

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA
CRIMINAL APPEAL NO. 54 OF 2000

JOAN TEMKO ODUYA APPELLANT

VS

REPUBLIC RESPONDENT

J U D G M E N T

The appellant was tried and convicted for the offence of assault causing actual bodily harm contrary to section 251 of the penal code. The particulars are that on the 3rd day of March 1999 at Bulwani village, Bulwani sub-location, Busia district within western Province unlawfully assaulted Roselyne Narotso thereby occasioning actual bodily harm.

She was sentenced to pay a fine of Ksh.11,000/= or in default to serve 12 months imprisonment. She has come to this court to challenge this decision.

The brief facts of this case are that on the 3rd day of March 1999 the complainant, Roselyne Narotso who testified as PW I was at a nearby river bathing her child when the appellant arrived armed with a stick. It is stated that she hit the complainant on the head with the stick and also used her fists to hit the complainant's chest and ribs. The complainant was rescued by her co-wife, Caroline Oriaro who testified as PW 3. The complainant reported this incident to the village elders and later to the police who issued her with a P3 form. She visited Bumala 'B' Health center on 5.3.99 where she was examined by Priscilla Ndubi, a clinical officer who testified as P.W 4. She noted in the P3 form which she filled and signed on 18.8.1999 that the complainant had a cut wound on the right side of the head and the upper right shoulder was swollen. She assessed the degree of injury as harm. The appellant was apprehended and charged with the offence earlier stated.

Mr. Ocharo appeared for the appellant at the hearing of this appeal which was opposed by Mr. Kemo who appeared for the state.

It was the submission of Mr. Ocharo that the prosecution did not prove its case beyond reasonable doubt. Mr. Kemo, the senior state counsel was of the view that the prosecution had proved its case to the required standard of proof. It was further pointed out that there were contradictory evidence which raised doubt which should have tilted in favour of the appellant. The appellant also complained that her defence was not considered by the trial magistrate. Finally the appellant also complained that the sentence meted out was excessive and harsh.

I have examined the record of appeal and noted that the evidence of P.W.1 Roselyne Narotso the complainant, PW 3 Carolyn Oriaro and that of P.W 4, Priscillah Ndubi agree on one aspect that the complainant was injured on the head. The evidence of P.W.1 and P.W.3 show that the appellant used a stick to hit the complainant. There was no evidence which contradicted this evidence which I find to be credible and consistent. The ground that there are contradictory evidence on record does not have merit.

The trial magistrate therefore correctly arrived at the right decision that the prosecution proved its case beyond reasonable doubt.

I have also noted that the trial magistrate considered the defence raised by the appellant. I have closely scrutinized the defence raised. I find that the same did not cast any doubt on the prosecution case.

On sentence, the trial court considered the fact that the appellant was a first offender. The appellant did

not raise any mitigating factors when she was given a chance to do so. I find that the learned Resident Magistrate applied the correct principles of sentencing. No grounds have been pointed to me to enable me interfere with his discretion on sentencing.

Consequently, I find that this appeal has no merit. The same is dismissed in its entirety.

DATED THIS 28TH DAY OF MAY 2004.

J.K. SERGON

JUDGE