



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 194 of 2003

SAMMY MIANO KILETAI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant has appealed against the original conviction and sentence that was imposed on him in the Senior Resident Magistrate, Court Molo Criminal Case No.2501 of 2002. In that case, the Appellant had been charged for the offence of Defilement of a Girl, under the age of 14 years contrary to Section 145(1) of the Penal Code. The Alternative charge against the Appellant is that of Indecent Assault on a Female, contrary to Section 144(1) of the Penal Code. The facts of the prosecution case as stated in the charge sheet for the main Count are as follows:-

“On the 26th November, 2002 at [particulars withheld], Elburgon within Nakuru District of the Rift Valley Province, had unlawful carnal knowledge of ANW, a girl under the age of fourteen years.”

As far as the Alternative Charge is concerned, the facts of the prosecution case as stated in the charge sheet are as follow:-

“On the 26th November, 2002, at [particulars withheld] Elburgon in Nakuru District, within Rift Valley Province unlawfully and indecently assaulted ANW a girl under the age of Fourteen years by touching her private parts.”

After a full trial, the Appellant was found “Guilty” and was convicted Accordingly. Later, the learned Magistrate viz, Mr. R. Kirui, Senior Resident Magistrate sentenced the Appellant to 10 years imprisonment with hard labour plus one stroke of the case.

During the hearing of the appeal, the Appellant narrated how he was arrested on 12th April, 2002, in connection with Stock Theft. However, when he and his co-accused, were taken to Molo Court, they were charged for the offence of Defilement. According to the Appellant, the mother of the complainant refused to go to Court and give false testimony and hence they were discharged under Section 87(A) of the Penal Code. On refusal of the same, they were released under Section 210 of the Criminal Procedure Code. However, the Appellant was later charged again for the same offence. On the last occasion, the Appellant was charged alone. Besides the above, the Appellant also presented to the Court written submissions.

In the said written submissions, the Appellant basically repeated the evidence that was adduced before the lower Court since the same is already on record and has been reviewed in the Judgment of the Learned Magistrate, it would not be necessary for me to repeat the same.

On the other hand, the State through Mr. Gumo, Asst. DPP has supported both the conviction and sentence arguing that the complainant was only 13 years old and was employed by the Appellant at a wage of Kshs.400/- per month.

Apart from the above, Mr. Gumo also submitted that when the complainant had gone to claim her wages, the Appellant dragged her into his bedroom and then defiled her. On being defiled, the complainant later reported the matter to her grand father and thereafter the same was reported to Elburgon Police Station. When they were examined, it was found that both the complainant and Appellant were infected with gonorrhoea. According to Mr. Gumo, it was found that it was actually the Appellant who had infected the complainant with the STD. He was of the considered view that the conviction was safe in the circumstances. As far as the sentence is concerned, Mr. Gumo submitted that the sentence of 10 years was well deserved and a signal to rapists that they had no room in our society.

This court has carefully perused the above together with the record of appeal. This being the first Appellate Court, I have the duty to evaluate the evidence afresh and reach my own conclusion. According to the PW1-ANW, aged 13 years old, she went to the Hotel of the Appellant on 26th November, 2003, at around 12.00 Noon.

While there, the Appellant told her that he wanted her to be his wife. However, the complainant turned down the offer. When the Appellant refused to pay her, her dues, the complainant went and took cash Kshs.400/-. The Appellant came later and locked the door and took her to the kitchen where he removed her pants and started seducing her. Subsequently, the Appellant forced down the complainant down on the floor before removing his trousers and pants. Thereafter, the Appellant had sexual intercourse with the complainant. Eventually, the complainant informed her grand-father who later took her to Elburgon Hospital where she was examined. In his evidence, the PW2 – P K confirmed that he was the person who had taken the complainant to the Hospital. In his medical evidence, the PW4 – David Cherop Introduced himself as a Clinical Officer attached to Elburgon Hospital. According to the PW4 – David Cherop when he examined her vagina he found that the same was parterned (not sure of the meaning of that word) and there was a whitish discharge from it. When a laboratory examination was conducted, the PW4 found many bacteria cells with moderate pus cells. The PW4 confirmed that the complainant had been defiled. Subsequently, the PW4 also examined the Appellant. The laboratory investigation revealed that the Appellant had moderate pus cells and diplococci “resembling that causing Gonorrhoea”. The results were similar to the ones found on the complainant.

In his defence, the Appellant stated that on 26th November, 2002, the complainant and her brother went to his place and he gave them tea. Afterwards the brother went outside while the complainant remained behind. The Appellant reckoned that the PW2 passed that way and at around 11.00 a.m. Police Officers came and found him with the complainant and her brother. Later, they were taken to the local Police Station and the Appellant was lock in. The Appellant was later charged for the present offence. The evidence on record explicitly shows how the complainant had gone to the Hotel of the Appellant who later defiled her and infected her with an STD. The evidence of the complainant was confirmed and corroborated with that of the PW4 – who was by then a Clinical Officer. From the record, there was no evidence whatsoever that any of the witnesses had any grudge against the Appellant.

Having gone through the Judgment of the learned Magistrate, I hereby find that he had analyzed the evidence properly and reached the correct conclusion. Since the conviction is safe and well merited, I hereby uphold the same. Apart from the above, I hereby confirm the sentence of 10 years imprisonment with hard labour plus One Stroke of the Cane. The sentence

is valid, lawful and well-deserved.

Right of Appeal explained.

MUGA APONDI

JUDGE

28TH September, 2005

Judgment read signed and delivered in open court in the presence of the Appellant and Mr. Njogu, State Counsel.

MUGA APONDI

JUDGE

28th September, 2005.