



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 501 OF 2002

(Being an Appeal against Conviction and Sentence in Criminal Case No.
1227 of 2002 of Senior Resident Magistrate's Court at Kwale – L.N.
Mbatia)

SABASTIAN MATEO APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G E M E N T

SABASTIAN MATEO ALIVANGI the Appellant herein was charged and convicted for the offence of Rape Contrary to Section 140 of the Penal Code and Sentenced to serve 10 years Imprisonment with 4 strokes of the cane. He preferred an Appeal challenging the evidence and the Sentence. He submitted that the Complainant's evidence was not corroborated by that of other witnesses while the Police recorded what they had been told by the Complainant. He further said, there was no other evidence as the Doctor did not find any incriminating evidence connecting him to the Crime..

The State Counsel M/s. Kwena did support both the Conviction and Sentence. She submitted that the incident took place during the day and complainant had gone to accused house to ask for directions. After the incident she reported to NAGASI SALIM MWAZIRO (PW2) from whom she had sought assistance and also her husband JOHN GEORGE SHIKOTI (PW3) and that their evidence did corroborate that of the Complainant. She further said PW4 was clear complainant was seen 8 days after and therefore no corroborating evidence was found. On Sentence, she said this was not excessive as the Appellant's behaviour is unacceptable and was below the maximum provided for by law.

After analyzing the evidence on record, there is no doubt the Appellant met the complainant whom she went to his home to ask for directions at around 4.00 p.m. and that even as late as 8 p.m. he was still with her. This is found in his own defence. The Complainant did state clearly that when she asked the Appellant for directions he offered to show her and instead lead her into another direction into the Forest where he forcefully and under the threat of stabbing her with a knife he raped her. It was not until later after 8.00 p.m. that he let her go with a warning not to tell anyone otherwise he would use her words "slaughter her like a chicken." When he let her go, she walked on not knowing where she was going as she had lost her directions and ended up at the door of PW2 and PW3 where she explained her ordeal and led them to his house. The two witnesses corroborated her evidence as far as the reporting to them the incident, reporting to her husband, the chief and the Police is concerned..

It is true there was no other evidence to corroborate the Rape which is obviously for reasons that she was not examined by the Doctor until 8 days after and the Appellant was not examined. The trial court however found her evidence to be truthful. In his defence, the Appellant did admit to meeting her from 4.00 p.m. and was still with her at as late as 8.00 p.m. for reasons he explains as that he was assisting her look for bus fare. He further said he had taken her to a friend house to spend the night but the friend is not named. The complainant however denied this when Appellant Crossexamined her. She further said he had warned her against telling anyone and he had ganged her mouth using a lesso.

The Complainant is an adult and from her evidence, she strikes as a truthful person. There has not been shown that she could have had any reason to frame the Appellant or lie for any reason and it was first time she met the Appellant. Even in the Absence of any other evidence in corroboration, her evidence in my opinion is solid enough to warrant a Conviction and therefore find no reason to interfere with the same.

The Sentence of 10 years and 4 strokes is neither too harsh taking into account the fact that the Appellant raped her under threat and even had continued to issue further threats should she report the incident.

The Complainant did state that the Appellant had infact admitted the offence before the Chief and fined 1,000/= and after he defaulted the matter was taken to the police. This part of the evidence was not challenged. In the circumstances, I find no reason to interfere with the sentence and the Appeal is consequently Dismissed.

Dated and Delivered at Mombasa this 30th day of July, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE