

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO 256 OF 1986

MUTUKU.....APPELLANT

V

REPUBLIC.....RESPONDENT

JUDGMENT

The learned principal state counsel does not support the convictions for indecent assault contrary to section 133 (1) of the Penal Code and of malicious damage contrary to section 339 (1) of the said Code as both convictions are based on uncorroborated evidence of the prosecutrix whose evidence of how she reported to her parents at home is at variance with her father. Moreover from the judgment of the trial court it appears the magistrate shifted burden of proof on the appellant.

The appeal is allowed. Convictions and sentences are quashed.

Appellant be set at liberty forthwith unless otherwise lawfully held.

March

20,

1987

ABDULLAH

J