



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL APPEAL NO. 1 OF 2016

MONICA JEMUTAI JELANG'A.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[Being an appeal from Principal Magistrate's Court at Iten

by Hon. N. Adalo Resident Magistrate dated 21st December 2015]

the original conviction in Criminal Case No. 1498 of 2015.

JUDGMENT

1. MONICA JEMUTAI JELANGA (the appellant) was convicted on a charge of defilement Contrary to Section 8(1) and read with Section 8 (3) of the Sexual Offences Act, and sentenced to serve 20 years imprisonment.

The particulars of the charge stated that on diverse dates between the months of June 2015 and 20th December 2015 at **[particulars withheld]** village within **ELGEYO MARAKWET** County, she unlawfully and intentionally caused her vagina to be penetrated by the penis of **TKK*** a boy child aged 15 years old.

She admitted the charge.

2. The facts as narrated by prosecution were that the complainant who was a student at **[particulars withheld] MIXED SECONDARY SCHOOL**, disappeared from his parents' home, and the parents eventually got a message that he had been seen at **[particulars withheld]** village, which was 2 km away from his home.

His parents and friends went to that village where an elder led them to a rental house where the appellant was living. They found the door locked from outside and called police – when they eventually gained access, they found the **TKK*** and appellant seated on the bed. Both were arrested.

3. The complainant's age was assessed at **CHEBEMII** Sub-county hospital and found to be 15 years whilst the appeal's age was assessed at 24 years.

A medical examination of the appellant showed signs of penetration and both appellant and complainant had some infection. The minor's birth certificate confirmed he was born on 06.04.2000. The investigations established that the relationship between the appellant and the minor begun in the month of June 2015 and continued until 20.12.2015 when it was discovered after the minor disappeared from home.

4. The appellant confirmed that the facts were correct. In mitigation she sought leniency saying the minor seduced her at the club where she was working. Since he used to drink, she did not realize he was in school.

5. The trial magistrate pointed out that the Sexual Offences Act provided a minimum sentence for the offence and therefore meted out a 20 year jail term.

6. The appellant contested this outcome on condensed grounds saying the charge was read to her in language she did not understand where she was referred to **M J** instead of **M J C**.

7. Further that on the date when she appeared in court for plea, she was in a drunken state being under the influence of alcohol.

It is also stated that the charge as framed is defective, and the complainant's age was not assessed nor supported by medical.

The appellant also laments that the medical examination report was not availed to her and the investigation was doctored, and her mitigation was not considered.

8. At the hearing of the appeal, **MR CHEPTARUS** on behalf of the appellant submitted that whereas the plea and facts were conducted in English/Kiswahili, which the appellant did not understand, and the trial magistrate ought to have ensured the proceedings were interpreted into the accused's vernacular language being **MARAKWET**. Counsel argued that given the appellant's level of education, the trial magistrate ought to have asked her whether she understood Kiswahili.

9. It was also counsel's contention that the appellant was not given time and opportunity to prepare and take plea – saying the matter was brought to court with speed. It is further alleged that at the time of taking plea, the appellant was under the influence of alcohol.

10. In opposing the appeal, **MISS KEGEHI** on behalf of the State pointed out that under Sec.348 CPC the appellant can only appeal on sentence. She argued that the mismatch of names is not fatal.

On this limb, I take judicial notice that in this part of the country, especially among the Kalenjin community the letter J and the words with 'Ch' as a prefix are used/pronounced interchangeably, and there was no prejudice in referring to the name Chelanga as Jelanga. As regards language, Miss Kegehi has pointed that even at the appeal, the appellant confirmed that she understood Kiswahili – I concur with Miss Kegehi on this limb and need not belabor the matter – the court used Kiswahili, a language the appellant understood and confirmed as much before this court. As regards age, a medical/scientific age assessment is not the only manner to confirm one's age – indeed even that assessment based on destination is not precise but an estimation. There is nothing on record to suggest that the birth certificate was doctored to fit in the scenario nor is there any reason presented as to why police would want to frame the appellant.

11. The other issues raised on the grounds of appeal amount to submitting – further evidence, which cannot fit in at this stage.

The claim that the appellant was drunk at plea, remain hot air with nothing to prove them and is rejected.

The sentence was as provided under the Act and the trial magistrate cannot be faulted – it was the minimum availed by the Act – the conviction was safe and is upheld.

Consequently the appeal lacks merit and is dismissed.

DATED, SIGNED and DELIVERED at ELDORET this 20th day of September 2018.

H. A. OMONDI

JUDGE