



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: MAJANJA J.

CRIMINAL APPEAL NO. 66 OF 2017

JULIUS NYACHOKO OROKOAPPELLANT

VERSUS

REPUBLICRESPONDENT

(Appeal from the original conviction and sentence of Hon. N. Wairimu – SRM dated 27th October 2016 at the Principal Magistrate’s Court at Ogembo in Criminal Case No. 2049 of 2015)

JUDGMENT

1. JULIUS OROKO NYACHOKO, the appellant, was charged and convicted of the offence of causing grievous harm contrary to section 234 of the Penal Code (Chapter 63 of the Laws of Kenya). The particulars of the charge were:

On the 12th day of October 2015 at Bosoti Sub-location in Kenyena Sub-County within Kisii County unlawfully did grievous harm to LINET KEMUNTO NYABUTO.

2. The appellant was sentenced to five (5) years imprisonment. He appeals against the conviction and sentence. Counsel for the appellant argued that the evidence had glaring contradictions and that essential witnesses were not called and on the whole prosecution did not prove its case.

3. The appellant and the complainant Linet Kerubo (PW 1) are siblings. She testified that on 12th October 2015 at 7.00pm, she had gone to the appellant’s wife to claim a debt but she started beating her and had her arrested. She also stated that the appellant also came and assaulted her with a panga while threatening to kill her. She told the court that the appellant hit her with a panga on her head, shoulder, left elbow and fingers as she was trying to block the panga cuts.

4. Among the people who came to rescue here were Vane Moraa Nyabuto (PW 2) who recalled that on that day, she heard PW 1 screaming and when she went there she found PW 1 being assaulted with a panga by the appellant. She also started screaming. She stated that she saw the appellant hit PW 1 on the head and that PW 1 had cut wounds on the left hand and fingers. Together with the other people who came to assist they took PW 1 by motor cycle to Kenyena District Hospital where she was treated.

5. Wycliffe Atambo (PW 3), the clinical officer at Etago Level 4 Hospital, filled the P3 form on 13th October 2015 after PW 1 had been treated at Kenyena District Hospital on 12th October 2015. He noted that she had an injury on her forehead, it was a 5cm cut wound on top of the head. The left hand elbow and left index finger were also stitched.

6. The investigating officer, Maurice Nyongesa (PW 4), testified that he was informed of the assault incident on 13th October 2015. He took the appellant’s statement when he reported to the station that he had been assaulted. PW 1 came to report the incident after she was discharged from hospital.

7. In his defence, the appellant gave an unsworn statement. He told the court that on 8th October 2015, he was at home when he was assaulted by people who came to his home. He went to the hospital on the next day and when he went to report the incident, he was arrested.

8. I have considered all the evidence and re-evaluated it independently and I find as follows. PW 1 and PW 2 knew each other so this is not a case of mistaken identity. PW 1 gave clear evidence on how she was assaulted by the appellant. PW 2 corroborated PW 1’s testimony as she responded to her screams and went to rescue her immediately. In her testimony she was clear that she saw the appellant hit PW 1 on the head with a panga. The testimony of PW 3 together with the P3 form show that PW 1 sought treatment thereafter and its only the P3 form that was filled on 13th October 2015.

9. I note from the proceedings that PW 1 referred to 29th October as the date of the assault. I find that this is a mistake considering the train and sequence of events that took place on 12th October 2015. Contrary to submission by counsel for the appellant, there is only one assault the appellant was charged with and the one that took place on 12th October 2015 and which was witnessed by PW 2. The injuries on the head, elbow and fingers described by PW 1 and PW 2 were consistent with those described by PW 3 in his report.

10. Counsel pointed out that two named people who came to assist PW 1 were not called. In my view, there was sufficient evidence of PW 1 and PW 3 and did not need corroboration of the people who came to assist PW 1. I find that their testimonies would not subtract from the prosecution case.

11. The appellant defence being an unsworn statement, did not dent the prosecution case as the appellant said nothing of the events of 12th October 2015. His reporting of the assault to the police was an attempt to deflect attention from himself. The testimony of PW 1, PW 2 and PW 3 was credible and consistent and therefore supported the conviction. It is affirmed.

12. As regards sentence, the appellant's act against his sister was deliberate and given that the maximum sentence for grievous harm is life imprisonment. I do not find the sentence harsh or excessive. The appeal is dismissed.

Dated and delivered at Kisii this 11th day of October, 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions for the respondent.

Mr. Abobo, Advocate for the Appellant.