



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Criminal Appeal 106 of 2009

CHARLES CHEBON.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

(Appeal from the decision of Hon. H.M. Nyaga ESQ. Senior Resident Magistrate delivered on 16th April 2009 at the Senior Resident Magistrate's Court at Kabarnet in Kabarnet SRM CRC. No. 96 of 2009 on conviction and sentence)

JUDGMENT

Background

1. On the 26th September, 2008 at 12.00 noon, the Complainant proceeded to her home. She decided to take a short cut to go home from Kabarnet and found the Appellant and his wife standing at the entrance of their home. Both of them suddenly attacked her. She was pulled towards their home. The wife to the Appellant who is also original 2nd accused attempted to stab her. She was not successful but she managed to damage the complainants little finger by breaking it.
2. The Complainant was held down by the 2nd original accused whilst the Appellant sodomized her. The Complainant screamed but no one came to her aid. The two put her clothes back which was by now soiled and blood stained. She was warned not to tell anyone.
3. The Complainant made a report to the police. P.W.4, a police woman referred her to hospital for a medical examination. The Police woman took possession of her soiled clothes.
4. On the 24th January 2009 at 6.30 p.m. members of public arrested and tied the two namely the appellant and his wife. They were charged with the following offence:-

II. Charge

5. Unnatural Offence Contrary to Section 162 of the Penal Code Particulars of Offence

On 26th September 2008 in Baringo District within Rift Valley Province had Carnal knowledge of E.K against the order of nature.
Alternative Count Indecent Act with an adult Contrary to Section 11 (a) of the Sexual Offences Act No. 3 of 2006 revised edition 2007Particulars

On 26th September 2008 in Baringo District within Rift Valley Province unlawfully and indecently touched E. K's private parts namely anus.

Count II Grievous Harm Contrary to Section 234 of the Penal Code (Appellant and another) Particulars of offence

On 26th September 2008 in Baringo District within Rift Valley province jointly and unlawfully did grievous harm to E.K.

6. The appellant and the original accused No. 2 were charged jointly with Count II. The two are related to each other as man and wife.
7. After their trial was heard, the appellant was sentenced to:
Count I- 10 years imprisonment
Count II- 5 years imprisonment
The original second accused was sentenced to 5 years imprisonment but did not appeal against the conviction or sentence.
8. The Appellant being aggrieved appealed against conviction and sentence.

III. Petition of Appeal

9. In his Petition of Appeal he raised only three points:
- (a) **That he pleaded not guilty to the offence**
 - (b) **That the charges were framed**
 - (c) **That there was no medical evidence**
10. On the day the appeal was called out, the appellant informed the Court that he was satisfied with his conviction but he only asked that the sentence be reduced.
11. In reply the State opposed that the sentence be reduced.

IV. Findings

12. The appeal against conviction having been abandoned, this Court hereby marks the same as withdrawn.
13. As to sentence, no reason has been given by the appellant to have the sentence reduced. There was no mitigating factors given.
14. This Court hereby finds that it will not interfere as to the sentence. The appeal is accordingly dismissed on sentence.

Dated this 1st day of September 2010 at ELDORET.

M.A. ANG'AWA
JUDGE

Advocate:

- (i) J.K. Chirchir, Senior State Counsel instructed by the office of the Attorney General
for the State - Present
- (ii) Charles Chebon, Appeallant in Person - absent