

IN THE HIGH COURT OF TANZANIA  
AT TABORA  
APPELLATE JURISDICTION  
(Tabora Registry)  
(DC) CRIMINAL APPEAL NO. 73 OF 2007  
ORIGINAL CRIMINAL CASE NO. 13 OF 1999  
OF THE DISTRICT COURT OF IGUNGA DISTRICT  
AT IGUNGA

BEFORE. H.R. MZONGE.; Esq.; PRINCIPAL DISTRICT MAGISTRATE  
SONDA S/O DEUS MAYOMBI.....APPELLANT  
(Original Accused )  
Versus  
THE REPUBLIC.....RESPONDENT  
(Original Prosecutor)

**JUDGEMENT.**

20/10/2008 & 9/2/2009

**KADURI, J**

This is an appeal by Sonda s/o Deus Mayombi who was convicted of the offence of Rape contrary to section 130 (1) (2) (a) 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 allegation being that on 10.2.1999 during the early hours of the morning, at Igogo Village, Igunga District the appellant had carnal knowledge of one Nyasolo Maigè without her consent.

The evidence of PW.1 Nyasole d/o Maigè is that, on 10/2/1999 at around 5.45 a.m her husband left for shamba. She was sleeping in a kitchen

which had no door. Her husband was sleeping outside. When her husband had left, he left Masamba Machiya sleeping outside. While sleeping, she felt someone pressing her to the ground. She pushed away the bed sheet she covered herself with. She said the appellant ordered her to keep quiet or else she would be stabbed with a knife. She went out while struggling with the appellant. By this time she was naked and the appellant was also naked. On seeing her mother struggling with the appellant Masamba Machiya ran away to call neighbours. The appellant fell her down and raped her while grabbing him by the neck. The appellant then took her into the house and ordered her not to get out.

Later she heard people shouting as if they were chasing someone. ~~\_\_\_\_\_~~  
The appellant was arrested. She was taken to hospital after obtaining a r.r.s from the police post. The PF.3 was not objected to. It was received and marked as exhibit P1.

The appellant cross – examined PW.1 who insisted that she had not seen the appellant before. She did not know how the appellant knew that her husband was away. She had not agreed with the appellant to have sexual intercourse and the appellant is not her lover. She was surprised that the appellant came at the same time when her husband had left.

PW.2 Magembe Shilai is PW1's neighbour. Machiya's son woke him up on the material morning with information that someone was fighting with her mother. He woke up one Lugetha, his neighbour and together they accompanied Machiya's child to the scene. As they neared Machiya's house

they saw a man. On seeing them approaching the man took to his heels. The man was chased and he ran into the house of one Mihayo.

This house was surrounded and the man was ordered to get out of the house. The man got out covering himself with a blanket. That man is the appellant.

PW.3 Lugetha Tilo testified in line with what PW.2 had stated.

PW.4 testified not on oath but was found to be possessed of sufficient intelligence to justify the reception of his evidence without oath after the court had conducted a voir dire. He testified how he saw the appellant left for shamba. He testified further how he called the neighbours.

In his defence the appellant only narrated how he was arrested at the house of one Mihayo. He stated that he was asked for an identity card which he did not have. He was suspected to be a thief, beaten up and taken to a house where he was told he raped a woman. On the allegation of being beaten up he stated that he was not examined by a Doctor.

That being the evidence for both the prosecution and the defence, the trial court found him guilty and convicted him of rape.

The appellant was chased from the house of PW.1 and was arrested in the house of one Mihayo. The chase was straight and I have no hesitation to

agree with the prosecution that the prosecution evidence left no doubt as to the appellant having committed rape of PW.1

The guilt of the appellant has been proved beyond reasonable doubt.

The, appeal is dismissed in it's entirety.

A handwritten signature in black ink, appearing to be 'L.K.N. Kaduri', written in a cursive style.

L.K.N. KADURI

**JUDGE**

20/11/2008