REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 94 OF 2013

(Appeal against both conviction and sentence of the Chief Magistrate's court at Kakamega in (S.O.) case No. 86 of 2012 [S. M. SHITUBI, CM] dated17th December, 2012)

MICHAEL SIMIYU RONJE alias FENJWA ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

JUDGMENT

The appellant was charged in the subordinate court with defilement contrary to **Section 8 (1)** and **(2)** of the Sexual Offences Act No. 3 of 2006. The particulars of the charge were that on 15th December 2012 in Kakamega County intentionally and unlawfully forced his penis to penetrate the vagina of V F B a child aged 7 years. In the alternative, he was charged with committing an indecent act with a child contrary to Section 11 (1) of the same Act. The particulars of the alternative charge were that on the same day and place intentionally and unlawfully touched the vagina of V F B a child aged 7 years.

He was recorded as having pleaded guilty to the main count. He was thus convicted and sentenced to serve life imprisonment.

He has now appealed to this court on five grounds. His grounds of appeal are as follows-

1. That he did not plead guilty to the charge.
2. That the trial magistrate convicted him without warning him of the consequences of pleading guilty to the charge.
3. That the trial magistrate did not consider that he was a layman in law and did not understand the court process.
4. That he was persuaded by the police to plead guilty to the charge as they promised that he would be released without knowing the consequences.
5. That the sentence meted was harsh and excessive.

At the hearing of the appeal, the appellant submitted that he wanted the court to assist him. He stated that he was pushed like a cow in an auction and that he did not commit the offence. He further added that he was implicated because of a family grudge.

The learned Prosecuting Counsel, Ms Opiyo opposed the appeal. Counsel submitted that the appellant pleaded guilty to the offence of defilement after the charges were read to him in Kiswahili language which he understood. In addition, the court warned him of the gravity of the offence. However, he went ahead and accepted the facts. The sentence was lawful.

In response to the Prosecuting Counsel's submissions, the appellant said that he was confused when he was in court. In addition, he was scared.

I have considered the grounds of appeal, the submissions both by the appellant and the State. I have also perused the record.

This being a first appeal, I am duty bound to re-evaluate all the record and come to my own conclusions and inferences. See the case of ***Okeno -vs- Republic [1972] EA 32.***

This appeal is against both conviction and sentence. The first issue is whether the appellant pleaded guilty to the charge. The requirements for taking a proper plea of guilty were considered in the case of ***Adan -vs- Republic [1973] EA 445***. In that case, the steps to be taken by the court in ensuring that the plea is unequivocal were given.

In the present case, the charge was read to the appellant in Kiswahili language which he understood. He was recorded as having said in Kiswahili - **"It is true."** Thereafter he was warned of the nature of the charge and the sentence. He still insisted that the charge was true. Consequently, the facts were then given by the prosecutor. When asked to respond to the facts, he said that the facts were correct but that he was drunk. It is on account of this record that the appellant was convicted on his own plea of guilty.

In my view, the plea of guilty of the appellant was unequivocal. Being drunk at the time of crime was no defence or vitiation of criminal responsibility. There is no evidence that he was drunk when he pleaded to the charge. The learned magistrate was in my view correct in convicting him on his own plea of guilty.

It is not true as alleged by the appellant that he was not warned of the seriousness of the offence. Infact, the record shows that he was warned of the seriousness of the offence and the sentence and reminded of the charge again in Kiswahili language, but still insisted that the charge was true. The facts given by the prosecutor before the trial court disclosed all the ingredients of defilement.

The appellant cannot therefore now turn and say that there was a family grudge which was instrumental in implicating him for having committed this offence. The information contained in the P3 form and treatment notes and age assessment form clearly established the offence. The appellant in my view, is attempting to change his plea on appeal. Such is not acceptable.

The sentence of life imprisonment is the sentence provided by the law, due to the age of the complainant. The learned magistrate had no power to reduce that sentence. It cannot be said to be harsh and excessive.

To conclude, this appeal has no merits. I dismiss the appeal and uphold both the conviction and the sentence of the trial court.

Dated and delivered at Kakamega this 12th day of June, 201

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George Dulu

J U D G E