



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL APPEAL NO. 83 OF 2013.

PETER NYONGESA MAJAMBE..... APPELLANT.

VERSUS

REPUBLIC..... RESPONDENT.

(An appeal from the original conviction and sentence of J.M. Nang'ea – SPM. In Criminal Case No. 1794 of 2011 delivered on 3rd July, 2013 at Kitale.)

J U D G M E N T.

1. The appellant, **Peter Nyongesa Najambe**, was convicted and sentenced to twenty (20) years imprisonment by the Senior Principal Magistrate at Kitale for the offence of defilement, contrary to section 8 (1) read with section 8 (3) of the Sexual Offences Act.

It was alleged that on the 1st August, 2011 in Trans Nzoia county, the appellant defiled B W, a male child aged twelve (12) years.

2. Being dissatisfied with the conviction and sentence, the appellant preferred this appeal on the basis of the grounds in the petition of appeal filed herein on 9th July, 2013 in which he complains that he was convicted on the evidence by the prosecution which was uncorroborated and fabricated.

He also complains that no investigations were carried out, that essential witnesses did not produce evidence, that he was not taken to hospital for medical examination, that the trial court relied on extraneous matters and that his defence was disregarded by the trial court.

3. At the hearing of the appeal, the appellant represented himself and relied on his written submissions in support of his case.

The state/respondent opposed the appeal through the Learned Prosecution Counsel, **Mr. Kakoi**, who submitted that PW1 was sodomized by the appellant after they met in a hotel and he (appellant) took him (PW1) to his house for accommodation which he (PW1) had requested. That, the act went on for about twelve (12) hours such that the issue of the appellants identification did not arise as he was easily recognized by the complainant (PW1) as they met at a place which was very well lit and proceeded to a house which also had lights.

4. The Learned Prosecution Counsel, further submitted that the act of defilement was confirmed by PW3 and that PW4 confirmed that the complainant was indeed a minor.

Learned prosecution counsel, contended that the prosecution evidence was never disproved by the appellant and that by dint of section 124 of the Evidence Act, the complainant's evidence was

sufficient even if it stood on its own.

5. After considering the grounds of appeal together with the submissions by both the appellant and the respondent, the duty of this court was to re-consider the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses. In that regard, this court considered the evidence led by the prosecution through the complainant **B W (PW1)**, his uncle, **P M L (PW3)**, the clinical officer, **Linus Ligale (PW3)**, a dentist, **Dr. Kiprop Jonathan (PW4)**, and the investigating officer, **P.C. Paul Kamau Mwangi (PW5)**.
6. The evidence led by the appellant in his defence has also been considered. He denied the offence and said that he was a maize trader. He said that he was arrested for no reason and implied that he was charged in court after failing to pay Ksh. 10,000/= to the police for his release. He also said that he never worked in a hotel and only came to see the complainant in court.
7. From the entire evidence, the basic issue arising for determination was whether the offence was committed against the complainant (PW1) and if so, whether the appellant was the person responsible for it.

Defilement is an act which causes penetration with a child and if the child is between the age of twelve and fifteen years, the offender would be liable to imprisonment for a term of not less than twenty years.

8. Herein, there was undisputed evidence from the complainant (PW1) that he was aged twelve (12) years at the material time. This was confirmed by Dr. Kiprop (PW4) although the complainant's uncle (PW2) placed his age at thirteen (13) years.

There was also undisputed evidence from the complainant and the clinical officer (PW3) indicating that the complainant was sexually assaulted by being sodomized.

9. Indeed, the defence raised by the appellant was a denial of responsibility for the offence rather than the commission of the offence against the complainant.

The ingredients of the offence of defilement were thus fully established by the evidence availed by the prosecution.

With regard to the identification of the offender, the appellant indicated that it was not him and that he was arrested and charged without any good reason and had never previously met or seen the complainant prior to their meeting in court.

10. However, the evidence indicating otherwise was that of the complainant (PW1) which could be acted upon even without corroboration by dint of section 124 of the Evidence Act which provides that where in a criminal case involving a sexual offence the only evidence is that of the alleged victim of the offence, the court shall receive the evidence of the alleged victim and proceed to convict the accused person if, for reasons to be recorded in the proceedings, the court is satisfied that the alleged victim is telling the truth.
11. The victim herein was the complainant (PW1) whose evidence was a narration of how he met the appellant at [particulars withheld] hotel and how he found himself at his house at a place called Sokomoko where he (appellant) prepared dinner which they took before retiring to bed on the floor of the house. It was while the complainant was asleep that he felt a painful penetration in his anus only to realize that he had been penetrated by the appellant using his sexual organ (penis). After withdrawing his penis, the appellant left him (complainant) alone.
12. The complainant's evidence indicated that he was with the appellant for a long period of time. It was therefore impossible for him (complainant) to mistake him (appellant) for another person.

The learned trial magistrate believed the complainant and accepted his evidence as a true reflection of what happened between him and the appellant in the appellant's house. In the circumstances, the defence raised by the appellant was clearly discredited and rendered worthless.

13. On its part, this court would have no reason to disbelieve the complainant's evidence in as much as it showed that he was sexually assaulted by the appellant and no other person. The appellant's conviction by the learned trial magistrate was therefore sound and proper and is hereby sustained.

The sentence imposed by the learned trial magistrate was also proper and lawful.

In the upshot, this appeal is devoid of merit and is dismissed.

[Delivered and signed this 12th day of March, 2015.]

J.R. KARANJA.

JUDGE.