

IN THE HIGH COURT OF TANZANIA

AT DODOMA

(APPELLATE JURISDICTION)

DC CRIMINAL APPEAL NO. 142 OF 2016

(Original Criminal Case No. 219 of 2016 of the District Court of Manyoni at Manyoni)

ISAYA DAVID @ MANGLEZA CHANZI.....APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

24/07/2017 & 04/08/2017

A. MOHAMED, J.

The appellant was convicted of committing an unnatural offence contrary to section 154 (1) of the Penal Code Cap 16 RE 2002 after he pleaded guilty to the charge. Consequently he was sentenced to life imprisonment as the victim was a 4 year old boy. He now appeals against both conviction and sentence on the following four grounds;

1. That a police officer convinced him to plead guilty after assuring him the trial magistrate would release him.

2. That he was told to sign the cautioned statement under threat.
3. That his neighbours fabricated the case so they would occupy his parent's land after his imprisonment.
4. That this court quashes the trial court's decision and releases him.

At the hearing of the appeal, the appellant appeared in person. Ms. Kezilahabi, learned State attorney, represented the respondent Republic. The appellant submitted he would rely on the grounds as set out in his petition of appeal in support of the appeal.

In reply Ms. Kezilahabi was of the view that since the appellant pleaded guilty to the charge against him; he could not appeal against the conviction. She said he could only appeal against the sentence as is stipulated in section 360 (1) of the Criminal Procedure Act [Cap 20 R.E 2002] that reads;

“No appeal lies where an accused person has been convicted on his own plea of guilty save as regards the legality of sentence meted out to him”.

In support of thereof she cited the unreported case of *Khalid Athumani v Republic*, Criminal Appeal No. 103 of 2005, CA at Arusha where the court said;

“The appellant pleaded guilty to the charge of rape with full understanding of the charge against him. There are no grounds for supposing that the appellant did not fully understand what he was doing when he pleaded guilty to the charge”.

She said the appeal was thus dismissed on the above reasoning. Ms. Kezilahabi submitted the facts of the above case fall squarely with the instant case. The charge was read over to the appellant and he pleaded guilty to the charge. He said;

“It is true I did have carnal knowledge of the said person against the order of nature”

The counsel said thereafter the facts of the case were read over to him in a language he understood and he did not object to the tendering and admission in evidence of his cautioned statement and the PF3 form showing the victim showed signs of a blunt object had been inserted forcefully in his anus. The appellant signed on the proceeding to indicate he acknowledged and agreed with the facts of the case.

It was the counsel's view the appellant understood everything and he cannot therefore appeal against the conviction. He can only appeal the sentence. She finally urged this court to uphold the trial court's conviction and sentence.

In rejoining, the appellant submitted that he neither committed the alleged offence nor pleaded guilty in the trial court. He further said the police did not record his statement. He also said he was not shown the PF3 in court. And that he argued with the police prosecutor but the trial magistrate recorded he had pleaded guilty to the charge. He went on to say he only heard of his life imprisonment at the prison.

I have carefully heard the parties and reviewed the lower court's record. I will now consider the contentions.

After a careful perusal of the record, I am in agreement with Ms. Kezilahabi that the appellant indeed pleaded guilty to the charge facing him. The charge sheet was read over to him and he understood fully what the charge leveled against him was. When the facts of the case were read to him he acknowledged committing the crime and he said:

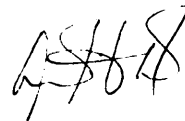
“It is true I did have carnal knowledge of the said person against the order of nature”

Furthermore he signed on the proceedings showing he agreed with the facts of the case that were read to him. I am therefore satisfied his plea was unequivocal and in terms of section 360 (1) of the Criminal Procedure Act [Cap 20 R.E 2002], he had only the option of appealing against the sentence. Since the victim was aged 4 years, the sentence of life imprisonment was proper in law.

I have gone through his defence and find his claims are baseless. He refuted making a police statement but he did not object to its admission when it was tendered in evidence nor did he object to the admission of the PF3 form. I also find his claim of being induced or of being threatened as unsubstantiated. I am therefore content he pleaded guilty to the charge on his own volition and these claims in the appeal were an afterthought.

In the event, I find no good reason to fault the trial court's sound decision in law on the facts before it. I find the appeal devoid of merit and I dismiss it in its entirety. I consequently uphold the trial court's conviction and sentence.

It is so ordered.

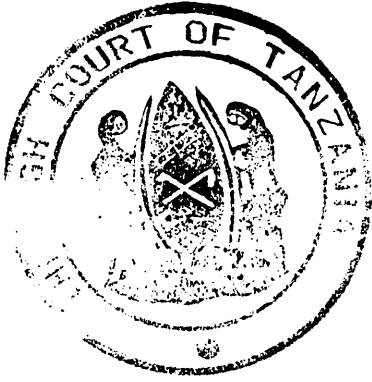


A. MOHAMED

JUDGE

04/08/2017

The right of appeal explained.



A handwritten signature in black ink, appearing to read "A. Mohamed".

A. MOHAMED
JUDGE
04/08/2017