IN THE HIG COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

(Tabora Registry)

(DC) CRIMINAL APPEAL NO. 204 OF 2013

CRIMINAL CASE NO. 250 OF 2011

OF THE DISTRICT COURT OF KASULU

BEFORE:- HON. M. PAUL Esq. DISTICT MAGISTRATE

SENGIMANA S/O MALAKI YARABI .....APPELLANT

(Original Accused)

VERSUS

THE REPUBLIC .....RESPONDENT

(Original Prosecutor)

JUDGMENT

06th & 19th August, 2014

S.M.RUMANYIKA, J

Sengimana Malaki Yarabi (the Appellant), charged, and now having been convicted for rape of a girl (6) c/s 130(a) of the penal code cap 16 RE 2002, was on 12/7/2012, sentenced to 30 (thirty)

years in jail. He is aggrieved. He appeal against the conviction and sentence.

The grounds of appeal are seven (7). But essentially, the same boil down to only five (5) points:-

1. The learned trial magistrate erred in law and in fact. Having required the Appellant to prove his innocence.
2. The learned trial magistrate having convicted the Appellant on uncorroborated prosecution evidence.
3. The learned trial magistrate's failure to hold that the prosecution proved the case not beyond reasonable doubts.
4. The learned trial magistrate having not considered the Appellant's defence evidence.
5. The learned trial magistrate availed him no chance to examine on, and have the material its authenticity of PF3 tested in court.

The Appellant, appeared in person but, made no kind of material submissions on the grounds of appeal.

M/s Elizabeth Mkumbe Learned State Attorney for the Republic Respondents supported the appeal. That no charge of rape or at all was proved against the Appellant. As the victim's complaints disclosed no fundamental elements of the offence.

Citing as authority, the case of Mathayo Ngalya Shaban V R, Criminal Appeal No. 170 of 2006 (Unreported), the Learned State

Attorney contends that however slight penetration might be, the intercourse needed be proved essentially. Not mere general statements by the victims of sexual offences. The medical evidence was more of corroborative purposes. That even Joyce (Pw2) did not tell in evidence, which specific party of the victim's body was bleeding injured.

The evidence on records will witness that invited, and now at home, the Appellant raped the infant (6), also he had her carnal knowledge against nature. On 27/07/2011 at about 13.00hrs at Muyama village District of Kasulu. The fellow Joyce (12) Pw2 heard one screaming. With pains I suppose! She rushed onto the scene. Only to catch the Appellant red handed. Both the latter and Pw1 were naked. She was bleeding injured.

The victim in her own words simply says that : "the Accused .....called me in the house. He put me on bed and slept over me. He unweared my clothes and also unweared his clothes "akanitengeneza huku nyuma" (Literally meaning; then accused made her up in her back).....I shouted then came Joyce (Pw2). She found me naked. The accused had weared is clothes .... I was injured and I did breed. I went to hospital for treatment....."

The central issue is whether the victim's complaints constitute one having had her carnal knowledge. Be it against nature or else what. Infact they don't. As argued, very correctly so in my view by

M/s Elizabeth Mkumbe, the mere words: the Appellant just slept over her, (both of them naked), he made her up in the back, she shouted, then Pw2 found them in the very state, and that the victim was rushed to hospital injured and bleeding, does not necessarily mean that the girl was raped/defiled. Or else, the prosecutor should have led her and the trial court record as such. Short, of which and in the absence of a medical report, the offence committed should have been one of indescent assault. The alleged injuries and bleeding not withstanding. This reasonable doubts needed be cleared in the Appellant's favour.

The Appellant's case might be weak and or shaky yes! But that one alone guarantees no proof by the prosecution, of their case beyond all reasonable doubts. Ground ONE succeeds.

As regards ground No. 2 above there is no rule in law that no conviction can be grounded on uncorroborated prosecution evidence. The law is settled, that courts convict satisfied that the victim's story is not but only the truth. The truth as said, was there but if appears of the lesser offence of indescent assault. Ground No. 2 is dismissed.

As such, the charge of rape was not proved beyond reasonable doubts. Only to that extent ground No. 3 is successful.

Moreover, I will reiterate that whereas one is quaranteed of a constitutional general presumption of innocence, an accused can, for

whatever reasons at any criminal trial, not be required to prove his innocence. Ground No. 4 of appeal is also allowed.

As regards ground 5, no PF3 was actually tendered, referred to or otherwise form base of the conviction whatsoever of the Appellant. Unlike others, this ground of appeal crumbles.

As said, the Appellant having been known to the two public witnesses before, and was properly identified by them, I will hold and order as hereby do, that he had only sexually harassed under section 138D – (I) SOSPA – Act No. 4/1998 leser offence Pw1. It is this charge that indeed was proved. He is sentenced to pay her shs. 200,000 (two handred thousand only being compensation or in default five (5) years imprisonment. Appeal allowed only to that extent.

R/A explained.

S.M.RUMANYIKA

JUDGE

15/08/2014

Delivered under my hand and seal of the court in chambers. This 19/08/2014. In the presence of Mr. Rwegila State Attorney and the Appellant.

S.M.RUMANYIKA
JUDGE
19/08/2014