



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 4 OF 2016

(From original Conviction and Sentence in Kangema PM Criminal Case No 160 of 2015 – J O Magori, PM)

GEOFFREY GECHU GITHU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant herein, **Geoffrey Gechu Githu**, was convicted after trial of *defilement of a child* contrary to **section 8(1) and (3)** of the *Sexual Offences Act, No 3 of 2006*. It was alleged that on 08/01/2015 in [particulars withheld], Mathioya within Murang'a County, he intentionally and unlawfully caused his penis to penetrate the vagina of **J W G**, a child aged 14 years. He was sentenced to twenty (20) years imprisonment. He has appealed against both conviction and sentence.

2. In his petition of appeal the Appellant complained –

(a) That apart from the complainant herself, none of the other witnesses called by the prosecution claimed to have seen him commit the offence charged.

(b) That the trial magistrate failed to note the existence of a grudge between the complainant's and the Appellant's families.

(c) That the medical evidence adduced by the prosecution was suspect because he (the Appellant) was not medically examined to prove that he had committed the offence.

(d) That the trial court rejected his defence without giving any reasons.

(e) That the sentence was “harsh and stiff”.

3. In his hand-written amended grounds of appeal tendered at the hearing of the appeal the Appellant further complained –

(f) That the learned trial magistrate erred in both law and fact by relying on the evidence of a single witness (the complainant) to convict him, which evidence was “riddled with contradictions”.

(g) That a material witness who was alleged to have chased the Appellant at the scene of the offence was not called to testify.

4. The Appellant also tendered written submissions, which I have considered.
5. Learned prosecution counsel supported the conviction and sentence. She submitted that the charge of defilement was proved beyond reasonable doubt in all its elements, and that the Appellant was properly convicted.
6. I have read through the record of the trial court in order to evaluate on my own the evidence placed before that court and arrive at my own decisions thereon. This is my duty as the first appellate court. I have borne in mind however that I neither saw nor heard the witnesses, and I have given due allowance for that fact.
7. The complainant was a girl child then aged about 14 years. She was in primary school Standard 7. Her father (PW3) produced in evidence her child health card. It showed that she was born in the year 2000.
8. PW1 testified under oath that on 08/01/2015 at about 2.00 p.m., as she was going towards her grandmother's home, the Appellant appeared and held her. She had known him well, even by his full name. He forcibly carried her to his house. There she tried to scream but he held her mouth. She bit his hand. He placed her on the bed and removed her clothes (skirt and under-pant). He removed his own shorts and lay on her.
9. The Appellant then inserted his penis into the complainant's vagina. She bled and screamed and people came. The Appellant then ran away and some people chased him. She was then taken to police and to hospital. She was still bleeding and was treated. The police took away her skirt, biker, under-pant and shoes, all of which were blood-stained. She identified them in court.
10. In cross-examination by the Appellant the complainant explained that she bit the Appellant in the palm of his right hand, but he did not bleed. She denied that she was falsely implicating him. She denied that the Appellant was at Nyahururu at the material time and was emphatic that it was the Appellant who defiled her in his own house; she screamed and people responded by coming to the scene; and that he then escaped.
11. PW2 (P W W) was one of the people who responded to PW1's screams. She proceeded towards the direction of the screams. The screams were coming from the Appellant's house which she knew. She found PW1 outside the Appellant's house. She was bleeding and she observed blood on her legs. PW1 told her that she had been defiled by the Appellant. She (PW2) picked up PW1's clothing and one shoe which were blood-stained. Just then PW1's father (J G who testified as PW3) came. They and others took PW1 to the police and subsequently to hospital. She identified in court PW1's clothing that she picked up and handed to the police. In cross-examination PW2 denied the Appellant's alibi.
12. PW3 was called to the scene. He proceeded to the house of the Appellant. He found his daughter (PW1) outside the house crying. Her clothes and legs were blood-stained. He and others took the child to the police and thence to hospital. In cross-examination PW3 denied that PW1 was falsely implicating him. He denied the Appellant's alibi. He also stated that the Appellant's mother tried to give him KShs 1,000/00 to terminate the case.
13. PW4 (Francis Kinga Maina) was the local assistant chief. He arrested the Appellant on 10/03/2015 at about 3.00 p.m. He already had information about the defilement of PW1 and the Appellant's escape. He escorted him to the police and handed him over. In cross-examination PW4 denied the Appellant's alibi.
14. PW5 (Ian Ngumo Waitere) was the clinical officer who examined the complainant about six (6) hours after the defilement and prepared her medical report which he produced in evidence. His findings were that she had lacerations on the vaginal wall and blood clots in the vagina. There were lacerations also on both labia. Her hymen was freshly broken. A high vaginal swab revealed the presence of blood, but no spermatozoa were seen. HIV and pregnancy tests were negative. In PW5's opinion, the physical findings upon the examination of the complainant were consistent with defilement.

15. PW6 (PC Timothy Muya) was the investigating officer. He produced in evidence the complainant's clothing and shoe.

16. In his own defence the Appellant gave an unsworn statement and did not call any witness. The thrust of his defence was that at the material time he was away at Ndaragwa in Nyahururu where he had gone on 02/12/2014 and only came back home on 01/03/2015. He was arrested on 10/03/2015 while going about his business. He was then placed in the cells. He repeated that he was falsely implicated in the case by the witnesses who were family members.

17. That was the totality of the evidence placed before the trial court. The complainant was not a child of tender years. She was 14 years old and in Standard 7 primary. She testified under oath. Her testimony was clear and straightforward, and she was not shaken at all in the robust cross-examination by the Appellant.

18. The Appellant was well-known to the complainant. The attack took place in broad daylight, and the Appellant took her to his own house. The screams in the course of the defilement were immediately responded to by PW2 and others, and this forced the Appellant to cut short the defilement and flee. It is true that none of the persons who apparently chased after him testified, but there was ample other evidence.

19. PW2, and shortly later the complainant's father (PW3), found the complainant outside the Appellant's house. She was crying and her clothing was blood-stained. Her legs were also blood-stained, and she was still bleeding when they got her to hospital.

20. The medical evidence by PW5 fully corroborated the testimonies of the complainant and also PW2 and PW3.

21. Upon my own evaluation of the evidence placed before the trial court, I am satisfied that the Appellant was convicted upon good and sound evidence, in fact, overwhelming evidence. His alibi was completely disproved by the prosecution evidence.

22. I find no merit at all in the appeal against conviction. As for the sentence, once the trial court decided that the Appellant deserved a custodial sentence (and there is no doubt that he richly deserved it) the minimum term of imprisonment that the court could impose was twenty (20) years. That is what he got.

23. In the end the Appellant's appeal is dismissed in its entirety. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 27TH DAY OF JULY 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 28TH DAY OF JULY 2017