



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL APPEAL NO 5 OF 2017

GILBERT KIPKORIR KIPRONO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence

in Cr Case SO 23 of 2013 Bomet – Hon P. Achieng – PM)

JUDGMENT

The appellant was convicted and sentenced to 15 years imprisonment for the offence of defilement contrary to section 8 (1) (4) of the Sexual offences Act no. 3 of 2006.

The particulars being that on diverse dates between January 2012 and July 2013 within Bomet county, intentionally caused his penis to penetrate the vagina of M C, a child aged 17 years.

The appellant and the complainant both teenagers at the time had an intimate relationship in the year 2012 till she conceived in February 2013. She gave birth to a bouncing baby boy on 14/10/2013.

Evidence was adduced to the effect that the complainant was born on 2/10/1995. A birth certificate was produced as exhibit no. 2 for the prosecution.

A perusal of the particulars of the charge do indicate that the offence was committed on diverse dates between the month of January 2012 and July 2013.

It is instructive to note that the complainant did not give the exact date when she first had sexual intercourse with the applicant only stating that it was in the year 2012.

In his defence the appellant testified that he had sexual relationship with the complainant from the year 2012 to 2013 and that he was of the view that she was over 18 years and that they had arranged to get married.

That according to her birth certificate showed that she was 19 years old. It is the prosecution case that the defilement took place on diverse dates from January 2012 to July 2013.

Assuming that this was the correct and exact duration. In the year 2013, the complainant would have been 18 years. What this means is that though the age of the complainant is known vide her birth

certificate, the date of the defilement is not known or it was not disclosed. The age of the complainant is shown to have been 17 years at the time of the defilement but the exact date of defilement was not ascertained and the defilement may as well have occurred when the complainant was 18 years and over.

The age of seventeen years of age which is shown in the particulars of the charge, is too close to call, more so when the date of defilement is not known.

The appellant contention is that he knew the complainant to be over 18 years and they intended to get married.

Complainant's evidence was to the same effect that they had intended to get married. This is one of those borderline cases whose evidence needs to be treated with lots of caution.

I am of the considered view that it was not sufficiently established the age of the complainant at the time of defilement because the date of defilement is not shown. The doubt should have been resolved in favour of the accused. The conviction was not safe. The appeal is allowed.

The conviction is quashed and the sentence is set aside.

The appellant is set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this 28th day of July 2017 in the presence of learned counsel for the prosecution Mr. Nambuyumbu. Appellant in person present. Court assistant Rotich.

MARTIN MUYA

JUDGE

28.7.2017