



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

HCCR. APPEAL NO. 10 OF 2014

HARON DENNIS MANDELA:::APPLICANT

VERSUS

REPUBLIC:::RESPONDENT

[Being an appeal from original conviction and sentence by Hon. H. O. Barasa, Principal Magistrate at Lodwar on 8th October, 2013, Criminal Case No. 337 of 2013]

J U D G M E N T

The appellant, **Haron Dennis Mandela**, was convicted and sentenced to ten (10) years imprisonment by the Principal Magistrate at Lodwar for rape, contrary to section 3 of the Sexual Offences Act.

It was alleged that on the 28th April, 2013, in Turkana West District, the appellant had sexual intercourse with L N without her consent.

There was an alternative count of committing an indecent act with the same person, but the conviction was on the main count.

Being dissatisfied with the conviction and sentence, the appellant filed the present appeal on grounds contained in the petition of appeal dated 10th February, 2014.

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

The Learned Prosecution Counsel, M/S Limo appeared for the State/Respondent and opposed the appeal by submitting that the conviction and sentence was proper as the complainant (PW1) narrated how the appellant entered her house and attempted to rape her. Without giving up, he later raped her while she was heading to her husband's work place. That, the incident was confirmed by PW2.

On sentence, the Learned Prosecution Counsel submitted that since the complainant was seven months pregnant at the time of the offence, the sentence of ten (10) years imposed on the appellant was lenient. That, the issue pertaining to the appellant's long, stay in police custody was never raised at the trial and if anything, the appellant may seek civil remedy. That, the four (4) witnesses who testified for the prosecution corroborated the complainant's evidence which could still be relied upon on its own.

The Learned Prosecution Counsel contended that the prosecution case was proved beyond

reasonable doubt and called for the dismissal of the appeal.

Having considered the appeal on the basis of the supporting grounds and the submissions by both sides, it is apparent that the evidence presented before the trial court which this court has re-visited bearing in mind that the trial court had the advantage of seeing the witnesses, raised no particular dispute that the offence was committed and that the only bone of contention was the alleged involvement of the appellant in the same.

The complainant, **L N (PW1)**, indicated that initially there was an attempt to rape her but it did not succeed. Later on the same date, she was waylaid and raped as she was proceeding to her husband's work place. She implicated the appellant whom she had previously known. She contended that she did not consent to the act and indicated that favourable condition existed for her to recognize the appellant as it was during the night.

The complainant husband, **LS (PW2)**, confirmed that the complainant reported to him that she had been raped by the appellant. The report was also made to a security officer with the Ugandan Community at the Kakuma Refugee Camp, **Alex Oloya (PW3)**.

Dr. Wanjiku Gichuru (PW4), confirmed that the complainant was indeed raped and was pregnant at the time.

P.C Kassim Said (PW5), received the necessary report at Kakuma police station and commenced investigations. He later preferred the present charge against the appellant.

In his defence, the appellant denied the offence and implied that he was arrested and implicated after being branded a stranger and being suspected to be among persons who normally attacked others within the Kakuma Ugandan Community zone. Added to that, his father was branded a murderer and the name Dennis Mandela was branded on his (appellant).

The learned trial magistrate after considering the evidence by both the prosecution and the defence, believed the prosecution's version and disbelieved that of the defence.

The finding by the learned trial magistrate were thus based on the credibility of the witnesses and this court would have no reason to interfere with that and must also hold that the appellant was the person responsible for raping the complainant.

His conviction was sound and proper and the sentence meted on him was lawful and adequate.

In sum, this appeal is devoid of merit and is hereby dismissed in its entirety.

J. R. KARANJA

JUDGE

22/10/2014

[Delivered & signed this 22nd day of October, 2014]