



REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL APPEAL NO. 81 OF 2016

BETWEEN

JAMES OOKO ODUOR.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal against the original conviction and sentence dated 1st March 2016 in Criminal Case No. 533 of 2015 at Ukwala Law Courts before Hon. R. M. Oanda, SRM)

JUDGMENT

1. The case against the appellant, **JAMES OOKO ODUOR** is that of defilement contrary to **section 8(1) and (4)** of the ***Sexual Offences Act***. The particulars of the offence were that on 15th January 2015 at [particulars withheld] Village, Simur Sub-location, Ugenya District of Siaya County, he intentionally caused his penis to penetrate the vagina of **GA**, a child aged 15 years.
2. The appellant was convicted and sentenced to 15 years' imprisonment. His appeal is grounded on the fact that the prosecution did not prove its case. The key witness and complainant, PW 1, recalled that on the night of 15th January 2015 she had a running stomach so she went out to the toilet where she found the appellant who asked her name. He pulled her into the thicket, laid her on the ground, removed her clothing and proceeded to insert her penis in her vagina. He warned her against telling anyone and gave her 100/=. She recalled that both of them had torches.
3. When PW 1 went back to the house, she asked the grandmother, PW 2 whether he was a night runner. She narrated to her what had taken place and the fact that she had been given Kshs.100/=. PW 2 woke up PW1's father and they went to report to Ukwala Police Station. PW 5, a police officer confirmed that PW 4 was brought by her parents and he referred them to Ukwala Health Centre. PW 5 went to the scene. He was also given the bloody underwear and Kshs.100/= which were produced in evidence.
4. The Clinical Officer, PW 4, also confirmed that she examined and treated PW 1 on 15th January 2015. She had a white blood stained panties and a dust stained skirt. She had bruises on the knee and a tear on the labia minor, discharge and bleeding. The high vaginal swab revealed spermatozoa.
5. The appellant in his defence said nothing of what took place at night but focused on his arrest. He admitted that he knew PW 1 as they were neighbours.
6. The testimony of PW 1 as to what took place on the night is clear and consistent as to the act of penetration and identity of the appellant. Even though corroboration was not necessary by reason of the

proviso to **section 124** of the *Evidence Act (Chapter 80 of the Laws of Kenya)* which permits a conviction on the basis of uncorroborated testimony of the child where the court believes that the child is telling the truth, there was ample corroborative evidence. PW 1 told PW 2 what happened immediately and within the same day she was examined by the clinical officer and penetration confirmed. Moreover, the Kshs.100/= note and bloodied panties, which were corroborated her narrative, were produced in evidence.

7. As to whether the appellant defiled PW 1, I am satisfied that this was a case of recognition. PW 1 and the appellant knew each other as neighbours and both had torches and spoke to each other and they interacted long enough to negate any notion of mistaken identity,

8. The prosecution proved that the appellant caused an act which penetrated PW 1. That she was a child is not in doubt and evidence was produced to show that she was 15 years old.

9. The conviction and sentence are affirmed. The appeal is dismissed.

SIGNED, DATED and DELIVERED AT SIAYA this 2nd day of February 2018

D.S. MAJANJA

JUDGE

Appellant in Person

Ms Odumba, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the State

Court Assistants: Laban O. Odhiambo, Ishmael Orwa