



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CRIMINAL APPEAL NO. 186 OF 2015

[being an appeal against the sentence and conviction of 20 years' imprisonment in Bungoma cr. Case no 1850 of 2014 by Hon. L.A OLEL on 28th September, 2015.

P W APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

BACKGROUND

1. The appellant faced the offence of defilement contrary to Section 8 (1) as read with 8 (4) of the Sexual Offences Act in CMCC No. 1850 of 2014 where he was convicted and sentenced to 20 years' imprisonment.

2. Being dissatisfied with the conviction and sentence the appellant appealed to this court on grounds that; the evidence of PW1 was exaggerated, the trial court erred in relying on the evidence of **PW1**, no medical examination was carried on him and the case was not proved to the required standard.

Appellants submissions

3. The appellant in addition to his grounds orally submitted that the case was framed against him by PW1 who is his in-law.

Respondents submissions

4. The State opposed the appeal on grounds that the standard of proof required was met; that the victim was tested for HIV 6 days after the incident which was not adequate to rule out infection, the victim was 16 years and bleeding occurred for long as the appellant had administered medication on her.

Analysis

5. This is the first appellate court and it has the duty to consider the evidence afresh, analyze and evaluate the same in order to arrive at an independent decision See **Okeno Vs. Republic [1973] E.A. at 322**

6. The prosecution's case is that the victim lived with the appellant and her aunt (the appellant's wife). She considered the appellant as her father, the aunt her mother, and on 10th July, 2014, the appellant

called the victim to the house, ordered her to remove her panty when she refused he tore the same, order the victim to lie on the bed and he then had sex with the victim. He thereafter gave the victim two tablets. The victim informed a niece who in turn told the mother who had been away and came back after 3 days of the incident. It was also the prosecution's case that the appellant is HIV positive and that he disappeared and resurfaced after about 13 days.

PW3 the doctor who examined the victim corroborated the evidence of **PW1** and 2 in that he found the hymen of **PW1** broken, and her vaginal canal had blood stains. He also assessed her age at 16 years.

7. In his defence the appellant pleaded that the case against him was a fabrication as PW2 wanted to take land away from him.

8. Having considered the evidence on record I am of the view that the prosecution proved its case beyond reasonable doubt. PW1 & 2 struck me as having been truthful in their evidence. Indeed, the trial court ruled out the defence of fabrication in that **PW1's** evidence was corroborated by that of **PW3** the doctor that there had been penetration and he detected blood stains. This piece of evidence is consistent with what the two stated.

Indeed under the provisions of Section 124 of the Evidence Act the court can base its conviction on the evidence of the victim if the court believes her evidence. The victim further pointed to the appellant whom she lived with and considered as a father to be the defiler.

9. I have considered the trial courts judgment. The trial court framed the issues for consideration and found as a matter of fact that the appellant had defiled the victim a girl of 16 years and that the victims evidence had been corroborated. I am in concurrence with the trial court's finding. I am also of the view that the sentence is within the law. Consequently, I dismiss the appeal for lack of merit.

DATED and delivered at BUNGOMA this 3rd day of November 2016

ALI-ARONI

JUDGE.