IN THE COURT OF APPEAL OF TANZANIA
AT BUKOBA

(CORAM: KILEO, J.A., MJASIRI, J.A. And MMILLA, J.A.)

CRIMINAL APPEAL NO. 278 OF 2015

JACKSON GODWIN ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Bukoba)

(Khaday, J.)

Dated the 07th day of May, 2015
in
Criminal Appeal No. 45 of 2014

JUDGMENT OF THE COURT

11th February,& 17th 2016

MJASIRI, J.A.:

In the District Court of Biharamulo at Biharamulo, the appellant Jackson Godwin was charged with two offences, namely armed robbery contrary to section 287A and rape contrary to section 130 (1) and 131(1) of the Penal Code, Cap 16, R.E. 2002 (the Penal Code). He was convicted on both counts and was sentenced to 30 years imprisonment on each count. The sentences were to run concurrently. In addition he was ordered to pay Shs. 500,000 compensation to the victim of rape.

Being dissatisfied with the decision of the District Court the appellant appealed to the High Court. His appeal was unsuccessful, hence his second appeal to this Court. The appellant presented a six-point memorandum of appeal. However the major grounds of appeal centres on the following:-

1. *The appellant was not properly identified.*
2. *The conviction of the appellant was against the weight of the evidence on record.*

At the hearing of the appeal the appellant being unrepresented had to fend for himself and the respondent Republic had the services of Mr. Athumani Matuma, learned Senior State Attorney. The appellant being a lay man did not have much to say. He opted to let the State Attorney submit first.

The prosecution relied on four (4) witnesses to prove its case. It was the prosecution case that on April 21, 2013 at 1.00 hours the appellant invaded the house of Magreth Ibrahim, PW1 and stole TShs. 50,000, a TV Screen, a deck, an amplifier and a jacket with a total value of TShs. 320,000, He threatened PW1 with a bush knife in order to obtain the said properties. PW1 was also raped by the appellant and his unidentified

companions. PW1 was the only eye witness. She testified in court that her husband was away in Mwanza, and she was left home with her 12 year old sister and her two children, one aged 7 years and the other one was seven months old. According to her, She was invaded by three people. They put on the solar light when they entered the room. She saw them upon entering and she clearly identified the appellant, who was her neighbour. They were all carrying matchetes and iron bars. They beat her up, and took turns to rape her. According to PW1, the appellant went to her house earlier, at 19.30 hours and 21.00 hours, asking for charcoal.

After the incident PW1 did not immediately seek help as it was raining. She contacted her friend Shamira Boele (PW2) on the next day at around 7 a.m., who escorted her to the police station. She named the appellant to both Shamira and the police.

Mr. Matuma on his part strongly supported the conviction. According to him the prosecution managed to prove both counts. The appellant was properly identified by PW1 who was very well known to her, being her neighbour. She testified that the appellant accompanied by two other people, who were strangers to her invaded her house. The bandits

switched on the solar light when they entered the room. They were clearly seen by PW1. PW1 had no need of giving a description as the appellant was well known to her, being her neighbor. Mr. Matuma submitted that PW1 gave a clear account as to what transpired when the appellant and the other two persons entered the room. She gave a description of the weapons they were carrying, the threats and the beatings and the demand for money and ultimately the rape.

Mr. Matuma submitted further that a doctor was called to testify and a PF. 3 report was tendered in Court as Exhibit P1, clearly demonstrating that PW1 was raped. Mr. Matuma stated that PW1 named the appellant immediately after the incident, first to PW2 and subsequently to the police. He made reference to the case of **Paulo Makaranga v Republic**,Criminal Appeal No. 26 of 2006, CAT unreported and **Marwa Wangiti Mwita and Another v Republic**, (2002) TLR 39.

The appellant in reply denied committing the offence. He contended that he was never examined by a doctor, and it has not been established that he was the one who raped the victim.

After carefully reviewing the proceedings, the memorandum of appeal and submissions made by the learned Senior State Attorney, we entirely agree with his submissions.

On looking at the first ground of appeal, on identification of the appellant, we are of the considered view that the appellant was properly identified. PW1's evidence was clear. She testified that the appellant switched on the solar light upon entry. The appellant was well known to her being her neighbour. She gave a clear description that the appellant and the two people accompanying him were armed, threatened her and they took money and other items from her house. The complainant named the appellant at the earliest possible time both to her friend, PW2 and to the police. This was significant that she was a reliable witness. In **Marwa Wangiti Mwita**(supra) this Court Stated thus:-

> *"The ability of a witness to name a suspect at the earliest opportunity is an all important assurance of his reliability, in the same way as unexplained delay or complete failure to do so should put a prudent court to inquiry."*
> (Emphasis supplied)

As stated above, once PW1 named the appellant to the police, he was arrested almost immediately. This as demonstrated above, was very significant to the prosecution case against the appellant.

In relation to second ground of appeal, that the conviction of the appellant was against the weight of the evidence, we are clear in our minds that this ground has no merit. The conviction of the appellant was based on the evidence of identification. It is clear from the evidence on record that the appellant was properly identified.

With regard to the offence of rape, so long as the trial court is satisfied with the credibility of a witness, that witness suffices to prove the particular fact in issue. In **Selemani Makumba v. Republic**, Criminal Appeal No. 94 of 1999 CAT (unreported) the Court stated thus:-

> *" True evidence of rape has to come from the victim."*

See – **John Martin@Marwa v Republic**, Criminal Appeal No. 22 of 2008 CAT (unreported).

In the instant case, PW3 Dr. Gervas Manento the doctor who examined PW1, also gave evidence and tendered the PF3 report (Exhibit P1). Given the circumstances, we find that the second ground of appeal has no basis.

Both the trial court and the first appellate court held that the appellant was positively identified by PW1, given the solar light, the distance between him and PW1, the familiarity before the material date and time and the time the appellant and his cronies spent in PW1's room. See **Waziri Amani v. Republic** (1980) TLR 250 and **Raymond Francis v. Republic** (1994) TLR 103.

This is second appeal. We are mindful of the settled law and practice that we should not readily disturb the concurrent findings of fact by courts below unless there are serious misdirections and non-directions. See- **DPP v. Jaffari Mfaume Kawawa** (1981) TLR 149; **Salum Mhando v. Republic** (1993) TLR 170.

The case against the appellant has been proved beyond reasonable doubt on both counts.

In view of what has been stated hereinabove, we find that the appeal has no merit. We hereby dismiss it. Order accordingly.

DATED at **BUKOBA** this 16th day of February, 2016.

E. A. KILEO
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

B.M. MMILLA
JUSTICE OF APPEAL

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

E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL