IN THE COURT OF APPEAL OF TANZANIA
AT IRINGA

(CORAM: MBAROUK, J.A., MMILLA, J.A., And MWARIJA, J.A.)

CRIMINAL APPEAL NO. 88 OF 2014

RAMJI S/O MHAPA ..... APPELLANT

VERSUS
THE REPUBLIC ..... RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Iringa)

(Kihio, J.)

dated the 12th day of March, 2012

in
DC. Criminal Appeal No. 36 of 2011
.....

JUDGMENT OF THE COURT

18th & 20th August, 2015

MBAROUK, J.A.:

In the District Court of Mufindi at Mafinga, the appellant, Ramji s/o Mhapa was arraigned for an offence of rape contrary to sections 130 (1) and 131 (1) of the Penal Code as amended by section 5 and 6 of the Sexual Offences Special Provisions Act No. 4 of 1998. The particulars of the charge read as follows:-

"RAMJI s/o MHAPA charged on 28th day of March, 2006 at about 21:00 hrs at Luhunga village, within Mufindi District in Iringa region, did unlawfully carnal knowledge to one VALLIETH D/O MHAPA a girl aged Twelve (12) years."

When the charge and particulars of the offence were read over and explained to the appellant on 6-04-2006 at the trial court, he pleaded guilty by saying:-

"It is true"

Thereafter, the trial court entered a plea of guilty. The trial was then adjourned for a short while and when it resumed the charge was read over again and explained to the appellant who was asked to plea thereto, and he pleaded as follows:-

"It is true"

The Court then entered again a plea of guilty to the charge. Then the following facts were read over to the appellant:-

FACTS:

1. Name and address of the Accused is as per the charge sheet.

2. That the victim is Valliet Mhapa a standard Four IV pupil at Luhunga Primary School.

3. That, the Accused and the victim Valliet, the latter being a daughter of the famers brother.

4. That on the material day the two slept together at the house of the Accused elder another who is now dead. They slept at different rooms.

5. That, on 28/3/2006 at about 09:00 pm the accused went to the victim and forced her to have sexual intercourse and after finish he warned her not to say.

6. That the Accused previously entered to a room where the victim had slept. She was marked.

7. That, the Accused then forced his penis in the victim vagina and had carnally known her.

8. That, in the following day the Accused, was in pain told father.

9. That, the victim was then taken to Kibao Dispensary for Medical Examination where it was confirmed that she was carnally known as per the Medical Doctors Technician. It was revealed father that the Accused, had form suittaed some sexual diseases to her.

   I pray to tender the said P.F. 3 to the used as an exhibit

10. That, the accused was also medically examined and his penis was found to have some bruises and he was found with some sexual disease. He was given some medications.

P.P. I pray to tender it to be used as exhibit.

Accused: No objection.

11. That, the Accused also, upon being interrogated, gave but his statement where he admitted. He was then brought here.

After those facts were read over to him, the appellant once again responded as follows:-

"I admit all the facts to be true."

There is nothing to dispute."

Following his own plea of guilty, the trial court convicted the appellant as charged and sentenced him to thirty (30) years imprisonment. Dissatisfied, he appealed to the High Court (Kihio, J.) but his appeal was dismissed. Still aggrieved, the appellant has preferred this second appeal.

In this appeal, the appellant appeared before us in person and fended for himself. On the other hand, the respondent/Republic was represented by Ms. Lilian Ngilangwa, learned Senior State Attorney.

The appellant filed a memorandum of appeal which contained seven grounds of complaint, but in essence, they may be conveniently condensed to two major grounds as follows:-

(1) That, Hon. Judge of the High Court erred when he dismissed the appeal relying on the equivocal plea.

(2) That the age of twenty four (24) years was planted by the prosecution side to the appellant. Therefore the High Court Judge erred when he failed to discuss it.

At the hearing the appellant adopted his grounds of appeal, and then opted to respond later if the need arise to do so after the learned Senior State Attorney gives her reaction on the grounds of appeal.

On her part, Ms. Ngilangwa, vigorously indicated not to support the appeal. In her reaction to the first ground of appeal, the learned Senior State Attorney submitted that the

record shows clearly that the plea entered was unequivocal. To substantiate her argument, she submitted that, when the charge was read over and explained to the appellant, he pleaded guilty. She also said, when the facts were read over to the appellant, the record shows that he admitted all the facts to be true and he added that there is nothing to dispute. Not only that the learned Senior State Attorney further added that even at a time of mitigation, the appellant confessed that he was not going to repeat that mistake again and prayed for mercy.

