



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL APPEAL NO.247 OF 2003

(From original conviction and sentence of the SRM's court at Kisii in criminal case No.233 of 2003)

DAVID KOKA OPALA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT:

Appellant DAVID KOKA OPALA was convicted by SRM Oyugis for the offence of Grievous Harm c/s 234 of the Penal Code. He was sentenced to 3 years imprisonment and 3 strokes of the cane. He has appealed against the sentence and conviction.

The evidence in the lower court was overwhelming. PW1 the complainant candidly narrated how she was attacked by the appellant who is her own son with a chair when she asked him to refund her money proceeds from sale of her bull.

Apparently the appellant was incensed and hit her with a chair on the head injuring it. It was fractured. The evidence of PW1 was corroborated by that of the clinical officer who examined her. He confirmed that indeed she was injured. PW2 Joseph Ondulo Onyango also told court he was attacked by complainant's screams. When he went there he found she had been assaulted. There was no hearsay evidence adduced. The complainant (PW1) narrated what happened. PW2 told what he saw when he arrived at the scene. The clinical officer did examine the complainant. The fact that accused's son who rescued the complainant was not called to testify was not fatal.

Appellant in defence said complainant fell and injured herself. He admitted he owed her money. If indeed she fell innocently there would have been no need to falsely implicate her son. The learned magistrate was right to reject the defence.

I therefore find the appellant was properly convicted and I upheld the conviction.

As for sentence the appellant was a first offender and said he had a family to support.

Sentence of 3 years and 3 strokes was excessive in the circumstances. He should have been given lesser term though he injured his own mother.

I therefore set aside the sentence of 3 years and 3 strokes and substitute it with one of 18 months imprisonment.

KABURU BAUNI

JUDGE

27/7/04

Dated and delivered on 27th July 2004.

KABURU BAUNI

JUDGE