



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
HIGH COURT CRIMINAL APPEAL No. 75 OF 2007

GABRIEL BEKETI WANJAFU APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

1 The Appellant, Gabriel Beketi Wanjofu, appeared before the Resident Magistrate at Kitale, charged with defilement contrary to section 145 (1) of the Penal code in that;- On the 22nd day of November, 2005 at [particulars withheld] Farm in Trans-Nzoia District had carnal knowledge of W A a girl under the age of sixteen (16) years.

2 After trial, the appellant was convicted and sentenced to thirty (30) years imprisonment but being dissatisfied he preferred the present appeal on the basis of the grounds in his petition of appeal dated 22nd November, 2007. He appeared in person at the hearing of the appeal and relied on his written submissions.

3. The learned prosecution counsel Mr. Kakoi, appeared for the respondent state. He opposed the appeal by submitting that the complainant (PW1) stated how the offence occurred. His evidence remained unshaken and coupled with that of PW5, it remained unshaken

4. The learned prosecution counsel, further submitted that PW5 confirmed that the complainant was indeed defiled and was at the time aged nine (9) years.

On sentence, the learned prosecution counsel, submitted that the same was excessive as the appellant was convicted under the former Section 145(1) of the penal code which carried a maximum sentence of fourteen (14) years imprisonment.

5. Having considered this grounds of the appeal in the light of the submissions by both sides, the duty of this court was to revisit the evidence and arrive at its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

6. In that regard, the evidence led by the prosecution through the complainant, W A (PW1), her mother T A (PW2), the arresting Officer, PC Moraa Pauline Cherugoi (PW4), the Clinical Officer, Chrisantus Masinde (PW5), the Investigations officer, PC Honestia Chekurgat (PW6), and a second clinical officer, Linus Ligare (PW7), was considered by this court against the evidence led by this appellant in his defence.

7. From all the evidence, it was clear that the ingredients of the charge were duly established. Indeed, the evidence by the complainant (PW1) as corroborated by that of the Clinical Officer (PW5) established without any particular dispute that the complainant was sexually assaulted.

8. The complainant went on to establish that the person who sexually assaulted her was the appellant, a person well known to her as a neighbour. She informed her mother (PW2) as such when she (mother) noticed that the (complainant) was walking with an unusual gait. The father informed the village elder (PW3) that the appellant was the offender and this led to his arrest. His defence was thus clearly disapproved. He could not therefore deny the offence and be heard to state that the prosecution witnesses were all liars.

9. This court is satisfied that the appellant's conviction by the learned trial magistrate was thus sound and safe and is hereby affirmed . However, with regard to the thirty (30) years imprisonment sentence, this was indeed excessive as the appellant was convicted under the repealed section 145(1) of the Penal Code which provided for a maximum sentence of fourteen (14) years imprisonment as opposed to section 8(2) of the current Sexual Offence Act which provides for imprisonment for life given that the complainant was aged nine (9) years at the time of the offence.

10. Consequently, the sentence imposed by the learned trial magistrate is hereby set aside and substituted for a sentence of ten(10) years imprisonment. It is only to that extent that this appeal is allowed.

J. R. KARANJA

JUDGE

Delivered and signed this 21st day of May 2015.

J. R. KARANJA

JUDGE