



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CRIMINAL APPEAL NO. 61 OF 2014**

**ANTHONY RENJU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***[An appeal against Judgment conviction and sentence of Hon. P. W. Wasike (Resident Magistrate) at Kitale delivered on 3rd June, 2014 vide Kitale CMCR. No. 2975 of 2013]***

**J U D G M E N T**

**1. Anthony Renju** (the appellant), was charged before the Resident Magistrate at Kitale with defilement, contrary to Section 8(1) read with 8(3) of the Sexual Offences Act, in that on diverse dates between **21st July, 2013** and **24th July, 2013**, at *Particulars withheld*, defiled ***Particulares withheld***, a child aged **thirteen (13) years**.

There was an alternative count of committing an Indecent Act with the same girl contrary to Section 11(1) of the Sexual Offences Act.

**2.** After a full trial, the appellant was convicted on the main count and sentenced to twenty (20) years imprisonment but being dissatisfied, he preferred the present appeal on grounds contained in his petition dated 10th June, 2014. He appeared in person at the hearing of the appeal and presented written submissions which he fully relied on in support of the appeal.

**3.** The learned prosecution counsel, **Mr. Kakoi**, opposed the appeal on behalf of the respondent and submitted that the complainant (PW1) was very consistent in her evidence on how she was taken against her will and held in the house of the appellant for some days during which she was defiled by the appellant before being released. That, PW2 and PW3 provided corroborative evidence while PW5 confirmed that the complainant was aged thirteen (13) years at the time.

**4.** With regard to the sentence, the learned prosecution counsel submitted that it was lawful but ought to be enhanced in terms of the notice of enhancement filed herein and dated 12th March, 2015, considering that the complainant was held against her will without food.

**5.** The rival submissions have been given due consideration by this court whose duty it was, to re-visit the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

In that regard, the evidence by the prosecution through its witnesses including the complainant, ***Particulars withheld*** (PW1), the complainant's father, ***Particulars withheld*** (PW2), a motor cycle taxi (boda-boda) operator, ***particulars withheld*** (PW3), the complainant's brother, **PK (PW4)**, **Dr. Ken**

**Ndege (PW5)**, a clinical officer, **John Kipkorir Koma (PW6)**, the investigating officer, **Cpl. Benedict Eregoi (PW7)** and a driver, **Tom Wanjal Wamalwa (PW8)**, was duly considered against that of the appellant in his defence.

6. The evidence by the complainant (PW1) as corroborated by that of the doctor (PW5) and the clinical officer (PW6) basically showed that she engaged in sexual activity between the 21st July, 2013 to the 23rd July, 2013 at the time when she was aged thirteen (13) years. She clearly indicated that the activity was forced on her thereby implying that she did not consent to it although she also indicated that she willingly accepted to be taken to a male person's home as a wife.

7. Indeed, the complainant's father (PW2) indicated that the complainant told him that she was cheated into entering into a "marriage" relationship. Her brother (PW4) was informed by her that she had been married. She informed the investigating officer (PW7) that she was cheated into being somebody's wife.

The foregoing notwithstanding and whether or not the complainant consented to engage in sexual intercourse with any man, she was only thirteen (13) years old and therefore a child. Consequently, any person who had carnal knowledge of her at the time was liable for the criminal offence of defilement contrary to Section 8(1) of the Sexual Offences Act.

8. The commission of the offence against the complainant was thus established by her own evidence together with that of the clinical officer ((PW6) while the doctor ((PW7) established her age of thirteen (13) years. There was in fact no dispute from the accused that the complainant was indeed defiled on several occasions.

9. The basic issue that fell for determination by the trial court was whether the accused was the person responsible for the offence thereby implying that he was the person who cheated the complainant, took her into his house and treated her as his wife. Evidence led by the prosecution through the complainant's father (PW2) and brothers (PW3 and PW4) indicated that the appellant was related to them. He denied responsibility for the offence and indicated that he was arrested for being found in possession of a traditional brew called "busaa" and that he was charged with the present offence after failing to raise a sum of Kshs.2,000/= needed by the police as a bribe.

10. Apart from the complainant, no other prosecution witness could with certainty say that she was defiled by the appellant. None of them witnessed the act. The complainant's evidence stood on its own in the identification of the appellant as the offender. This was appreciated by the learned trial magistrate who nevertheless believed the complainant and noted that her evidence remained strong and uncontroverted such that it rendered the appellant's defence an afterthought and lacking in merit.

11. Under Section 124 of the Evidence Act, the complainant's evidence did not have to be corroborated and could be acted upon by the trial court to convict the appellant once the court was satisfied that the complainant told the truth. The trial court was at an advantage than this court in making findings based on the credibility of witnesses. This court has no reason to fault the findings of the trial magistrate to the effect that the appellant was responsible for defiling the complainant. There was cogent and credible evidence from the complainant to establish the fact beyond reasonable doubt. Therefore, this court upholds the appellant's conviction by the learned trial magistrate.

12. With regard to the sentence, Section 8(3) of the Sexual Offences Act, provides for minimum sentence of twenty (20) years for a person who defiles a child aged between twelve (12) and fifteen (15) years.

The sentence imposed on the appellant by the trial magistrate was therefore lawful and a need to enhance it as requested by the respondent does not arise as the prosecution had an option of charging the appellant with defilement and abduction but they only opted for defilement. In any event, the complainant's evidence suggested that she may have consented to sexual acts with the appellant but he should have known better than to fall prey to sensual temptations.

In sum, this appeal is dismissed in its entirety.

**J.R. KARANJA**

**JUDGE**

**28/07/2015**

{Delivered and signed this **28th** day of **July, 2015**}

**J.R. KARANJA**

**JUDGE**

**28/07/2015**