

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Appeal 198 of 2006

NICHOLAS LANGAT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

NICHOLAS LANGANT, the appellant, was in Narok SRM Cr. Case No. 204 of 2005 charged with defilement of a girl contrary to Section 145(1) of the Penal Code. It was alleged that on 13th February 2005 in Narok District of Rift Valley Province he unlawfully had carnal knowledge of J.K a girl under the age of 16 years. He pleaded not guilty to the charge but after trial he was convicted and sentenced to 16 years imprisonment. This appeal is against that conviction and sentence.

In his submissions the appellant, wondering how he could have defiled the complainant in his house at 3.00 p.m. without the neighbours hearing, argued that the charge against him was not proved by the required standards. He said except for the complainant the evidence of the others was mere hearsay. He therefore urged me to allow the appeal.

Opposing the appeal, Mr. Mugambi for the state submitted that the complainant PW1 gave graphic details of how she was with another girl defiled by the appellant and another in the appellant's house after which they were locked in that house until the following day when they were rescued. Upon examination the clinical officer corroborated the complainant's evidence that she had indeed been defiled. In the circumstances he urged me to dismiss this appeal in its entirety.

I have considered these submissions and carefully read the record of appeal. Other than that of the complainant, PW1, the other evidence in the case against the appellant was that of the complainant's father, M.M.Ole K, PW2, the Clinical Officer, PW3, and the Investigating Officer, PW4. In his evidence PW2 said that on 14th February 2005 at about 6.00 a.m. his father went to his house and asked him why his daughter the complainant was not going to school that day. On enquiring from his wife he was told that the girl had not been seen since the previous day. With others they searched for the complainant and some young man informed him that she was with another locked in a house at a shopping centre. As he walked to that house he saw the appellant and another running away into the bush. Instead of proceeding to the house he chased them in vain. He was later informed that his daughter and another were found locked in the appellant's house.

Save for the complainant, PW1, nobody else said that she was found locked in the complainant's house the people including PW2's informant who allegedly found her there having not testified. In cross examination the Investigating Officer, PW4, said that the complainant had in her statement said she had been found in a maize plantation and not in any house. There is therefore doubt if the complainant was found in the Appellant's house. And that doubt having been created by the complainant herself, it becomes difficult to believe the rest of her evidence that it is the Appellant who defiled her. The benefit of that doubt has to be given to the Appellant.

For these reasons, I find the appellant's conviction unsafe. Consequently I allow this appeal, quash the conviction and set aside the sentence. The appellant shall be set free forthwith unless otherwise lawfully held.

DATED and delivered this 27th day of October, 2009.

D. K. MARAGA

JUDGE.