



Ndaa v Republic

Court of Appeal, at Mombasa January 24, 1984

Hancox JA, Chesoni and Nyarangi Ag JJA

Criminal Appeal No 146 of 1983

Criminal law - assault causing actual bodily harm - ingredients of the offence - how plea of the offence taken - Penal Code s 251.

Plea - plea of guilty - pleading to offence of assault causing actual bodily harm - what amounts to plea of guilty to such offence - Penal Code s 251. Sentence - severity of sentence - offence of causing actual bodily harm - corporal punishment - 20 strokes of - whether sentence manifestly excessive.

The appellant had been charged with assault causing actual bodily harm and when the charge was read and explained to him, he answered:

“I have understood the charge. I did beat [the deceased]”.

The appellant was convicted on his own plea of guilty and sentenced to 2 years’ imprisonment and 20 strokes of corporal punishment. He appealed against conviction and sentence. Held:

1. The ingredients of the offence of assault causing actual bodily harm are:

(a) assaulting the complainant or victim;

(b) occasioning actual bodily harm

2. An accused person pleads guilty to a charge of assault causing actual bodily harm contrary to s 251 of the Penal Code (cap 63) when he admits assaulting the victim and causing actual bodily harm. The appellant had admitted only assaulting which alone amounted to common assault but his admission of the facts of the offence was sufficient to support a finding of a plea of guilty as the facts disclosed that the appellant had kicked the deceased several times and in view of the injuries suffered, an inference would be made that the appellant had inflicted harm on him.

3. The sentence of 20 strokes of corporal punishment was manifestly excessive.

Cases

No cases referred to

Statutes Penal Code (Cap 63) s 251

January 24, 1984, **Hancox JA, Chesoni and Nyarangi Ag JJA** delivered the following Judgment.

When the charge of assault causing actual bodily harm contrary to section 251 of the Penal Code (cap 63) was read and explained to the appellant he is recorded as having answered:

“I have understood the charge. I did beat Kenya Karisa.”

The ingredients of the offence of assault causing actual bodily harm are:

(a) assaulting the complainant or victim

(b) occasioning actual bodily harm.

An accused person pleads guilty to a charge under section 251 of the penal code when he admits assaulting the victim and causing him actual bodily harm. It will be observed that the appellant admitted only (a) above, which, if taken alone, would amount to common assault. However, the appellant then admitted the facts narrated by State Counsel. Those facts disclosed that the appellant not only pushed the deceased to the ground, but kicked him several times. In view of the injuries the deceased suffered it is an inevitable inference that the appellant did inflict harm on him. In the circumstances, therefore, the appellant's admission of the facts was sufficient to support a finding of a plea of guilty to the offence charged. We therefore dismiss the appeal against the conviction.

As regards the sentence, we consider 20 strokes corporal punishment was manifestly excessive and we allow the appellant's appeal against that part of his sentence, leaving the two years' custodial sentence undisturbed.

In the result the appellant will undergo two years' imprisonment but will not receive any corporal punishment. To that extent only is the appeal allowed.