



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 1179 OF 2001

**(From original conviction and sentence in Criminal Case No. 1688 of 2001
of the S.P. Magistrate's Court at Thika)**

JOSEPH NJOROGE CHEGEAPPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

The appellant herein was convicted and sentenced to 3 years imprisonment together with 12 strokes of the can on count one. Count one related to a charge 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 court two which relates to assault causing actual bodily harm contrary to Section 251 of the Penal Code.

Miss Oburu 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 working.

Miss Aburu however supported the appellant's conviction but not the sentence of strokes in so far as it 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 prosecutions evidence which was shaky and touched material corroboration. The appellant had also submitted that the trial magistrate did not consider his mitigation and that the 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 higher. An eye witness saw the appellant away the complainant. When the complainant returned she had been defiled by PW2 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 who was his own mother. Whereas the appellants claims that he was framed up with this offence because wanting to beat the complainants father. The appellants witness denied 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 PW2 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 prosecutions 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 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.**

R.M. MUTITU

JUDGE

9.1.2003