



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 115 of 2005

STEPHEN AIYABEI CHEBII APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No.756 of 2003 – Resident Magistrate’s Court Eldama Ravine – W.M. Kagendo -RM)

JUDGMENT

The appellant Stephen Aiyabei Chebii was charged with the offence of Assault causing actual bodily harm contrary to section 251 of the Penal Code. The particulars of the charge stated that on the 27th day of June, 2003 at Saos village in Koibatek District within the Rift Valley Province jointly with another not before the court assaulted Grace Sarwa thereby occasioning her actual bodily harm.

The appellant pleaded not guilty and after a full trial he was convicted and sentenced to 3 years imprisonment. Being dissatisfied with the sentence the appellant appealed but during the hearing of the appeal the appellant only pursued the appeal against the sentence. He asked the court to consider that he is a first offender, he has suffered a lot since he was incarcerated 2 years ago within which period he has reformed and wishes to be given an opportunity to reunite with the society and lead a meaningful life.

This appeal was however opposed by the State. The learned state counsel Miss Opati supported the sentence of 3 years which is extremely lenient considering that the appellant was found guilty of an offence that carries a maximum of life sentence. This being a first appeal, this court is mandated to reconsider and reevaluate the evidence before the trial court and arrive at its own determination of whether to uphold the conviction while bearing in mind that this court never saw or heard the witnesses and give due allowance for that. See the case of Njoroge V Republic 1987 LKR pg 19. Although this appeal turns on the sentence alone, in order to appreciate the entire circumstances of the case and the sentence imposed by the trial court it is important to briefly set out the evidence before the trial court.

Grace Sarwa (PW1) testified that on 27th June, 2003 she was traveling from Chepelugu trading centre and along the way she met one Christine who demanded to be given 50/= which belonged to Kiprono. PW1 said she did not have the money that is when Christine grabbed her immediately the appellant joined him grabbed her and hit her on the leg she fell down and cut her with a panga on the leg. PW1 started screaming and she was rescued by Evans Kibet PW2 together with her children. She was taken to Eldama Ravine hospital where she was admitted for one month. The injured leg was plastered and she carried on with treatment at the Nakuru Provincial General Hospital for a further one month. PW2

testified how he rescued PW1 after he responded to somebody screaming on the road he said he found the appellant beating PW1. The appellant was armed with a panga and PW2 requested him to stop beating PW1. More people came and they helped PW2 to carry PW1 to the road where they got a vehicle to take her to the hospital. The matter was reported to the Police Station and APC Joseph Lomolo PW3 arrested the appellant and took possession of the panga which was used to cut the complainant. PW3 also issued the complainant with a P3 form which was duly filled at Eldama Ravine District Hospital and the injury was classified as Maim.

Put on his defence the appellant gave evidence and stated that he was drinking changaa at the house of the complainant on the material day when a quarrel ensued between the complainant and the appellant's wife. The women started a scuffle. It is at that time the appellant told his wife to go home and he continued drinking changaa and when it was time for him to leave and was walking home, the complainant grabbed him from the back. He fell down and also the panga he was carrying fell off and cut Grace when she was grabbing him. Mary Kibet PW2 also supported the evidence of the appellant. She said that Christine and the complainant were engaged in a scuffle. Later on the appellant told his wife to go home. Later on the appellant also started going home when PW1 followed him. This witness said that she remained at the home of PW1 still drinking but later on she learnt that PW1 was cut. The appellant also relied on the evidence of his wife Christine Chebii DW3. She testified that on the material date, she had gone to the house of the complainant to buy changaa for which she gave the complainant 100/= but the complainant refused to give the change. An argument ensued and PW1 started beating DW3 when the appellant joined him. The appellant asked DW1 to go home and she left. Thereafter she saw the appellant following her from behind and she decided to hasten her pace therefore she did not hear anything and did not know what happened.

The trial magistrate considered the entire evidence including the defence and found the evidence the appellant and his witnesses lacking in credibility. The trial court also found the defence evidence inconsistent and less than candid for reasons that PW2, PW3 claimed not to have seen when the complainant was attacked by the appellant. The trial court considered the evidence by the prosecution and found that the complainant sustained a serious injury for which she was admitted in hospital and continued with treatment and thus found that the prosecution had proved its case to the required standard. As stated earlier, this appeal turns only on the issue of sentence, it is clear from the evidence before the trial court that the appellant's convictions were based on sound evidence and the court properly evaluated all the evidence before the court.

The principles to be considered by the court while exercising its jurisdiction to review or alter a sentence by the trial court were stated in case of **Ogalo S/o Owuor 1954 EACA at pg 270** where the Court of Appeal held as follows:

“ The court does not alter a sentence on a mere ground that if the member of the court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless it is evidence that the Judge acted upon some wrong principle or overlooked some material facts if the sentence is manifestly excessive in view of the circumstances of the law.”

Taking the totality of the evidence before the trial court and in particular the sentence that is prescribed by the law that is life imprisonment, I find the sentence of 3 years extremely lenient and there are no justifiable reasons why this court should interfere with the sentence imposed by the trial court.

The appeal therefore has no merit and the same is dismissed. The conviction and sentence imposed by the trial court is hereby confirmed.

Judgment read and signed on the 10th May, 2007.

M. KOOME

JUDGE