



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL APPEAL NO. 177 OF 2012

CHARLES KIBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The appellant, **Charles Kiba** was charged with defilement contrary to section 8(1) as read with Section 8(2) of the Sexual Offence Act No. 3 of 2006. The particulars of the offence are that on 22nd Novemer,2010 at *[particulars withheld]* in kisii Central district within Kisii County, Charles intentionally and unlawfully caused his penis to penetrate the vagina of **L M** a child aged 6 years old.
2. The appellant also faced an alternative charge of committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act, No.3 of 2006. The particulars thereof were that on 22nd November, 2010 at *[particulars withheld]* in Kisii Central District within Kisii County, Charles intentionally touched the vagina of **L M** a girl aged 6 years old with his penis.
3. The trial commended in Kisii Chief Magistrate's court. The appellant was convicted of the offence of defilement contrary to section 8(1) as read with 8(2) of Sexual Offences Act. He was accordingly sentenced to life imprisonment. He now appeals against the conviction and the sentence. The appellant is unrepresented. He filed his grounds of appeal which can be summarized as herebelow:

1. *That the trial magistrate erred in law and fact by failing to observe that the charge sheet was incurably defective.*
2. *That the trial magistrate erred in law and fact to consider the evidence of pW2, PW3 and pW4 as credible and yet it was insufficient, inadequate and inappropriate to convict on leading to miscarriage of justice.*
3. *That the trial magistrate misdirected herself by failing to observe that PW2 and PW4 were children of tender years and their evidence is not plausible to be relied upon hence leading to a mistrial.*
4. *That the trial magistrate made misdirection by not taking into account family members would fabricate their evidence.*
5. *That the trial magistrate made non-direction to the fact that the prosecution had not proved their case beyond reasonable doubt by failing to summon their vital witnesses.*
6. *That the trial magistrate in erred in law and fact by failing to exhaustively examine the appellant strong sworn defence.*

4. Submissions of the appellant.

I have read and understood the submissions of the appellant in which he prays that the appeal be allowed,

conviction quashed, sentence be set aside and he be set at liberty.

5. The Respondent's submissions.

I have read the said submission, of the respondent with rapt attention. PW2 gave tearing testimony of her defiler. That section 124 of evidence act, has a proviso that in section matters a victim's evidence need not be corroborated.

PW1- the clinical officer confirmed the defilement and confirmed bruises on her genitalia, sperm cells in her vagina. He concluded that there was penetrative sexual assault.

It is therefore our submission, the respondent said that the evidence that was adduced at the trial was consisted and corroborative. And the prosecution proved beyond reasonable doubt that indeed it is the appellant who defiled the complainant. Finally, as to the sentencing, under Section 8(2) of Sexual offence Act, it provides for only one sentence. Life imprisonment.

6. Conclusion

Having reviewed the trial court's proceedings and judgment on court record, and having read the respective submission of the appellant and the respondent, I find that the conviction and sentence was rightly arrived at.

Accordingly, the application herein be and is hereby dismissed.

It is so ordered.

Dated and delivered at KISII this 13th day of February, 2015.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Appellant in person.

Majale for the respondent

Edwin Mongare Court Clerk.