



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL APPEAL NO. 53 OF 2013.

GEOFFREY YITTII APPELLANT.

VERSUS

REPUBLIC RESPONDENT.

(Being an appeal from the original conviction and sentence of R.M. Washika – AG. PM in Criminal Case No. 88 of 2013 delivered on 30th April, 2013 at Kapenguria.)

J U D G M E N T.

The appellant, **Geoffrey Yitii**, appeared before the Principal Magistrate at Kapenguria charged with defilement, contrary to section 8 (1) read with section 8 (3) of the Sexual Offences Act, in that on the 25th January, 2012, at (*particulars withheld*) West Pokot County, he defiled R.C, a girl aged nine (9) years.

After trial, the appellant was convicted and sentenced to life imprisonment but being aggrieved with that outcome filed the present appeal on the basis of the grounds in the petition of appeal filed herein on 9th May, 2013.

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

Mr. Chelashaw, the Learned Prosecution Counsel appeared for the state/respondent and opposed the appeal by submitting that the evidence by the complainant (PW1) was sufficient in as much as she indicated that she was confronted and defiled by the appellant whom she had previously known. That, the doctor (PW3) confirmed that the complainant was a minor even though the age assessment report was marked for identification but not produced.

The Learned Prosecution Counsel contended that the sentence imposed upon the appellant was lawful.

Having considered the submissions by both appellant and respondent, the obligation of this court is to re-consider 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, this court has considered the evidence forming the prosecution case as adduced by the three prosecution witnesses including the complainant, **R.C (PW1)**, a police officer, **P.C. Paul Muchira (PW2)** and a medical officer, **Danson Litole (PW3)**.

The evidence given by the appellant in his defence has also been considered.

In the opinion of this court, the fact of defilement and the age of the complainant were not disputed.

Indeed, the complainant (PW1) informed the court that she was aged nine (9) years at the time and that she had gone to a river to fetch water when she was defiled.

The P3 form (P. Exh. 1) produced by the medical officer (PW3) showed that the complainant was indeed defiled.

The main issue for determination was whether the appellant was responsible for the offence. He denied responsibility and indicated that he was arrested without good reason.

P.C. Muchira (PW2), arrested him (appellant) following a report made to the police in respect of the ordeal that befell the complainant.

The complainant was positive that it was the appellant who defiled her. She had previously known him and the incident apparently occurred during the day time hence creating no obstacle to positive identification. Her evidence was found by the trial court to be credible.

The trial court was in a better position to determine the credibility of the witnesses than this court as it had the advantage of seeing and hearing them. Its assessment of the credibility of the complainant in her identification of the appellant as the offender would not in the circumstances provoke this court's interference.

Consequently, this court also finds that the appellant was responsible for defiling the complainant. His defence could not withstand the very credible evidence adduced against him by the complainant. His conviction by the learned trial magistrate was therefore proper and is hereby upheld.

The sentence imposed upon the appellant was lawful in terms of section 8 (2) of the Sexual Offences Act as the complainant was below the age of eleven (11) years at the material time of the offence.

In the upshot, this appeal is unmerited and is dismissed in its entirety.

[Delivered and signed this 18th day of March, 2014.]

J.R. KARANJA.

JUDGE.