



REPUBLIC OF KENYA

High Court at Meru

Criminal Appeal 154 of 2006

PAUL MBANA PIPIRI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An appeal against the judgment of Hon. Mr. W.K. Korir SRM in Principal Magistrate's Court at Isiolo Criminal Case No. 1221 of 2003

delivered on 12th August 2004

J U D G M E N T

The appellant had earlier been charged for the offence of defilement of a girl under the age of 16 years contrary to section 145 (1) of the Penal Code. The particulars of the offence as stated in the charge sheet are as follows:-

“On 14th/15th days of September 2003 at [particulars withheld] in Isiolo District within Eastern Province had unlawfully carnal knowledge of P.K. girl aged 10 years.”

After a full trial, the appellant was found guilty and convicted accordingly. Consequently, the trial magistrate sentenced the appellant to 15 years imprisonment. Being aggrieved by the conviction and sentence passed by the trial magistrate, the appellant has appealed. The grounds of appeal are as follows:-

- 1. That the learned trial magistrate erred in both law and facts by adopting the evidence tendered by the prosecution without taking my defense into consideration.***
- 2. That I was very likely prejudiced because the investigation germinated at my trial was very shallow in terms of evidence.***
- 3. That the sentence meted down to me is very oppressive because the investigation of my activity and backgrounds however disclosed no suspicion for my involvement in any crime.***
- 4. That the court did not elicit to know why the said victim's mother who was at the best position to describe the matter could not come to shed light in court.***
- 5. That a greater portion of evidence relied upon to convict me was hearsay and thus the learned trial magistrate based my conviction thereon.***

6. That since I am not capable of re-collection all the facts gathered at lower court, I humbly and prayerfully get to be furnished with the same proceedings and also be produced at the hearing of this appeal.

During the hearing of the appeal, the appellant opted to hand over written submission to the court. Besides the above, he also stated that he is an ordinary citizen and that he has not learnt any law. Apart from the above, he also stated that due to his poverty, he could not hire a lawyer. The appellant contended that the lower court had erred by refusing medical evidence. That apart, he also explained that the court had also relied on false allegations to convict him. While referring to page 3 at line 32 of the proceedings, the appellant stated that there was no proper evidence to show that there was defilement.

On the other hand, the State was represented by Mr. Motende who is the State Counsel. In response to the above, the learned State Counsel opted to concede to the appeal on the ground that the language that was used in the proceedings was not indicated. Secondly, the learned State Counsel referred this court to the evidence of PW2 who stated that there was no proper evidence to show that there was defilement. In conclusion, Mr. Motende submitted that the trial magistrate heard in convicting the appellant on evidence that was not collaborated. On the basis of the above, the learned counsel urged this court to deliver a judgment on the said appeal.

This court has carefully considered what has been stated above and the record of appeal. Having gone through the records of the proceedings, it is apparent that the learned trial magistrate did not indicate the language that was used throughout the trial. Secondly, the clinical officer called Daudi Dabaso produced a P3 form which had been filled by his colleague namely Yusuf Nduba. The P3 form stated as follows:-

“The patient had complained of having been raped. The hymen of the patient was perforated. Analysis was done and there was nothing seen. There was no proper evidence to show there was defilement. I now produce the P3 form as exhibit 1.”

It is apparent that the medical evidence that was adduced during the trial did not support the charge at all. The said evidence was at variance with the evidence that was adduced by the prosecution witnesses. Secondly, it is of significance that the State Counsel himself has conceded to the appeal on the grounds that the language used was not indicated in the proceedings.

Article 50 of the Constitution states as follows:-

“(1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

(2) Every accused person has the right to a fair trial, which includes the right:-

- a)
- b)
- c)
- d)
- e)
- f)
- g)
- h)
- i)
- j)
- k)
- l).....

m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial.”

It is explicit that in this particular case, the constitutional rights of the appellant were not catered for. In addition to the above, the evidence on record did not support the charge. Given the total circumstances of this case, I hereby concede to the appeal. The upshot is that the conviction is hereby quashed, and the sentence is set aside. The appellant should be released forthwith unless held lawfully.

Those are the orders of this court.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open court in the presence of:-

PRESENT – APPELLANT

MR. MOTENDE FOR STATE COUNSEL

MUGA APONDI

JUDGE

9TH OCTOBER 2012