



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL APPEAL NO. 25 OF 2012.

RICHARD GEOFFREY EPOKULA ::::::::::: APPELLANT.

VERSUS

REPUBLIC ::::::::::: RESPONDENT.

(Being an appeal from the original conviction and sentence of G.M.A. Ong'ondo – PM in Criminal Case 1068 of 2010 delivered on 12th October, 2011 at Kitale.)

J U D G M E N T.

The appellant, **Richard Geoffrey Epokula**, appeared before the Principal Magistrate at Kapenguria charged with grievous harm, contrary to section 234 of the penal code, in that on the night of 13th December, 2010, at Chepararia West Pokot County, he unlawfully did grievous harm to Paul Kanyangu.

After a full trial, the appellant was convicted and sentenced to ten (10) years imprisonment.

Being dissatisfied with the conviction and sentence, he filed the present appeal on the basis of the grounds contained in the petition of appeal dated 15th February, 2012.

At the hearing of the appeal, the appellant appeared in person and relied on his written submissions.

M/s. Limo, learned prosecution counsel, appearing for the state/respondent opposed the appeal and submitted that the appellant was properly convicted and sentenced. That, the complainant (PW1), recognized the appellant with the help of moonlight and by his voice.

That, the complainant had previously known the appellant. That, the doctor (PW2) assessed the degree of injury as grievous harm and that the defence by the appellant was a mere denial.

Having considered the submissions by both the appellant and the respondent, the duty of this court is to re-visit the evidence and draw its own conclusions bearing in mind that the trial court had the benefit of seeing and hearing the witnesses.

In that regard, this court considered the evidence by the four (4) prosecution witnesses including the complainant, **Paul Kanyangu (PW1)**, a clinical officer, **Gerald Rotich (PW2)**, the complainant's wife, **Esther Cherotich (PW3)** and the investigating officer, **Cpl. Newton Njehia (PW4)**. This court has also considered the defence raised by the appellant.

From the evidence, this court is satisfied that indeed the complainant (PW1) was assaulted on the material date at about 2.00 a.m. while heading home after watching a soccer match on television at Chepararia trading centre.

The clinical officer (PW2) assessed the degree of the harm caused to the complainant's grievous harm.

The complainant's wife (PW3) confirmed that the complainant had suffered an injury to the head and took him to hospital. She however did not witness the assault but was informed that the appellant was responsible.

Indeed, the appellant raised no dispute with regard to the complainant having been assaulted. He however, denied any responsibility for the offence.

There being no dispute that complainant was assaulted and occasioned grievous harm, the basic issue for determination was whether the appellant was positively identified as the assailant. The offence occurred in the hours of darkness thereby presenting difficult conditions for identification. However, the complainant said that there was intense moonlight on that date which made him identify the appellant whom he had previously known. He said that the appellant called him by name and was able to recognize his voice. That, he (complainant) pleaded with the appellant not to attack him but all in vain.

It therefore suffices to hold that apart from identification of the appellant by the complainant by voice, he was also identified by visual recognition due to the presence of intense moonlight on that date.

Consequently, there was sufficient and credible evidence from the prosecution establishing that the complainant suffered grievous harm after being grievously assaulted by the appellant.

The appellant's conviction by the learned trial magistrate was thus sound and proper and is hereby upheld.

The sentence imposed upon the appellant was lawful but on a higher side for a first offender.

In the upshot, the appeal is dismissed with alteration to the sentence which is hereby reduced to five (5) years imprisonment.

[Delivered and signed this 19th day of March, 2014.]

J.R. KARANJA.

JUDGE.