



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rop v Republic (Criminal Appeal E007 of 2022)  
[2024] KEHC 9161 (KLR) (23 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9161 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
CRIMINAL APPEAL E007 OF 2022**

**JR KARANJA, J**

**JULY 23, 2024**

**BETWEEN**

**ALHABIB KIBET ROP ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An appeal against the conviction and sentence of 20 years imprisonment for the offence of Gang Defilement in Criminal Sexual Offences Case No. 74 of 2018)*

**JUDGMENT**

1. The Appellant, Alhabib Kibet Rop and another appeared before the Principle Magistrate at Kapsabet charged with Gang Defilement, Contrary to Section 10 of the [Sexual Offences Act](#), in that on diverse dates between 11<sup>th</sup> June 2018 and 15<sup>th</sup> June 2018 at Nandi County with another not before court sodomized SK a child aged fifteen (15) years.
2. Alternatively, the Appellant was charged with committing on indecent act with a child, Contrary to Section 11(1) of the [Sexual Offences Act](#), in that he unlawful caused its male sexual organ to come into contact with the anus of the said child.  
  
The Appellant, after pleading not guilty to both counts was tried, convicted and sentenced to twenty (20) years imprisonment on the main count.
3. Being dissatisfied with the conviction and sentence the Appellant preferred this appeal on grounds that he was convicted on the basis of evidence which was fabricated, hear-say and far-fetched and that his alibi defence was disregarded by the trial court. He contended that the evidence against him contravened the provision of Section 35 and 36 of the [Sexual Offences Act](#) and that both charge sheet and the P3 form were defective.



4. At the hearing of the appeal which was by way of written submissions the Appellant represented himself while the State/ Respondent was represented by the Learned Prosecution Counsel, Ms. Oduor, who opposed the appeal. After due consideration of the appeal and the supporting grounds, and those in opposition thereto as against the rival submissions, this court re-visited the evidence availed before the trial court while noting that the trial court had the advantage of seeing and hearing the witnesses and now arrives at its conclusions as stated herein-under.
5. With regard to the charge, Section 10 of the *Sexual Offences Act*, provides for gang rape as follows: -

“Any person who commits the offence of rape or defilement under this Act in association with another or others, or any person, who, with common intention, is in the company of another or others who commit the offence of rape or defilement is guilty of an offence termed gang rape and is liable upon conviction for a term of not less than fifteen years but which may be enhanced to imprisonment for life.”
6. The provision clearly creates the offence known as gang rape and at the same time provides for its punishment.

Therefore, the charge as framed in the charge sheet was proper and from the prosecution’s evidence through the Complainant (PW1) and the Clinical Officer, Isaac Kipkorir (PW4) its ingredients were fully established.
7. The Complainant indicated that he was forcefully sodomized by three adult men and the fact of sodomy was confirmed after he was medically examined by the Clinical Officer. His mother, BJM (PW2) and neighbour, CL (PW3) noted that he had defecated on himself and on being pressurized to say what had happened to him, he disclosed that he had been sodomized.
8. Indeed, the fact that Complainant was sodomized, hence commission of the criminal act of defilement against him was not disputed by the defence. The Appellant denied responsibility for the offence although he did not deny that he was known to the Complainant and his mother (PW2). He implied that the charge against him was trumped up by the Complainant’s mother.
9. However, the Complainant clearly recognized him as one of the person who offended him. The two were not strangers to each other and the incident occurred in the open in a building under construction. His denial was thus disproved by the Complainant’s evidence which also disproved his alibi in as much as it placed him at the scene of the offence.
10. Even after the matter was reported to the police the Complainant maintained that he was offended by the Appellant and accomplices. He told the police that the Appellant was one of the offenders.

This prompted Corporal Irene Lagat (PW5), to go for and arrest the Appellant and one accomplice. They were charged with the present offence after investigators linked them through the Complainant to the Offence.
11. The trial court believed the Complainant and the entire group of prosecution witnesses to arrive at the conclusion that the charge against the Appellant was proved beyond reasonable doubt. This court agrees and arrives at the same conclusion to find that the Appellant’s conviction was sound and proper and is hereby affirmed.
12. On sentences, the Appellant was handed a sentence of twenty (20) years imprisonment of a possible life imprisonment sentence prescribed in Section 10 of the *Sexual Offence Act*. The sentence was in the opinion of this court not only lawful but also reasonable in the circumstances of the case considering that a boy child was sodomized in a manner which was most heinous.



13. This appeal is devoid of merit and is hereby dismissed in its entirety.

**DELIVERED AND DATED THIS 23<sup>RD</sup> DAY OF JULY 2024**

**J. R. KARANJAH,**

**JUDGE**

