



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

CRIMINAL APPEAL NO 41 OF 2016

SHAKUE SHEE ASMAIN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgment and sentencing of Hon. Njeri Thuku, Principal Magistrate in Lamu Criminal Case No. 7 of 2014 delivered on 07/4/2015)

JUDGMENT

1. The appellant Shakue Shee Asman was charged with two counts of assault causing actual bodily harm contrary to **Section 251** of the **Penal Code**. In count I he was alleged to have assaulted **Naima Badi** at Tchundwa on 5/1/2014 while in count II, he was alleged to have assaulted **Fahad Shemote** on 30/1/2014. He was acquitted on count II for lack of sufficient evidence and sentenced to serve 5 years in prison on count 1 in the judgement rendered on 7/4/2015.

2. Dissatisfied with the judgement, the appellant filed the present appeal on 31/10/2016. His home made grounds of appeal however show that the appeal is against sentence only. He has stated that the sentence of 5 years imprisonment was too harsh and he requests the court to reduce his sentence because he is physically challenged.

3. When the appeal came up for hearing on 23/10/2018, the appellant who is unrepresented handed the court a half page written submissions. The submissions state that the sentence was too harsh; that he has already served 3 years and 4 months; that he has already changed and that he pleads to be set free to take care of his mother as the father has since passed on.

4. Mr. Kasyoka for the respondent submitted that the conviction was safe and should be upheld. He observed however that the appellant had not raised any grounds of appeal as what he had raised was mitigation on sentence. He also made an observation that the appellant had a physical disability. Finally, counsel submitted that he did not oppose the appeal on sentence.

5. I have, as required by law, reviewed the evidence before the trial court. I agree with the respondent's counsel that the conviction was safe. The evidence clearly shows that the appellant attacked the complainant and injured her. He was well known to her and the incident happened in the village where he was well known. As tension arising out of the assault built up in the village, the appellant surrendered himself to the police. I therefore find that the conviction was safe and uphold it accordingly.

6. With respect to sentence, I have looked at the appellant's grounds of appeal and submissions. They all amount to mitigation. I have also observed that he has physical disability on his left hand. The appellant has already served more than 3 years of his 5 year sentence. I consider that this period in custody has sufficiently reformed him.

7. In the final analysis, I uphold the conviction. I however consider the sentence already served as sufficient. The appellant is released forthwith unless otherwise lawfully held.

Judgment delivered dated and Signed at Garsen on 19th day of November 2018.

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R.LAGAT - KORIR

JUDGE

In the presence of:-

.....C/A

.....Appellant

.....For Appellant

.....For Respondent