





The offence is also very serious and the court has read the record of appeal and finds that the admissible evidence on record is such that it would result in a conviction if a retrial was done. Considering the seriousness of the offence it is proper that the court does take into account whether justice has been done to both the appellant and the complainant. In my view a retrial would not prejudice the appellant.

The complainant hails from same village with the appellant and so do the other witnesses. It is within Wote under jurisdiction of Makueni court. If a retrial is ordered the witnesses can be traced.

Since the appellant has hardly served the sentence and for the other reasons above, I find that he will not suffer any prejudice if a retrial is ordered. A retrial is hereby ordered and the trial be conducted on a priority basis. The appellant be produced before Makueni court on 22.12.2004 for retrial.

Date at Machakos this 20th day of December 2004.

Read and delivered in the presence of

R. V. WENDOH

JUDGE