

IN THE HIGH COURT OF UGANDA AT SOROTI

CRIMINAL APPEAL 32 OF 2013

(ARISING FROM ABIM-KOTIDO CRIMINAL CASE. NO. 343 OF 2013)

REVEREND MICHAEL OKELLOAPPELLANT

V

UGANDA

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The appellant through his advocates Odekel Opolot & Co. appealed the decision of HW Wandera Wilson dated 27th November 2013 sitting at Abim on eight grounds of appeal that I will refer to later in the judgment.

Counsel for the appellant filed written submissions that I have carefully considered. The respondent did not file written

The duty of an appellate court is to re-evaluate the evidence adduced in the trial court and arrive at its own conclusion bearing in mind that the trial magistrate had an opportunity to observe the demeanour of the witnesses.

The appellant was charged with and convicted of assault occasioning actual bodily harm c/s 236 of the penal code.

The prosecution was required to prove that the appellant unlawfully assaulted the complainant occasioning him actual bodily harm.

From the record of proceedings, PF3 showed that the complainant sustained injury to the tooth and classified as harm.

Prosecution witnesses testified that it was the appellant who came to the complainant's church on 18.11.2013 in a group of about seven people. PW1 Rev. Caleb Omwony said it was the appellant who grabbed him by the shoulders, demanded to greet the congregation, and boxed the complainant on the cheek when the complainant declined his request. PW2 Agwang Grace testified it was one Richard who demanded that the appellant be allowed to greet the people and when the request was declined, the appellant boxed the complainant on the cheek. Counsel for the appellant in his submissions complains that this is an inconsistency but I find this inconsistency minor because both witnesses agree that it was the appellant who was the aggressor and who boxed the complainant.

Counsel for the appellant also submitted that PW2 Agwang was outside the church when the scuffle took place but she testified she separated the two when the scuffle broke out. Therefore she was present throughout the incident.

PF3 admitted as Pexh.1 corroborates prosecution witnesses' account on the part of the body the appellant hit, i.e. the cheek which led to a loose tooth.

I find the defence case full of contradictions. It is a total denial of the assault and instead places the complainant as the aggressor yet it is the appellant and his group who went to disturb the peace at the complainant's church.

I find that the trial magistrate correctly evaluated the evidence as a whole and arrived at a correct conclusion.

Turning to the grounds of appeal, the first five grounds of appeal all touch on the evaluation of evidence. I will therefore consider them together under ground three, i.e., the trial magistrate failed to evaluate the evidence as a whole.

I have found that the trial magistrate properly evaluated the evidence as a whole and arrived at a correct conclusion. The first five grounds of appeal fail.

The sixth ground is that the trial magistrate erred when he passed a sentence that was manifestly harsh.

The appellant was sentenced to a sentence of 20 months imprisonment. The trial magistrate gave reasons for the sentence, among which include the fact that the appellant was a man of responsibility who ought to be exemplary in conduct; that the appellant went to the complainant's church well knowing the two had a grudge. Accordingly, there are no grounds to interfere with the sentence.

Notwithstanding this finding, as the appellant has served nine months of the sentence imposed, I will exercise my discretion and suspend the remainder of the sentence on condition that the appellant keeps the peace. Should he commit any offence during the period of suspension, he will be arrested and made to serve the remaining sentence.

Ground 7 is that the trial magistrate manifested bias for the reason that he did not give an option of a fine. The trial magistrate has discretion in sentencing and he has jurisdiction not to give the option for a fine, without giving any reasons.

In the premises, the appeal is dismissed and conviction and sentence of the trial court confirmed.

DATED AT SOROTI THIS 27TH DAY OF AUGUST 2014.

HON. LADY JUSTICE H. WOLAYO

