



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

GARSEN HCCRA No. 11 OF 2016

PETER MUITA GITHINJI.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an Appeal from the conviction and sentence of 10 years imprisonment by Hon. J.W Ochuru(PM) at LAMU on 18/2/2016)

JUDGEMENT

1. The appellant was convicted and sentenced to 10 year imprisonment for the offence of rape contrary to section 3 (a) and (b) as read with section 3 (3) of the sexual Act No. 3 of 2006 on 18/2/2016.
2. The particulars of the offence were that on the night of 4th and 5th July 2015 at around 1.00am in Lamu West District, the Appellant unlawfully caused his penis to penetrate the vagina of Z W N without her consent.
3. The Appellant was faced with an alternative charge of indecent Act with a female contrary to section 11 (2) of the sexual offence Act No. 3 of 2006 in that on the same material particular as in count 1 (above). The appellant intentionally and unlawfully caused his penis to touch the vagina of Z W N without her consent.
4. The prosecution evidence in brief was that the complainant was asleep in her house on the material night at 1.00am when the Appellant entered her house and raped her and went away.
5. The complainant who recognized the Appellant as her neighbor woke PW5 and PW6, both neighbours and they went to the Appellant's house and arrested him. They recovered a chamber sweater which he was wearing with three used condoms.
6. The complainant was taken to Hospital and the Appellant was charged with this offence.
7. The appellant said in his defense that while he was at his home asleep he was ordered by some people to come out of his house. He said he was taken to the KPR officers and handcuffed. He was taken to Mpeketoni police station where it was alleged that he had stolen. He said he was asked for Kshs. 10,000 in order to be released and since he had done nothing, he refused to give the money and he was later charged with this offence.
8. The trial court found the Appellant guilty as charged and sentenced him to 10 years imprisonment. The Appellant has now appealed against both the conviction and sentence on the following grounds;

(i) That he pleaded not guilty.

(ii) That he was sentenced to ten (10) year for offence of rape c/sec 3(a) and (b) as read with sec 3(3) of the sexual offence act no. 3 of 2006, in criminal case no. 363 of 2015 on 18/02/2016.

(iii) The complainant mentioned the exhibits before the court.

(iv) The investigating officer brought the exhibits mentioned by the complainant before the court and the complainant denied those exhibits.

(v) That after that, they promised the court to bring different exhibits apart from mentioned.

(vi) That the doctor who examined the complainant informed the court that the mentioned exhibits were never brought to him for examination.

(vii) The complainant told the court that he was her neighbour living at Kamukunji in Lamu county, but the arresting officer told the court that he was her neighbor living at githurai at Mpeketoni in Lamu county.

(viii) That the Appellant is calling for justice to be administered by the High Court of Kenya.

9. I have carefully considered the submissions by both parties in this appeal. My findings are as follows;

(i) I find that the three ingredients of rape were proved by the prosecution.

(ii) The first is the identity of the perpetrator. The complainant was able to identify the Appellant who was her neighbor.

The complainant led the other neighbours to the house of the Appellant and he was arrested the same night and a sweater he was wearing was recovered with three used condoms.

(iii) I also find that penetration was proved. The evidence of the complainant was corroborated by that of the clinical officer who testified as PW1. He said there were no signs of forceful penetration because the complainant said the assailant used a condom.

(iv) I also find that the prosecution proved that the Appellant had sexual intercourse with the complainant against her consent.

(v) I find that the conviction herein is secure and the sentence lawful.

(vi) I accordingly dismiss the appeal and uphold both conviction and sentence.

Due to the security situation at Hindi Prison, the appellant could not be availed to court for this judgment which has been long pending and the judgment is now delivered on this 28th day of February, 2018 in the absence of the Appellant.

_____ for the Appellant.

Mr. Kasyoka for the Respondent

Order to issue accordingly.

ASENATH ONGERI

JUDGE.