



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO. 84 OF 2002

(Being and Appeal from Original Conviction and Sentence in Criminal Case
No.143 of 2002 of the Resident Magistrate’s Court at Voi –E.N. Maina,
SRM)

RONALD TITO WATEE APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G M E N T

The appellant was charged, convicted and sentenced on a charge of rape contrary to Section 140 of Penal Code. He was sentenced to 5 years imprisonment and 3 strokes of the cane.

At the hearing he was represented by learned counsel Mr. Gatonye. It is to be noted that at the hearing when the appellant was called upon to plead he pleaded guilty and after the facts were read to him he said “They are true” He did not dispute the facts or try to explain. He was therefore convicted on his own plea of guilty.

In his grounds of appeal he now complains that the alternative charge of indecent assault on a female contrary o Section 144(1) should have been applied and not Section140 Penal Code. On this ground these are two separate offences. Section 139 of the Penal Code defines the offence of rape thus:

“Any person who has unlawful carnal knowledge of a woman or girl without her consent, or with her consent if the consent is obtained by force, or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act or in the case of a married woman, by personating her husband, is guilty of the felony termed Rape”

The punishment is imprisonment with hard labour for life. On the other hand Section 144(1) provides that-

“Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony and is liable to imprisonment with heard labour for 5 years with or without Corporal punishment.”

It will be seen therefore that the alternative charge is lighter and is only available when the facts of the

case do not prove rape. In this case the appellant pleaded guilty to having “carnal knowledge without her consent” as written in charge sheet and the facts were that “he grabbed her and covered her mouth so she could not scream. He then took her forcefully had carnal knowledge of her. Then he fled” The appellant heard these facts. He admitted them to be true. He offered no explanation. If she had consented he would not have had to force her. I find that the plea was unequivocal. He admitted freely and cannot be heard to say otherwise now.

Ground 3 of the appeal is a straightforward admission that the appellant committed offence. If it is true as he says they did it regularly why should she now complain. There is nothing to indicate that she had any reason to complain this time at all. They were inside the house and there was no one about. That he had rejected, not to marry her cannot be a reason if she continued being his girlfriend after his marriage. On the whole the grounds of appeal relate to matters that are mere allegations. They are not part of the record. They are not sworn.

What concerns the court is that the appellant pleads he is newly married and has a young family and yet he pursued a sexual relationship with the complainant in the circumstances – “we kept having affairs secretly” he said. It reflects a dishonest character. The court cannot rely on his statements. He has no respect for his young wife. He is dishonest to her, and he is deliberately exposing her to dangerous diseases. This court finds the grounds of appeal not with merit and upholds the conviction and sentence which in the circumstances of this case is quite lenient.

The appeal is therefore dismissed.

Dated at Mombasa this 31st Day of July, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE