



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO. 44 OF 2016

PATRICK MUNENE ALIAS BABA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No.15 of 2016 of the Senior Resident Magistrate's Court at Githongo by C.A Mayamba– Senior Resident Magistrate)

JUDGMENT

The appellant, **PATRICK MUNENE ALIAS BABA**, was charged and convicted for the Offence of rape contrary to section 3 (1) (a) (c) (3) (sic) of the Sexual Offences Act No.3 of 2006 and the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code.

The particulars of the offence were that on 4th January 2016 at [particulars withheld] Market, in Imenti Central District of Meru County intentionally and unlawfully caused his penis to penetrate the vagina of **A W** by use of force. On the same day he beat and injured the said **A W**.

The appellant was sentenced to serve 10 years imprisonment in count one and in count two to serve one year imprisonment. The sentence was ordered to run concurrently. He now appeals against both conviction and sentence.

The appellant raised four grounds of appeal that can be summarized as follows:

1. That the learned trial magistrate erred in law and fact by convicting him without medical evidence linking him to the offence.
2. That the learned trial magistrate erred in law and fact by convicting the appellant without sufficient evidence.

The state opposed the appeal and was represented by Mr. Odhiambo, the learned counsel.

The facts of the prosecution case were briefly as follows:

The complainant met with the appellant at a corridor. He got hold of and beat her severally before raping her. He then dragged her to his house where he also raped her before police went for her rescue.

On his part the appellant contended that he was woken up by some police officers in company of the complainant and he was arrested.

This is a first appellate court as expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO Vs. REPUBLIC 1972 EA 32.**

The charge in count one was wrongly drafted. It ought to read:

" ... contrary to section 3(1) as read with section 3(3) ..."

Since the appellant fully participated in the trial and clearly understood the charge, I find that he was not prejudiced in any way. The defect is curable under section 382 of the Criminal Procedure Code.

In ***GEOFFREY KIONJI VS REPUBLIC CR. APPEAL NO 270 OF 2010*** the court of appeal held that *medical examination of an accused is not mandatory when it stated:*

Where available, medical evidence arising from examination of the accused and linking him to the defilement would be welcome. We however hasten to add that such medical evidence is not mandatory or even the only evidence upon which an accused person can properly be convicted for defilement. The court can convict if it is satisfied that there is evidence beyond reasonable doubt that the defilement was perpetrated by the accused person. Indeed, under the proviso to section 124 of the Evidence Act, Cap 80, Laws of Kenya, a court can convict an accused person in a prosecution involving a sexual offence, on the evidence of the victim alone, if the court believes the victim and records the reasons for such belief.

This position holds in the appellant's case.

The complainant (PW1) testified how the appellant accosted her and started to beat her before having sexual intercourse with her without her consent. This was witnessed by S M (PW2) and J K M (PW3). The medical evidence by Dr. Samuel Mutegi (PW5) confirmed that the complainant sustained several injuries on her body. The same medical evidence indicated that the complainant suffered scratch marks on her inner thighs and that her vaginal wall was inflamed and reddish. This confirmed penetration.

At the time of arrest the appellant and the complainant were found in the appellant's house where the complainant contended was taken against her will. There was ample evidence to support the prosecution case.

The sentence meted out cannot be said to be excessive in the circumstances.

I therefore dismiss the appellant's appeal for want of merits.

DATED at Meru 19th day of December 2016

KIARIE WAWERU KIARIE

JUDGE