

IN THE HIGH COURT OF TANZANIA
MWANZA DISTRICT REGISTRY
AT MWANZA
CRIMINAL APPEAL NO. 147 OF 2019
(Originating from the District Court of Chato
Criminal Case No. 278 of 2017)

FRANK ONESMO..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGEMENT

17.2 & 27.2.2020

U. E. Madeha. J

Before the District Court of Chato, the appellant Frank Onesmo was charged and convicted with rape offence C/S 130 (1) (2) (e) and 131 of the Penal Code Cap 16 of the Law (R. E. 2002) for the first Count. In the second count, he was also charged and convicted with impregnating a school girl C/S 60A (3) of the Education Act as amended by Act No. 2/2016.

Frank Onesmo was working as a brick maker at the victim's home. The victim started having sex with Frank Onesmo on 18.5.2017. They were meeting in their friend's room. As a result, the victim was impregnated. The victim left her home and went to live in the residence of the appellant.

The appellant and the victim were living as husband and wife. They were arrested while they were living together. PF3 showed that the victim was pregnant. It was received in evidence as exhibit PE2. The appellant had no objection to the caution statement. It was received in evidence as exhibit PE3. At the end of the trial the appellant was sentenced to serve thirty years in prison concurrently.

The sentence and conviction did not amuse him. Hence this appeal In view of the grounds of appeal raised the issues here are:

1. Whether the appellant can be imprisoned in the absence of the DNA test.
2. Whether the PF3 does not have a sufficient standard to prove the case.
3. Whether the offence of rape was proved beyond reasonable doubt.

The first issue raised is that, the appellant was imprisoned in the absence of DNA test. Mr. Juma Sarige, Senior State Attorney, did support conviction of the appellant. I am of the view that since the appellant married a school girl and they lived together as husband and wife, the DNA test is not important in this matter. Accordingly, there is a proof that the pregnancy belongs to the appellant. This fact is not disputed either by the appellant.

Dealing with the issue of DNA testing and whether it is important or not the Court of Appeal in the case of **Juma Mahamudu V.R Criminal Appeal** No 47 of 2013 CAT held at Mbeya, stated that;

"Even If we are holding that a DNA test may reveal better results than other form of examination conducted to a raped lady, the present law does not lay down conditions for DNA in proof of rape cases. Not only that the Country (Tanzania) may not possess sufficient DNA test facilities, but we are convinced that the procedures provided under section 240 (3) of Cap 20 suffice to establish and provide correct results in examining the victim relating to such offence, the appellant is charged with".

Coming to the second issue, whether the PF3 does not have the sufficient standards to prove rape offence. Senior State Attorney Mr. Juma Sarige argued that, the appellant has failed to explain properly the value of the PF3 which was admitted in evidence as Exhibit PE2. The record is clear that the appellant did not reject the PF3 when it was tendered and admitted in evidence. In my view, this case shows that, the appellant is responsible for the victim's pregnancy, as they were living together as husband and wife.

After being tested the victim was found to be pregnant. I see that the PF3 is used to show that there is pregnancy and the rape offence was behind it. Evidence of PW.5 a doctor proved penetration. The victim connects the appellant with the offence of rape and impregnating the school girl.

Evidence of expert, the doctor with special knowledge and understanding is trustful. Experts are people possessing special qualification in the field in which they are called to opine or to testify. The expert opinion is obtained in the field and the witness is sufficiently skilled in the subject of an expert opinion.

I do not see anything to disregard the evidence of PW5. Simply, a proof is required from an expert with sufficient skills and experience to enable the witness to express an opinion which would assist the court to form a correct judgment on the issue. In the case of **Agness Doris Lindu V. Republic** (1980) TLR it was stated that: -

"The Court is not bound to accept medical testimony, if there is good reasons for not doing so, At the end of the day, that is, it remains the duty of the trial Court to make the findings and in doing so, it is incumbent upon it to look at, and assess, the totality of the evidence before it, including that of a medical expert".

With regard to the third issue, whether the offence of rape and impregnating a school girl was proved beyond reasonable doubt. It is my opinion that the appellant was convicted based on the victim's evidence, and evidence of a doctor who tendered the PF3 exhibit PE2. The doctor examined the victim and found that the victim was pregnant.

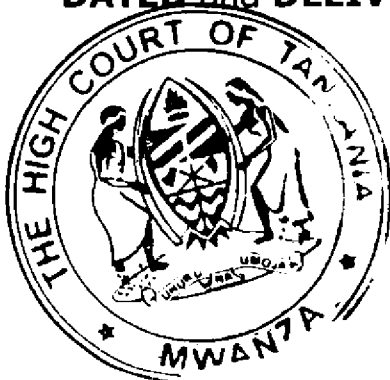
In conjunction, there was also the evidence of the caution statement (Exhibit PE3) which the appellant did not object and the evidence of the teacher in Bwanga A Primary School, who tendered the attendance register as an exhibit PE1 without objection from the appellant. There was likewise the evidence of the victim (PW1) in which the victim explained that she was aged 16 years old. With such evidence, the offence of rape and impregnating a student of Bwanga A Primary School was well proven. I do not hesitate to say that the appellant cannot evade the crime of rape and impregnating a school student. First of all because the appellant used to work with the victim's family. Secondly, the evidence proved that the victim is pregnant which means that the offence of rape cannot be avoided. Thirdly, they were arrested while the appellant was living with the victim as a husband and wife. Three testimonies of the teacher of Bwanga A Primary School proved that the victim was the student. The evidence of the caution statement of

the appellant exhibit PE3 and the evidence of PF3 exhibit PE2 linked the appellant with the offence of rape and impregnating a school girl.

As the crimes of rape and impregnating a school girl were proved to the required standard, the appellant could not establish the grounds of appeal. He only requested the Court to adopt them. I agree with the submission of the Senior State Attorney who supported the conviction of the appellant.

Consequently, all grounds of appeal concerning rape and impregnating a school girl are hereby dismissed. In the upshot, the appeal is found to have no merit. It is hereby dismissed. Order accordingly
at **MWANZA** this 27th day of February 2020

DATED and DELIVERED at **MWANZA** this 27th day of February 2020.




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U. E. MADEHA
Judge
27.2.2020