



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO. 387 OF 1993

GODFREY NJARA GICHACHI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No 1332 of 1992 of SRM's Court at Kerugoya)

JUDGMENT

Three accused persons were jointly charged in the SRM subordinate court sitting at Kerugoya, for the offence of rape contrary to section 140 of the Penal Code and of robbery contrary to section 296 (1) of the Penal Code.

All three pleaded not guilty to the two counts.

A trial was held and the three accused were found guilty of rape contrary to section 140 of the Penal Code and of stealing (not robbery) contrary to section 275 of the Penal Code. The trial magistrate proceeded to sentence accused No 1 to 4 years imprisonment with 5 strokes of the cane.

Accused No 2 was committed to Youth Corrective Centre.

Accused No 3 was placed on probation for 3 years.

The 2nd and 3rd accused being minors. It appears that the trial magistrate failed to sentence the 1st accused on the 2nd count, though she duly convicted him of it.

The 1st accused filed this present appeal against both conviction and sentence through his counsel. From the memorandum of appeal the counsel's grounds of appeal relied wholly on the grounds against the charge of rape.

The prosecution does not support the conviction and sentence.

Basically, the three accused had volunteered to escort the complainant home. They passed via a bar in which the complainant thought she would find her husband. She did not but did speak to PW2 one of the bar maids she proceeded home on a route which the appellant stated was more suitable than the one she normally takes. The 2nd accused held her and thereafter raped her whilst accused 1 & 3

searched her bag. They each raped her. She was not able to get home until midnight.

The appellant and 2nd accused were in a house. The 2nd accused was arrested whilst the 1st accused (appellant) was not arrested until a later date.

An identification parade was conducted in which accused No 2 was duly identified.

Counsel for the appellant raises technicalities to this case. On the issue of rape there required to be corroborated evidence. The trial magistrate ought to have warned herself in admitting the evidence of a sole witness.

He also relied on identification – that this was not sufficiently done for accused No 1 now appellant.

He also relied on the medical evidence not being produced as required by law to support it.

And the aspect of dismissing the defence of alibi

Though a criminal case is conducted in the subordinate courts for offences of rape and or stealing it is important for the strict adherence to procedure to be followed. This is not necessary for the cases in civil matters.

The Court would note that section 169 of the Criminal Procedure Code should be complied with in the writing of judgments. There are two counts. A point to point reasons for the decision should be reached in each count and its findings. Sentence should be for each count and the two may not be corroborated.

The warning by a trial magistrate must be given for relying on the uncorroborated evidence of a witness. In this case the offenders were identified by the bar maid and the complainant. These were seen leading with the complainant and shortly thereafter the incident is said to have occurred.

The medical evidence required to be adhered to strictly which rightly so was not done.

The complainant to be examined and P3 form produced ius so. This though should have followed by the accused persons being escorted to the doctors for their blood and spot samples to be taken.

The medical report speaks of a few spermatozoa that was seen.

At the moment this Court would allow the appeal quash and the conviction set the sentence aside for appellant.

Dated and Delivered at Nyeri this 7th day of December 1994.

M.A.ANG'AWA

JUDGE



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