As for the second ground of appeal, the learned Senior State Attorney submitted that, looking at the record of appeal at page 33 where the judgment of the High Court is found, the complaint of the age of the appellant was extensively discussed. Hence, she said, claiming that it was not discussed is an afterthought.

For those reasons, Ms. Ngilangwa urged us to find that, the appellant was properly convicted and sentenced by the trial

court on his own plea of guilty. She therefore prayed for the appeal to be dismissed.

In response to what have been submitted by the learned Senior State Attorney, the appellant claimed not to have understood "Kiswahili" when the proceedings were conducted at the trial court, he was only conversant with "Kikinga." He contended that even when the plea was taken he did not understand what was going on. He then reiterated his complaint on the issue of age. Finally, he prayed for justice to be done and for his case to be sent back at the trial court for re-trial.

On our part, we fully agree with the learned Senior State Attorney that the grounds of complaint raised by the appellant are an afterthought. Firstly, it is now a trite law under section 360 (1) of the Criminal Procedure Act (the CPA) that, it is not open for an accused person who has pleaded guilty to seek to impugn his own plea of guilty as of right. Section 360 (1) of the CPA provides as follows:-

"S. 360 (1) No appeal shall be allowed in the case of any accused 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."

However, under certain conditions, an appeal may be entertained even if an accused person pleaded guilty. Those conditions were given in the case of **Rex v. Folder** (1923) 2 KB 400 which was quoted in the decision of this Court in the case of **Khalid Othumani v. Republic,** Criminal Appeal No. 103 of 2005 (unreported). Where it was stated as follows:-

"A plea of guilty having been recommended, 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."*** *(Emphasis added).*

See also **Bashiri Hassan v. Republic**, Criminal Appeal No. 195 of 2013 **and Kalos Punda v. Republic**, Criminal Appeal No. 153 of 2005 (both unreported), to name a few.

In the instant case, we have no flicker of doubt that the trial court made extra effort to make sure that the appellant understood the nature of the charge to which he pleaded guilty. As shown at pages 2 and 3 of the record, the trial court read over the charge to the appellant twice and in both occasions he pleaded guilty by saying "it is true." Not only that, even when the facts were read over to him, the appellant admitted that all the facts were true and had nothing to dispute. Also at the time of mitigation, the appellant confessed that he would not do such an offence again and prayed for the trial court's mercy.

We are increasingly of the view that the plea entered by the appellant at the trial court is clearly an unequivocal. From the facts we have gathered on record, there is no doubt that the appellant appreciated the ingredients of the offence of rape

charged against. Hence claiming that he did not understand "Kiswahili" at this stage, we think, is an afterthought. This is because as shown herein above tireless efforts were made by the trial court to enable the appellant appreciate the nature of the offence charged against him. For those reasons, we fully agree with the learned Senior State Attorney that the first ground of appeal is devoid of merit.

As to the second ground of complainant made by the appellant that the issue of his age was not discussed in the High Court judgment, we again agree with the learned Senior State Attorney to the effect that the complaint is devoid of merit. This is because, as per the record, the first appellate judge has extensively discussed that issue of age. We are of the opinion that if the appellant had seriously intended to dispute on his age, he could have done so at the time of mitigation for the purpose of bringing an attention of the trial court to consider that aspect of age when pronouncing the sentence. But this was not done, hence, we are of the opinion

that raising that point at the appellate level is nothing but an afterthought.

All said and done, and for the reasons stated herein above, we find the appeal devoid of merit, hence we dismiss it in its entirety.

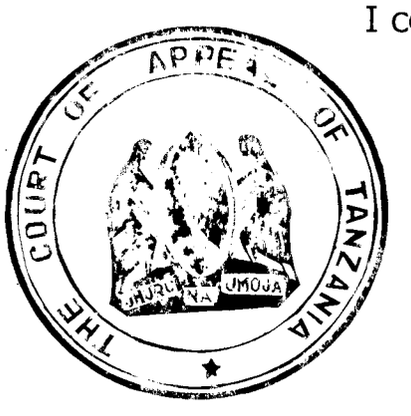
DATED at IRINGA this 19th day of August, 2015.

M.S. MBAROUK
JUSTICE OF APPEAL

B.M.K. MMILLA
JUSTICE OF APPEAL

A.G. MWARIJA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL