

**IN THE HIGH COURT OF TANZANIA**  
**AT TABORA.**  
**APPELLATE JURISDICTION**  
**(Tabora Registry)**  
**(DC) CRIMINAL APPEAL NO.88 OF 2003**  
**ORIGINAL CRIMINAL CASE NO.91 OF 2002 OF THE DISTRICT**  
**COURT OF MASWA DISTRICT**  
**AT MASWA**  
**Before: R. Masige Esq., DISTRICT MAGISTRATE**  
**YUNGE MBOJE .....APPELLANT**  
**(Original Accused)**  
**VERSUS**  
**THE REPUBLIC .....RESPONDENT**  
**(Original Prosecutor)**

**J U D G M E N T**

*7<sup>TH</sup> & 14<sup>TH</sup> DECEMBER, 2007*

**KIHIO, J.**

The appellant, Yunge d/o Mboje along with one Mwanzalima s/o Cosmas who did not appeal were Convicted of Rape and were each sentenced to thirty years imprisonment.

They were further ordered to pay compensation to the Victim's father at a sum of shs.200,000/= for the injuries sustained by the victim.

She is now appealing against both conviction and sentence.

Doto d/o Malahi (PW1), a girl of fifteen (15) years, told the trial court that she was a standard six pupil and that on 6/8/2002 she and her sister, one Kulwa d/o Malahi had gone to their aunt's home for Nane Nane Celebrations and on the way they were called by the appellant. She (PW1) further told the trial court that when they went to the place where the appellant was by then they met Mwanzalima s/o Cosmas and the appellant told her (Pw1) that the said Mwanzalima s/o Cosmas wanted to marry her but she refused. She (PW1) stated that as the said Mwanzalima s/o Cosmas grabbed her (Pw1's) had her (PW1's) sister ran away and thereafter the appellant gave her (PW1) Shs.200/= but she refused. She (PW1) was taken to the appellant's young sister's home at 6.00 p.m. as the appellant advised Mwanzalima s/o Cosmas and in the night Mwarizalima s/o Cosmas had Sexual intercourse with her (PW1) three times. Mwanzalima s/o Cosmas and the appellant escorted her at 6.00 a.m. She (PW1) informed the trial court that she was taken to the hospital for examination as she had PF.3 (Exh.P1) and she was admitted for two days.

Kulwa Malahi (PW2) told the trial court that on 6/8/2002 she and Dotto Malahi (PW1) went to the house of their aunt, Yunge Chelehani. She (PW2) further told the trial Court that on 10/8/2002 when they were going back home on the way the appellant called Dotto d/o Malahi (PW1) and when she reached there Mwanzalima Cosmas and Salum arrested Doto d/o Malahi at appellant's house. She (PW2) stated at the trial court that she (PW2) ran home and

reported to their grandmother who on the following day reported to their parents. She (PW2) further stated at the trial court that Doto d/o Malahi came home the following day and she (Doto d/o Malahi) said that she had sexual intercourse with Mwanzalima s/o Cosmas. She (PW2) said at the trial court that the victim, Doto was taken to the hospital where she was admitted for two days.

Njile Kibisa (PW3), Street Leader, told the trial court that on 10/8/2002 when he was at home he received complaints that the daughter of Malahi did not reach at her parents home. He (PW3) made a follow-up and on the way he met the Victim, Doto d/o Malahi who narrated that she had Sexual intercourse with Mwanzalima s/o Cosmas. He (PW3) reported the matter to the Ward Tribunal where by Arrest Warrant was issued. He (PW3) finally told the trial court that he took the victim to the hospital where she was admitted for two days.

Nkamba d/o Kija (PW4) told the trial court that she stayed with her granddaughters Kulwa and Doto and that on 6/8/2002 the former asked for permission to go to see their aunt and to go for a certain celebration. She (PW4) further told the trial court that on 10/8/2002 Kulwa Malahi returned home at night but Doto Malahi did not return back. She (PW4) stated that she went to Doto's aunt's house on the following day and Doto's aunt said that Doto was not there. She (PW4) returned back home and Doto had already came back home. She (PW4) went on to inform the trial court that Doto told her that she

slept at one Mwanamboje's home and that she had Sexual intercourse with a certain boy.

The appellant told the trial court that on 14/8/2002 She was arrested by militiamen and sent to Mpingo Primary Court and she was put into lock-up. She further told the trial court that they took her out and she heard that she conspired and a school pupil was ravished. She (appellant) denied whereby she was released on bail. She (appellant) stated at the trial court that some days later militiamen re arrested her and they took them (appellant and the other person) to Maswa Police and therefore taken to the Court.

Kwangu d/o Matondo (DW3) told the trial court that she came to Senani Village on 9/8/2002 and left on 11/8/2002 for Ngewe Village and that she did not know the reasons for the appellant's arrest. She (DW3) further told the trial court that the appellant was her mother.

The appellant raised three complaints in her Memorandum of Appeal. In essence, her grounds of appeal are two, namely, 1. that the District Magistrate Convicted her on insufficient evidence. 2. that the District Magistrate convicted her without taking into consideration her defence of Alibi.

The appellant did not wish to be present during the hearing of the appeal.

The Republic is represented by Mr. Mkoba, Learned State Attorney who supports the conviction.

Mr. Mkoba submitted that the appellant aided Mwanzalima Cosmas in raping Doto d/o Malahi in 2002 when she (Doto d/o Malahi) was 15 years old. He pointed out that under section 22(1) (b) and (c) of the Penal Code, Cap.16 Revised Edition 2002 any person who aids another person to commit an offence that person commits the offence. He argued that the appellant did not give Notice that she would raise the defence of Alibi as provided for under Section 194(4) of the Criminal Procedure Act, 1985 and she (appellant) did not show in her defence the place where she was at the time of the commission of the offence. He further argued that the appeal is without merit.

The first issue for determination here is whether there is sufficient evidence against the appellant.

The evidence of PW1 at the trial court shows that the appellant was the one who called her when she (PW1) and her sister were on the way to their aunt's house and when she went to the place where the appellant was by then she (PW1) met the appellant and Mwanzalima s/o Cosmas.

The evidence of PW1 at the trial court further shows that the appellant told her that the said Mwanzalima s/o Cosmas wanted to

marry her and when she (PW1) refused the said Mwanzalima s/o Cosmas grabbed her hand.

The appellant gave her (PW1) shs.200/= but she refused and thereafter she (PW1) was taken to the appellant's young sister's home as the appellant advised Mwanzalima s/o Cosmas.

There is evidence that Mwanzalima s/o Cosmas had Sexual intercourse with Pw1. The PF 3 (Exh.P1) corroborates the evidence of PW1 that penis penetrated into PW1's Vagina.

As PW1 was fifteen years old when Mwanzalima s/o Cosmas had Sexual intercourse with her (PW1), Mwanzalima s/o Cosmas raped her (PW1) in law – see section 130 (2) (e) of the Penal Code as amended by Section 5 of the Sexual offences Special Provisions Act – No.4 of 1998. The Learned District Magistrate believed PW1 as a witness telling the truth. I find no ground to differ with his finding Section 22(1) (b)(c) of the Penal Code, Cap.16 Revised Edition states,

***“When an offence is committed each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence may be charged with actually committing it, that is to say –***

(a).....

(b)every person who does or omits to do any act for the purposes of enabling or aiding another to commit

the offence.

- © every person who aids or abets another person  
in committing the offence

(d) .....

Indeed under Section 22(b) and (c) of the Penal Code they are  
Principal offender.

As the appellant aided Mwanzalima s/o Cosmas in Committing  
rape she falls within the scope of paragraph (b) and (c) of Section  
22(1) of the Penal Code, Cap.16 Revised Edition 2002. She  
therefore raped Doto d/o Malahi (PW1).

As the determination of the first ground of appeal disposes of  
the appeal, I find that it is not necessary to dwell on discussing the  
second ground of appeal.

The evidence available leaves no doubt on the appellant's guilt.

The conviction was rightly made.

The sentence imposed is the Minimum Sentence under Law.

Accordingly, the appeal is dismissed.

  
**S.S.S. KIHIO**

**JUDGE**

**14/12/2007**

**COURT:** Judgment delivered in the presence of Miss Wakuru, Learned State Attorney and in the absence of the appellant who did not wish to enter appearance.

  
**S.S.S. KIHIO**

**JUDGE**

**14/12/2007**