



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CRIMINAL APPEAL CASE NO.214 OF 2015
(ARISING FROM PM'S SIRISIA COURT CRIMINAL CASE NO.896 OF 2014)

JOB BARINGO.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The appellant herein Job Baringo was initially charged in Criminal Case No.896 of 2014 in the Principal Magistrate's Court at Sirisia. He faced one main Count of defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act No.3 of 2006. The alternative Count was indecent Act with a child contrary to Section 11(a) of the said Act.
2. The appellant pleaded not guilty to the offence and the matter went to full trial. He was put on his defence found guilty of the main, convicted and sentenced to 10 years imprisonment.
3. The particulars of the main Count were that on diverse dates between 30th November 2013 and 7th December 2014 at [particulars withheld] village Bungoma County he intentionally and unlawfully caused penetration by inserting his male genital organ into the female genital organ of M C aged 16 years.
4. The appellant being aggrieved by the conviction and sentence appealed to this Court seeking to quash the conviction and setting aside of the sentence on the grounds that;
 - i) The conviction was based on fabricated and contradictory evidence.
 - ii) The sentence was illegal and unconstitutional and
 - iii) There was no medical evidence to support the Charge of defilement.
5. This being the first appellate Court it is charged with the duty of considering, evaluating and analyzing the evidence a fresh in order to arrive at an independent opinion of course taking note that the trial Court saw, heard and had the opportunity of observing the witnesses. See; Okale vs R (1973) E.A.
6. The Prosecution called a total of 5 witnesses. In summary the Prosecution's case is that between the month of November 2013 and October 2014 the appellant eloped with the Complainant M C a girl of 16 years, lived with her as a wife during that period and later abandoned her on learning that she was pregnant which forced the Complainant to look for her parents.

PW1 the Complainant narrated how she left home on November 2013 and went with the appellant to his home, and was dropping out of school while in Form 1.

Further that she stayed with the appellant as her husband upto October 2014. While living together they had sexual intercourse culminating into a pregnancy, when she informed the appellant he left her. She later realized that the appellant was married at which point she informed the father of her whereabouts.

PW2 E C is father to PW1. He confirm her age. PW2 produced PW1's birth certificate to ascertain her age. He confirmed her disappearance from home on 30th November 2017.

PW3 Philemon Yomba a Clinician attached to Sirisia County Hospital without objection Produced a P3 form on behalf of his colleague Perpetua Akware whom he had worked with for 2 years and whose handwriting and signature he was familiar with.

The P3 form gave age of the Complainant as 16 years. There was suggestion of penetration.

She was found to be pregnant hence proof of defilement.

7. The Court found the appellant had a case to answer and he was placed on his defence he called 2 witnesses.

DW1 (appellant) denied knowing or having cohabited with the Complainant as his wife. In short he totally denied charge.

DW2 & 3 were his neighbours. They did not speak to the charge. DW2 simply stated that he had not seen the Complainant at the appellant's house. DW2 talked of the appellant's arrest.

8. For determination are the following:-

a). Age of the Complainant (victim)

b). If there was penetration.

c). If 2 above is positive whether there is any evidence connecting the appellant to the offence.

9. **Age of the Complainant:** PW2 a parent of the Complainant produced her birth Certificate which corroborated the evidence of PW1 the same indicated that she was born in 1998 giving her age at the time of the alleged offence to have been 16 years. She was indeed a minor.

10. The Complainant in her evidence stated that she stayed with the appellant between November 2013 to October 2014 as a wife during which period they engaged in sex resulting into a pregnancy. Upon medical examination she was found to have been pregnant, naturally there was sexual intercourse which resulted into pregnancy.

11. The appellant denied having known the Complainant meaning he never lived with her as her husband as alleged. This is against the evidence of PW1 the Complainant who at the time of the trial was 17 years.

12. The trial Court in arriving at a conviction based the same on the evidence of the Complainant relying on the Proviso to Section 124 of the Evidence Act that allows a Court in a sexual offence case to rely on the evidence of the alleged victim if satisfied that the victim was telling the truth.

13. In this instance I having read, considered, analysed and evaluated the evidence of the Complainant. I too find that her evidence was clear and consistent and the same corroborated by PW3 the Clinical Officer and I would rely on the said evidence in arriving at a determination.

14. The appellant denied knowing the Complainant at trial however in his appeal he asserted that he was

19 years at the time of the offence. No proof of the alleged age was made available. That notwithstanding at 19 years he was an adult.

He further in this appeal admitted that he lived with the Complainant for 1½ years and sired a child.

He also admitted that he ditched the Complainant.

15. The above confession in my view does not assist the appellant but fortifies the conviction and sentence meted out to him.

16. He appears not remorseful despite his unlawful relationship with the minor.

17. Based on the evidence by the Prosecution and indeed the admission by the appellant in this Court, this Court is not expected to condone the unlawful behavior of the appellant but to punish him in accordance with the Law.

18. For the reasons above, I do concur with the conviction as meted out by the trial Court. I will not interfere with the sentence and the said sentence of 10 years is affirmed.

19. The appeal is consequently dismissed.

DATED at BUNGOMA this 2ND day of MARCH, 2017

ALI-ARONI

JUDGE