



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITALE

CRIMINAL APPEAL NO. 88 OF 2014

P E.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[An appeal against Judgment conviction and sentence of Hon. H.O. Barasa (Ag. Principal

Magistrate) at Kapenguria delivered on 31st July, 2014 vide Kitale CMCR. No. 428 of 2014]

J U D G M E N T

1. The appellant **P E**, appeared before the Principal Magistrate at Kapenguria charged with defilement, contrary to Section 8 (1) read with 8 (2) of the Sexual Offences Act. He faced an alternative charge of indecent Act with a child contrary to Section 11 (1) of the same Act. It was alleged that on the night of **17th/18th March, 2014** at West Pokot County, he defiled **E C**, a girl aged four (4) years or engaged in an indecent act with her.

2. After a full trial, the appellant was convicted and sentenced to life imprisonment on the main count. He was dissatisfied with the verdict and preferred the present appeal on the basis of the grounds in the petition of appeal dated 5th August, 2014. He represented himself at the hearing of the appeal and relied on his written submissions.

3. The respondent, through the learned Prosecution Counsel, **Mr. Kakoi** opposed the appeal by orally submitting that the evidence by the prosecution was consistent in proving the offence against the appellant. That, the complainant was aged six (6) years and that she told the court that she was defiled by her step-father, the appellant.

That, PW2 was very elaborate on the circumstances leading to the offence and its discovery. That, PW3 corroborated the evidence by PW2 and that there was medical evidence to establish the offence. That the defence did not address the offence but only marital differences.

4. The learned prosecution counsel, urged this court to dismiss the appeal but the appellant contended that the prosecution evidence was from members of one family as there was no independent witnesses. This court's duty after having considered the grounds of appeal in the light of the submissions by both sides was to re- consider the evidence afresh and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

5. In that regard, this court has considered the evidence led by the prosecution through the complainant,

EC (PW1), her mother, **LC (PW2)**, her grandmother, **JC (PW3)**, a clinical officer, **Makal Michael (PW4)**, and the investigating officer, **PC James Maina (PW5)**. The evidence led by the appellant in his defence was also considered.

6. It was apparent from all that evidence that an act of defilement was indeed committed against the complainant. Her testimony indicated as much and was duly corroborated by that of her mother (PW2) and grandmother (PW3) as well as that of the clinical officer (PW4). There was indeed no dispute that the offence was committed against the complainant who was at the material time aged four (4) years as confirmed by the age assessment report dated 7th April, 2014 [P. Exhibit 1].

7. The basic issue that arose for determination was whether the appellant was the person responsible for the offence. His defence was a denial and a conclusion that he was framed by the complainant's mother, his wife. He confirmed that the complainant was his step-daughter and contended that her mother's intention was to get married to someone else.

8. However, there was ample and credible evidence from the complainant that it was the appellant who defiled her. That evidence was rightly relied upon by the trial court in its finding that the appellant was the offender. The learned trial magistrate was satisfied that the complainant told the truth and being alive to the provision of Section 124 of the Evidence Act proceeded to convict the appellant. This court agrees with the conviction in as much as it was supported by credible direct evidence which was somehow corroborated by indirect evidence from the complainant's mother (PW2) and grandmother (PW3) pointing towards the guilty of the appellant.

9. It was the complainant mother's testimony as well as that of her grandmother that after the incident was reported to the police, the appellant ran away and disappeared from home for about one week before he was arrested. His conduct of disappearing after the commission of the offence attracted a strong inference that he did so to escape being arrested for committing the offence. This provided sufficient circumstantial evidence against him (*see, Malowa -vs- Republic [198] KLR 110*) on top of direct evidence. His conviction was therefore safe and sound.

10. The complainant was aged four (4) years at the time of the offence. Section 8(2) of the Sexual Offences act, provides for life imprisonment for a person who defiles a child aged eleven (11) years or less.

The sentence imposed on the appellant by the learned trial magistrate was therefore lawful. In the end result, the present appeal is devoid of merit and is hereby dismissed in its entirety.

J.K. KARANJA

JUDGE

28/07/2015

[Delivered and signed this 28th day of July, 2015]