REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL APPEAL NO 176 OF 1992

JOSEPH KOECH YEGO …..……. APPELLANT

VERSUS

REPUBLIC……..…… RESPONDENT

JUDGMENT

The appellant was charged in the Court of the Resident Magistrate at Eldoret with the two offences, namely indecent assault on a female contrary to section 144(1) of the Penal Code and personating a public officer contrary to section 105 (b) of the same Code.

He was alleged to have visited the house of the complainant J C C [particulars of her full name withheld] (PW1) on the night of 24th December, 1991 at 3 am at Buheba farm in Uasin Gishu District where he represented himself as a police officer who was looking for *busaa* or *chang'aa* brewers.

He searched the complainant's house and when he saw a *sufuria* which he thought was used to brew *busaa*, he threatened to arrest the complainant and actually marched her out of the house allegedly to take her to Soy Police Station.

On the way, the appellant unlawfully and forcefully had carnal knowledge of J C C whom he then released to go back home.

Back home, the complainant reported the matter to members of the public who included Simon Kirwa (PW2). They looked for and arrested the appellant near the river and took him to Soy Police Station where he was charged with the offence subject to this appeal.

In his unsworn defence the appellant denied the two offences and said he had not committed or done whatever he was being accused of. He said that the complainant was just picking on him.

The learned Resident Magistrate, Mrs Opondo, wrote a detailed judgment in which she took into account the prosecution evidence as well as the defence of the appellant. At the end of the day, she found the appellant guilty, convicted and sentenced him to five years imprisonment with six strokes of the cane on the first count and three years imprisonment, on the second count, the sentences to run concurrently, hence the present appeal.

The law of East Africa, Kenya included, on corroboration in sexual cases was set by Law JA as he then was in the case of *Chila v Republic* [1967] EA at page 722 and it is this;

> "The judge should warn the assessors and himself of the danger of acting on the uncorrobated testimony of the complainant, but having done so he may convict in the absence of corroboration if he is satisfied that her evidence is truthful. If no so such warning is given, then the conviction will normally be set aside unless the appellate Court is satisfied that there has been no failure of justice."

In the case subject to this appeal, there is no doubt the learned Resident Magistrate relied mainly on the evidence of the complainant to convict the appellant on both counts. On the charge of indecent assault, the learned Resident Magistrate said that;

> "The law is that it is desirable that there should always be some corroboration in a charge of sexual offences. It is also dangerous to convict without such corroboration and I accordingly warn myself on this danger. This notwithstanding, I did have the opportunity to observe all the prosecution witnesses as well as the accused person. I believe the complainant even if there was no other corroboration."

The complainant testified in detail as to how the appellant went to her house and asked her to open the door which she did. The appellant came in and gave her a match box to put on a lantern, which she also did.

The appellant was wearing a dark rain coat and civilian clothes and when she put on a lantern she saw his face quite well. He told her that he was looking for *busaa* and asked to search the house. The complainant was with the appellant during the search and with help of her lantern she was able to identify him well.

The appellant saw a *sufuria* in the house and said it was one used for brewing *busaa* when he asked for money and the complainant gave him Kshs 60/- he refused to take it because it was little. So he ordered that she accompanys him towards where he alleged he has parked the police vehicle. Then on the way he forced her to have sexual intercourse with him and after that he left her.

All these details the complainant could remember and after the sexual intercourse episode she went home and immediately informed neighbours who were surprised because they had not seen any policeman in the area.

Early next morning the same day, she saw the very appellant walking towards the river and immediately informed PW2 who went and arrested him. She never lost any opportunity and the immediate report to neighbours and PW2 could be construed as sufficient corroboration of what actually happened to her the previous night. Even if I find that there was no corroboration, this was one case where the complainant was so vivid in her evidence that no reasonable Court would have rejected it as a made up story.

The offence of personating a person employed in the public service is covered by section 105(b) of the Penal Code.

It states;-

> "Where any person who falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing an act by virtue of such employment is guilty of a misdemeanour."

According to the evidence of the complainant, she was made to believe that the appellant was a police officer who was on duty looking for *busaa* or *changaa* brewers and this is why she opened the door for him, lighted the lantern and allowed him to search the house. Although he did not find any illicit brew in the house, yet when he threatened to take her to the police station she was tempted to give him some money (Kshs 60/-) to be released but the appellant refused because it was little. He even took her out of the house and marched her allegedly to where the police vehicle was parked only to be assaulted on the way and forced into sexual intercourse.

All these circumstances proved the charge under section 105 (b) of the Penal Code. The appellant's allegation that the complainant had a grudge with him did not hold any water because the two did not know each other before and there would have been no reason for the grudge.

In my view, the appellant was properly convicted, of the two offences and in view of the seriousness thereof, the sentences imposed were not harsh and/or excessive. The appeal is dismissed in its entirety.

Dated and Delivered at Eldoret this 18th day of May, 1993

D.K.S. AGANYANYA

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JUDGE