



offence occurred in broad day light. She said that she was at home on the material date together with the appellant who stayed with them. She was arranging utensils in a cupboard inside the house which the appellant who was outside the house entered therein and forcefully held her. He forced her to lie on her back and removed her inner wear. He then made an attempt to insert his male sexual organ into her female sexual organ but all in vain. She ran away after the opportunity to do so presented itself. She reported the incident to her mother, **A N (PW2)**, who reported to the police.

**P.C Adan Galgalo (PW3)**, received the report and commenced investigations. He later prepared the present charge against the appellant. Roy Situma (PW4), a clinical officer, examined the complainant and placed her age at approx. ten (10) years. He found no evidence of penetration in her genitalia.

In his defence, the appellant implied that he did not commit the offence and was charged without any good reason and simply because of demanding money owed to him by an individual person. The learned trial magistrate considered the defence together with the evidence availed by the prosecution and in particular that of the complainant and arrived at the conclusion that the appellant did not tell the truth and that he was the person responsible for the attempt to defile the complainant. This court upholds the conclusion as there was sufficient and credible evidence confirming the offence and the appellant's involvement in the same. His conviction by the learned trial magistrate was proper and is hereby sustained.

With regard to the sentence, section 9 (2) of the Sexual Offences Act provides for a minimum sentence of ten (10) years. Therefore, the twenty (20) years sentence handed to the appellant was lawful but on a higher side as the appellant was a first offender. The same is hereby reduced to ten (10) years imprisonment.

The appeal is otherwise dismissed.

**J. R. KARANJA**

**JUDGE**

**22/10/2014**

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