



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

CRIMINAL APPEAL NO.9 OF 2017

BETWEEN

JOHN MOMANYI JOEL.....APPELLANT

AND

STATE.....RESPONDENT

(An appeal from original conviction and sentence of the SRM's

Court at Oyugis in Criminal Case No.501 of 2014

dated 26.06.2015 – Hon. J. Wesonga, RM)

JUDGMENT

1. The appellant **JOHN MOMANYI JOEL** was convicted on a charge of grievous harm contrary to **Section 234 PC**. The prosecution case was that on the night of 25th November 2012 at **KOJWACH EAST** location in **RACHUONYO SOUTH**, within Homa Bay County, he caused grievous harm to **MONICA AKINYI OKUMU**.
2. He denied the charge and after the testimony of seven witness and appellant being the only defence witness, he was sentenced to serve 7 years imprisonment.
3. **MONICA AKINYI OKUMU** (PW1) had been inherited by the appellant after her husband's death and they lived together for 10 years. On 25/11/2012 she arrived at home at 8.00 p.m. from her mandazi selling business at **GAMBA** market. She instructed her daughter to prepare supper and went to the shop to buy oil for deep frying the mandazi.
4. Upon her return, she found the appellant at home and supper was ready and infact set on the table. PW1 and her daughter ate, but the appellant pretended to be asleep on a nearby chair. After supper PW1 escorted her daughter to the place where she sleeps, then returned to the house and went to bed, leaving the appellant on the chair.
5. The appellant followed her and demanded to know why she had taken so long at **GAMBA** market. She tried to give an explanation, but the appellant insisted he would kill her. He grabbed her by the neck and threw her on the floor – head first. He then got a knife – but she lost conscious and woke up at **RACHUONYO** district hospital surrounded by **MOLINE ACHIENG, PETER OINDI** and **JANE AWINO**. She realized she had cut wounds on the head and left cheek. She also had bruises on the left side of her face.
6. Meanwhile the appellant went underground and only resurfaced in June 2014.
7. **MOLINE ACHIENG** (PW2) aged 20 years confirmed that her mother returned home at about 8.30 p.m. from **GAMBA** market and left to buy cooking oil while she prepared supper. She ate supper with her mother, but the appellant declined while pretending to be asleep on a chair. Her mother escorted her to **JANE AWINO**'s house where she used to sleep. The next day when she went home she noticed that things were strewn all over and water poured. She entered the bedroom and found her mother unconscious with injuries on her head and cheek. She called for help and **JANE AWINO** responded and called other neighbours who came and assisted to take her mother to hospital.
8. After the incident, the appellant who had lived with her mother disappeared.
9. **JANE AWINO** (PW3) who is PW1's co-wife confirmed rushing to PW1's home in response to an alarm raised by PW2. She described

the sitting room as being in a mess and PW1 was in the bedroom lying naked with wounds on the left lower lip and head. She also had a scarf around her neck.

10. She explained that the previous night she heard a scream from PW1's house but did not bother to find out because she did not hear the scream again. She assisted in taking PW1 to hospital after reporting to the area chief. After PW1 was discharged, she informed PW3 that she'd quarrelled with the appellant who assaulted her.

11. According to PW3 the appellant –

“... is a quarrelsome man and I have solved many disputes between them.”

12. **JAMES OINDI** (PW6) the chief of **KOJWACH** location received a call on 26/11/12 in the morning from **JANE AWINO** that **MONICA** had been seriously assaulted and injured.

13. He found PW6 already admitted in hospital with injuries and she could not talk properly. He learnt from PW2 that the appellant had assaulted her mother following a quarrel after the latter arrived from market. He later learnt that the appellant was planning to go to PW1's house to harm her and collect his items. PW6 liaised with Chief **DORCAS NYALESO** of **KODERA NORTH** location and she traced and apprehended the appellant.

14. PW5 (KIBET) a clinical officer at **RACHUONYO** sub county hospital who examined PW1 found that she had a deep cut wound over the left side of the head which was still bleeding, a cut on the left lower cheek (also bleeding) and a bruised facial left side. She was admitted in hospital for 9 days. The wounds were stitched and a skull x-ray revealed a small fracture. The degree of injury was assessed as grievous harm. The investigating officer **PAUL LANGAT** (PW7) confirmed that a report about the assault had been made in 2012, but the assailant went into hiding and was only arrested in 2014.

15. In his unsworn evidence, the appellant made no reference to his relationship with PW1 or what could have happened on 26/11/12 preferring to describe events surrounding the day he was arrested.

16. In her judgment, the trial magistrate found that the nature of injuries suffered by the victim left no doubt that she indeed suffered grievous harm. The trial magistrate observed that appellant was the one inside the complainant's house and the issue of mistaken identity would not arise and was convinced that the assault was as a result of a disagreement which arose between the couple. She pointed out that apart from the complainant's evidence, there was the circumstantial evidence that after the attack the appellant went underground for a period of 4 years. She also alluded to PW3's testimony that on the material night at around 2.00 a.m., she received a call from the appellant who eagerly wanted to know what was happening at his home. The trial magistrate stated:-

“In my considered view, the accused's disappearance after the attack on the complainant, provides corroboration of all the other evidence and is very compatible with his guilty ... I find no reason why the witnesses would frame the accused.”

17. The appellant now challenges these findings on grounds that the matter which led to his conviction was a family affair and he has so far reconciled with the complainant who was his wife. He explains that the period spent in prison has led to a reformation of his character and vows never to take the law in his hands. He also urges this court to consider the plight of his school going children so that he can go back to cater for their educational needs.

18. In opposing the appeal, **MR. OLUOCH** on behalf of the DPP submitted that the offence attracts a maximum life sentence and taking into account the injuries inflicted on the victim, which almost led to her death, then 7 years imprisonment cannot be said to be excessive.

19. Indeed the appeal is only on sentence. I have taken into account the nature of the injuries and how they were inflicted. I also consider the circumstances which led to the assault – really this was the most irrational conduct – simply because PW1 returned home late from market and her attempts to explain the late arrival were met with the most traumatizing reaction from one who was supposed to be her partner and protector. It was the most brutal attack which led to a small fracture of the skull and she spent 4 days unconscious – I think it is the classical example of domestic violence.

20. Although the appellant makes reference to young school going children, he does not disclose their ages or what level of school they are at.

21. All things considered I think the sentence meted was most appropriate and I find no reason whatsoever to interfere with it. Consequently the appeal has no merit and is dismissed.

Delivered and dated this 15th day of May, 2017 at Homa Bay

H.A. OMONDI

JUDGE