

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CRIMINAL APPEAL NO. 1132 OF 2001

ANASTELICO AKOYO SHIRWAAPPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

The appellant was convicted of the offence of defilement of a girl under the age of fourteen years sentenced to serve ten (10) years imprisonment with hard labour and receive ten (10) strokes of the cane. He appealed against the said conviction and sentence.

The complainant together with two other children was on their way home from school when the appellant allegedly caught up with them, hold the complainant and pulled her into a coffee plantation. In the coffee plantation, he is said to have defiled the complainant and warned her not to tell anyone of the incident.

On being set free, the complainant met her school colleagues and when asked what transpired started crying. Before then, PW2 one of her colleagues saw the appellant in the coffee plantation lying on top of her. Due to the fear instated upon her by the appellant, the complainant did not inform her parents but her schoolmates who were with her notified one of the teachers who on questioning the complainant confirmed the incident. The parents were then informed, a report made and the complainant medically examined. The medical report confirmed that the complainant had been defiled. The appellant was then charge.

For his defence the appellant merely denied the offence. The learned trial magistrate believed the prosecution case and convicted the appellant. I have made an independent evaluation of the evidence on record. The appellant was known to the complainant was in fact gave his name to the teacher who interviewed her. The incident took place during daylight. PW2 witnessed the appellant lying on top of the complainant.

When the complainant was clinically examined, the medical evidence confirmed defilement. The evidence is corroborative. The defence was a mere denial. The conviction as well founded. The offence is no doubt serious and more so when the complainant was only 7 years old. The sentence handed down by the learned trial magistrate was well warranted. I see no reason to interfere with the same.

In the end this appeal is hereby dismissed. It is so ordered.

Dated this 18th December 2002 at High Court, Nairobi.

Mboghli Msagha

JUDGE