

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Criminal Appeal 305 of 2004

MOHAMED RAMADHANAPPELLANT
VERSUS
REPUBLICRESPONDENT

J U D G M E N T

The appellant was being tried on an offence of Defilement of a girl contrary to section 145 (1) of the Penal Code and also an alternative charge of indecent assault contrary to Section 144 (1) Penal code.

The evidence of complainant is that appellant approached her from the backside. She felt much pain and was bleeding and could hardly walk. Her mother also examined her buttocks and found her bleeding. This was immediately after the incident.

However, 2 days later a doctor examined her and found that she was approached from the front and there were bruises in her vagina but that the hymen was not ruptured and was intact.

The trial magistrate found the offence committed to be the alternative count, "indecent assault." Was it the appellant who committed the offence the evidence is clear.

The appellant put himself in the scene when he admitted that he was found by Pw 2 going to the river to bathe and he returned with him to the house only to hear people say the child was "done" "he had caught her".

The evidence of neighbours PW 2, PW 3 and the mother PW 4 supports what the child said. She was crying in pain. When they found her in the house of Appellant. The appellant told the witness that the complainant was hit by a seat. This is not supported by evidence. It is not true to say the evidence of accused was not considered. Most of it consisted of unreliable allegations against the complainant's family. Can a family allow their young girl to be compromised for sake of revenge? This cannot be so.

I therefore do not find any merit in the grounds of appeal. On the issue of sentence the maximum sentence is now 21 years. In the circumstances 10 years is not excessive.

The appellant states that in the first trial he was sentenced to 7 years imprisonment. In that case the trial was found to be flawed by the High Court and that is why the court ordered a retrial.

In the circumstances, I do find the prosecution case proved beyond reasonable doubt and I see no reason to interfere. The Appeal is dismissed.

Delivered and dated at Mombasa this 26th day of September 2005.

J. KHAMINWA

J U D G E