

**IN THE HIGH COURT OF TANZANIA**

**AT DODOMA**

**(APPELLATE JURISDICTION)**

**DC CRIMINAL APPEAL NO. 52 OF 2017**

*(Original Criminal Case No. 27 of 2016 of the District Court of Singida at Singida)*

**IBRAHIM RAMADHANI.....APPELLANT**

**VERSUS**

**THE REPUBLIC .....RESPONDENT**

**JUDGMENT**

*31/07/2017 & 07/08/2017*

**A. MOHAMED, J.**

The appellant was convicted on his own plea of guilty to the charge of rape contrary to section 130 (1) (e) and 131 of the Penal Code (Cap 16 RE 2001) by the Singida District Court and sentenced to life imprisonment.

Against both against both conviction and sentence he now appeals on 7 grounds that can be consolidated into the following two;

1. That he was not identified
2. That PW1 did not give a description of her assailant.

3. That the trial court acted on the hearsay evidence of PW2.
3. That the identification parade was not conducted properly.
4. That the trial court relied on PW1's contradictory evidence.
5. That PW6's was not conclusive he raped the victim.

Briefly stated, the prosecution alleges on 28/1/2016 at about 18:00 hours at Utaho "B" Village Kituntu Ward within Ikungi District, in Singida Region, the appellant had carnal knowledge of one Penina John a girl aged 17 years.

At the hearing, the unrepresented appellant relied on his grounds in the appeal in support thereof.

In reply, Mr. Sarara supported the appeal and said he would submit generally on all the grounds. He said in proving its case, the prosecution called six witnesses.

He submitted that Penina John's (PW1) evidence was scrawny and did not prove beyond reasonable doubt that it was the appellant who had committed the crime. First; she said there was no light when the assailant raped her. Secondly; she said she did not

know the rapist as it was the first time to see him. When cross examined by the appellant, she replied;

***“Maybe you were following me because you appeared suddenly and pulled me”***

In essence, the counsel submitted, the victim had doubts whether it was the appellant who had raped her.

Mr. Sarara further submitted that PW1 failed to provide any description of her assailant which could have had assisted other persons to trace the suspect as he was not found at the scene of crime. He said her mother Bertha Hussein (PW2) told the court on the material PW1 came home crying and said one guy had kicked, pulled and raped her. PW2 reported the incident to the hamlet leader called Rabia who ordered militiamen to arrest the assailant. They arrested Ibrahim, the appellant. The counsel said there was no connection between the arrest and PW1 since she did not name or describe the appellant. In his view, it was odd that PW2 named the appellant without PW1 providing his name or description to her. He went on to say there is no evidence PW1 told PW2 it was the appellant who had committed the crime.

It was the counsel's further submission that the militia or police officer who had arrested the appellant could shed light how he knew or identified the appellant. He said Inspector Pansiono Kahangwa (PW5) who conducted the identification parade testified

on the parade only. The counsel was also unhappy on the conduct of the identification parade as PW1 did not give any description to have assisted the proper identification of the appellant. He finally concluded the evidence at the trial court could not ground a conviction.

In his rejoinder submission, the appellant had nothing to add.

I have heard the parties well, reviewed the trial court's record and will at the outset state that the appeal will succeed.

I will deal with the 1<sup>st</sup> question of visual identification. I do agree that the victim's evidence on the identification of her assailant was dismal. Her assailant was unknown to her. She admitted it was dark and therefore conditions did not favour a conclusive identification of the suspect. This principle was well stated in *Waziri Amani V. R* (1980) TLR 250, which held that;

***"No court should act on evidence of visual identification unless all possibilities of mistaken identity are eliminated and the court is satisfied that the evidence before it is watertight".***

I am therefore satisfied the appellant was not identified by PW1 on the material day as possibilities of mistaken identity could not be ruled out. Consequently, I find merit in the ground and sustain it.

I need not belabor on the other grounds as I think this one suffices to dispose of the appeal.

I thus quash and set aside the conviction and sentence of the lower court. This will result in the appellant being released forthwith unless he is held for another lawful cause.

It is so ordered.

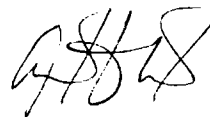


**A. MOHAMED**

**JUDGE**

**07/08/2017**

The right of appeal explained.



**A. MOHAMED**

**JUDGE**

**07/08/2017**