



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO.23 OF 2019

VINCENT KIPRONO LANGAT.....ACCUSED

- V E R S U S -

REPUBLIC.....PROSECUTOR

(Being an appeal from the Judgment of Hon. S. M. Mokua (CM) in Kericho CR. No.12/2018 delivered on 4/07/2019).

J U D G M E N T

1. The Appellant was sentenced to 15 years imprisonment for the offence of Defilement Contrary to Section 8(1) as read with Section (3) of the Sexual Offences Act No.3 of 2006.

2. The particulars of the charge were that on diverse dated between 18th and 27th February, 2018 at Chepseon Town in Kericho County the Appellant intentionally and unlawfully caused his Penis to penetrate the vagina of SC a child aged 14 years old.

3. The Prosecution evidence in brief was that between 17/2/2018 and 27/2/2018 the complainant a girl aged 14 years left her home and paid a visit to the Appellant who was her boyfriend.

4. Her parents who did not know her whereabouts reported to Chepseon Police Station. The girl was traced to the Appellant's house and he was arrested and charged with this offence.

5. PW.7 the Clinical Officer who produced the P.3 Form on behalf of the officer who examined the complainant stated that the laboratory tests disclosed that the Complainant's hymen was torn.

6. The Complainant was taken for age assessment and it was confirmed that she was 14 years old.

7. The Appellant denied that he had defiled the Complainant and he said he was arrested at his place of work on 28/2/2018 and no reasons were given to him for the arrest.

8. The Court found the Appellant guilty as charged and sentenced him to 15 years imprisonment. The Appellant has now appealed to this Court for on the following grounds:-

(i) THAT the Trial Court convicted him without proper evidence.

(ii) THAT the charge sheet was defective and further that the proceedings were conducted in a language he did not understand.

(iii) THAT the Trial Court did not consider the defence raised by the Appellant.

(iv) THAT the Appellant was not taken for Medical Examination.

(v) THAT the Appellant was convicted out of pressure from the Complainant.

9. The parties filed written submissions in the Appeal. The Appellant submitted as follows:-

(i) THAT the Prosecution did not prove their case beyond reasonable doubt. That no witness was called from the Hotel where the Appellant is alleged to have slept with Complainant.

(ii) ***THAT*** the Trial Magistrate failed to indicate that the charge and all its elements was read to the Appellant in a language he understands and it is therefore assumed that the Appellant understands Kiswahili.

(iii) ***THAT*** the testimony of PW.1 was not corroborated by that of PW.7 in that a torn hymen is not prove of Sexual Intercourse.

10. The Respondent opposed the appeal and testified as follows:-

(i) ***THAT*** the Complainant's evidence was that on material dates the Appellant took her to a Hotel and they had Sexual Intercourse and further testimony was corroborated by that of PW.7 who said her hymen was torn.

(ii) ***THAT*** the proceedings were conducted in a language the Appellant understood and he actively participated by Cross-Examining all the witnesses through the defence Counsel.

(iii) ***THAT*** the defence by the Appellant was considered and the Trial Court noted at Page 4 of Appeal that the defence was a mere denial that did not challenge the Prosecution Case.

(iv) ***THAT*** the Prosecution proved its case beyond reasonable doubt and further there was no need to take the Appellant for Medical Examination and neither was there pressure from the Complainant to prosecute the Appellant.

11. In the case of **Okeno vs. Republic [1972] EA 32**, the Court of Appeal set out the duties of a first appellate court as follows:

“An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya vs. Republic (1957) EA. (336) and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (Shantilal M. Ruwala Vs. R. (1957) EA. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see Peters vs. Sunday Post [1958] E.A 424.”

12. To establish a case of defilement, the prosecution was required to prove three elements in order to secure the conviction of the Appellant on the charge of defilement.

13. The first element is penetration. Penetration is defined under **Section 2(1)(d)** of the **Sexual Offences Act** as:-

“the partial or complete insertion of the genital organs of one person into the genital organs of another person”.

14. I find that the evidence of PW1 was corroborated by that of PW7, the medical expert who produced the P3 form and I find that there was penetration.

15. The second element that the prosecution was required to establish is the identity of the perpetrator.

16. The Appellant was positively identified by PW1 who said the Appellant was her boyfriend. Her testimony was that she stayed with Appellant at lodging for one week and after that the Appellant took her to his home near Chepseon.

17. The Complainant's evidence was corroborated by that of PW3, PW4, PW5, PW6 and PW8 who rescued the Complainant and arrested the Appellant following a report from PW2, the mother of the Complainant that the Complainant was missing from home.

18. The third element that the prosecution is required to prove is the age of the complainant. Under **Section 2(1)** of the **Sexual Offences Act**, the definition of a child is the one assigned thereto in the Children Act. This means any human being of less than eighteen (18) years.

19. In the current case the age of the Complainant was medically assessed by the Doctor who confirmed that the she was 14 years old and I find that the prosecution proved that she was less than 18 years when the offence was committed.

20. Although no birth certificate was produced, there is evidence that the Complainant was taken for age assessment and found to be 14 years old.

21. There is no evidence from the record that the prosecution was under pressure to charge the Appellant as he alleged in his submissions and his allegation that he did not understand the language is baseless as fully participated in the trial.

22. I find that the conviction herein is secure and the sentence lawful and I accordingly dismiss the appeal and uphold both the conviction and sentence.

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

A. N. ONGERI

JUDGE