



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO. 52 OF 2018

PAUL MURIUKI.....APPELLANT

V E R S U S

REPUBLIC.....PROSECUTOR

JUDGEMENT

Paul Muriuki was convicted in Nkubu court SOA case no. 270 of 2017 and sentenced to life imprisonment on 3<sup>rd</sup> Day of April 2018 for defiling a 10 years old girl.

He was aggrieved by the conviction and sentence and he preferred appeal on the following grounds:-

1. That the learned trial Magistrate erred in both law and fact by failing to note that the prosecution witnesses gave hearsay evidence contradictory and conflicting testimonies.
2. That the learned trial Magistrate erred both in fact and law by failing to note that the prosecution case was not proved beyond all reasonable doubts.
3. That the learned trial magistrate erred in both law and fact by failing to note that there was vendetta between the mother of the complainant and the appellant.
4. That the learned trial magistrate erred both in law and facts by failing to note that the expert report didn't support allegations of defilement as no spermatozoa was seen.
5. That the learned trial magistrate erred both in law and fact by failing to give the appellant enough time to prepare his defence as the defence witnesses were not called.
6. That he should be furnished with the court proceedings and judgment to draft more cogent grounds during hearing of appeal. He prayed that the appeal be allowed, sentence set aside and conviction quashed.

The duty of this court as 1<sup>st</sup> appellate court is to relook at the proceedings in the lower court and re-evaluate to confirm that the judgment of the lower court is grounded on sound principles of law and based on evidence adduced before it as was held in the case of **Okemo vs Republic (1977) and in the Court of Appeal Case of Mark Muiruri Moses vs Republic (2013) eKLR.**

The prosecution at trial tendered evidence of the complainant – PW1, her elder brother PW2, her aunt PW4 and the Clinical officer PW3 as well as the investigating officer PW5 who tendered evidence to the effect the complainant PW1 was defiled and she was defiled by the accused who was her father, she said the accused lured her to his bedroom and asked how she wanted to make her hair for Christmas and gave her money to buy bladders to plait her hair for Christmas.

That when appellant inserted his penis into the vagina of his own daughter, she felt pain and screamed and that her younger brother Edwin came and accused ran away. The complainant bled from her private part and her skirt had blood stains. Edwin informed PW2 who in turn took the complainant to their aunt PW4 and they proceeded to Nkubu police station and reported. The complainant was escorted to hospital and from Report produced by PW3 the child had a tear between the vagina and anus which was stitched. The medical officer concluded that the tear was a result of the defilement. Appellant was apprehended and presented to police by members of the public.

When the appellant was placed on defense he said that he was to tender sworn evidence but that he didn't have any witness. In his defense appellant said that he had differed with his who deserted him after selling all the bananas. He said the children had visited their maternal grandmother and were not at home and he didn't commit offence appellant said it is his wife. He said his wife's relatives had already taken his household and ant to disinherit him.

In the appellants amended supplementary grounds of appeal he claims that the complainant didn't testify on oath and that voire dire examination was not conducted upon PW2. The proceedings on 12<sup>th</sup> February 2012 show that PW1 was examined and the court noted that she was intelligent enough to testify and she took oath before giving her testimony. The appellant didn't have any questions to PW1 in cross examination. PW2 the elder brother of complainant also testified on oath but the appellant didn't have any questions for him.

The appellant didn't point out which of the evidence adduced by prosecution contradicted each other to warrant the conclusion of the trial court being quashed and sentence set aside.

PW4 the aunt to the complainant confirmed contrary to appellants allegations that she left PW1, PW2 and their younger brother with the appellant. Appellants wife didn't testify and he didn't explain how he was framed in a case his 10 years old daughter was admitted and underwent a corrective procedure when it was found she had a tear between the vagina and the anus. The appellant committed offence during the day and subjected his 10 years old daughter to embarrassment of being seen in blood stained clothes from her brothers.

The appellant also raised the ground that he was convicted when the expert report didn't support allegations of defilement as there was no spermatozoa seen.

ExP 2 – Medical Examination Report – P3 filed in respect of the complaints injuries indicates the child had 2<sup>nd</sup> degree perineal tear and hymen was not intact. It is also indicated she had blood vulva and perineum which as shown in paragraph 5 of P3 made it impossible to take specimens for further examination.

The appellant didn't question the clinical officer PW3 concerning the ground of appeal. In any case there was no dispute as to who was perpetrates of the offence. The offence was committed early in the morning at 7.00 am. The complainant felt pain and screamed and her brother rushed in only to find his father defiling the complainant. The appellant escaped when he was caught in the act and furious members of the public apprehended and escorted him to the police station.

This court having reconsidered the evidence on record for the prosecution and defense and having reconsidered the learned magistrates judgment find that there was no error committed either on points of law or fact. The appeal lacks merit and is dismissed in it's entirety. Appellant to remain in custody and serve the sentence meted out Right of Appeal 14 days explained.

**HON A. ONG'INJO**

**JUDGE**

**JUDGEMENT DELIVERED, DATED AND SIGNED IN COURT ON 9<sup>TH</sup> DAY OF MAY 2019.**

**In the presence of :**

**C/A: Kinoti**

**State:- Ms Mbithe**

**Appellant:-Present in person**

**HON A. ONG'INJO**

**JUDGE**