



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL APPEAL NO. 78 OF 2019

JOSEPH OPICHO SIMIYU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgement, conviction and sentence dated 17th June 2019 of the Principal Magistrate (Hon. L. Kiniale) in the Senior Resident Magistrate's Court at Sirisia in Criminal Case No. 409 of 2019, Republic v Joseph Opicho Simiyu)

JUDGEMENT

[Pursuant to section 201 (2) as read with section 200(1) (a) CPC]

1. The appellant has appealed against his conviction and sentence of life imprisonment in respect of the offence of grievous harm contrary to section 234 of the Penal Code (Cap 63) Laws of
2. The state has supported both the conviction and sentence.
3. In his petition of appeal to this court the appellant has raised six grounds of appeal. In ground one, he has stated that he pleaded guilty to the offence.
4. In ground 2 and 3 he has faulted the trial court for not taking into account his mitigating factors in view of the fact that the complainant is his wife. I find from the sentencing notes of the trial court that it took into account the mitigation of the appellant. The mitigation of the appellant was that the complainants were his children, who depended upon him. He also told the trial court that if he was imprisoned, his children would suffer. These grounds lack merit and are hereby dismissed.
5. In ground 4 the appellant has applied for a re-trial. This application is without merit as the plea of guilty was unequivocal. I have also found that the submissions of the appellant which are challenging the plea for being equivocal are without merit; for after pleading guilty the court proceeded to warn the appellant that he was faced with a serious penalty. In response the appellant accepted that he was aware of the penal consequences. His submissions are therefore without merit and are hereby dismissed.
6. In ground 5 the appellant has faulted the trial court for failing to take into account that the appellant was the sole bread winner of his family. There is merit in this ground. It was not taken into account. The trial court also did not take into account that the appellant was a first offender.
7. The aggravating factors were as follows. The complainants were his defenceless minor children. After locking them inside the house, the appellant proceeded to mercilessly beat them for no apparent reason. As a result, they sustained severe injuries, fractures and concussion, which the trial court found to be life threatening.
8. I have considered all the foregoing matters. As a result, I find that the trial court rightly found the inflicted injuries to be serious and life threatening.
9. However, it failed to take into account that the appellant was a first offender and that he had heavy family responsibilities. This court is therefore entitled to interfere with the sentence imposed. I therefore reduce the sentence to ten years' imprisonment, which now the appellant has to serve.
10. The appeal fails with the result that the appeal is hereby dismissed except for the sentence that has been reduced to ten years' imprisonment.

Judgement signed and dated at Narok this 27th day of August 2019.

J. M. Bwonwong'a

Judge

AND

Judgement signed, dated and delivered in open court at Bungoma this 12th day of February, 2020.

S. N. Riechi

Judge

12/2/2020