



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CRIMINAL APPEAL NO.14 OF 2016

BETWEEN

JOHN OCHIENG JUMA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from original conviction and sentence in Mbita SRM's Court Criminal Case No.773 of 2015 dated 16th November, 2015 – Hon. S.O. Ongeru, SRM)

JUDGMENT

1. **JOHN OCHIENG JUMA** (the appellant) was convicted on a charge of rape contrary to **Section 3 (1) (a)** of the **Sexual Offences Act** and sentenced to serve 20 years imprisonment.

The prosecution case was that on 18th day of October 2015 at **[particulars withheld]**, Kaksingri **EAST** location in **SUBA** Sub County within **HOMA BAY** County, the appellant intentionally and unlawfully caused his penis to penetrate into the anus of **S O M** without his consent.

2. The appellant pleaded guilty to the charge whose facts as narrated by the prosecutions were that on 18/10/2015 at 1500 hours, the complainant who was mentally unstable was on his way from church when he met the appellant.

3. The appellant requested him to accompany him to Mbita as he offered to buy him a cup of tea. Instead the appellant dragged him into the bush and forcefully removed his clothes, lay him on the ground and inserted his penis into the complainant's anus. The complainant raised an alarm but there was no help.

4. Thereafter the appellant left but the complainant followed him and alerted members of the public who then arrested the appellant.

5. The complainant was taken to hospital for examination and treatment. The treatment notes and P3 form showed the complainant had bruises on the rectum which was also tender.

6. The appellant was also examined and the P3 form presented had findings that his penis had ulcers and the Doctor's remarks were that the shaft of his penis was bruised.

In response the appellant states "**the facts are true.**"

He was thus convicted on his own plea.

7. The appellant now challenges the outcome of the decision saying the sentence was harsh and excessive. He also expressed remorse and urged the court to be lenient to him, saying his health has markedly deteriorated due to severe illness. He also lamented that his family has been adversely affected by his incarceration.

8. The appellant filed written submissions in which he conceded that he pleaded guilty to the charge but argued that the prosecution took advantage of his naivety and cheated him to plead guilty so that he could be pardoned yet it was against his wish to plead guilty. He also blames the trial magistrate for failing to warn him and failing to find out that he was naive in the law. He also submits that he was not supplied with any witness statements and in any event the sentence was excessive and harsh.

9. In opposing the appeal, **MR. OLUOCH** on behalf of the state submits that there was no error on the face of the record and the 20 year sentence meted was the mandatory minimum.

10. Section 3 of the sexual Offences act provides that:-

“3(1) A person commits the offence termed rape if –

a. He or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs.

b. The other person does not consent to the penetration.

3. A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life.”

11. The claims by the appellant that he was tricked by the prosecution to plead guilty are not supported by any factual material. The charge was read to him in a language which he understood and he readily admitted. The issue about witness statements not being availed caused no prejudice to him as he elected to admit the charge, so the matter did not proceed to full trial so those limbs of the appeal fail.

12. As regards the sentence meted, **Section 3 (3)** of the **Sexual Offences Act** provides a mandatory sentence of 10 years which may be enhanced to life. The trial magistrate in meting sentence pointed out that the offence committed was barbaric, immoral and had definitely left the complainant traumatized.

13. I find that was a justification for passing sentence higher than the minimum provided and did not in any way offend the provisions of **Article 50 (2) (p)** of the **Constitution of Kenya** which behoves a court to consider the least severe prescribed punishment for an offence. The upshot is that the conviction was safe and is upheld.

14. The sentence was legal and is confirmed. Consequently the appeal is dismissed in its entirety.

Delivered and dated this 4th day of April, 2017 at Homa Bay

H.A. OMONDI

JUDGE