



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAPENGURIA
CRIMINAL APPEAL NO.6 OF 2015
THOMAS MNANGA.....APPELLANT
VERSUS
REPUBLICRESPONDENT

JUDGMENT

THOMAS MNANG'AT LEKEM, the appellant herein was convicted and sentenced to life imprisonment for an offence of defilement of a child, contrary to section 8(1) as read with section 8(4) of the Sexual Offences Act No. 3 of 2006.

The particulars of the said offence are that on the 14th day of October 2013 at about 21:30 hours at [Particulars Withheld] village, Pokot Central within West Pokot County, the accused unlawfully caused his penis to penetrate the vagina of F C L a girl aged 3 years.

There is an alternative count to the main one, of indecent act with a child, contrary to section 11(1) of the Sexual Offences Act No.3 of 2006. The particulars hereof are that on the 14th day of October 2013 at about 21:30 hours at [Particulars Withheld] village, Pokot Central within West Pokot County, the appellant did cause his penis to come into contact with the vagina of F C L, a girl aged 3 years.

The appellant dissatisfied with the conviction and the sentence, filed this appeal on 21st day of January 2015 on the following grounds,

- (1) That he pleaded not guilty to the offence.
- (2) That the trial Magistrate erred in law and facts by convicting him relying on evidence of a single witness.
- (3) That the learned trial Magistrate erred in law and facts by convicting the appellant when the elements of the alleged incident were not proved beyond reasonable doubt.
- (4) That the trial Magistrate erred in law and facts by rejecting his defence without cogent reason.
- (5) That the trial Magistrate erred in law and facts by not noting that the prosecution evidence was full of contradictions and was inconsistent.

The evidence adduced in the lower court on the prosecution side is that on 14/10/2013 at 9:30pm, B C

L, the PW1 in this case was at home in Sigor within West Pokot County. His parents had not returned home from farm. He went to visit a neighbour called Gladys, leaving two of his younger brothers and a sister by the name of FC L, the complainant herein, in the house. There was a lamp in the home. When he returned after about 15 minutes he found the appellant who is their neighbour, having removed his clothes, those of F C L, lying on her. He was having sex with her. PW1 screamed. His other younger two brothers R and C were asleep. Neighbours turned up and arrested the accused. He was taken to the police station. The complainant gave evidence as PW2. She said she knew the Accused who they call at home Kariuki. He is their neighbour. On the material night he removed her clothes and his before he placed his penis into her vagina. She felt pain and cried.

The Clinical Officer who is PW3 in this case examined the complainant 12 hours after the incident. He noted there were fresh lacerations on her vagina. Her hymen was torn. She was 3 years old. He concluded that she had been defiled.

The appellant gave unsworn testimony and called no witness. His case is that on 14/10/2013 he was in the farm during the day. At night while asleep he was woken up by Chief Terer. He requested to be assisted to take a patient to hospital. The appellant agreed to help. There were three other persons in their company as they walked. They suddenly arrested him and took him to the police station.

Mr. Thuo the State Prosecutor opposed the appeal. He averred that the prosecution called 4 witnesses and their case is well corroborated. The accused was properly recognized as the assailant. Penetration and her age (complainant) were well corroborated by the evidence of PW3, the Clinical Officer. He urged the court to dismiss the appeal as all elements of the offence were satisfied beyond reasonable doubt.

I have evaluated the evidence on record against the appellant's grounds of appeal. Apart from ground 1, where he stated that he pleaded not guilty at trial, all the rest are wrong. The evidence relied on is not of a single witness but (4) four witnesses. The elements of the offence were well pointed out in the judgment as were laid in the case of ***Dominic Kibet Mwoneng -VS- Republic (2013) eKLR*** as the age of the complainant, proof of penetration and positive identification of the assailant. The court weighed them properly and arrived at the right decision that they were proved beyond reasonable doubt. The defence was weighed against the prosecution case and failed to tilt the scale of justice in his favour. It was rightly rejected. There are no material contradictions in the prosecution case. The evidence by the four witnesses is consistent and firm. It's reliable evidence, safe to arrive at a conviction.

The case was properly handled by the lower court, evidence properly weighed, the law rightly applied and the correct decision arrived at, that is conviction of the appellant on the main count of defilement. **He was rightly sentenced to life imprisonment. I have no cause to interfere. I accordingly dismiss the appeal and uphold the conviction and the sentence.**

STEPHEN GITHINJI J.

Judgment read, delivered and signed in open court in presence of the Appellant, The State Counsel and Court clerk this 5th day of November 2015.

STEPHEN GITHINJI J.

5/11/2015



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