



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL NO. 84 OF 2014

JONATHAN LUYALI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The appellant, **Jonathan Luyali**, was convicted and sentenced to fifteen (15) years imprisonment by the Resident Magistrate at Kapenguri for the offence of defilement, Contrary to S. 8(1) read with S. 8(4) of the Sexual Offences Act.

It was alleged that on diverse dates between **8th February, 2014** and **10th February, 2014**, at [particulars withheld] West Pokot County, the appellant defiled **R N**, a girl aged **sixteen (16) years**.

2. Being dissatisfied with the conviction and sentence, the appellant preferred

this appeal on the basis of the grounds in his petition of appeal dated 25th July, 2014. He appeared in person at the hearing of the appeal and presented written submissions which he fully relied on in support of his case.

3. The learned prosecutor Counsel, Mr. Mukabana, appeared for the respondent and opposed the appeal by insisting that there was no material contradictions in the evidence adduced by the prosecution and that PW1 was clear when she stated that she was penetrated by the appellant at his home, a fact which was confirmed by PW2. That, the clinical officer PW3) confirmed that the complainant's hymen was torn and that there was evidence showing that the complainant was a minor aged sixteen (16) years.
4. Learned prosecutor counsel further submitted that the appellant's alibi defence could not be believed without corroboration evidence that the learned trial magistrate took into consideration the defence and found it weak.
5. Having considered the appeal on the basis of the supporting grounds and the rival submissions, it fell upon the court to re-consider 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 prosecution's evidence given by the complainant, R N (PW1), the appellant's neighbour Irene Chepkemoi (PW2), the clinical officer, Danson Litole (PW3), and the investigations officer, PC Walter Menjo (PW4), was considered against the evidence given by the appellant in his defence which was essentially a denial.
7. From all the evidence, this court is satisfied that the appellant was properly convicted by the

learned trial magistrate. This is because there was sufficient and credible evidence from the complainant (PW1) and the clinical officer (PW3) establishing the material ingredients of the charge.

8. The complainant, indicated that the appellant defiled her on several occasions with promises that he would marry her. He later hurled insults at his neighbour (PW2) when she (complainant) sought refuge at the neighbour's house.
9. The neighbour indicated that she was threatened by the appellant after the complainant sought refuge in her house on disagreeing with the appellant. She (PW2) then reported the matter to the police leading to the arrest of the appellant. Thereafter the complainant was taken to Kapenguria District Hospital for examination.
10. The clinical officer (PW3) produced a report prepared by a colleague indicating that the complainant was defiled. He (PW3) carried out an age assessment of the complainant and found her to be sixteen (16) years. He produced the necessary certificate (P. Exhibit 1).
11. Although the appellant denied the offence and the indication that he was found with the complainant, the evidence against him by the complainant (PW1) as supported by the neighbour (PW2) and the clinical officer (PW3), resulted that the defence and rendered it completely unbelievable. The evidence clearly showed that not only was the complainant defiled but also that the person responsible for the consecutive acts of defilement was the appellant.
12. It did not matter that the complainant may have consented to the acts of defilement or that the appellant had promised to marry her, the fact was that she was an under age girl at the time and the appellant had no right to engage in sexual intercourse with her.
13. Given that the complainant was aged sixteen (16) years at the material time, it followed that the sentence applicable was that provided under S.8(4) of the Sexual Offences Act, i.e. imprisonment for a term not less than fifteen (15) years.

The sentence inflicted herein by the learned trial magistrate is therefore lawful.

14. In sum, this appeal is devoid of merit and is hereby dismissed in its entirety.

J.R. KARANJA

JUDGE

21/5/2015.

(Delivered/signed this 21st day of May, 2015)