



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL APPEAL NO.3 OF 2019

DAVID KIBII CHEPKWONY.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the conviction and sentence by Hon. Mokuia (CM)

in Criminal Case No.5891 of 2018 delivered on 11/1/2019)

JUDGEMENT

1. The Appellant was convicted with his own plea of guilt with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code in that 24/12/2018 at Ainapko sub-location, Kipsolu location in Belgut sub-county within Kericho County the Appellant unlawfully assaulted Faith Chepngeno thereby occasioning her actual bodily harm.

2. The facts of the case were given by the prosecution as follows;

On 25/12/2018 the complainant was in company of her brother's wife. They were headed to the farm to pluck tea. Her brother emerged and dragged her back home. On the way they met their father. He took a wooden stick and assaulted the complainant. She sustained injuries on the right hand, knee and neck. She was rescued by the area chief who assisted her to seek medication. The incident was reported at Sosiot Police Station. The complainant was treated at Sosiot Health Centre. The medic classified her degree of injury as harm. The prosecution produced the P3 form as Pexhibit 1. The accused was arrested and charged as herein.

3. The Appellant was sentenced to 3 years imprisonment following a Report by the Probation Officer which stated that the complainant who is the appellant's own daughter was not ready to forgive him.

4. The Appellant has now appealed to this court against sentence on the following grounds;

(i) THAT the Appellant was sentenced to three years imprisonment without considering the evidence.

(ii) THAT the prosecution did not prove its case beyond reasonable doubts.

(iii) THAT the trial court relied on hearsay evidence.

(iv) THAT the Appellant was charged with an offence he did not commit.

5. The Appellant filed mitigation submissions which were opposed by the Respondent on the grounds that the Appellant pleaded guilty to the charge of assault and he has no right of appeal.

6. The Appellant has no right of appeal except on the sentence. I find that the plea herein was unequivocal as the same was taken in accordance with the law.

7. In the celebrated case of **Adan V Republic, (1973) EA 446** Spry V.P. laid down the procedure for taking plea at page 446 as follows;

“When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the

accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must of course be recorded."

8. The record is clear that the Appellant took plea in accordance to the above stated procedure and he was sentenced to three years imprisonment following filing of a presentence Report that said that the Complainant who was his own daughter was not ready to forgive him.

9. I find that the conviction is secure. However, I reduced the sentence to the period already served.

10. The Appellant has been in custody since 11/1/2019 and the sentence is reduced to the period already served.

11. I direct that the Appellant be released forthwith unless held for any other lawful reason.

Delivered, signed and dated at Kericho this 6th day of November 2020.

A. N. ONGERI

JUDGE