



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL APPEAL NO. 110 OF 2013.

ERICK WANYONYI HENRY:.....APPELLANT.

VERSUS

REPUBLIC:.....RESPONDENT.

(Being an appeal from the original conviction and sentence of J.M. Nang'ea – SPM. in Criminal Case No. 3027 of 2011 delivered on 7th October, 2013 at Kitale.)

J U D G M E N T.

The appellant, **Eric Wanyonyi Henry**, appeared before the Senior Principal Magistrate at Kitale charged with defilement, contrary to section 8 (1) read with section 8 (4) of the Sexual Offences Act, in that on diverse dates between 30th January, and 30th November, 2011, in Trans Nzoia County, defiled L W, a child aged sixteen (16) years.

After trial, the appellant was convicted and sentenced to serve fifteen (15) years imprisonment.

Being dissatisfied with the conviction and sentence, the appellant filed the present appeal on the basis of the grounds in his petition of appeal dated 16th October, 2013.

At the hearing of the appeal, the appellant appeared in person and relied on his written submissions in support of his case.

The Learned Prosecution counsel, **M/s. Kiigi**, appeared for the state/respondent and opposed the appeal by submitting that the appellant was properly convicted as he defiled the complainant who was aged 15 years at the time and who properly identified him.

Learned Prosecution Counsel contended that the appeal lacks merit and urged this court to dismiss it.

Having considered the appeal in the light of the submissions by both sides, this court's duty was to re-visit the evidence and draw its own conclusions bearing in mind that the trial court had the benefit of seeing and hearing the witnesses.

In that regard, the case for the prosecution was briefly that in the month of August, 2011, the complainant **LW (PW1)**, was returning to her grandfather's home at about 7.00p.m. When her name was called out by the appellant who also lived at her grandfather's home and worked as a cattle herder. He pulled her

beside the road and defiled her. Thereafter, they both left the scene and went to the complainant's grandfather's home. He warned her not to report the matter to the grandfather. She however reported the matter to her grandfather in the month of December, 2011, after having been defiled again by the appellant in the month of November, 2011.

The grandfather, **W W (PW3)**, indicated that the matter was reported to him by the complainant on the 11th December, 2011. He was told that the appellant had assaulted the complainant and snatched her money and that he had also impregnated her. He (PW3) took the complainant to hospital and reported to the police.

A police reservist, **Richard Wekesa (PW4)**, received the report and arrested the appellant.

P.C. Caleb Yator (PW6), investigated the case and in the process issued a medical examination form (P3 form) which was completed and signed by a clinical officer, **Kirwa Labat (PW5)**, who confirmed that the complainant had been defiled as a result of which she became pregnant.

Dr. Kiprop Jonathan (PW2) examined the complainant for purposes of determining her age which he assessed to be fifteen (15) years.

In his defence, the appellant in exercise of his right to remain silent stated nothing in the response to the evidence adduced against him by the prosecution and from the said evidence, it was apparent that the complainant was defiled on more than one occasion between the months of August, and November, 2011. The defilement led to her pregnancy.

The issue that arose for determination was whether the appellant was the person responsible for the offence in all the occasions and hence, the complainant's pregnancy.

Apparently, the complainant deemed it fit to tell her grandfather about the incident or incidences on realizing that she was pregnant. She directed responsibility towards the appellant who was not under any obligation to prove his innocence. It was thus incumbent upon the prosecution to establish his guilt beyond reasonable doubt.

Other than the complainant, no other person came forward to say that they saw the appellant committing the offence. Therefore, it was only the word of the complainant which resulted in the arraignment of the appellant. Her evidence, though admissible without corroboration by dint of section 124 of the Evidence, had to be treated with care for purposes of veracity.

The Learned Trial magistrate believed the complainant's evidence and heavily relied on it to convict the appellant. Indeed, the trial court was better placed than this court to make findings based on credibility of witnesses because it saw and heard them. Therefore, this court does not see any good reasons to fault the learned trial magistrate's finding that it was the appellant who defiled the complainant whose age at the time was below 18 years between 15 years and 16 years.

It was apparent from the complainant's evidence that she allowed the appellant to engage in sexual intercourse with her on several occasions. This was a hidden and secretive affair between the complainant and the appellant which eventually came out in the open after the complainant became pregnant and seemingly after a disagreement with the appellant.

On his part, the appellant allowed the secretive affair to flourish knowing too well that the complainant was a minor. He therefore became criminally responsible for the offence of defilement against the complainant.

This appeal is devoid of merit and is hereby dismissed in its entirety.

[Delivered and signed this 7th day of October, 2014.]

J.R. KARANJA.

JUDGE.