



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL No.44 OF 2013

MICHAEL WAFULA APPELLANTS

VERSUS

REPUBLIC RESPONDENT

(An appeal from the original conviction and sentence of S. K. NG'ETICH Senior Resident Magistrate in Criminal Case No. 1300 of 2012 delivered on 5th April , 2013 at Kitale.)

J U D G M E N T

1. The appellant, **Michael Wafula**, appeared before the Senior Resident Magistrate charged with defilement, contrary to S.8(1) read with S. 8(3) of the Sexual Offences Act, in that on the 11th June 2011 in Trans-Nzoia county, defiled **RC**, a child aged fourteen (14) years.
2. After a full trial, the appellant was convicted and sentenced to twenty (20) years imprisonment. He was aggrieved by the outcome and filed this appeal on the basis of the grounds in his petition of appeal dated 11th April, 2013. He appeared in person at the hearing of the appeal and presented written submissions which he fully relied on in urging this court to allow the appeal and set him free.
3. The learned prosecution counsel, **Mr. Kakoi**, opposed the appeal on behalf of the respondent and submitted that the complainant (PW1) testified on how she was taken into a maize plantation by the appellant and defiled. That, her evidence was clear and was corroborated by PW3 who found her in the Company of the appellant while limping and with pieces of grass on her head.
4. Learned prosecution counsel, further submitted that the manner in which the complainant was found by PW3 was consistent with what she said happened to her. That, the act of defilement was confirmed by the clinical officer (PW6). That, the offence was indeed proved and identification of the appellant was not in doubt. That, the sentence imposed was lawful.
5. This court considered all the submissions by both sides. It's duty was to re-visit the evidence and draw its own conclusion bearing in mind that the trial court had the advantage of seeing and hearing all the witnesses. Accordingly, the prosecution evidence through the complainant, **RCC** (PW1), was considered along with that of her grandfather, **SKC** (PW2), a farmer, **G K** (PW3), the investigating officer, PC **Gedd Onyait** (PW 4), **Dr. Ndege** (PW5) and the clinical officer **Stephen Chepkos** (PW 6). The defence evidence through the appellant (DW1) was also considered.
6. From the evidence, it was undisputed and indeed proved that the complainant was indeed defiled on the material date. She (complaint) indicated as much and this was corroborated by the clinical officer (PW6)

and to an extent by the farmer (PW3).

The doctor (PW5) confirmed by necessary report. (Pex.3) that the complainant was about fourteen (14) years old at the material time of the offence.

7. The crucial issue for determination was the appellant's alleged involvement in the offence. He denied responsibility for the offence and implied that he was attacked and assaulted by a group of people for reason that he had defiled the complainant yet as a boda-boda (taxi) operator he was only transporting her from Kitale to Kobos in the normal cause of his duty. He later learnt that she had disappeared from her home for three days. He was handed to the police and charged with the present offence which was not committed by himself.

8. However, it was the complainant's evidence that she was sexually assaulted by the appellant after he lured her into a maize plantation where the offence occurred at about 11.00 a.m. He turned against her after carrying her on a bicycle on the pretext that he was taking her to weed in his farm.

9. Grace (PW3) and a colleague became suspicious when they saw the appellant carrying the complainant on his bicycle along an expansive maize farm. They knew the complainant and confronted her while she was with the appellant. She (PW3) noted that the complainant was limping and had pieces of grass on the back of her head. Upon being questioned, she (complainant) indicated that the appellant had defiled her.

10. The Complainant's grandfather (PW2) saw the appellant when he was taken to him along with the complainant by a group of people. He denied the allegations and alleged that he was a pastor but after intense interrogation he allegedly admitted his wrong. The alleged admission cannot be used against him as it was not in law an admission capable of being used against a suspect.

11. Nonetheless, the grandfather (PW2) and the complainant (PW1) together with the farmer (PW3) were able to show that it was the appellant who was responsible for the offence thereby overruling his defence in that regard.

Indeed, there was no denial from the appellant that the complainant was the girl that he carried on his bicycle from one point to another before he was confronted and assaulted by a group of people.

12. Just as the learned trial magistrate found, this court also finds that the appellant was the person responsible for defiling the complainant.

Consequently, this appeal is not merited and is hereby dismissed in its entirety.

J. R. KARANJA

JUDGE

[Delivered & signed this 8th day of June 2015]