

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

CRIMINAL APPEAL NO. 41 OF 2017

(Originating from Manyara Resident Magistrate's Court Criminal Case
No. 228/2014)

JAFARI MOHAMED.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of Last Order: 17/04/2018

Date of Judgment: 30/05/2018

BEFORE: S.C. MOSHI, J.

This is uncontested appeal. The appellant was arraigned before Manyara Resident Magistrate's Court for the offence of Attempted Rape contrary to section 132(1), (2)(a) of the Penal Code[Cap. 16 R.E. 2002]. The particulars of the offence are thus:

***"Jafari S/O Mohamed on the 21st day of August, 2014
at Gidamala 'A' village within Babati District in
Manyara region, did attempt to have sexual
intercourse of one Angelina D/O Edward a girl of 5
years old."***

The court found the accused guilty of the offence; he was sentenced to serve ten years in jail. The appellant was aggrieved by the decision, he preferred the present appeal and he had a total of seven grounds of appeal as follows:-

1. That, the trial Magistrate erred in law and in facts by not finding that the Charge Sheet was defective.
2. That, the trial Court erred in law and in facts by not complying with the Provisions of Section 210(1) (a) of the CPA, Cap 20 R.E. 2002.
3. That, the trial Court erred in law and facts by not complying with the Mandatory Provisions of Section 127 (2) of the Evidence Act, Cap 6 R.E. 2002.
4. The trial Court erred in law and in fact when it failed to evaluate the evidence on records.
5. That, the trial Court erred in law by not complying with Sections 230 and 231 of the CPA, Cap 20 R.E. 2002.
6. That, the trial Magistrate erred in law and in facts by not finding that the purported cautioned statement of the appellant was obtained contrary to the requirements under the law.
7. That, the trial Court erred in law and in fact in holding that the charge against the appellant was proved to the required standards i.e beyond reasonable doubt.

At the hearing of the appeal, the appellant appeared in person whereas the Republic was represented by Miss Alice Mtenga, State Attorney. Miss Alice supported the Appeal while the appellant who

appeared in person had nothing to say. He just requested the court to let him free.

I have considered the submission that was made by the State Attorney, the record as a whole and the relevant law. I agree with the submission that was made by the State Attorney. The appellant was charged with a defective charge. The accused was charged with Attempt Rape c/s 132(1) and 2(a) of the Penal Code, Cap 16 R.E. 2002. The provisions of section 132(1) and (a) reads thus:

S. 132. Attempted rape:-

(1) Any person who attempts to commit rape commits the offence of attempted rape, and except for the cases specified in subsection (3) is liable upon conviction to imprisonment for life, and in any case shall be liable to imprisonment for not less than thirty years with or without corporal punishment.

(2) A person attempts to commit rape if, with the intent to procure prohibited sexual intercourse with any girl or woman, he manifests his intention by-

(a) Threatening the girl or woman for sexual purposes;[Emphasis is mine].

From the wording of the provisions of the cited law, the most important element that has to be proved is the aspect of threat. However, the charge sheet does not show this necessary element. It only reads that the appellant attempted to rape the victim but it does not disclose the threat. In this respect, the case of **Martine Kaiza V R**, Criminal Appeal

No. 371 of 2016 the Court of Appeal of Tanzania (unreported) is relevant. In this case the Court quoted with approval the case of **Musa Mwaikunda V R** (2006) TLR 387. In this case the court held among other things thus:-

"The principle has always been that an accused person must know the nature of the case facing him. This can be achieved if a charge discloses the essential elements of an offence. Bearing in mind the charge in an instance case ought to have disclosed the aspect of threatening which is an essential element under paragraph (a) above. In the absence of the disclosure it occurs to us that the nature of the case facing the appellant was not adequately disclosed to him".

Likewise in the case at hand, the charge sheet does not disclose the essential element. Hence the accused was denied a right to understand the nature of the case that he was facing.

Therefore the charge sheet was incurably defective.

That said, the first ground of Appeal is answered and it suffices to dispose of the entire appeal as the case was founded on a defective charge.

Consequently the conviction is quashed, sentence is set aside and the appellant should be released forthwith unless he is held in prison for other lawful causes.

Right of appeal is explained.


S.C. MOSHI
JUDGE
30/05/2018