

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

**CRIMINAL APPEAL NO.97 OF 2002
(originating from The District Court of Morogoro
At Morogoro Criminal Case No.266 of 1998)**

**JUTO S/O WAZIRI.....APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT**

JUDGMENT

SHANGWA, J.

The Appellant Juto Waziri was charged in the District Court of Morogoro with the offence of rape c/s 130 (1) of the Penal Code as amended by the Sexual offences Special Provisions Act No.4 of 1998. The charge against him was based on the allegation that on 28.7.1998 at Kichangani Village in Turiani Ward Division within Morogoro Region, he

had unlawful carnal knowledge of Desderia John without her consent.

On 9.3.2000, he was found guilty and convicted of the offence charged. He was sentenced thereof to 30 years imprisonment. He was not satisfied with both conviction and sentence. He has now appealed to this court. He raised three grounds of appeal. Out of these grounds, I will only deal with the second one which I find to be the most pertinent to this appeal. This ground is to the effect that the evidence of P.W.1 and P.W.2 upon which he was convicted was fabricated against him.

I have gone through the testimonies of P.W.1 and P.W.2 who are the key witnesses in this case, but I have not found anything truthful upon which I can maintain the

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conviction which was imposed on the Appellant by the District Court of Morogoro.

Both witnesses told the said court that on 28.7.1998, during the night, while they were at safari guest house, in Kichangani Village, Turiani, together with one Zahara Salum and Catherine, the Appellant appeared and suddenly attacked P.W.1 by kicking her on the face and beating her with a brick on her back before he dragged her towards the banana plants.

No one witnessed what went on after P.W.1 was dragged by the Appellant towards the banana plants. Pw.1 herself testified to the effect that after she was dragged from the guest house towards the banana plants, the Appellant took her to a condemned house from where he undressed her and fucked her for about 1 ½ hours. She

further testified that after fucking her, he whistled to his friends called Mniga and Fadhili to come to the scene of the incident and do the same thing to her but she managed to run away, and that, thereafter, she went with one Zahara and Catherine to the Police at Turiani where she reported the incident.

On close examination of Pw.1 and Pw'2 testimonies, I find that the charge against the Appellant was cooked by a group of four ladies namely Pw.1 Desderia John, Pw.2 Stamili Hamisi, Zahara Salum and Catherine. These are all friends who decided to corner him.

I wish to state that it is beyond my understanding that the Appellant could have suddenly started by kicking her on the face and beating her with a brick at her back before

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dragging her towards the banana plants or to the condemned house for raping her.

It is also beyond my understanding that P.W.1 could have been so kicked, beaten and dragged without serious intervention by her friends namely P.W.2 Stamili Hamisi, Zahara Salum and Catherine who were physically present at Safari Guest House when the said Criminal acts of assaulting her took place.

Furthermore, it is beyond my understanding that Pw.1 could have been fucked by the Appellant for about 1 ½ hours without stopping and without being arrested by anybody to whom the incident was immediately reported by her friends assuming that such incident took place.

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With these reservations, I am inclined to agree with the Appellant that the charge against him was fabricated by Pw.1 and Pw.2 due to the fact that he lived with P.w.1 for about two months and then chased her away irrespective of the fact that both of them were lovers since 1997 when the Appellant played sex with her for the first time.

Learned Counsel for the Republic, Mr. John Mapinduzi submitted that as the Appellant admitted in his defence that he started playing sex with Pw.1 since 1997 when she was 16 years old, it means that the Appellant is admitting to have been raping her since then. He contended that under the provisions of the Sexual Offences Special Provisions Act, No.4 of 1998, a girl under 18 years of age such as P.w1 was, cannot consent to sexual intercourse.

With respect to Mr. John Mapinduzi for the Republic, in 1997 when the Appellant states to have had carnal knowledge of Pw.1, the Sexual Offences Special Provisions Act, No.4 of 1998 had not yet been enacted.

Due to the fact that the charge against the Appellant is mere fabrication, I hereby allow his appeal against both conviction and sentence. Thus, I quash his conviction, set aside his sentence of 30 years imprisonment and order that he should be released from prison henceforth unless he is otherwise lawfully detained therein on a different matter.


A. Shangwa

JUDGE

30.12.2005

Delivered in open Court this 30th day of December, 2005.


A. Shangwa

JUDGE

30.12.2005