



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT BUNGOMA**

**CRIMINAL APPEAL NO. 37 OF 2002**

**VINCENT WAKHUNGU NDOMBI ..... APPELLANT**

**VS**

**REPUBLIC ..... RESPONDENT**

**J U D G M E N T**

The appellant was convicted for the offence of defilement of a girl contrary to Section 145 (1) of the penal code. The particulars of the charge are that on the 22nd day of December 2000 at [particulars withheld] in Bungoma District within Western Province, had carnal knowledge of S.N.S a girl under 14 years of age. He was then sentenced to 5 years imprisonment with hard labour. He now appeals against both the conviction and the sentence. He listed 6 grounds of appeal in his petition of appeal. The grounds may be summarised to four grounds which I will deal with them in a shortwhile.

The facts of the case before the trial court were simple. The appellant is said to have visited the complainant's mother, E.N who testified as P.W 1 with the intention to settle a debt in the sum of Ksh.40/= in respect of fish which he had taken on credit. He then took the complainant, S.N.S and her brother A. E..S who testified as P.W. 2. A.E.S. came back leaving his sister, the complainant with the appellant.

His mother got alarmed when her son came home minus his sister, consequently he sent him back to the accused's house to bring her. He did not find her so he went back home to report to his mother. E .N visited the appellant's house and on the way she heard screams of a child inside a sugar cane plantation. She tiptoed to check what was happening only to be shocked to find the appellant on top of her daughter defiling her. When the appellant saw E.N he ran away leaving the complainant writhing in pain. She reported the matter to the police and later took the child to hospital whether she was treated. The appellant was later on arrested and charged with the offence earlier stated. The appellant gave unsworn statement of defence in which he made a general denial. He however admits having taken the complainant to his house but released her to go home after feeding her with ugali.

The first ground raised by the appellant is that the trial court relied on contradictory evidence to convict him.

Secondly that he was convicted and sentenced on uncorroborated evidence.

Thirdly, that the prosecution did not prove its case beyond reasonable doubt.

Finally that the trial court erred in failing to consider his defence of alibi.

Mr. Kemo, the senior state counsel opposed this appeal and stated that the prosecution had tendered evidence which was overwhelming. He was of the view that the prosecution proved its case beyond reasonable doubt.

The evidence on record show that E.N who testified as P.W. 1 found the appellant on top of the complainant defiling her. She took her to hospital after reporting the matter to the police who issued her with a P3 form which was filled by Dr. John Juma who testified as PW IV. His evidence showed that the complainant S.N.S was defiled and infected with a venereal disease and further that her hymen membrane

was broken and rugged. A.E.S, a boy of tender age testified as P.W 2 and confirmed that he left the complainant with the appellant but could not find her when he was sent to fetch her by his mother. This fact is confirmed by the appellant in his defence.

The appellant has alleged that he was convicted on an uncorroborated evidence. I think this ground has no merit. It is clear that the evidence of P.W. I E.N is corroborated by the evidence of P.W. IV Dr. John Juma. Her evidence also corroborates the evidence of P.W. II A.E.S. Her evidence was not shaken by the intense cross examination mounted by the appellant.

There is also no evidence on record that the prosecution witnesses contradicted each other. Hence this ground has merit.

The appellant also complained that the trial court did not consider his defence of alibi. I have examined the record and it shows that the appellant did not raise the defence of alibi. He infact admitted having been with the complainant where he even fed her with ugali and further gave her an egg.

The sum total is that the appellant's appeal has no merit at all, the same is dismissed in its entirety.

**DATED AND DELIVERED THIS 28TH DAY OF MAY 2004**

**J.K. SERGON**

**JUDGE**