



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Case 188 of 2011

REPUBLIC.....RESPONDENT

VERSUS

J.W.A.....APPELLANT

(From original conviction and sentencing in Criminal Case No. 4298 of 2009 of Chief Magistrates Court at Makadara,

Hon. T. Murigi (P.M.) on 8th July 2011).

JUDGMENT

The appellant was charged with the offence of defilement of a child contrary to Section 8 (1) (2) of the Sexual Offences Act No. 3 of 2006. It was alleged in the particulars of the charge that on diverse dates between 15th and 21st October, 2009 at Majengo Estate, Nairobi, he defiled a child aged 10 years old. He denied the offence but after the trial he was convicted and sentenced to life imprisonment. This is an appeal against both the conviction and sentence.

In his appeal he blamed the trial magistrate for failing to observe that the prosecution case was contradictory, and that crucial witnesses were not called to testify, that the learned trial magistrate admitted the P3 form without calling the person who authored the same and that she relied on the evidence of a single witness in arriving at the conviction. Finally, he complained that his defence was not given due consideration.

Before the learned trial magistrate took the evidence of the complainant, he conducted a *voire dire* and being satisfied that the child was intelligent enough to give evidence in court, he had her sworn. She proceeded to give an account of what transpired on the date of the alleged offence. Incidentally, the appellant is the step father of the complainant and they shared the same room alongside the complainant's brother and their mother.

The complainant described how the appellant moved to where she was sleeping, lay on top of her and defiled her. At that time, their mother was asleep. Strangely however, when the complainant told her mother of what she had gone through with the appellant, she (the mother) did nothing. Thereupon, she told a neighbour who called their grandmother to whom she revealed what had taken place. She was then taken to hospital and the matter reported to the police. At the police station she saw the appellant. She knew the appellant well as he lived with the mother.

Pw. 2 is the grandmother. She narrated how she received that information upon which she examined the complainant and found evidence suggestive of defilement. There was medical evidence by Doctor

Zephania Kamau (attached to the Police) and Doctor Aden Rilwan of Nairobi Women Hospital. The complainant had been examined by Dr. Muhombe who was indisposed on the date of the trial. Dr. Rilwan had worked with Dr. Muhombe before, and I believe she had the capacity to produce the report made by Dr. Muhombe. The evidence contained in the medical report confirmed defilement of the complainant.

In his defence the appellant denied the offence and blamed the grandmother of the complainant for implicating him due to the differences that they had. In effect his position is that he had nothing to do with the defilement of the complainant.

As the first appellate court I have examined and evaluated the evidence before me. The complainant gave a graphic account of what transpired between her and the appellant. There is no suggestion in her evidence that she held any grudge against the appellant. Her evidence was adequately corroborated by that of Dr. Kamau and Dr. Rilwan. The learned trial magistrate also found corroboration from the evidence of the grandmother, P.W. 2.

The complainant knew the appellant very well. She was her step father and lived with him in the same house. The learned trial magistrate had the advantage and benefit of listening to, and watching the demeanour of the complainant. She made a specific finding about her in the following words;

“The complainant impressed me as a truthful witness”.

As for the appellant the learned trial magistrate said,

“I discredit his evidence as a mere denial lacking in credibility. His defence that his mother in law implicated him with the offence for failing to give him Kshs. 40,000/= to buy a piece of land has no basis.”

With profound respect, I agree entirely with the assessment of the evidence by the learned trial magistrate. I find that, sufficient evidence was adduced to justify the conviction. For avoidance of any doubt, the proviso to Section 124 of the Evidence Act was sufficient, even in the absence of any corroboration, which in any case existed in this case, to found a conviction on the evidence of the complainant alone.

I find the appeal lacking in merit both on conviction and sentence. Accordingly, the same is hereby dismissed.

Orders accordingly.

Dated and delivered at Nairobi this 28th day of November, 2012.

A. MBOGHOLI MSAGHA
JUDGE