

The Respondent submitted that the person who defiled the complainant, was the appellant.

The evidence of the complainant was said to have been corroborated by both her mother and by the medical officer of health who examined the complainant.

Being the first appellate court, I have re-evaluated all the evidence on record. I have drawn my own conclusions, whilst bearing in mind the fact that I did not have the benefit of observing the witnesses as they testified.

In the charge sheet it was indicated that the offence was committed on 25th June, 2010, at about 3.15p.m.

One of the particulars in the charge sheet was that the complainant was a child aged 4 years. The said child testified that on the material day, she met the appellant when she was walking from school, heading home.

PW1 testified that the appellant carried her into a maize plantation. He then removed her panty and also removed his own trousers.

The appellant inserted his "thing", which is between his legs, into PW1's groin. He did so by force, causing PW1 to suffer pain. As a result of the pain, PW1 cried.

After that incident, the appellant took PW1 home, but he cautioned her against telling anybody about what had happened.

However, PW1 informed Aunt D about the incident.

PW2 is the mother of the complainant. She testified that PW1 informed her that Kimutai had raped her on 28th June, 2010. Upon learning of that incident, PW2 took the complainant to Kapsabet District Hospital on 30th June, 2010.

Thereafter, on 3rd July, 2010, PW2 reported the incident at the Kilibwon Police Station. She was then accompanied by a police officer, when she escorted the complainant back to the hospital, where the P3 form was filled.

PW3 is a clinical officer at the Kapsabet District Hospital. He examined PW1 on 3rd July, 2010 and found that she had mild tears and old bruises on her labia majora. She also had a whitish discharge. As a result, the clinical officer concluded that there had been penetration.

PW4 is a police officer attached to the Kilibwon Police Post. On 3rd July, 2010, PW4 was at the post, when PW2 arrived with the complainant, and PW2 told PW4 that the complainant had been defiled.

PW4 issued a P3 Form to PW2, and also escorted the complainant to the hospital, where PW3 examined her.

On the next day, PW4 arrested the appellant.

When the appellant was put to his defence, he gave sworn testimony. He denied defiling the complainant.

He said that his mother had asked him about what he had done, and he told her that he had done nothing.

Having given consideration to all the evidence on record and the submissions advanced before me, I find that there was irrefutable evidence that the complainant was defiled.

The clinical officer examined her on 3rd July, 2010, and verified that there had been penetration. It was the evidence of the clinical officer that the defilement had taken place about eight (8) days before the complainant was examined. The estimated age of the injuries, as given by the clinical officer, is in tandem with the complainant's evidence, regarding the date when she was defiled.

Therefore, the evidence of the minor was amply corroborated by the medical evidence.

The only other issue relates to the identity of the person who committed the offence.

The complainant said that it was the appellant who did so. During cross-examination, PW1 reiterated that the appellant is the person who defiled her.

On the other hand, the appellant testified that he did not commit the offence.

In the event, we are faced with the evidence of the complainant against that of the appellant. There was no other witness who saw what happened between those two people, if indeed anything did happen.

The learned trial magistrate had the benefit of observing the demeanour of the witnesses when they gave evidence. He noted as follows:-

“In this case, PW1 who is a child of tender years struck me as a truthful witness. She wept when she saw the accused in court, meaning what the accused did to her must have been traumatizing.”

The learned magistrate further noted that when the accused cross-examined the complainant, the little girl was firm. As a result, the trial court said;

“PW1 struck me as a candid witness, and despite her age, she knew what she was talking about.”

I have found no reason at all to doubt the assessment of the learned trial magistrate, concerning the credibility and reliability of the complainant. Therefore, I have come to the conclusion that it is the appellant who defiled the complainant.

The evidence is simply overwhelming. Therefore, although Aunt D did not testify; and also even though the complainant's mother delayed in noting that her daughter had been defiled, those factors do not cast any doubt on the evidence tendered by the prosecution.

Accordingly, the appeal has no merit. It is dismissed. I uphold both the conviction and the sentence.

DATED, SIGNED and DELIVERED AT ELDORET THIS 14TH DAY OF NOVEMBER, 2013

FRED A. OCHIENG

JUDGE