



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CRIMINAL APPEAL NO. 93 OF 2011

PAUL BARASA..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction in Criminal Case No. 250 of 2011 Republic v Paul Barasa in the Resident Magistrates' Court at Eldoret by J. A. Owiti, Resident Magistrate dated 13th May 2011 and sentence dated 3rd June 2011.)

JUDGMENT

1. The appellant pleaded guilty to the charge of defilement of a girl aged 16 years contrary to sections 8(1) as read together with section 8(4) of the Sexual Offences Act, No. 3 of 2006. He was sentenced to 15 years imprisonment.
2. The particulars of the offence were as follows-

“On the 14th January 2011 at around 08.00 Hrs. in Lugari District within Western Province, intentionally and unlawfully caused penetration with his genital organ namely penis into the genital organ namely vagina of [name withheld] a child aged 16 years”.

3. When the trial opened on 11th February 2011, the appellant at first pleaded not guilty. The complainant (PW1), a village elder (PW2), the grandfather of the complainant (PW3), a clinical officer (PW4), the investigating officer (PW5) and the complainant's father (PW6) testified for the prosecution. On 15th April 2011 the prosecution closed its case. The trial court ruled that a *prima facie* case had been established and placed the appellant on his defence.
4. The appellant in his unsworn statement told the court as follows-

“I reside at Lugari. I am a mason. I have been implicated in this case. I pray for leniency. I am sickly. I have been in remand since I was arrested. My grandfather is unable to provide for my needs. I admit the charge as preferred against me”

5. Since the appellant was now admitting the offence, the trial court ordered that the charges be read afresh to the appellant. The charges were read in Kiswahili, a language the appellant confirmed he understood. The appellant replied as follows-

“It is true. I defiled [name withheld] on 14th January 2011 at 8.00 a.m. at [particulars withheld] Sub-location,”

6. The facts which were read were straightforward: on the material day, the appellant had sent for the

- complainant through one John. The complainant went to the appellant's house. She stayed there until 7.00 p.m. when the appellant asked her to accompany him to his sister's place. The appellant's sister (Musungu), and the complainant slept on one bed and the appellant on another. In the morning, the sister left the house. The appellant found the complainant at the back of the house. He touched her breasts, forcefully removed her skirt and panties and defiled her. From the complainant's birth certificate number xxxx (exhibit 1), the complainant was born on 24th April 1995. The P3 form (exhibit 3) produced by the clinical officer and the treatment notes (exhibit 2) confirmed that the complainant's hymen was torn, there were seminal fluid deposits in the posterior vaginal spectrum and a whitish discharge from the vagina.
7. The appellant confirmed that all the facts were true and correct. A plea of guilty was thus entered. The appellant's mitigation was taken. A pre-sentence report was also availed to the trial court. On 3rd June 2011, and after considering the report, the appellant was sentenced to fifteen years imprisonment.
 8. The appellant being aggrieved by the sentence has lodged this appeal to the High Court. The petition of appeal was filed on 15th June 2011. In a synopsis, the appellant's case is that the sentence was manifestly excessive. He pleads for leniency. He states that he is a first offender; that he is remorseful; that he was only eighteen years old at the time he committed the offence and did not comprehend the consequences of his actions; and, that he is the eldest of four orphans who are living with his grandparents. The appeal is contested by the State.
 9. This is a first appeal to the High Court. I have re-evaluated all the evidence on record and drawn my own conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190.
 10. I find that the appellant's plea of guilty was unequivocal. The charges and facts were read out to him in Kiswahili, a language he understood. From the facts that I set out above, the appellant penetrated the complainant. The penetration was corroborated by the evidence of the clinical officer, the P3 form and treatment notes that I referred to. The age of the complainant was proved to be sixteen from the oral evidence and the birth certificate (exhibit 1). I thus find that all the key ingredients of the offence of defilement were established. The appellant was thus properly convicted of the offence of defilement contrary to section 8 (1) of the Sexual Offences Act.
 11. The appellant has pleaded with this Court to review the sentence of 15 years. Under section 8(4) of the Sexual Offences Act, defilement of a child of between sixteen years and eighteen years attracts a sentence of *not less* than 15 years imprisonment. The sentence is mandatory. I commiserate with the appellant but I regret my hands are tied in the matter. I find that the sentence handed down was the minimum sentence and thus well within the law. Where the statute has set a minimum sentence, it would be a misnomer to say the sentence is too harsh or oppressive.
 12. In the result, I find that the appeal is devoid of merit. I uphold the conviction and sentence handed down by the learned trial Magistrate. The entire appeal is dismissed.

It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this 2nd day of October 2014

GEORGE KANYI KIMONDO

JUDGE

Judgment read in open court in the presence of

The appellant.

Mr.....for the State.

Mr. Kemboi, Court clerk.