

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Criminal Appeal 190 of 2005

PAUL NJAMBUYA WANJIRU.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

[Being an appeal filed against the conviction and sentence of T.W. Murigi, Senior Principal Magistrate in Criminal Case No. 1794 of 2004 at Murang'a.]

JUDGMENT

The appellant was charged with attempted rape contrary to Section 141 of The Penal Code. In the alternative he was charged in indecent assault of a female contrary to Section 144 (1) of the Penal Code. In count 2 the appellant was charged with theft of spectacles contrary to Section 279 (a) of the Penal Code. In count 3 he was charged with being in possession of traditional liquor contrary to section 25 (1) of cap 122. He pleaded guilty to count 3 and was sentenced to a fine of Ksh. 5000/= and in default 4 months imprisonment. The learned magistrate after the trial convicted the appellant of attempted rape but found him not guilty of stealing. In respect of count 1 the appellant was sentenced to 7 years imprisonment. He now seeks to appeal against conviction and sentence. The evidence of pw1 was that on 12th December 2004 at about 3.00 pm she was on her way from church. She passed by a bushy and lonely road. The appellant was behind her and on realizing his presence she made way for him to pass. He told her that he did not wish to pass but wanted to make love to her. The complainant began to run but was tripped by the appellant and she fell down. Her spectacles also fell down. She was then involved in a struggle with the appellant for 30 minutes. She fell with her face facing downwards to the ground. The appellant came on top of her and began to remove her clothes. He pulled her skirt upwards and was trying to remove her inner clothes. He had also pulled down his trousers. The complainant could feel his body on her back. As the struggle was going down pw2 passed by and the complainant asked her for help. She ran to get assistance. Pw2 came back with complainant mother. On the mother arriving and screaming the appellant run holding his trousers. Pw2 was able to confirm that she found the complainant struggling with the appellant when the appellant was trying to remove her clothes. She confirmed that she could no assist the complainant but that she went for assistance. They returned to the scene with the mother. Pw3 the mother also confirmed that she was called by pw2 and they went to the scene and that as they approached they found the appellant on top of the complainant and the appellant was holding the complainant by the throat while the other hand was trying to remove her clothes. She began to call out for assistance and that is when the appellant run away. Pw1, pw2 and pw3 confirmed that they could positively identify the appellant indeed they identified him at the dock. The complainant also noted his deformity which description she gave to the police. In his defence the appellant denied the charge and denied being at the scene. I have re-examined the evidence and I find that am in the agreement with finding of the guilty of the 1st count of the lower court. There was no evidence to support the charge of theft of spectacles as correctly found by the trial court therefore I dismiss the appeal against the conviction.

The sentence of 7 years is not excessive and I do also dismiss the appeal against sentence.

Dated and delivered at Nyeri this 28th day of September, 2007.

MARY KASANGO

JUDGE