

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.354 OF 2000

**(From original conviction and sentence in Criminal
Case No.109/99 of the Senior Principal Magistrate's
Court at NAIVASHA – L. W. GITARI (S.R.M.)**

PETER CHEGE NGANGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant PETER CHEGE NGANGA was charged, tried and convicted for an offence of DEFILEMENT OF A GIRL contrary to S.145(1) of the Penal Code. There was an alternative charge of INDECENT ASSAULT ON A FEMALE contrary to Section 144(1) of the Penal Code.

The Appellant's ground of appeal is that he was charged not because he did anything but because of a grudge existing between him, his family and the Complainant's family who were neighbours.

The Learned Counsel for the State opposed the appeal. He submitted that the evidence before the court was sufficient to sustain a conviction. That the Complainant's evidence received sufficient corroboration from PW3, an adult who happened to come across the Complainant and other children and to whom the Complainant reported the incident. That Doctor's report on Complainant confirmed she had been defiled and also infected with a venereal disease.

I have carefully considered the record of the lower court and do agree that indeed the Complainant's evidence received corroboration from the evidence of PW3. The kind of corroboration needed is not confirmation of independent evidence of everything the Complainant related in her evidence but independent evidence which implicates the Appellant in some material particular, and tending to show that not only the offence has been committed but that it was committed by the Appellant.

In this case the evidence of PW3 went far to show that not only had the Complainant ceased the first opportunity to report the incident but also that the Appellant was watching from within the vicinity. It was only when the Appellant saw that the Complainant was put in a vehicle that the Appellant ran away from the scene. The Appellant's conduct of running away on seeing that the Complainant story was taken seriously by PW3 an independent witness, shows clearly that he had a guilty mind.

In addition PW3 was able to identify the Appellant as the one implicated by the Complainant. According to PW3, the Appellant had walked up to where he, PW3, and the Complainant and other children were. He heard what the Complainant was telling PW3. He only ran away when a school bus stopped. That is conduct inconsistent with that of an innocent person. The Doctor's evidence confirms that the Complainant had been defiled and presence of spermatozoa confirmed sexual intercourse had taken place.

I am satisfied that there was sufficient evidence before the lower court upon which the court could convict.

On the sentence, I do agree with the Counsel for the State that it was lenient in the circumstance of the

case. I will not disturb it. I will dismiss the appeal against both the conviction and sentence accordingly.

Dated and delivered at Nakuru this 11th day of March, 2003.

JESSIE LESIIT

JUDGE