



WILFRED CHERUIYOT MARE.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the Judgment of Hon. A.B Mong'are (Senior Resident Magistrate) in Eldoret Chief Magistrate's Court at Eldoret CMCRC No. 868 of 2009 dated 29th July, 2009)

JUDGMENT

The appellant **Wilfred Cheruiyot Mare** was charged with defilement of a girl contrary to section 8(1) as read with section 8(4) of the Sexual Offences Act No. 3 of 2006. He also faced an alternative charge of committing an indecent act with a girl contrary to Section 11(1) of the same Act. He was convicted on the principal count of defilement and sentenced to fifteen (15) years imprisonment. He now appeals against the same sentence.

The defilement charge alleged that on the 3rd February, 2009 at Keiyo District within Rift Province the appellant unlawfully defiled **W.J.B** (hereinafter "the complainant") a girl aged 16 years old.

The complainant testified that on the material date, her mother asked her to take livestock to graze. As she drove the animals to the forest the appellant followed her and slapped her. He held her by the neck almost strangling her. She could not speak and then lost consciousness. In the morning when she came to, she found herself in the forest and realized that she had been defiled. Her pant was torn and wet with semen. She was taken to the police station where a P3 form was issued to her. She then went to Moi Teaching and Referral Hospital where she was treated and the P3 form filled.

Dr. Joseph Embenzi (PW3) produced the P3 form which had been filled by **Dr. Rono**. The doctor observed a bruised genital area. The hymen was torn and blood stains were in the loins. She was also bleeding from her vagina. The doctor opined that the complainant had been raped.

The prosecution also called the mother of the complainant and the police officer who re-arrested the appellant. The mother, **J.K** (PW2), traced the complainant in the forest the next day after the defilement. She was very weak, her neck had scratch marks and she could not talk. Her clothes were torn and her right leg had deep abrasions upto the thigh. Her pant was also torn. The complainant's condition distressed her so much that she screamed thereby attracting members of the public.

The prosecution therefore presented a water tight case against the appellant and I am not therefore surprised that there is no challenge against conviction.

The appellant was sentenced to fifteen (15) years imprisonment. That is the minimum sentence the trial court could impose under the section the appellant was charged. The sentence may be severe but it cannot be excessive or harsh. The complainant in any event, from the testimony adduced by the prosecution, suffered more than a sexual attack. She was nearly strangled. She also lost consciousness and spent a whole night in the forest.

In those premises the sentence imposed upon the appellant was deserved. The appeal has no merit and is

dismissed.

It is so ordered.

DATED AND DELIVERED AT ELDORET

THIS 19TH DAY OF JULY, 2012.

**F. AZANGALALA
JUDGE**

Read in the presence of:-

The Appellant and

Mr. Chirchir for the State.

**F. AZANGALALA
JUDGE
19TH JULY, 2012**