



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 317 OF 2010

LIMO MGANDI APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original Conviction and Sentence in Criminal Case No. 1503of 2010 of the Principal Magistrate's Court at Kwale – **Hon. Ogembo - PM**)

JUDGMENT

LIMOS MGANDI hereinafter referred to as the Appellant was Convicted and Sentenced to ten (10) years imprisonment for the offence of defilement contrary to section 8(3) of the Sexual offences Act.

The particulars being that on the 17th day of October, 2009 at [Particulars withheld] Village in [Particulars withheld] Location in [Particulars withheld] - Kwale County he intentionally and unlawfully committed an act which caused his penis to penetrate the Vagina of **M. N.** a girl aged fifteen (15) years.

Brief facts of the case are that the complainant, the appellant and others had attended all night prayers commonly called “**Kesha**”.

The Complainant was a niece to the appellant. On their way home at about 4:00 am the appellant offered to escort the complainant home but before reaching their destination he wrestled her down removed her underpants and his and had sexual intercourse with her. Meanwhile she screamed for help and Appellants **two** brothers arrived.

The appellant instructed them to proceed to have sex with the complainant but they declined.

The complainant upon arriving home reported the incident to her parents and the appellant was later arrested and charged.

The complainants step mother did testify on the age of the victim as fifteen (15) years. Its to her that the matter was first reported and took the liberty of reporting to the village chairman and the police. A perusal of the proceedings before the trial Court indicate that complainants evidence was corroborated by PW 2 who had earlier escorted her but was told to go away by the appellant. When the Complainant screamed for help they went to her rescue only to find the appellant lying on top of her and having sexual intercourse with her.

The Doctor who examined her found that she had bruised Labia Minora and a perforated hymen with

fresh bruises with bloody discharge which was consistent with defilement.

I am satisfied that there was overwhelming evidence to arrive at the finding that the appellant had defiled the Complainant.

In his submissions the appellant does not seem to attack the Conviction but the Sentence stating that he has reformed.

In Sentencing the Appellant to ten (10) years imprisonment, the trial court was very lenient as the offence carries an imprisonment term of twenty (20) years. It is however noted that he did consider the appellant as relatively young being nineteen (19) years old.

I find no reason to disturb the Conviction and Sentence.

The appeal has no merit and its dismissed.

Judgment dated and delivered in open court this **18th** day of **September, 2013**.

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M. MUYA

JUDGE

18TH SEPTEMBER, 2013

In the presence of:-

Learned state Counsel Miss Ogweno

The appellant present

Court clerk Mr. Musundi