



REPUBLIC OF KENYA

High Court of Kisii

Criminal Appeal 226 of 2011

BETWEEN

STEPHEN NTALATI RANI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

(Being an appeal from the conviction in Kilgoris SPM Criminal Case

No.463 of 2011 dated 28th June 2011 by Hon. B. O Ochieng, SRM)

JUDGMENT

1. The appellant herein, Stephen Ntalati Rani was convicted on his own plea of guilty to a charge of maim contrary to **section 234** of the **Penal Code**. The particulars of the offence were that on the 21st day of April 2011 at Ogwedhi trading centre in Transmara West District within Narok County, he unlawfully maimed William Ole Nasindo. On conviction, the appellant was sentenced to imprisonment for 10 years.
2. The facts of the case to which the appellant pleaded guilty were that on the 25th April 2011 at Ogwedhi centre in Transmara West District, the complainant in the case who was a “**boda boda**” closed his business at 8.00 p.m. and went to a nearby bar at the centre. He parked his motorcycle outside the bar. At the bar, the complainant met his friend named Ole Mekumo. The complainant took some two bottles of beer and then went outside to meet the appellant who was known as “**Alias Mheshimiwa**”. Without uttering a word and without any reason whatsoever, the appellant jumped onto the complainant and started beating him. The appellant bit the complainant on the left arm with the teeth. He also bit the complainant on the lower lip, chopping it off completely. The complainant raised an alarm, but by the time the patrons of the bar came out to his rescue, the appellant had disappeared. The complainant was taken to Migori District Hospital for treatment; but was referred to Kisii Ram Hospital where he was admitted for one week.
3. After being discharged, the complainant reported the incident to Kilgoris police station. He was given a P3 form which was later filled at Transmara District Hospital. The P3 form, dated 29th April 2011 showed the degree of injury as maim. The P3 form was produced in court as **P. Exhibit 1**. The appellant was subsequently arrested and charged.
4. When the appellant was asked if the facts were correct, he told the court “**I understood the facts are**

true” whereupon he was convicted on his own plea of guilty.

5. The appellant was aggrieved by the sentence imposed upon him by the trial court and has appealed. In his home-made Petition of Appeal, the appellant says that he is recently married; that he is the family’s sole breadwinner and that the 10 year sentence will greatly hinder his efforts towards progress of the society in which he lives. He also says he is remorseful and that because of his diabetic condition, he prays for leniency.

6. When the appeal came up before me on 6th December 2012, the appellant informed the court that he was only appealing against sentence. He asked the court to reduce the sentence. He expressed great remorse for what happened.

7. Mr. Nicholas Mutuku, learned counsel for the respondent, opposed the appeal, arguing that a conviction on a charge under **section 234** of the **Penal Code** attracts a life sentence, and that in the circumstances, a sentence of 10 years imprisonment was very lenient indeed.

8. Counsel also submitted that the manner in which the offence was committed was quite aggravated, resulting in disfigurement of the complainant’s mouth. Counsel urged the court to dismiss the appeal.

9. This is a first appeal. On a first appeal, the court hearing the appeal is under a duty to reconsider and evaluate the entire evidence carefully, consider and weigh the judgment/record of the lower court with a view to making up its own mind in the matter. In the instant case, this court is under a duty to consider whether the plea of guilty was unequivocal and taken in line with the parameters set out in the case of **Adan –vs- Republic [1973] EA 445** and secondly whether the sentence imposed upon the appellant was deserved in the circumstances of the case.

10. On the first issue, the record shows that when the appellant appeared in court on 28th June 2011, he asked the court to read the charge to him again as he had not understood it the first time. Though the language was not indicated on that day, it was indicated on 7th June 2011 when the appellant appeared in court for plea, the interpretation was English/Kiswahili. After the charge was read out to the appellant, he stated that the charge was true and that he had understood it. The facts were then read out to the appellant who stated that he had understood the same and that they were true. In this regard therefore, the plea was unequivocal and it is on that basis that the appellant has raised no complaint against the conviction.

11. As regards sentence, this court can only interfere with the same if it is clear to it that the sentence is either inordinately high or inordinately low or that the trial court applied the wrong principles when passing sentence. As submitted by counsel for the Respondent, a conviction under **section 234** of the **Penal Code** attracts a maximum sentence of life imprisonment. That means that a trial court has a discretion as to the severity of the sentence to be imposed, taking into account the circumstances surrounding the commission of the offence and any statements regarding the previous criminal antecedents of the accused and any mitigating factors put forward by the accused.

12. In the instant case, the appellant was said to be a first offender. In mitigation, the appellant stated, *inter alia*, that though he committed the offence, he was drunk, that he was an orphan; that at age 19 he was the sole breadwinner for his two younger siblings and that if he went to jail, he was not sure who would pay their fees. He promised not to repeat the offence.

13. The trial court took note of those mitigating factors before passing sentence. The court also took note of the gravity of the prescribed sentence for the offence, and the gravity of the injuries sustained by the complainant and the incomprehensible manner in which the appellant committed the offence.

14. In my humble view, I do not find any evidence that the trial court exercised its discretion unjudiciously or that the sentence is either inordinately harsh or inordinately low.

15. For all the above reasons, I find that this appeal on sentence lacking in merit and the same is accordingly dismissed. R/A within 14 days from today.

16. It is so ordered.

Dated and delivered at Kisii this 31st day of January, 2013

**RUTH NEKOYE SITATI
JUDGE.**

In the presence of:

Present in person for the Appellant

Mr. Shabola (present) for the Respondent

Mr. Bibu - Court Clerk

**RUTH NEKOYE SITATI
JUDGE.**