



IN THE COURT OF APPEAL

AT MOMBASA

(Coram: Law, Miller & Potter JJ A)

CRIMINAL APPEAL NO. 39 OF 1980

BETWEEN

FRANCIS CHARO OPO.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal against conviction and sentence by Kneller J in the High Court, Mombasa, on 30th July 1980)

JUDGMENT OF THE COURT

The appellant appeals from his conviction on a charge of incest under section 166(1) of the Penal Code, and the sentence of six years' imprisonment passed on him. The complainant was a child of ten years of age at the time, and was admittedly the appellant's daughter. As Kneller J clearly appreciated, the evidence of the child complainant needed corroboration; and doubly so in this case, as section 124 of the Evidence Act makes corroboration mandatory in the case of the evidence of a child of tender years, and corroboration is, as a rule of practice, required in all cases of a sexual nature involving a female complainant. The judge accepted as true, as we do on our evaluation, the evidence contained in a deposition given at the preliminary inquiry of a witness, Alice Kuvuna, who died before the trial. It is clear from that deposition that on the day of the crime, the complainant had been taken away by her father (the appellant) and was brought back home by him at 9.00 pm, by which time she had suffered the injuries, including the defilement proved by the medical evidence.

At the trial, and before this Court, the appellant's defence was an alibi: he was at Kibarani, some distance away. We have come to the same conclusion as the judge; his alibi was false. The appellant was with the complainant on the material afternoon and had the opportunity to commit the offence; he has consistently lied in maintaining otherwise; and we think that these falsehoods give to the proved opportunity a complexion such as to amount in the circumstances of this case to corroboration; see *R v Erunasani Sekoni s/o Eria* (1947) 14 EACA 74, 76. For these reasons we are of the opinion that the appeal against conviction fails; and as regards sentence we do not think that the sentence of six years can possibly be described as excessive in the circumstances of this case. We order that this appeal be dismissed.

Appeal dismissed.

Dated and delivered at Mombasa this 23rd day of October 1980.

E.J.E LAW

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JUDGE OF APPEAL

C.H.E MILLER

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JUDGE OF APPEAL

K.D POTTER

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JUDGE OF APPEAL

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