



**IN THE COURT OF APPEAL**  
**AT ELDORET**  
**(CORAM: O’KUBASU, ONYANGO OTIENO & VISRAM JJA)**  
**CRIMINAL APPEAL NO. 15 OF 2011**

**BETWEEN**

**JOHN LOKALA AKOLONG.....APPELLANT**  
**AND**  
**REPUBLIC.....RESPONDENT**

**(Appeal from conviction and sentence of the High Court of Kenya at Kitale (Koome, J) dated 25<sup>th</sup> February, 2011**

**in**

**HCCRA NO 31 of 2010)**

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**JUDGMENT OF THE COURT**

Following his conviction, after a trial, John Lokala Akolong, the appellant, was sentenced to 15 years imprisonment by the Senior Resident Magistrate’s Court ( T. Nzioki ) at Lodwar for the offence of rape contrary to **section 3(1)** as read with **section 3(3)** of the Sexual Offences Act. The particulars of the offence alleged that on the 20<sup>th</sup> February, 2009 in Turkana Central District within Rift Valley Province, intentionally and unlawfully committed an act which caused penetration to the genital organs of C.M without her consent. The appellant’s first appeal against conviction and sentence was dismissed by the High Court.

The evidence before the trial court which that court and the High Court accepted, was that at about 9 a.m. on 20<sup>th</sup> February, 2009 C.M ( C ) (PW2), the complainant, was on her way home from the fishing area of E[...] when she encountered the appellant who she had known from before. The appellant asked her to stop, and slapped her. She attempted to move, but was tripped by the appellant and fell down. The appellant then ripped off her skirt and underpant and after lowering his own pants to knee level, proceeded to rape her. C was four months pregnant at that time. The appellant continued having sex with her for three hours “until he was satisfied”, according to C’s testimony. He then got up and walked towards the lake. She immediately reported the matter to the elders; sought medical help; and eventually reported the incident to K Police Post. One week later, the elders with the help of members of the public, apprehended the appellant, brought him over to the police, who after investigation, re-arrested the appellant and charged him with the offence stated earlier. Bernard Bundotich (PW1), a clinical officer with the Lodwar District Hospital, testified that C was indeed four months pregnant at the time of this ordeal; that although there were no visible bruises on the labia majora, laboratory tests showed that C had been infected with STD.

In his defence, the appellant denied having committed the offence and asserted that he was at K Centre, dealing with maize at the material time.

However, at the end of it all, the Senior Resident Magistrate believed the prosecution case; rejected the appellant’s testimony; and convicted and sentenced him to 15 years imprisonment.

The appellant appealed to the High Court and by its judgment dated 25<sup>th</sup> February, 2011 that court (Koome, J.) dismissed the appeal against both conviction and sentence.

The appellant is now before us in this second and final appeal and that being so, the jurisdiction of this Court is confined to considering only issues of law – see section 361 of the Criminal Procedure Code.

In his home-made memorandum of appeal, the appellant essentially complained that the case had not been proved beyond reasonable doubt; that he was convicted on the reliance of a single witness and that others who had recorded statements with the police had not been called as witnesses; and that there was no medical evidence to show that C had been infected with STD.

At the hearing before us, the appellant, who was unrepresented, sought to rely on his grounds of appeal, and simply urged that we reduce the sentence imposed on him.

Mr. A. Oluoch, learned Senior Deputy Prosecution Counsel, submitted that the offence was committed in broad day light, over a period of four hours, by a person known to the complainant; that under the Sexual Offences Act it was lawful to convict on the basis of the testimony of one witness; and that the sentence, being lawful, could not be interfered with.

With regard to the credibility of the single witness before the Court, both the courts below assessed C's evidence carefully, and chose to believe her. The trial court expressed itself as follows:-

**“The complainant PW2’s evidence before court was consistent. She knew the accused person prior to the alleged rape on the 20<sup>th</sup> February, 2009. In evidence, she called by (sic) accused person by his names.(sic) The medical evidence by the clinical officer PW1 collaborates (sic) the complainant’s evidence that she had been sexually assaulted as more particularly borne out by the painful lower abdomen attributed to forceful penetration and the infection with syphilis and STD.**

**I have no reason to doubt the credible evidence by the complainant on oath and therefore believe her testimony.**

**The accused person’s mere denial of the charge lacks truth in view of the overwhelming evidence adduced by PW1, PW2 and PW3.**

**In view of the foregoing facts I find that the prosecution has proved the elements required to establish the offence of rape contrary to section 3(1) (3) of the Sexual Offences Act”**

The High Court, in its judgment, stated, in part, as follows:-

**“This appeal raises the issue of whether the prosecution proved its case to the required standard, in particular whether there was sufficient evidence in view of the fact that the appellant was not subjected to medical examination. The complainant was found to have an (sic) STD and according to the appellant, it was necessary for the police to subject him for medical examination to connect him with the offence of rape of the complainant. The learned trial magistrate who heard the evidence of the complainant and who had the advantage of observing her demeanor believed the complainant was truthful in her evidence. I have also considered the evidence by the complainant.**

**The complainant said she was subjected to the orgy of rape for about 4 hours which gave the complainant ample opportunity to identify her assailant. The complainant was pregnant at the time and the clinical officer who examined her noted that the lower abdominal pain the complainant was experiencing could be attributed to the forceful penetration. It is not material that the complainant was found to have STD. What was material was the offence of rape. I find that the ingredients of the offence of rape were proved because the complainant was accosted, assaulted, was pushed down and then raped. The fact that there were no physical injuries on the complainant’s genitalia is also not material because the complainant was already three months pregnant.”**

We agree with the learned Senior Deputy Prosecution Counsel that the offence having been committed in broad day light, over a period of four hours, by a person well-known to the complainant, leaves no doubt in our minds that the appellant was properly identified and that his conviction was safe. On all other issues of fact, there are concurrent findings made by the two courts below regarding the appellant’s guilt, and having re-examined the evidence upon which that conclusion was made, we find that it was well-founded. With regard to conviction being based on the testimony of a single witness, this is permissible under **section 124** of the Evidence Act. Finally, with regard to the sentence of 15 years imprisonment, this being a lawful sentence for the offence of rape stated earlier, we are unable to interfere with the same.

Accordingly, and for reasons outlined, this appeal fails and is dismissed.

**Dated and delivered at Eldoret this 11<sup>th</sup> day of November 2011.**

**E.O. O’KUBASU**  
.....  
**JUDGE OF APPEAL**

**J.W. ONYANGO OTIENO**  
.....  
**JUDGE OF APPEAL**

**ALNASHIR VISRAM**  
.....  
**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**