



REPUBLIC OF KENYA

IN THE HIGH COURT AT SIAYA

CRIMINAL APPEAL NO. 152 OF 2016

BETWEEN

S O O.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal against the original conviction and sentence dated 25th October 2016 in Criminal Case No. 107 of 2014 at Siaya Law Courts before Hon. H. Wandere, PM)

JUDGMENT

1. The appellant, **W A O**, was charged with the offence of defilement contrary to **section 8(1) and (3)** of the **Sexual Offences Act**. The particulars were that on 25th January 2014 at about 0.00 pm at [particulars withheld] Village, Mulaha Sub-location within Siaya County, he intentionally caused his penis to penetrate the vagina of HAO, a child aged 15 years. He was sentenced to 20 years' imprisonment.
2. The appellant's case was that the offence was not proved and that as an old man he could not defile his 15-year-old granddaughter.
3. The complainant, PW 1, recalled that on 25th January 2014, she was at home with the appellant who was her grandfather. She told the court that he called her to sit on his bed, undressed her, removed her panties and while she was lying on the bed, he also removed her trouser and underwear and proceeded to insert his penis into her vagina. He sexually assaulted her for 30 minutes and chased her away. She did not report to anyone what happened but she eventually told her father, PW 2.
4. PW 2 recalled that PW 1 told her on 27th January 2014, that the appellant used to sexually assault her and had indeed assaulted her when she was at the appellant's place during the burial of her mother.
5. The appellant was thereafter arrested by PW3 and charged, while PW1 was examined by PW4 at Siaya County Referral Hospital on 29th January 2014. PW4 noted that PW1's hymen was broken, the vaginal walls were inflamed and hyperemic. The high vagina swab revealed epithelial cells on her vagina walls. He concluded that there was penetration.
6. In his unsworn statement the appellant denied defiling PW 1. I have considered the evidence and I find as follows. PW 1 gave clear testimony of what happened. The trial magistrate who heard the evidence was convinced that she was telling the truth. In the circumstances under proviso to **section 124** of the **Evidence Act (Chapter 80 of the Laws of Kenya)** her testimony did not require corroboration. That notwithstanding, her testimony was corroborated by the evidence of PW 4 who confirmed penetration.
7. The appellant was the grandfather to the child and nothing emerged from his cross-examination of PW 1 and PW 2 to suggest a grudge or 'fitina'. If anything one can understand the reluctance of PW 1 to report the incident to PW2 but she nevertheless did.
8. I affirm the conviction as PW 1 was clearly a child. Her age was confirmed by the dental assessment which showed she was 15 years. The minimum sentence under **section 8(3)** of the **Sexual Offences Act** is 20 years' imprisonment.
9. I affirm the conviction and sentence. Appeal is dismissed.

DATED, SIGNED 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