



REPUBLIC OF KENYA

High Court at Meru

Criminal Appeal 139 of 2006

P.G.M.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

The appellant faced two counts of offenses before the Chief Magistrates Court Meru. One was Incest by Male contrary to section 166(1) of the Penal Code. In the alternative the appellant faced a charge of defilement contrary to section 145(1) of the Penal Code. The offence is alleged to have been committed on diverse dates between 26th and 29th of July 2005. After a full trial the appellant was convicted for the main count of Incest and on the 29th June 2006 he was sentenced to 20 years of imprisonment. He was dissatisfied with the conviction and sentence and therefore filed this appeal.

When the appeal came up for hearing the appellant indicated that he was abandoning his appeal against the conviction and wished to pursue only the appeal against the sentence. He urged the court to reconsider his sentence and reduce it. He said was suffering with asthma which he contracted while in prison. He also said that he has children who are suffering and needed him. He told the court that he was aware the offence he was convicted of attracted life imprisonment nevertheless he urged the court to exercise leniency.

Ms Murithi learned state counsel represented the state. The learned state counsel left it to the court to decide on the appeal.

The accused had been charged under section 166(1) of the Penal Code which stipulates as follows:

166(1) Any male person who has carnal knowledge of a female person who is to his knowledge his granddaughter, daughter, sister or mother is guilty of a felony and is liable to imprisonment for five years;

Provided that, if it is alleged in the information or charge and proved that the female person is under the age of thirteen years the offender shall be liable to imprisonment for life.”

Since the case against the appellant was concluded on 29th June, 2006, before the commencement date of

the Sexual Offences Act which is 21st July, 2006 he could only be sentenced in accordance to the relevant provisions under the Penal Code.

The Appellant was convicted of having carnal knowledge of his daughter who at the time was nine years old. Under section 166(1) of the Penal Code a person found guilty of incest under that section is liable to imprisonment for 5 years. However where the female victim is proved to be under the age of 13 years the offender shall be liable to imprisonment for life. The learned trial magistrate had the right to exercise her discretion and assess the sentence suitable to impose against the appellant for the offence charged. The facts of the case indicate that the Appellant quarreled with his wife and that he chased her away from their matrimonial home. It was while they were away that the Appellant defiled his daughter for 3 consecutive days. After the parents reconciled is when the complainant revealed that her father had defiled her.

The Appellant has so far served six years and ten months out of the twenty years imprisonment period. The complainant was only 9 years old and therefore a very young child. She was the daughter of the Appellant. Even though the evidence reveals that the Appellant was drunk the first night he committed the offence, the fact that he repeated it two other times/days is proof that he committed the offence deliberately with a sane mind and in his right frame of mind. After the first act, the Appellant must have recovered from his drunken stupor sufficiently to come to a realization of what he had done to his daughter. To back to her a second and third day is unfathomable. I agree with the learned trial magistrate that the offence was aggravated.

The Appellant has pleaded with the court to reconsider his sentence and to consider that there are other children suffering who also depend on him. For the offence the Appellant was convicted of, 20 years imprisonment is not a long sentence. The law places the sentence for this offence as life imprisonment.

I find no reason to disturb the sentence. In the result the Appellants appeal fails and is dismissed accordingly.

DATED SIGNED AND DELIVERED THIS 18TH DAY OF APRIL 2013

J. LESIIT
JUDGE