



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CRIMINAL APPEAL NO. 89 OF 2013.

REUBEN BOYI ::::::::::::::: APPELLANT.

VERSUS

REPUBLIC ::::::::::::::: RESPONDENT.

(Being an appeal from the original conviction and sentence of R.M. Washika – AG. PM in Criminal Case No. 197 of 2013 delivered on 22nd July, 2013 at Kapenguria.)

J U D G M E N T.

The appellant, **Reuben Boyi**, appeared before the Principal Magistrate at Kapenguria charged with defilement, contrary to section 8 (1) read with section 8 (2) of the Sexual Offences Act, in that on the 23rd February, 2013, in West Pokot County, he defiled F C, a girl aged nine (9) years.

There was an alternative count of indecent act contrary to section 11 (1) of the Sexual Offences Act.

After trial, the appellant was convicted on the main count and sentenced to life imprisonment. He was also sentenced, albeit erroneously, to ten (10) years imprisonment for the alternative count. Both sentences were to run concurrently.

Being dissatisfied with the conviction and sentence, the appellant filed this appeal on the basis of the grounds in the petition of appeal dated 24th, July, 2013. He appeared in person at the hearing of the appeal and relied on his written submissions in support of his grounds of appeal.

The learned prosecution counsel, **M/s. Limo**, opposed the appeal on behalf of the state/respondent and orally submitted that the conviction and sentence on the main count of defilement was proper as there was sufficient evidence in support thereof. That, the issue of a grudge was untrue as it was PW2 who reported the matter to the victim's mother (PW3).

That, the fact of defilement was proved and that it was unnecessary for the appellant to be subjected to medical examination. That, the sentence on the alternative count was wrong.

Having considered the grounds of appeal in the light of the submissions by both sides, the duty of this court was to review 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 prosecution case was briefly that on the material date, the complainant, **F C (PW1)**, a standard four (4) pupil and aged nine (9) years at the time, was driving livestock back home at 6.00 p.m. when she spotted the appellant whom she had previously known peeping from a hiding spot. She ran off due to shock and in the process fell down after hitting a stone. The appellant confronted and dragged her

into a bush where he defiled and warned her to remain silent. She became scared and never told anybody what happened, but on the following day her teacher noticed that she was in pain and reported to her mother.

The teacher, **M L (PW2)**, noticed that the complainant was walking with difficulties and on questioning her, detected that she was difficult, scared and embarrassed to speak. She (PW2) called her (complainant's) mother and after talking to her, they realized that she had been defiled.

The mother, **J C (PW3)**, recalled that the complainant arrived home on the material date very late. She (PW3) noticed that she (complainant) had difficulties in walking and was scared but did not disclose what had happened. She went to school and it was when she (PW3) was called there to interrogate her. It was then that she (complainant) disclosed that she had been defiled by the appellant, their neighbour. She was thus taken to hospital.

Clement Kibet Singor (PW5), a clinical officer at Kapenguria District Hospital examined the complainant and confirmed that she had been defiled. He completed and signed the necessary P3 form which he produced (P. Exh. 1). he also produced an age assessment report (P. Exh. 2) confirming that the complainant was aged nine (9) years.

P.C. Gideon Ochieng (PW4), investigated the case after it was reported at Kapenguria police station and thereafter, preferred the present charge against the appellant who defended himself in court by denying the offence and stating that he was at his place of work on the material date when he was suddenly arrested and implicated with the offence after failing to raise money demanded by the police as a bribe.

From all the evidence, it is apparent that no dispute arose with regard to the fact of defilement which was in any event established by the complainant's evidence supported by that of her mother (PW3), teacher (PW2) and most importantly, the clinical officer (PW5).

The issue which was disputed by the appellant and was the basic point for determination was whether he was the person responsible for the offence. He denied responsibility and implied that he was framed after failing to bribe some police officers.

However, in her evidence, the complainant was firm that it was the appellant who defiled her. She knew him as their neighbour and indicated that he threatened her with death if she disclosed the matter to anybody. Her evidence was believed by the learned trial magistrate who had the opportunity of seeing all the witnesses and therefore more suitable that this court to make findings based on credibility.

Although the complainant (PW1) was the sole witness on identification, the appellant was not a stranger to her. Besides, she identified him in circumstances which were not difficult. Her evidence was admissible even as it stood on its own in terms of section 124 of the Evidence Act.

In the upshot, this appeal is lacking in merit and is hereby dismissed save for the setting aside of the erroneous sentence of ten (10) years imprisonment imposed by the learned trial magistrate on the alternative count.

[Delivered and signed this 1st day of October, 2014.]

J.R. KARANJA.

JUDGE.