

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL APPEAL NO.37 OF 2017

(From original conviction and sentence in Criminal Case No.1062 of 2011

of the Senior Resident Magistrate's Court at Ogembo)

RICHARD MOGENI ONDARA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The appellant was charged with the offence of gang rape contrary to Section 10 of the Sexual Offences Act No.3 of 2006. He also faced an alternative charge of indecent act with an adult contrary to Section 10(A) of the Sexual Offences Act No. 3 of 2006. The second count he faced is that of assault causing actual bodily harm contrary to Section 251 of the penal Code. He pleaded not guilty and the matter proceeded to hearing and by a judgment dated 20th of June 2012 the trial court found him guilty of the offence of rape and assault. He was sentenced to 18 years on Count 1 and three years on the second count the sentences to run concurrently.

2. The appellant launched his appeal on the 2nd of May 2017. His appeal is not against the conviction but against the sentence. He states that the sentence meted against him was excessive in nature and he intends to invoke Articles 22(1) 23,(3)and 27(1)(2).

3. At the hearing of the appeal the appellant stated that his appeal is against a sentence, and his family has suffered, he is 32 years old and his family depends on him. The prosecution opposed the appeal arguing that the sentence given to the appellant was sufficient and not excessive as the Sexual Offences Act provides for a minimum of 15 year for gang rape. That because of the brutal nature of the attack he was sentenced to 18 years and that the sentence as per the section can be enhanced.

4. Section 10 of the Sexual Offences Act provides that; *any person who commits the offence of rape or defilement under this Act in association with another or others, or any person who, with common intention, is in the company of another or others who commit the offence of rape or defilement is guilty of an offence termed gang rape and is liable upon conviction to imprisonment for a term of not less than fifteen years but which may be enhanced to imprisonment for life.*

5. I have read the evidence and judgment and note that the appellant raped his sister-in-law together with 2 other persons whom he allowed into the house. They took turns in raping her and took a bottle and inserted into her vagina. They later took her panty and inserted it into her vagina. She fainted and woke up in a lot of pain. There was sufficient medical evidence that the complainant was gang raped. The conviction of the appellant was proper on the evidence adduced. The sentence provided for one convicted for the offence of gang rape is imprisonment for a terms of not less than fifteen years but which may be enhanced to imprisonment for life. The appellant was sentenced to 18 years. The act the appellant committed with others not in court was beastly, ugly and traumatizing against his sister –in-law. In my view 18 years imprisonment is not harsh for the offence the appellant was convicted of. I decline to reduce the sentence as he was properly convicted and sentenced as provided under the law. The appeal is dismissed. The appellant to continue to serve the imposed sentence. He has a right of appeal within 14 days.

Dated signed and delivered this 20th day of September 2018.

R.E. OUGO

JUDGE

In the presence of;

Appellant in person

Mr. Otieno for the State

C/C Ms Rael