



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL CASE NO. 120 OF 2014

[Arising from Kimilili Criminal Case No. 292 Of 2013 By the Sentence of C. Menya (Rm)]

PAUL WANJALA SININO APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

1. This is an appeal arising from the judgment in PMCC No. 292 of 2013 in Kimilili where the appellant **Paul Wanjala Sinino** had been charged with the offence of defilement contrary to Section 9(1)(4) of the Sexual Offences Act No. 3 of 2006. He had been faced with an alternative charge of indecent act with a child contrary to Section 11 (1) of the said Act.
2. The court upon hearing and determining the case convicted the appellant to 15 years' imprisonment on account of the main charge.
3. Being dissatisfied with the conviction and sentence the appellant preferred an appeal to this court on grounds that the trial court imposed a conviction without evaluating the evidence of the prosecution and there was no medical evidence.
4. At the hearing of the appeal the appellant relied on written submissions which may be summarized as follows; the case was a fabrication meant to tarnish his name and to take away land he had bought from his accusers; all the prosecution witnesses were members of one family; a key witness did not testify; he was assaulted by 7 people upon his arrest the police did not take him to hospital thus concealing evidence; there was contradiction in the prosecution case and the evidence of the minor was not corroborated.
5. The State opposed the appeal and argued that there were no contradictions in the prosecution case and that the prosecution evidence was consistent.
6. This being the first appellate court it has considered the evidence on record, evaluated and analyzed the same in order to arrive at an independent opinion in line with the case of **Okeno Vs. R [1973] E.A.**
7. In brief the prosecution evidence is to the effect that on the 17th of February, 2013 F N S a child aged

16 years was found in the appellants house where the appellant had lured her and had had sexual intercourse with her severally. Her mother missed her in the house and her brothers sent to look for her. They learnt that the complainant had been with the appellant. They went to the appellant's house and he refused to open, prompting them to call their father. When they threatened to break the door, the appellant opened the door and the girl was in the said house. The appellant was detained and taken together with the girl to Khachonge police station. The following day the girl was examined and treated. The doctor confirmed that she had been defiled.

8. In his defence the appellant stated that he had been framed up by his accusers due to a land boundary dispute. He denied knowing the complainant or defiling her.

9. At the hearing the complainant **PW1** produced her baptismal card that gave her date of birth as 19th October, 1997 giving her age at the time of the incident as 16 years. She was no doubt a minor at the time and so I find.

10. **PW1** testified that the appellant lured her to his house with a promise of giving her kshs. 150/= and while there he had sexual intercourse with her. Her 2 brothers, her father and neighbors found them locked in the house as per the evidence of **PW2, 3 & 4**. **PW5** corroborated the evidence of **PW1**. In his examination, he found

“labia majora was reddish, hymen was ruptured. She had discharge on her vaginal wall, inflammation on the vaginal wall is an indication of penetration.”

In cross examination, he stated

“... I examined the girl the results showed she was defiled.”

11. Although the appellant decried that the evidence against him was from members of one family, evidence is overwhelming that the girl was found in his house, the evidence of defilement was confirmed by **PW5** a police officer and **PW6** a medical doctor who examined the girl. The two had no reason to fabricate their testimony. The defence which was uncorroborated did not dislodge the prosecution case which meets the required standards. See **R. Vs. Gachanja (2001) KLR 428.**

12. With the above findings this court does not fault the trial court's conviction and will not interfere with the same.

13. As for the sentence the same is within the law and ultimately the appeal fails and is dismissed.

DATED and DELIVERED at BUNGOMA this 1st day of DECEMBER, 2016.

ALI-ARONI

JUDGE



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