



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL APPEAL NO. 44 OF 2012

DENNIS KIPLANGAT BETT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the conviction and sentence made by the learned Resident magistrate at Sotik court (Hon. J.Kasam) in Sotik SRM Magistrate's court criminal (S.O) case No.19 of 2012 on 16/07/2012)

JUDGMENT

DENIS KIPLANGAT BETT, the appellant was tried and convicted for the offence of defilement contrary to **Section 8(1) (4)** of the **Sexual Offences Act No. 3 of 2006**. He was thereafter sentenced to serve 20 years imprisonment. Being aggrieved, the appellant preferred this appeal and put forward the following grounds:

- 1.That I pleaded not guilty in this case.**
- 2.That the learned trial Magistrate erred in both law and in fact by failing to consider that the prosecutions evidence was contradictory and full of lies.**
- 3.That the learned trial Magistrate erred in both law and in fact by failing to consider that the prosecution failed to avail the exhibits of clothes the complainant was wearing.**
- 4.That the learned trial Magistrate erred in both law and in fact by failing to consider that the case could have arisen from a long time grudge between accused and complainant's family.**
- 5.That the learned trial Magistrate erred in both law and in fact by failing to consider that the medical report and the evidence of PW3 did not incriminate I the appellant with the offence.**
- 6.That the learned trial Magistrate erred in both law and in fact by failing to consider that the complainant did not bleed despite claims that the hymen was broken.**
- 7.That the learned trial magistrate erred in both law and in fact by relying on a single evidence.**
- 8.That the learned trial magistrate erred in both law and in fact by rejecting my sworn defence**

without due consideration to Section 169(1) of C.P.C.

When the appeal came up for hearing Mr. Mutai, learned senior prosecution counsel opposed the same. The appellant who appeared in person was allowed to file and rely on written submissions.

The case that was before the trial court appear to be short and straight forward. A total of six witnesses testified in support of the prosecution's case. C (P.W.1) the complainant herein told the trial court that on 06/3/2012 at about 6.00pm she was accosted by the appellant while on her way home from school. She alleged the appellant forcefully took her to his house using threats where he defiled her the whole night until the next morning. P.W.1 said she managed to escape at 2.00am while the Appellant was asleep and upon reaching home she informed her father P C (P.W.2) of what happened to her. P.W.2 reported the matter to the area chief who in turn informed the police who swung into action. P.W.1 was taken into Ndanai Health Centre for medical examination and treatment. At the Health Centre Caroline Cherotich (P.W.4), a clinical officer, examined PW1 and formed the opinion that her hymen was broken and that there was spermatozoa in her urine and formed the opinion that the complainant was defiled. When placed on his defence, the appellant denied the offence claiming he never left his house that particular day. He alleged that the charge was fabricated against him since the complainant's family had a grudge against him. He claimed that the complainant is a sister to his wife who disserted him after they had a matrimonial dispute. The learned trial Magistrate came to the conclusion that the prosecution had proved their case beyond reasonable doubt.

On appeal, the appellant argued mainly one ground, that is to say that the trial magistrate did not give due consideration to his defence. He repeated his allegation that the charge was a fabrication meant to settle scores by his in-laws. The appellant argued that when his wife disserted him, he demanded for a refund of his dowry. This caused a rift between him and the complainant's family.

Miss. Magoma, learned prosecution counsel was of the view that the defence did not shake up the prosecution's case, hence the same was properly rejected. I have carefully re-evaluated the evidence. There is no dispute that the complainant is a brother in law to the complainant (P.W.1) and a son in law to P.W.2. The appellant was emphatic from the beginning that the complainant's family had a grudge against him because he had separated with his wife, the complainant's sister due to domestic dispute. The record shows that the trial magistrate noted the appellant's defence but did not give serious consideration. In fact the trial magistrate concentrated on the prosecution's case claiming the same displaced the appellant's defence. The appellant was plain in his defence. He simply stated that his in-laws were out to settle a score because he disagreed with his wife. The trial Magistrate did not give due consideration to that defence. I do not understand how the prosecution's evidence displaced the appellant's defence. There was no evidence to show that PW1 and PW2 were having a cordial relationship with the appellant. There was no evidence also to discount the allegation that the appellant had separated with his wife. It is clear from the evidence of PW1 that his daughter (the appellant's wife) had disserted the appellant. It is the evidence of PW1 that she told her father a lie because she feared he would punish her. It is clear in my mind that in view of PW1's admission that she lied, her evidence should not have been believed to be the gospel truth. It is possible PW1 and PW2 conspired to fix the appellant to revenge against him due to the bad-blood between the appellant and his estranged wife. It is apparent from the evidence of PW2 that the appellant has remarried after separating with his wife. After a critical re-consideration of the evidence, I am convinced that the appellant's defence was improperly rejected. The same in my view had cast doubt on the veracity of the prosecution's case. It is possible that the complainant may have told lies to cover her tracks. For the above reasons, I will give the appellant the benefit of doubt by allowing the appeal.

In the end, the appeal is allowed. The conviction is quashed and the sentence set aside. The appellant is hereby set free forthwith unless lawfully held.

Dated, signed and delivered this 8th day of November, 2013.

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J.K.SERGON

JUDGE

In open court in the presence of

The Appellant in person

Miss. Muthee - for the Office of Director of Public Prosecution.

Mr. Koech- Court clerk