



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CRIMINAL APPEAL No.104 OF 2013

GEOFFREY MOHA KEYA..... APPELLANTS

VERSUS

REPUBLIC RESPONDENT

(An appeal from the original conviction and sentence of S. K. NGETICH Senior Resident Magistrate in Criminal Case No. 1816 of 2012 delivered on 20th September, 2013 at Kitale.)

J U D G E M E N T

1. The appellant, **Geoffrey Moha Keya**, alias. **Miwani**, appeared before the Senior Resident Magistrate at Kitale charged with defilement, contrary to section 8(1) read with S.8(2) of the Sexual Offences Act, in that on the 23rd July 2012 in Trans-Nzoia County, defiled **ACC**, a child aged (8) years. There was an alternative count of committing an Indecent Act with the same child contrary to S.11(1) of the Sexual Offences Act.

2. After a full trial, the appellant was convicted and sentenced to life imprisonment on the main count. He preferred this appeal after being dissatisfied with the conviction and sentence and appeared in person at the hearing of the appeal. He presented written submissions which he fully relied on in support of the appeal. He urged the court to quash the conviction and set him free.

3. The respondent opposed the appeal through the learned Prosecution Counsel, **Mr. Kakoi** who submitted that the complainant's evidence showed how she was defiled and that she screamed in the process whereupon the appellant cut her on the head. That, her evidence was firm and unshaken and was corroborated by that of PW2 and PW3. That, the age of the complainant was confirmed by PW4. That, there was adequate primary evidence against the appellant from the complainant and the clinical officer(PW3). Learned Prosecution Counsel contended that the appellant conviction was proper and the sentence lawful.

4. After due consideration of the appeal together with the supporting and opposing submissions, this court was called upon to re-examine the evidence bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

In that regard, the evidence by the five (5) prosecution witnesses was considered against that of the appellant in defence.

5. The evidence by the complainant **AC** (PW1), indicated that she was from a river with her younger sister called **L** when they met the appellant who gave her (complainant) a sum of Kshs.40/= and took her to his house where he told her to lie on a bed. He then defiled her and when she screamed he used a "**Panga**" to cut her on the head. She therefore reported the matter to the mother, **EC** (PW2).

6. The mother (PW2) met her on the road and noticed that she was bleeding on the head. She learnt from her (Complainant) that the appellant had defiled her. She (mother) noticed that her (complainant) private parts were swollen and took her to hospital where she was examined by a clinical officer, **Kirwa Labat** (PW3), who confirmed that she was defiled. He also confirmed that she had a cut would on the left temporal region of the head. He completed and signed the necessary medical report (P3 form) (P.EX.2).

7. **Dr. Ken Ndege** (PW4) produced the age assessment report (Pex.3) completed by a colleague and showing that the complainant was aged eight (8) years at the material time of the offence.

8. **Sgt Justine Wabwire** (PW5) investigated the case after it was reported to the police and later preferred the present charge against the appellant who denied the offence in his defence and indicated that he was owed some money by the complainant's father with whom he disagreed on the 21st July 2012 and who warned him that he would do something that he (appellant) would regret. That he was arrested on the 22nd July 2012, for an assault offence but was shocked to be charged with defilement of the complainant whom he had not previously known.

9. Basically, the evidence in its totality raised no dispute with regard to the fact that the complainant was defiled. In any event, her evidence coupled with that of the clinical officer (PW3) and to some extent that of her mother (PW2) was sufficient enough and credible to establish the fact. Indeed, the appellant did not dispute that the complainant was defiled. His defence was that he was not responsible for the offence.

10. However, there was sufficient and credible evidence from the complainant that the appellant was the person who defiled her. She did not know his name before the material date but she knew him as the person who lived at the compound of one **Gicheru**. Her mother (PW2) also knew that he stayed at **Gicheru's** compound.

11. 11. The mother (PW2) did not see the appellant committing the offence but she believed what the complainant informed her. The learned trial magistrate also believed her and found that she was indeed defiled by the appellant. Having seen the complainant testify, the learned trial magistrate was better placed than this court to make necessary findings on the credibility of witnesses.

It is also the finding of this court that the appellant was the person responsible for the offence.

12. His (Appellant's) defence was therefore discredited and reduced into an after-thought. Not only did he assault the complainant, but also defiled her. It was surprising that he was not charged with a second count of assault causing actual bodily harm.

13. In sum, it is the ultimate finding of this court that this appeal is lacking in merit as the prosecution case against the appellant was cogent, fairly consistent and credible. Any lapse in consistency was immaterial and incapable of watering down the prosecution case.

The Appeal is thus dismissed in its entirety.

J. R. KARANJA

JUDGE

[Delivered & Signed this 18th day of June 2015.

J. R. KARANJA

JUDGE