

**IN THE COURT OF APPEAL OF TANZANIA**

**AT BUKOBA**

**(CORAM: RUTAKANGWA, J.A., KIMARO, J.A., And LUANDA, J.A.)**

**CRIMINAL APPEAL NO. 189 OF 2014**

**PAULO ANTONY .....APPELLANT**

**VERSUS**

**THE REPUBLIC.....RESPONDENT**

(Appeal from the conviction and judgement of the High Court  
of Tanzania at Bukoba).

(Khaday, J.)

dated 2<sup>nd</sup> day of May, 2014  
in

Criminal Appeal Case No. 25 of 2012

.....

**JUDGEMENT OF THE COURT**

20<sup>th</sup> & 24<sup>th</sup> February, 2015

**LUANDA, J.A.:**

The appellant PAULO ANTHONY was arraigned in the District Court of Karagwe for raping a girl aged 7 years. He was convicted as charged and sentenced to life imprisonment.

Aggrieved by both the finding and sentence, he unsuccessfully appealed to the High Court (Bukoba Registry). Still dissatisfied he has preferred this appeal in this Court. So, this is a second appeal.

Briefly the prosecution case is as follows:- On the fateful day (24/9/2002) around 13.00 hrs while Adoroster w/o Fredrick (PW2), the mother of Frola d/o Fredrick (PW1) the victim of rape, went to her shamba to harvest beans, her husband had gone to attend a funeral. PW2 left behind PW1, the appellant who was their shamba boy and one Mutalemwa.

The appellant seized that opportunity in taking PW1 and went to a store cum his bed room. They entered and then the appellant undressed his trouser and he also undressed the trouser PW1 was wearing and raped her. PW1 felt severe pains and tried to call for help which was not forthcoming. Luck would have it in that when PW2 was on her way back home, she heard someone crying. On arrival she went to the store where the voice was coming. Alas! she saw the appellant on top of PW1 and both the appellant and PW1 were naked. As a grown up she knew what the

appellant was doing. She picked a stick and hit the appellant on his head and neck. Blood came out from the appellant's head. The appellant released PW1. PW2 saw sperms around PW1's vagina and hips. PW2 removed PW1 from the store and kept her in one of the room and went to call her neighbours. Thereza Joseph (PW3) and Morice Kapele (PW4) who were neighbours to PW2, responded. PW3 confirmed PW2's story that she saw the secret parts of PW1 spread with sperms. PW4 was the one who arrested the appellant by tying him with rope and sent him to police and eventually to Court. PW1 was sent to hospital.

In his defence, the appellant denied to have committed the offence. He said on the fateful day while he was sleeping in his room, he was arrested and taken to police for no apparent reason. At police he was told he had raped. The offence of rape he was charged with was a cook story with a view to denying him his payments for work he had done.

With that evidence on record, both lower Courts were satisfied that the prosecution had proved their case.

In this appeal, the appellant who was unrepresented fended for himself. The respondent Republic was represented by Ms. Grace Komba learned State Attorney. Ms. Komba supported the conviction and sentence.

The appellant has raised three grounds of appeal in his memorandum of appeal which can be paraphrased thus:-

- 1. The learned first appellate Judge erred in law and facts in upholding the decision of the trial District Court of Karagwe which is based on contradiction evidence.*
- 2. That his defence that it was planted case was ignored.*
- 3. That the sentence meted out is excessive.*

Ms. Komba was brief and said the evidence on record is clear that the appellant committed the offence. It is on record that when all witnesses finished giving evidence, the appellant did not put any question

to them. That should be taken to mean that what had been said is true. As regards to the appellant's defence to have not been considered, she said it was considered. The defence was an afterthought.

Turning to sentence of life imprisonment she said it is not excessive; it is within the law. In response to what Ms. Komba had said, the appellant said it is true he did not ask questions. This is because he was ignorant of Courts procedure.

This appeal has no merits whatsoever. The evidence on the prosecution side on record is clear that the appellant raped PW1. PW1 stated in clear words thus:-

*"He laid me on the bed in which it is within the store, which the accused is using to sleep. Thereafter the accused laid on my stomach, **took his penis and raped.**"*[Underscore ours].

The evidence of PW1 was corroborated by PW2 her mother who first heard the cry and further found the appellant in **flagrante delicto**. Her mother had to hit the appellant with a stick to enable the appellant release her daughter. And the evidence on the prosecution side was not shaken in any way; the appellant did not put any question. As a matter of principle a party who fails to cross examine a witness on a certain matter is deemed to have accepted that matter and will be estopped from asking the trial court to disbelieve what the witness said. (See **Cyprian Kibogoyo V R**, Criminal Appeal No. 88 of 1992 (CAT unreported). We were unable to see any contradiction in the prosecution case.

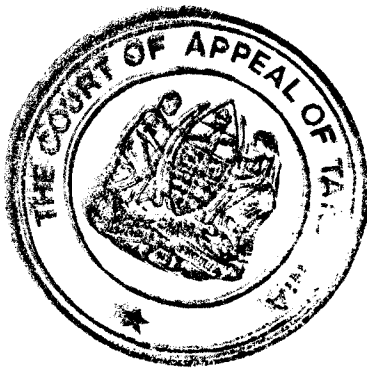
As regards to the second ground, both the Courts below did not ignore his defence. In the light of the strong evidence on the prosecution side which was not challenged at all, his defence as correctly stated by Ms. Komba is an afterthought.

Finally is about sentence. The sentence of life imprisonment is the bare minimum for the offences of this nature. The Courts are required to impose the sentence of life imprisonment.

In fine, the appeal is dismissed in its entirety.

It is so ordered.

DATED at BUKOBA this 24<sup>th</sup> day of February, 2015.




E.M.K. RUTAKANGWA  
**JUSTICE OF APPEAL**

N.P. KIMARO  
**JUSTICE OF APPEAL**

B.M. LUANDA  
**JUSTICE OF APPEAL**

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

  
E.Y. MKWIZU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**