



REPUBLIC OF KENYA

High Court at Embu

Criminal Appeal 114 of 2012

FRANCIS MURIUKI KARIUKI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from the Sentence and Conviction of L.K. MUTAI Principal Magistrate Embu in Criminal Case No. 1369 of 2010 on 4th November 2010)

J U D G M E N T

FRANCIS MURIUKI KARIUKI hereinafter referred to as the appellant was charged with the offence of Grievous Harm contrary to Section 234 of the Penal Code. The particulars as stated in the charge sheet were as follows:-

On the 13th day of May 2010 at 3.00 p.m. at Njukiri Village, in Embu District within Eastern province, unlawfully did grievous harm to AGATA KANINI.

The matter proceeded to full hearing and the appellant was convicted and sentenced to 4 years imprisonment On 4/10/2010. And being aggrieved by the judgment he appealed against both conviction and sentence raising the following grounds:-

1. ***He pleaded not guilty.***
2. ***That the custodial sentence of four years was harsh and excessive.***
3. ***That he is old and sick requiring treatment regularly.***

When the appeal came before me for hearing the appellant abandoned his appeal against conviction. He therefore asked the Court to consider that he had served a larger part of his sentence and was left with a period of about 3 months to go. The State was not opposed to this application.

As a first appeal Court I have the duty to reconsider and reevaluate the evidence adduced in the Court below, and arrive at my own conclusion. Ref. ***OKENO VS REPUBLIC [1972] EA 32.***

From the evidence adduced the complainant had on 13/5/2010 3 p.m gone to fetch water. On her way back as she carried the jerricane of water she heard footsteps behind her and somebody retorting “hapo ni hapo”. On turning back she saw her neighbour (the appellant) who told her he had waited for a long time. He kicked her above the knee joint causing her to fall down. He held her neck squeezing it. He hit her head with his. He then punched her jaws knocking off two of her lower incisor teeth. He left her there and she went home. The matter was reported to Embu Police Station and she was taken to Hospital by her daughter (PW2). She denied stealing the appellants cassava.

PW2 stated that her mother (PW1) returned home from the river appearing beaten. She told her it was

the appellant who had beaten her. PW3 confirmed receiving the report of assault the same day. PW4 Dr. Njuki Njiru confirmed that PW1 had been injured and her two lower incisor teeth had been knocked off.

In his defence the appellant admitted assaulting the complainant. He however said he did so because he found her stealing his cassava. DW1 said he only found the appellant holding PW1.

From the evidence above there is no dispute that the appellant and PW1 had a confrontation that afternoon of 13/5/2010. Even the appellant admitted having assaulted the complainant by slapping her. He however does not say on which part of the body he slapped her. He took the law into his own hands.

The medical evidence confirms the injuries suffered by the complainant. The same was assessed as maim. It is clear that the appellant is the one who caused this injury. The appellant abandoned his appeal on conviction. And after evaluating the evidence adduced I am satisfied that the learned trial Magistrate arrived at the right conclusion and the conviction is safe.

The sentence of 4 years is lawful and was not harsh. The appellant has however pleaded for a reduction of the sentence since he will be completing his sentence on 4/7/2013. The state did not oppose this application. Considering his age (as I have seen him in Court) I believe the appellant has learnt his lesson in Prison for the period he has been there.

I will reduce his sentence to the period already served. To that extent only does this appeal succeed. He will be set free unless otherwise held separately under a separate warrant.

DELIVERED, DATED AND SIGNED AT EMBU THIS 2ND DAY OF APRIL 2013.

H.I. ONG'UDI

JUDGE

In the presence of:-

Ms. Macharia for Prosecution

Appellant

Nyaga Cc