



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL APPEAL NO. 51 OF 2017

LEONARD KIPKIRUI RONO.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Sotik PMs Court Criminal Case No. 703 of 2017.- Hon C.N Oruo –RM)

JUDGMENT

The appellant above mentioned was convicted and sentenced to pay a fine of Kshs.20,000/= in default to serve one year imprisonment for the offence of assault causing actual bodily harm C/S 251 of the Penal Code.

The particulars being that on the 22nd day of June 2017 at Mosonik village, Sotik, Bomet County unlawfully assaulted Nancy Sigei thereby occasioning her actual bodily harm.

This is the first appellate court, it has a duty to evaluate and reconsider afresh the evidence on record so as to arrive at its own conclusion.

Okeno V R 1972 EALR

Background

The appellant and the complainant are neighbours and are not in good terms in view of several cases they allegedly have initiated and are before the court.

It is not in dispute that on the 22nd day of June 2017 at about 10.00 a.m the two met at the home of Johana where the complainant had gone to buy vegetables. Johana happens to be a brother of the appellant.

It is the complainant's case that when the appellant found her at Johana's home he threatened to kill her. He hurled insults at her and chased her for a considerable distance and threw a stone which hit her on the back.

She later went and reported the matter to police. She was issued with a P3 form which was later filled by a Doctor.

Johana Rono (PW2) testified to have seen the complainant at his home where she had gone to buy vegetables. He saw the accused/appellant emerge with his cattle which he had been grazing. Upon seeing the complainant he insulted her and chased her for a distance of about 200 metres. He told the court that he did not see the complainant being assaulted.

Dennis Rono (PW3) is also a brother of the appellant he did testify to have seen the appellant chasing the complainant but he did not see him assault her.

Complainant's husband (PW4) did testify to the effect that he saw the appellant chasing the complainant though he did not see him assaulting her. An uncle of the appellant (PW5) also did see him chase the complainant but he did not see him assault her.

A clinical officer at Ndanai Sub county one Chero Vitaly did testify to have examined the complainant who presented a history of having been hit with a stone on the back. Upon examination she found tenderness on the left side of the back. Object used was a blunt one.

The appellant in his defence does not deny having met the complainant on the material day. It is his evidence that she insulted him. He denied having stoned her. Under cross-examination he did concede that he had met the complainant while at the home of his step brother. That she insulted him and ran away. That he followed her but did not assault her.

The main issue for this court's consideration and determination is whether the appellant did hit the complainant with a stone as alleged and thereby assaulting her.

It is not in dispute that the appellant met the complainant at the home of his brother and an altercation ensued between the two which ended up in the accused chasing the complainant.

All the prosecution and the defence witnesses are in agreement to that fact. The prosecution witnesses apart from the complainant herself and the doctor testified not to have seen the accused hit the complainant with a stone. They may have not seen this as the appellant was in between the complainant and themselves during the chase.

The clinical officer who examined the complainant found that she had tenderness on her back(left side). From a perusal of the P3 form the complainant presented herself to the doctor within an hour after the incident. This corroborates the evidence of the complainant as to the injuries sustained.

From the evidence on record, it is the appellant who was the aggressor. The appellant found the complainant in the home of his brother. Not his house. He proceeded to chase her. It cannot be taken that he was chasing her for fun. It must be taken that he was chasing her with the intention of causing her bodily harm which he subsequently did. The fact of there being other cases between two goes to show the lack of amity between the two.

The prosecution did prove their case beyond reasonable doubt.

The conviction was safe and the sentence lawful. The appeal is disallowed.

Judgment delivered dated and signed in open court this 19th 11/2018 in the presence of learned counsel for the prosecution Mr. Wawire, Learned counsel for defence (absent), Appellant present

Court Assistant Rotich.

M. MUYA

JUDGE

19/11/18