THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE

HCT-04-CR-CN-0061 OF 2013 (ARISING FROM TORORO CRIMINAL CASE NO. 632 OF 2013)

BEFORE: HON. JUSTICE HENRY I. KAWESA

JUDGEMENT

Appellant raised 4 grounds of the appeal in the memorandum of appeal;

- 1. That Learned trial Magistrate erred to convict accused on a plea of guilty when plea was equivocal
- 2. The conviction was based on facts which didn't support the charge
- 3. Medical evidence did not support the charge of grievous harm
- 4. Sentence was manifestly harsh.

Counsel for appellant argued Grounds 1,2 and 3 together and 4 separately.

The accused had been convicted on a plea of guilty of causing grievous harm contrary to section 219 of the Penal Code Act and sentenced to 3 years.

Counsel's argument is that the procedure to be followed in taking a plea of guilty was not followed by the Learned trial Magistrate. He referred to *Uganda vs. Siringi Bajainddha CR N0 MV. 93/ 1997, Uganda vs. Clement Tukei (1976)*

HCB 203, Bukenya vs. Uganda(1967)EA 341, Ali Abadi Sabria Vs. Uganda CR APP. 9/1987, Penekasi Mukibi vs. Uganda 1972 HCB 51, Martin Malinga vs. Uganda (1998)KLR II.

The gist of all those cases is that;

In a plea of guilty, the accused must plead to all necessary ingredient of causing grievous harm.

I agree that the record shows that the Learned trial Magistrate never called upon the accused to plead to all the ingredients of grievous harm.

It's also true that contrary to the law and practice as in *Uganda vs. Savirieo Ello CR NO 96/1977*, the accused pleaded to facts which were at variance with the medical report. Observations as pointed out by counsel are correct in that the multiple injuries referred to by the prosecutor are missing on the exhibited medical report. The only injury was on her middle finger and therefore it was erroneous for the medical officer to classify that as" Grievous harm."

I agree with the reasoning in the cited cases of *Uganda vs. Mungai Mwaura*((MB112/70) 1970 HCB, *Uganda vs. Boniface Seyambe CR* 157/1997, Namis Kefa Vs. Uganda HCR APP. 34 /2009, Wamoto John Vs. Uganda CR APP 10/2009

And find that, the plea was equivocal, and could not sustain the plea for grievous harm, but sustained the charge of the lesser offence of assault occasioning actual bodily harm. Like in the cited cases above, I will set aside the conviction based on

the charge of grievous harm and substitute it with a conviction for assault

occasioning actual bodily harm contrary to section 288 of the Penal Code Act.

This disposes off grounds 1, 2, and 3 as proved (Section 34(1), 2(b)(c) CPC,

followed).

On ground 4, I adopt the reasoning of appellant, and do agree with the cited

authorities. Under Section 34(1), 2(b) and (c) of the Criminal Procedure Code, this

court is empowered to substitute a conviction of an appellant of a serious charge

with a minor offence and thereby alter the sentence.

As this court has already convicted the appellant of the minor offence of

occasioning actual bodily harm. With the law in mind and arguments as raised by

counsel in mind, the sentence of 3 years is hereby set aside, but taking cognizance

of the offence and circumstances under which it was committed, accused is to

serve 12 months imprisonment. It is therefore ordered that the sentence of 3 years

be reduced to a sentence of 12 months.

This ground therefore succeeds as above.

Finally the appeal is allowed with orders as above. I so order.

Henry I. Kawesa JUDGE

18.09.2014

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