



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 69 OF 2014

BETWEEN

ATHANUS LIJODI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal against the original conviction and sentence by Hon. M. Moranga, PM dated 3rd January 2013 at the Chief Magistrate's Court, Kakamega in Criminal S.O. Case No. 48 of 2012.)

J U D G M E N T

1. ATHANUS LIJODI was charged and convicted of the offence of defilement contrary to section 8(1) and 8(2) of the Sexual Offences Act and sentenced to life imprisonment. The particulars of the charge were that on 30th July, 2012 within Kakamega South District, he intentionally and unlawfully caused his penis to penetrate the vagina of SK, a child aged 10 years. He now appeals against conviction and sentence.
2. The facts giving rise to this appeal were as follows. On 30th July, 2012, SK (PW1) was sent by her mother to collect firewood. The appellant, whom she knew, came towards her and requested her to assist him carry grass. She accepted but when she followed him there was no grass. Instead, the appellant carried her deep into the maize plantation and proceeded to sexually assault her. Her father, PW3, emerged and found the appellant having intercourse with PW 1. PW3 confronted the appellant with a panga but since the appellant also had a panga, he feared for his life and they parted. In the meantime, PW1 ran away and went home.
3. PW1's mother, PW 2, told the court that she had sent PW1 to look for firewood but she did not return immediately. She came back later looking distressed with her dress stained. PW 1 told her that the appellant had defiled her. PW 2 examined PW 1's private parts and that she was bleeding. When her husband, PW 3, came home, he narrated to her what he had witnessed.
4. PW 2 and PW 3 took PW 1 to Shibuye sub-District Hospital for examination and treatment and also reported the matter to the police on the same day. PW 5, the Clinical Officer, confirmed that PW 1 and PW 2 came to the hospital. She examined the child and noted that she had bruises on her private parts. She also noted that her pants were wet and torn and had blood stains. The other clothes, the skirt and blouse, were also stained with mud. She concluded that there was penetration.

5. PW 4, the investigating officer, confirmed that PW 1 and PW 2 reported that the appellant had assaulted PW1. He issued the P3 form, took statements and made a decision to charge the appellant.
6. In his sworn testimony, the appellant denied the offence. He explained that he shared a common boundary with PW 2 and PW 3 and that on the material day at 7.00 pm, people came to arrest him, beat him and took his money. He claimed that he had been framed.
7. The thrust of the appellant's appeal is that the prosecution did not prove the offence of defilement to the requisite standard. The respondent was of the view that the prosecution proved all the elements of the offence.
8. PW1's testimony was clear and graphic and left no doubt that it is the appellant had sexual intercourse with her. He was not a stranger and was well known to her. Under section 124 of the Evidence Act (Chapter 80 of the Laws of Kenya), there is no need for corroboration if the trial magistrate is satisfied that the child is telling the truth. In this case, the trial magistrate was satisfied that PW 1's testimony was clear and unshaken.
9. Notwithstanding the provisions of section 124 of the Evidence Act, there is ample corroboration of PW1's testimony. First, PW 3 caught the appellant in the act of penetration. Second, PW1's blood stained clothes including blood stained pants were produced in evidence to confirm what took place in the maize plantation. Third, after the ordeal, the child went and informed her mother, PW 2, immediately. PW 2 saw her in a distressed state and confirmed that she had been assaulted when she examined her private parts. Fourth, the medical examination done by PW 5 on the same day leaves no doubt that there was penetration.
10. PW 2 and PW 3 clearly denied that they had framed the appellant or that they had any dispute with him. It is difficult to believe that they would put PW 1 through such an ordeal in order to implicate him in a non-existent grudge. The appellant's defence was clearly a sham when considered alongside the prosecution case.
11. There is no doubt that PW1 was aged 8 years old as the testimony of her parents, PW 2 and PW 3, confirmed. Since she was 8 years old, the offence attracts a mandatory sentence of life imprisonment upon conviction.
12. The conviction and sentence are affirmed. The appeal is dismissed.

Dated and delivered at Kakamega this 29th day of August, 2017

D. S. MAJANJA

JUDGE

Appellant in person.

Mr Ng'etich, Senior Prosecution Counsel instructed by the Director of Public Prosecutions for the respondent.