



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.1179 OF 2003

(From Original Conviction and Sentence in Criminal Case No.1688 of
2001 of the S.P. Magistrate's Court at Thika)

JOSEPH NJOROGE CHEGE..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGEMENT

The appellant herein was convicted and sentenced to 3 years imprisonment together with 12 strokes of the cane on count one. Count one related to a change of defilement of a girl under the age of 14 years of age contrary to section 145 (1) of the Penal Code. The appellant was fined Kshs.3,000/= in default three months imprisonment in respect of count two which relates to assault causing bodily harm contrary to section 251 of the Penal Code.

Miss Okumu did not support the appellants conviction so far as it related to count two since there was no evidence to support the conviction. I am in agreement with her observations on this point

Miss Okumu however supported the appellant's conviction but not the sentence of strokes in so far as conviction is concerned. She did not agree with the appellants grounds of appeal to the effect the trial magistrate erred in law and fact – by relying on the prosecution evidence which was shaky and touched material corroboration. The appellant had also submitted that the trial magistrate did not consider his mitigation and that one trial magistrate misdirected herself by admitting some of the prosecutions evidence even though the facts of grudge and biasness emerged.

The appellant did not appear to argue the appeal

. I have carefully perused the evidence adduced in the lower court while compelling this judgment. I have noted that there is plenty of evidence as to how the appellant left with the complainant while holding her hands. The complainant identified the appellant as the person who defiled her. She knew him for a long time since they were neighbours. The incidence occurred during the day light. An eye witness saw the appellant pulling away the complainant. When the complainant returned she had been defiled as P.W.2 confirmed from her observations. Although the appellant claims that his defence was not

considered I have noted that his defence is not corroborated by that of his defence witness who was his won mother. Whereas the appellants claims that he was framed up with this offence because wanting to beat the complainant's father. The appellants witness denied to have witnessed such an evident. The evidence of the appellants mother is similar to that of most prosecution 5 witnesses to the effect that the appellant was asleep in his home when the complainant came looking for her alleging that P.W2 had been raped by the appellant who was drunk. From my perusal of the proceedings it is quite clear that the trial magistrate considered the appellants defence but found it too weak to rebut the prosecution's case.

I reject the appellants grounds of appeal as that on record.

After a careful analysis of the evidence on record I am satisfied that the appellants conviction was based on safe grounds and was properly arrived at. I therefore dismiss the appellants appeal in so as the issue of conviction is concerned. As concerns sentence I am satisfied that the sentence handed down to the appellant was quite proper in so far the length of the prison term was concerned. I however reduce the number of strokes handed down to the appellants which I reduce from twelve to five. The sentence is reviewed accordingly so that the appellant will serve three years imprisonment together with five strokes of the cane.

Orders accordingly.

R.M. MUTITU

JUDGE

9.1.2003

Delivered in the presence of the appellant and in the presence of Mr. Okello for the state.

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R.M. MUTITU

JUDGE

9.1.2003