

(PW4) confirmed that the child was indeed sexually molested.

The issue arising for determination was whether the appellant was responsible for the offence.

The defence by the appellant was a denial of responsibility for the offence. He said that his wife escaped from home on the 26th June, 2012 leaving the children alone. On the following day he gave the child complainant to a neighbour so that she may be taken care of. He was informed on the 28th June, 2012 that his wife had gone home and on the 29th June, 2012, he went there to see her. They met and discussed but she later went to the house of PW3 where they held lengthy discussions. He left for his home and was later informed that the child was taken to Endebess before he was arrested and charged.

Nobody saw the appellant in the act of defiling his half-daughter although there was evidence from Lydia (PW3) and the investigations officer (PW5) that the child told me that she was defiled by the appellant. Lydia stated that the accused brought the child to her and said that he was going to look for the child's mum. She (Lydia) saw semen on the child's private parts after she had complained of pain in her stomach and exposed her private parts.

The investigations officer (PW5) said that the child told him that she was in the custody of the appellant when he defiled her. Without direct evidence against the appellant, the prosecution was with circumstantial evidence based on the facts that the child was found to have been defiled after she had been taken to Lydia (PW3) by the appellant under whose care she was.

The appellant implied that his wife and Lydia (PW3) may have conspired to frame him after they held lengthy discussions in Lydia's house.

However, since the child complainant was not in the custody of any other male person prior to the discovery that she had been defiled and since there was no other male person in her vicinity and considering that she (child) actually mentioned the appellant to Lydia (PW3) and the I.O (PW5), it may safely be stated herein that the circumstantial evidence against him was cogent and credible in as much as it irresistably pointed to him as the culprit to the exclusion of all other persons. The inculpatory facts were more consistent with his guilt rather than innocence.

Therefore, his conviction by the learned trial magistrate was sound and proper and is hereby upheld. The sentence was however, harsh and excessive for a first offender considering that section 20 (1) of the Sexual Offences Act does not carry a mandatory sentence of life imprisonment.

Consequently, the sentence imposed upon the appellant by the learned trial magistrate is hereby reduced to fifteen (15) years imprisonment.

Otherwise, the appeal is dismissed.

[Delivered and signed this 5th day of August, 2014.]

J.R. KARANJA.

JUDGE.