



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.308 OF 2003

(From Original Conviction and Sentence in Criminal Case No.1417 of 2003 of the Senior Resident Magistrate's Court at Kwale –L.N. Mbatia, Ms –S.R.M.)

MASUDI KATSINYA ROCITA.....APPELLANT

-V E R S U S

REPUBLIC..... RESPONDENT

J U D G M E N T

This Appellant was charged with the offence of Defilement of a girl under the age of 14 years contrary to Section 145(1) Penal Code.

On a plea of Guilty the accused was convicted and sentenced to 12 years imprisonment with hard labour.

He now appeals on the ground that the sentence is harsh and his mitigation was not considered. He states that his age is 14 years.

On the issue of age the lower court obtained an assessment of age from medical officer in charge Kwale Hospital. He was certified to be about 18 years of age on 5/9/03.

Again, this court obtained his age assessment from Coast General Hospital on 23/12/2003 and it was stated to be approximately 19 years.

The offence was committed on 18/7/2003. It is quite clear then that the Appellant was at the material time over 18 years of age and therefore an adult. The Learned Magistrate was therefore right in treating the Appellant as an adult.

The other grounds of appeal relate to mitigation. The prosecutor informed the lower court that the accused was a first offender. The Appellant first pleaded guilty and later changed his plea. He submitted nothing in mitigation.

The Appellant now states that the Trial Magistrate failed to consider mitigation that the long sentence will hinder his life rather than rehabilitate him.

To answer his grounds it is to be pointed out that punishment for the offence he committed has been enhanced by Parliament to life imprisonment with hard labour. The society has reviewed its position regarding the offenders of this offence and have concluded that a heavy sentence is the only way to curb this menace. The Appellant should know that sexual contact nowadays exposes not only the victim but the perpetrator to the risk of contracting the fatal HIV/AIDS. Hence the enhancement of sentence.

Prior to the amendment sentence was 14 years imprisonment together with corporal punishment. In this case the offence was committed at the time the law was in the process of being changed which was put in operation as from 23/7/03. The Appellants argument that a person who pleads guilty and is a first offender should be treated with leniency has to be considered with the weight of the sentence set down by law. Also that long imprisonment is not conducive to rehabilitation is to be considered in the same light.

Considering what is stated above and the young age of the Appellant it seems to me that the sentence of 12 years imprisonment is on the high side considering maximum sentence was then 14 years imprisonment.

After considering mitigation the term should have been reduced.

I therefore find the sentence excessive and I set the imprisonment of 12 years aside and substitute the same to a term of 7 years imprisonment with hard labour.

Dated at Mombasa this 23rd day of February, 2004.

JOYCE KHAMINWA

J U D G E

23/2/2004

Read in open court in presence of:-

Court Clerk

Mr. Monda – State Counsel

Appellant.

JOYCE KHAMINWA, J.