



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL APPEAL NO.100 OF 2009

ISMAEL KHADAMBI

APPELLANT

V E R S U S

REPUBLIC

RESPONDENT

J U D G M E N T

1. The Appellant herein, Ishmael Khadambi was charged with the offence of defilement contrary to section 8(2) of the Sexual Offences Act. It was alleged that on 29.3.2007, he unlawfully had carnal knowledge of M.W., 12 year old girl. He denied the offence and after trial was sentenced to serve twenty (20) years' imprisonment. The Appeal is against both conviction and sentence.

2. I have read the record and according to PW1, M.W. aforesaid, on the material date, the Appellant invited her to his house, gave her some food to eat and when she finished eating and rose to leave, he grabbed her, placed her on his bed and proceeded to defile her. He covered her mouth with his hand and threatened her and when he released her, she went to the local police station where PW4, Roselina Aula of Serem Police Station, recorded her complaint and sent her to hospital.

3. PW3, Ayienda Sadfo, a clinical officer of Vihiga District Hospital examined PW1 on 2.4.2007, and according to him she had earlier been treated on 29.3.2007 at Serem Health Centre. He confirmed that because epithelial cells were found in her vagina, sexual activity had taken place therein and he produced a P3 form in that regard.

4. PW2, C.M, mother of PW1 received a report that her daughter had been defiled and went to see her at the local hospital and she noted that her private parts were swollen.

5. PW4 upon investigating the case decided to charge the accused who in his defence before the trial court, stated that he was arrested for no reason and that when he was informed that the police were looking for him, he presented himself at Serem Police Station.

6. I have taken into account the above evidence and I am satisfied that the Appeal has no merit for the following reasons;

7. Firstly, PW1 gave me consistent evidence that was hardly challenged in cross-examination. She knew the Appellant and had been to his house on a previous occasion and on the material day, the incident took place in broad daylight and so there was no chance of mistaken identity.

8. Secondly, PW3 confirmed that PW1 had some form of sexual activity because of the epithelial cells that were found in her vagina when he examined her. That evidence is sufficient corroboration of PW1's evidence of defilement.

9. Thirdly, PW1's conduct was extremely brave in the circumstances and that only adds credibility to her evidence. I say so because she walked to Serem Police Station immediately after the incident and lodged her complaint. I see no reason to believe any evidence to the contrary.

10. Regarding the Appellant's defence, it was no answer to the charge and like the trial court, I can only dismiss it as an afterthought.

11. Lastly, the sentence is within the law and I see no reason to tamper with it.

12. It is clear therefore that I see no merit in the Appeal and I hereby dismiss it in its entirety.

13. Orders accordingly.

Delivered, dated and signed at Kakamega this 13th day of April, 2011

ISAAC LENAOLA

J U D G E