



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BOMET**

**CRIMINAL APPEAL NO.7 OF 2019**

**SK.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence in Bomet*

*Sexual Offence Case No. 1 of 2018 ( Hon. P. Achieng (PM)*

*dated 26<sup>th</sup> February 2018)*

**JUDGMENT**

1. The appellant was convicted by the Magistrate's Court at Bomet for incest contrary to section 20 (1) of the Sexual Offences Act No.3 of 2006 and sentenced to serve 10 years imprisonment.

2. He has now come to this court on appeal on three (3) grounds that-

**1. The learned magistrate erred in law and fact on relying on the evidence of PW2, PW3, PW4 which testimony was never corroborated by an independent party.**

**2. The learned magistrate erred in law and fact by relying on contradictory testimony of the prosecution witnesses which story was incredible, unbelievable to justify his imprisonment.**

**3. The learned trial magistrate erred in law and fact by convicting and sentencing him to imprisonment for 15 years without considering that there was a dispute between PW3 and the appellant regarding a hoe for cultivating the farm.**

3. The appellant also filed written submissions which he relied upon, and elected not to highlight the same in court.

4. Mr. Muriithi for the State opposed the appeal and submitted that the prosecution called 5 witnesses and said PW1 gave an account of her ordeal with her father who forced her to have sexual intercourse and an uncle PW3 and the public came to rescue her. The doctor PW2 produced a medical report.

5. This being a first appellate court, I am duly bound to consider the evidence on record afresh and come to my own independent conclusions and inferences-See **Okeno –vs- Republic [1972] EA 32.**

6. I have reconsidered the evidence on record and the submissions of the appellant and the State.

7. The burden is always on the State in a criminal case to prove a case against an accused person beyond reasonable doubt. The accused person does not have a burden to prove his/her innocence.

8. In the present case PW1 the complaint clearly stated how her father took her to a house in their homestead at about 5.00 p.m and defiled her. PW3 DC a brother of the accused alerted by his wife went to that house and found PW1 lying down and the appellant with lowered trousers. There was a fight between him and the appellant who was drunk and members of the public came to the scene and the appellant was arrested. The doctor PW2 Dr. Ronald Kibet said that on examination of the complainant two days after the incident, he found bruises in the vaginal canal and hymen was missing and concluded that there was sexual penetration.

9. In my view, though in parts of the evidence PW1 the complainant referred only to an attempt by the appellant to defile her, the evidence on record from the prosecution evidence was that sexual intercourse between the appellant and the complainant did take place that evening.

10. There is no dispute about the relationship of the appellant and the complainant. They were a father and a daughter. Thus in terms of section 20 (1) of the Sexual Offences Act, incest was committed by the appellant.

11. The sentence is lawful. I thus find no merits in the appeal. I dismiss the appeal and uphold both the conviction and sentence. Right of appeal explained.

**Dated and delivered at Bomet this 4<sup>th</sup> day of March 2020.**

**George Dulu**

**JUDGE**