



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

CRIMINAL APPEAL NO. 24 OF 2015

NICHOLAS KIPRONO.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(An appeal from the original conviction and sentence

in Criminal Case No. 22 of 2014 SRM's

Court Bomet – Hon. Karanja RM)

JUDGMENT

The appellant was convicted and sentenced to twenty years for the offence of rape C/S 3(1) (a) (c) of the Sexual Offences Act and Seven years for the offence of abduction with intent to confine C/S 259 of the penal code.

The particulars on the 1st count were that on the 3rd and 4th day of August 2014 , in Bomet County he intentionally and unlawfully caused his penis to penetrate the vagina of C S by use of force and threats.

In the second count, the particulars are that on the 3rd day of August 2014 at Kapsoiyo –silibwet, with intent cause C S to be secretly and wrongfully confined abducted the said C S.

Being dissatisfied by both the conviction and sentence by the learned trial magistrate the Appellant has now lodged this appeal whose grounds are

- (1) That the trial magistrate relied on evidence of a single witness.
- (2) Poor investigations
- (3) Consent

Brief facts

It is not in dispute that the complainant was an adult at the time of the rape incident as she was aged 19 years.

She testified to have boarded a motorbike at around 3.00 p.m. at a stage. She sat in the middle between the rider and a passenger and instead of being taken to her stated destination , She was taken to some forested area where she was left behind with the passenger. He informed her that he wanted to marry her and proceeded to forcefully have sex with her up to 7.00 p.m. when he decided to take her to his house. He locked her therein and left returning at 11.00 p.m. He thereafter took her to a hotel at Silibwet where they had supper. They returned to his house whereby he proceeded to rape her again.

At about 4.00 a.m. he left her in the house and locked her from outside. He later returned at 11.00 a.m. He told her to go and take tea at Silibwet Hotel. He gave her Kshs100/- to buy drugs at a chemist as she was feeling pains. She went and bought the drugs and found him waiting at a bus state. He told her to go and recuperate in his house, which she did. He followed her and demanded to have sex with her but she refused. She went out and narrated her ordeal to a neighbour who advised her not to take a shower. She went and reported the matter to police and the accused was arrested.

The clinical officer who examined the complainant found that she had bruises and blood stains around the genitalia. She had pus cells. There were clear signs of penetration and she had been infected with a sexually transmitted disease. The appellant was examined and he was found with a healed scar on the penical shaft. He had syphilis and pus cells in the urine. The officer made a conclusion that the appellant sexually assaulted the complainant and infected her with a sexually transmitted disease.

The complainant appears to have known the appellant before. They rode together on a bike and had sexual intercourse in the bushes before going to the house of the appellant where they spent the night there and had sexual intercourse up to the following morning. Before that they had gone for supper at a hotel at Silibwet. In the morning the appellant gave her money to go for drugs at a chemist

Identification

I am satisfied from the evidence on record that the complainant had ample time from 3.00 p.m on the 3rd day of August 2014 to 11.00 a.m. the following day.

Penetration

Complainants evidence is to the effect that the appellant had sexual intercourse with her in the bushes from 4.00 p.m. to 7.00 p.m when he took her to his house where they had sexual intercourse overnight. Her evidence is corroborated by PW2 the clinical officer who had found that as a result of the sexual act the appellant had infected the complainant with an STI.

The complainant had testified of how she was tricked by the appellant and the bodaboda rider to proceed to an unknown and deserted forested area.

How she was forced to have sex in the forest and how she was taken to the accused house where further threats were issued on her till the following morning when she decided to report the matter to police. I am of the considered view that if the complainant had consented to the sexual act she would not have reported the matter to the police but would have concealed it.

I find there is overwhelming evidence to the effect that the appellant had sexual intercourse with the complainant without her consent after cheating her that she was being taken to her place of abode but instead taken to some isolated bushy area for sexual exploits. As a result of this escapade she was infected with syphilis. The consent if any was obtained by means of force, threats and intimidation.

The appeal has no merit as regards conviction.

On the issue of sentencing, the appellant was treated as a first offender

The minimum sentence for rape is ten years imprisonment with a maximum of life imprisonment.

The appellant was sentenced to 20 years imprisonment. No reason was advanced for enhancement of the sentence. The appellant having been treated as a first offender he should not have been sentenced to 20 years imprisonment unless good reasons were provided. I find there are good reasons to interfere with the sentence which I hereby do by reducing the imprisonment term of 20 years to ten years imprisonment in respect of the 1st count.

This sentence to run concurrently with that in count No.2. To that extend only does this appeal succeed.

Judgment delivered dated and signed in open court this 7th day of March 2017 in the presence of learned counsel for the prosecution M/S Kiptoo, the appellant in person. Court assistance Mr.Rotich

M. MUYA

JUDGE

7/3/17