REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 332 OF 2001

From original conviction and sentence in Criminal Case No. 1808 of 2000 of

the Snr. Resident Magistrate's Court at Kikuyu

DANIEL NJEHIA NJENGA……..APPELLANT

VERSUS

REPUBLIC……..RESPONDENT

JUDGMENT

The appellant was convicted of rape c/s 40 of the Penal Code and sentenced to 10 years imprisonment with hard labour. He was also ordered to be under police supervision for 10 years after serving sentence. This is an appeal arising from the said conviction.

The complainant was going to the shops at about 8.00pm when she met the appellant who forced her into his house. She knew the appellant before. In the house she was forced to strip naked while the appellant held a knife with which he threatened her if she screamed.

There after the appellant raped and sodomised the complainant. He also used a bottle on her pr8ivate parts. At some point at night, the complainant escaped, and hid in a toilet near her home. She called her relatives who included her father, sister in law and brother. She was provided with clothes, taken to hospital and treated. The appellant was arrested, and inside his house the complainant's clothes were recovered.

The doctor who examined the appellant confirmed rape and sodomy on her. In his defence the appellant merely denied the offence. The learned trial magistrate believed the prosecution case and convicted the appellant.

On my part, I have made an independent evaluation of he evidence on record. The same was straightforward and believable. No doubt was left whatsoever that it was the appellant who raped and sodomised the complainant. The evidence of the complainant was corroborated by that of her relatives and medical evidence through the doctor. I find no reason to depart from the conclusion reached by the learned trial magistrate.

The sentence if anything was lenient considering he beastly conduct of the appellant. There are two aspects however that call for observation. This offence is not one of those that attract police supervision under section 344 a of the Criminal Procedure Code neither can it fall under section 343 of the said code as the appellant was said to be a first offender. The supervision order is therefore vacated. The other issue is that he learned trial magistrate had the discretion to order corporal punishment. She did not. And therefore, while corporal punishment is considered inhuman, the conduct of the appellant was more inhuman against an innocent and defenceless woman. I order that, in addition the 10 years imprisonment and hard labour, the appellant shall suffer six strokes of the cane.

In the end this appeal is dismissed.

Orders accordingly.

MBOGHOLI MSAGHA

JUDGE

4/12/2002