



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL APPEAL NO. 76 OF 2017

(From Original conviction and Sentence in Criminal Case No. 478 of 2017 of the Senior Resident Magistrate's Court at Gichugu).

LILIAN WANJIRU MWANGI.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Appellant Lilian Wanjiru Mwangi was charged with two counts of assault causing actual bodily harm contrary to section 251 of the Penal Code before the Senior Resident Magistrate Court at Gichugu. She pleaded guilty to the charges and was sentenced to serve three (3) years imprisonment.

2. She filed an appeal against both conviction and sentence based on the following grounds:-

(i) That she pleaded guilty to the charge.

(ii) The trial Magistrate erred in both law and facts when he relied on the prosecution witnesses.

(iii) The sentence of 3 years imprisonment for the offence of assault causing actual bodily harm was harsh and excessive since she is a 1st offender.

She prays that the conviction be quashed and the sentence be set aside and she be set at liberty.

3. When this matter came up for hearing the appellant abandoned the appeal on the conviction and appealed against the sentence.

4. The state did not oppose the appeal on the sentence but left the matter to the court to decide.

5. I have considered the appeal. The issue which arises for determination is Appeal on the sentence.

6. The right of an accused person to appeal is guaranteed under **Article 50(1)(q) of the Constitution**. It provides:-

2) Every accused person has the right to a fair trial, which includes the right—

(q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.

The appellant has a right to appeal to the High Court. The appellant had pleaded guilty and could only appeal against the sentence. This is as provided under **Section 348 of the Criminal Procedure Code**.

7. When dealing with an appeal against the sentence **Section 354 (3)(b) of the Criminal Procedure Code** provides:-

“The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may –

in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;

8. Sentencing is the discretion of the trial court. There are principles which an appellate court will consider in determining whether to interfere with the sentence imposed by the trial Magistrate. These are:-

- (i) The Judge acted on wrong principles or
- (ii) Overlooked some material factor.
- (iii) The sentence is manifestly excessive.

These principles were stated in **James –v- R (1950) 18 E. A. C. A 147**

9. The appellant was charged with two counts that is Assault causing actual bodily harm contrary to Section 251 of the Penal Code, and failing to protect a child from physical abuse contrary to **Section 13(1) & Section 20 of the Children Act**. She pleaded guilty to both counts, **Section 251 of the Penal Code** provides:-

“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.”

10. I have looked at the proceeding and the circumstances under which the offence was committed. The complainant was a minor and the appellant was her mother. She assaulted her using a red hot panga and locked her in the house for two days. The appellant committed a heinous crime against her own child. I find that the sentence meted out was deserved. I see no reason to interfere with the sentence. The appeal is without merits and is dismissed.

Dated at Kerugoya this 8th day of February 2019.

L. W. GITARI

JUDGE