



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO 4 OF 2016

GEOFFREY RUTO CHELEGON.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence the criminal case no. 2 of 2015 Bomet PMs court – Hon. P. Achieng PM)

JUDGMENT

The appellant was convicted and sentenced to twenty years imprisonment for the offence of defilement contrary to section 8 (1) as read with S.8 (3) of the sexual offences Act no. 3 of 2006.

The particulars being that on the diverse dates between the 1st day of September 2014 and 2nd January 2015 [particulars withheld] village Bomet county, he intentionally caused his penis to penetrate the vagina of C C a child aged 15 years.

The complainant and the appellants became friends sometimes in the month of October 2014 and they eloped and they slept together on various dates till their arrest on 2nd January 2015. It is complainants evidence that during that period they had sexual intercourse on various dates culminating into her becoming pregnant.

The ingredients for the offence of defilement are

- (1) Age
- (2) Penetration
- (3) Identification

Age

On the issue of age the mother of the complainant produced in court a birth certificate for C C (Complainant) showing the date of Birth as 20th.12.2000. The particulars in the charge sheet show the diverse dates from between 1st day of September 2014 to 2nd January 2015. That is within the 15 years window.

Penetration

The clinical officer who examined the complainant found no obvious visible injuries to the external genitalia. There was no discharge. She was found to have had an infection of the urinary tract. She was also found to be pregnant. Its complainant evidence that they had sexual intercourse with the appellant for the period they were staying together.

There is evidence that some traditional rituals were performed binding the two together. What transpires from the evidence before the court is that this is a clear case of a child marriage. There is overwhelming evidence that the complainant was 15 years at the time of elopement and subsequent marriage. They had stayed together for a period of more than three months prior to the arrest of the appellant.

The appellant called two witnesses who testified to have been seeing the complainant going to the home of the appellant but also in the same breath stated that the appellant was not at home at the time. As observed by the learned trial magistrate there would have been no point for the complainant to keep on visiting somebody who was not present.

The appellant did not prefer the defence as per S.8 (5) of the sexual offences Act that the complainant deceived him that she was over 18

years at the time of the commission of the offence.

The appellant has not alleged that at the time of the commission of the offence he was below the age of 18 years for the court to consider alternative modes of imprisonment.

The upshot is that the prosecution proved its case beyond reasonable doubt. The conviction was safe and the sentence lawful. Both are upheld.

The appeal is dismissed.

Judgment delivered dated and signed this 26th day of April 2017 in open court and in the presence of learned counsel for the prosecution. Mr. Wawire. The appellant in person present. Court assistant Rotich.

M. MUYA

JUDGE

26.4.2017