



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: MARAGA, MUSINGA & MURGOR, JJ.A)

CRIMINAL APPEAL NO. 71 OF 2014

BETWEEN

JK APPELLANT

AND

REPUBLICRESPONDENT

(Appeal from the judgment of the High Court of Kenya at Eldoret (Kimondo, J.) dated 18th October 2013

in

H.C.C.CR. No. 83 OF 2007)

JUDGMENT OF THE COURT

1. The appellant was convicted by the trial court of the offence of defilement of his 9 year old daughter, contrary to **section 145 (1)** of the **Penal Code**. He was sentenced to 30 years' imprisonment. Being aggrieved by the said conviction and sentence, the appellant preferred an appeal to the High Court. The appeal was dismissed. The appellant has now preferred a second appeal to this Court.
2. In his home made memorandum of appeal, the appellant faulted the High Court Judge for upholding the conviction and sentence whereas there was no conclusive evidence that he had committed the offence as charged. He also averred that the section of the law under which he had been charged had been repealed, hence the charge was defective.
3. The offence for which the appellant was convicted was committed on 27th May, 2006. That was before the commencement date of the **Sexual Offences Act No. 6 of 2006**, which was 21st July, 2006. The said Act repealed, *inter alia*, **section 145** of the **Penal Code**. The appellant was therefore charged under the appropriate provision of the law at the material time.
4. The Complainant, PW2, testified that on the material night she was sleeping on the same bed with her younger siblings. Her father, the appellant, was sleeping alone in the same room but on a different bed. The appellant's wife is deceased. The appellant crept onto his daughter's bed and defiled her. The young girl testified that she endured great pain and even screamed and caused some commotion. The

appellant promised to buy the complainant bread if she did not report what he had done to her.

5. **R K, PW3**, was sleeping in a wooden room that was adjacent to the one occupied by the appellant and his children. She testified that on 27th May, 2006 at about 2.00 a.m. she heard a child screaming in the adjacent room. The child was saying: “Dad, it is painful”. PW 3 heard the appellant replying: “*sorry, I will not do it again, I will buy you bread tomorrow*”.

6. In the morning PW3 reported the matter to the complainant’s grandmother, PW4, who interviewed the complainant and confirmed that she had been defiled by the appellant. PW4 took her grandchild to hospital for treatment and later reported the incident to the police.

7. **Michael Mengich, PW 1**, a Clinical Officer, examined the complainant. He stated that she had a broken hymen with redness on her labia majora and minora. She also had discharge from her vagina. The girl told PW1 that she had been defiled by her father.

8. In his defence, the appellant admitted spending the night of 27th May, 2006 with his children in the same room. He however denied having defiled his daughter.

9. Considering the totality of the prosecution evidence, we are satisfied that the appellant’s conviction was safe. The complainant was categorical that it was her father who had defiled her. Even though it was night and there was no evidence of any light in the small room, the appellant talked to the complainant when the latter started screaming. The young girl must have been familiar with her father’s voice.

10. The complainant’s evidence was corroborated by that of PW1, PW3 and PW4. The age of the complainant was not in dispute.

11. The only submission made by the appellant before this Court was that the P3 form issued by Kabarnet Police Station to be filled by the Medical Officer of Health, Kabarnet, did not bear a stamp of the police station, and the police officer who issued it did not write his service number. We do not think that such omissions are material and neither can they invalidate the contents of a P3 form.

12. We find this appeal lacking in merit and dismiss it in its entirety.

DATED and DELIVERED at ELDORET this 14th day of June, 2016.

D. K. MARAGA

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JUDGE OF APPEAL

D. K. MUSINGA

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JUDGE OF APPEAL

A.K. MURGOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR