



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

HIGH COURT CRIMINAL APPEAL NO. 69 OF 2015

(CORAM: J. A. MAKAU – J.)

GEOFFREY INDUNYI WERE..... APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal against both the conviction and the sentence in Criminal Case No. 624 of 2015 in Bondo Law Court before Hon. M. Obiero – P.M.)

JUDGMENT

1. The Appellant **GEOFFREY INDUNYI WERE** was charged with an offence of defilement contrary to section 8 (1) (3) of the Sexual Offences Act No. 3 of 2006. The particulars of the offence are that on diverse dates between 24th day of November, 2014 upto 10th July 2015 within Siaya County, intentionally caused his penis to penetrate the vagina of S A O a child aged 14 years.
2. The charge was read and explained to the appellant in Kiswahili language which he understands and on being asked whether he admits or denies the charge he replied it was true. That facts of the offence were given by the prosecutor. The prosecutor produced the complainant's treatment notes as exhibit 1, treatment notes of the appellant as exhibit 2; P3 form for the complainant as exhibit 3, and P3 form for the appellant as exhibit 4 and complainant's birth certificate as exhibit showing date of birth of the complainant as 27.11.2001. The appellant admitted the facts as given by the prosecution as true. The trial Court then proceeded to convict the appellant on his own plea of guilty and proceeded to sentence the appellant to serve imprisonment for 20 years.
3. The appellant aggrieved by the conviction and sentence preferred this appeal setting out 4 grounds of appeal as follows:-

“a) That he was not conversant to the language used in Court during the whole process thus unconstitutional as guaranteed under Article 50 (2) of the constitution of Kenya to a fair trial.

b) That the presiding magistrate erred in law by passing an immediate and harsh sentence upon the appellant without considering the dire consequences of the proffered charge against the appellant which was unsafe and unsuitable.

c) That the presiding Court ought to have invited the doctrines of natural justice on determining the present matter in the interest of justice.

d) That the presiding Court did not appreciate that the appellant's mitigation was an indirect way of pleading not guilty as was the basis of his conviction which the Court ought to have come up with a different verdict.

REASONS WHEREOF: he prayed that the appeal be allowed, conviction quashed and sentence set aside as the Court deemed fit and just.

4. When the appeal came up for hearing the appellant abandoned his appeal against conviction and proceeded to prosecute his appeal against the sentence.

5. The brief facts of the prosecution's case is as follows:- That on 24.11.2014 at about 12.00 p.m. the appellant seduced the complainant and took her to his rented house at Ndori where he had Sexual intercourse with her. The complainant's grandfather who was the employer of the appellant discovered what had happened and sacked the appellant. On 15th June, 2015, the appellant took the complainant from school and went with her to Mumias where they were later spotted on 10th July 2015, and arrested. They were brought to Akala Police Station both were escorted to Akala Health Centre; and then complainant escorted to Kombewa District Hospital; examined and P.3. Form filled. It was established the complainant was pregnant. The accused was charged with the offence. The prosecution in support of the charge produced treatment notes for both complainant and appellant as exhibit 1 and 2 respectively, P.3. Forms as exhibit 3 and 4 for complainant and appellant respectively and complainant birth certificates as exhibit 5. The appellant conceded the facts in support of the charge.

6. The Appellant in his oral submissions before this Court, pleaded for leniency urging the Court to reduce the sentence as he is the only family member in his family and as his health had deteriorated.

7. M/s. Odumba, Learned State Counsel opposed the appeal urging the appellant was convicted on his own plea of guilty and is not appealing against the conviction but the sentence. She submitted the sentence imposed is lawful and the minimum sentence that can be imposed for the offence with which he was charged which is 20 years. She urged the Court to dismiss the appeal.

8. **Section 8 (1) (3) of the Sexual Offences Act** provides for for the minimum mandatory sentence and 20 years as defilement has become epidemic in this County against Minors. The Parliament did not leave a room for the Courts to exercise discretion in sentencing and issue any sentence other than what they considered to be a minimum sentence to be imposed. Had that been preferred and the case Courts would be issuing various sentences despite the seriousness of the charges that might have been preferred and proved. In view of the foregoing and inspite of the mitigating factors in favour of the appellant over the mandatory sentence of 20 years period I cannot interfere with the mandatory sentence provided by law.

Section 8 (1) (3) of the Sexual Offences Act No. 3 of 2006 provides:-

“8(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.”

9. I have carefully considered the mitigation in favour of the appellant and the response by the Learned State Counsel. The law provides for a minimum mandatory sentence and the Parliament in doing so intended to curb defilement which had and has become a menaces in this country. The sentence imposed is lawful and I cannot interfere with the sentence meted against the appellant as it is the minimum sentence that the Court's are bound to grant upon conviction of the accused person..

10. The upshot is that the appeal against conviction having been abandoned the conviction by trial Court's and; the sentence of 20 years is upheld. The appeal is dismissed as it has no merits.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 26TH DAY OF NOVEMBER, 2015.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT THIS 26TH DAY OF NOVEMBER, 2015.

In the presence of:

M/s. Odumba State Counsel – present

Appellant – Present

Court Clerk – Kevin Odhiambo

Court Clerk – Mohammed Akidae

J. A. MAKAU

JUDGE