sect 360(1) CPA (plea of guilty)

selected 28/3/2008

IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: LUBUVA, J.A., NSEKELA, J.A. And KAJI, J.A.)

CRIMINAL APPEAL NO. 103 OF 2005

KHALID ATHUMANI ..... APPELLANT
VERSUS
THE REPUBLIC ..... RESPONDENT

(Appeal from the Conviction of the High Court of Tanzania at Arusha)

(Msoffe, J.)

dated the 11th day of July, 2003
in
Criminal Appeal No. 48 of 2002

REASONS FOR JUDGMENT OF THE COURT

Dated 26 October 2005

NSEKELA, J.A.:

When the appeal was called on for hearing, we dismissed the appeal in its entirety and reserved our reasons for so doing which we hereby proceed to give.

The appellant, Khalid s/o Athuman was charged with the offence of rape contrary to sections 130 and 131 of the Penal Code as amended by the Sexual Offences Special Provisions Act No. 4 of 1998. He was convicted on his own plea of guilty and sentenced to

the statutory term of imprisonment of thirty (30) years with twelve (12) strokes corporal punishment. His appeal to the High Court (Msoffe, J. as he then was) was dismissed hence this appeal.

The appellant preferred a four-ground memorandum of appeal. The thrust of the appeal, in our view, was whether or not it was open to the appellant to appeal against his own plea of guilty to the charge during the trial. At the hearing of the appeal, the appellant, who appeared in person and unrepresented, did not have anything more to add apart from his rambling memorandum of appeal. For the respondent Republic, Mr. Kagaigai, learned Senior State Attorney, resisted the appeal. He briefly submitted that under section 360(1) of the Criminal Procedure, Act, 1985 (CPA) no appeal lies where an accused person has been convicted on his own plea of guilty save as regards the legality of sentence meted out to him. He added that the appellant knew the nature of the offence, did not deny it and that the particulars of the case as presented by the prosecution were very clear.

At this juncture, we think it is desirable to reproduce the appellant's plea in the trial court. His plea was recorded in the following words –

> "I admit the charge that it is true that I raped the complainant **Rabia d/o Maulid** without her consent."

The public prosecutor then narrated the facts which essentially showed that the appellant forcibly detained the complainant Rabia d/o Maulid, a girl aged sixteen (16) years in his room from 13.12.2001 to 16.12.2001 and unlawfully had sexual intercourse with her. After the facts had been given in some detail by the public prosecutor, the appellant is recorded to have said –

> "I admit the facts as true and correct."

whereupon the trial court proceeded to enter a plea of guilty and convicted the appellant accordingly.

Section 228(2) of the CPA provides as follows:-

> "(2) If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses, and the magistrate shall convict him and pass sentence upon or make an order against him, unless there shall appear to be sufficient cause to the contrary."

We do not entertain any doubts whatsoever that the summary of facts as narrated by the public prosecutor showed that the offence stated in the charge had been made out. For a charge of rape to succeed, the prosecution had to prove, *inter alia*, that the appellant had carnal knowledge of his victim without her consent. These were the essential ingredients that were put to the appellant and his plea of guilty was unequivocal. The courts are enjoined to ensure that an accused person is convicted on his own plea where it is certain that he/she really understands the charge that has been laid at his/her

door, discloses an offence known under the law and that he/she has no defence to it.

This takes us to the crux of the appeal. Section 360(1) of the CPA provides as under –

> "(1) No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence."

We are alive to the fact that under certain circumstances, an appeal may be entertained notwithstanding a plea of guilty. In the case of **Rex** v **Forde** (1923) 2KB 400, His Lordship Avory J. had this to say at page 403 –

> "A plea of guilty having been recorded, this court can only entertain an appeal against conviction if it appears (1) that the appellant

> did not appreciate the nature of the charge or did not intend to admit he was guilty of it, or (2) that upon the admitted facts he could not in law have been convicted of the offence charged."

Our reading of the record shows that the public prosecutor gave a lucid summary of the facts which established the offence with which the appellant was charged. He pleaded guilty without equivocation. The trial court followed the procedure that has been consistently followed by the courts where an accused person pleads guilty to an offence charged. The procedure was well explained by Spry V.P. in **Adan** v **Republic** (1973) EA 445 at page 446 in the following terms–

> "When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate

should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilty, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the

> magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must, off course, be recorded. (see also: **Chamrungu** v **S.M.Z.** (1988 LRC (Crim.) 26 at page 29)."

Our perusal of the record leaves us in no doubt that the procedure laid out in **Adan's** case above and approved by this Court in **Chamrungu's** case was followed. The appellant pleaded guilty to the charge of rape with full understanding of the charge against him. There are no grounds for supposing that the appellant did not fully understand what he was doing when he pleaded guilty to the charge.

It is for the above stated reasons that we dismissed the appeal.

DATED at DAR ES SALAAM this day of 2005.

JUSTICE OF APPEAL

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