



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL 92 OF 2008

G.N.M.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from the Sentence and Conviction of L.W. GITARI Senior Principal Magistrate Embu in Criminal Case No. 2878 of 2006 on 20th December 2006)

J U D G M E N T

The appellant was charged with the offence of rape contrary to Section 3(1) as read with Section 3(3) of the Sexual Offences Act No. 3 of 2006. The particulars as per the charge sheet were as follows:-

G.N.M: On the 10th day of December 2006 at [PARTICULARS WITHHELD] sub-location in Embu District within the Eastern Province, intentionally and unlawfully had sexual intercourse with I.W. without her consent.

When the appellant appeared for plea on 20/12/2006 the charge was read to him in Kiembulanguage which he understands and he admitted it.

The facts were then stated by the Prosecutor and he admitted them as being correct. These facts clearly indicated how the appellant had attacked the complainant at her mother's house and forcefully had sexual intercourse with her. When her mother returned home she reported to her. The media evidence (P3 form) confirmed that there was penetration with all these facts read to the appellant he told the learned trial Magistrate that he admitted the facts as read by the Prosecutor.

This plea was unequivocal. And upon admission of the appeal, Hon. Justice Khaminwa indicated that the appeal was admitted on sentence only and I entirely agree with her. In his grounds of appeal the appellant states that the complainant was his wife and it is the parent who wanted him out of the way. He states that the sentence was harsh considering that the complainant depended on him.

When the appeal came for hearing, the appellant submitted that the sentence was excessive and that the Court should consider reducing it as he was a 1st offender.

The State through Ms. Macharia opposed the appeal as the sentence was lawful. She stated that the complainant was an imbecile.

From the material before the Court it is clear the complainant was mentally challenged. She was however able to tell her mother what has happened to her and who did it. The sentence provided for under Section

3(3) of the Sexual Offences Act is a minimum of 10 years imprisonment. The appellant got 20 years imprisonment.

The learned trial Magistrate gave reasons for the sentence she handed down to the appellant. When all is taken into consideration, I find the sentence of 20 years imprisonment to be lawful and deserving. I do not see any reason to make me interfere with it.

I dismiss the appeal and confirm conviction and sentence.

Right of appeal explained.

DELIVERED, DATED AND SIGNED AT EMBU THIS 28TH DAY OF DECEMBER 2012.

H.I. ONG'UDI

J U D G E

In the presence of:-

Ms. Macharia for State Appellant

Njue CC