



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL APPEAL NO.73 OF 2018

(Appeal Originating from Nyahururu CM's Court Cr.No.406 of 2014 by: Hon. A.P. Ndege –S. R.M.)

KIMALEL NARIKE LOJAN.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

J U D G M E N T

This is an appeal arising from the Judgment of Hon. Ndege SRM, in Criminal Case No.206 of 2014, dated 28/7/2015.

The appellant was charged with the offence of defilement contrary to Section 8(2) as read with Section 8(3) of the Sexual Offences Act.

The particulars of the charge are that on 14/2/2014 within Laikipia County, intentionally and unlawfully caused his penis to penetrate the vagina of CW a juvenile aged 14 years old.

In the alternative, he faced a charge of committing an indecent Act with a child contrary to Section 11(1) of the Sexual Offences Act.

After a full trial, the court found the appellant guilty of the offence of rape contrary to Section 3 of the Sexual Offences Act. He was sentenced to serve 13 years imprisonment.

Although the applicant had appealed against both conviction and sentence, he abandoned the appeal against conviction. He pleaded with the court to reduce the sentence or give him a non-custodial sentence.

The appeal was opposed. Ms. Rugut, learned counsel for the State submitted that the appellant was sentenced to 13 years imprisonment; that he kidnapped the complainant, a young girl for purposes of marrying her, locked her up and raped her in the process. Counsel urged the court not to interfere with the sentence.

I have considered the fact that the appellant was treated as a first offender. He did not give any mitigation. Even upto now, he is not remorseful for what he did. He is an old man, seems to be over 70 years. However, he abducted a young girl whom he tried to force to be his wife but she managed to escape. However, by the time of escape, she was already pregnant. The appellant's actions must be condemned at all costs. Such practices of young girls being married off to very old men like the appellant should be discouraged at all costs. The appellant should look for his age bracket and not destroy the life of children who should be his grandchildren.

Although the court found that the age was not established, there was medical evidence from the P3 that the complainant was 14 years. In fact, the court itself observed that the complainant was a juvenile and it is not clear why the court decided to disbelieve the Doctor and convicted the appellant on a less serious charge.

This court cannot however interfere with the trial court's findings on conviction at this stage.

The appellant does not deserve mercy.

Having said all the above, I hereby call for a Pre-sentence report through the Probation Office.

Dated, Signed and Delivered at NYAHURURU this 25th day of November, 2019.

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R.P.V. Wendoh

JUDGE

PRESENT:

Ms. Rugut for the State

Soi – Court Assistant

Appellant - present