

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC CRIMINAL APPEAL NO. 15 OF 2020

(Original Criminal Case No. 19 of 2019 of the District Court of Bukombe District at Bukombe Before Moshi - RM)

PAULO S/O KWIKEAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

01 & 10.07.2020

RUMANYIKA, J.:

The appeal is against conviction and custodial sentences of the concurrently running seven (7) years and 30 (thirty) years with respect to charges of abduction of a girl and impregnating a school girl C/s 133 of the Penal Code (the code) and Section 60 A of Education Act Chapters 16 and 353 now RE.2019 respectively. The particulars of offence will read that Paulo Kwiki (the appellant) did on diverse date of April 2018 at 19:30 hours at Ilangale village Mbogwe district Geita unlawfully abduct and impregnate Vumilia Kulwa 18 yrs old girl of Masumbwe secondary school.

Essentially the grounds of appeal are two **(2)** which revolve around points:-

1. That the prosecution case wasn't beyond reasonable doubts proved.

2. That the learned trial resident magistrate improperly evaluated the evidence as she was not a school girl but one lawfully married to the appellant.

Though were dully notified, when the appeal was called on 1/7/2020 for hearing, the Respondent Republic was without notice not in attendance. I dispensed with the latter's appearance.

Following the global outbreak of coronavirus I heard the appellant by way of audio teleconferencing through mobile number 0735 706 035.

The appellant made no submissions obviously he relied on the contents of his memorandum of appeal.

The evidence on record in a nutshell runs thus:-

Pw1 Vumilia Kulwa sworn and stated that she was a drop out Form II pupil of Masumbwe secondary school but now pregnant and wife of the appellant (on that ground expelled from school in January, 2018) the appellant, the 1st man she ever have had met in her life having seduced her and they married in April, 2018.

Pw2 Maswa Jena a peasant of Masumbwe and grandfather of Pw1 at the time the latter's custodian/guardian he stated that as the victim got missing in April, 2018 and he reported the case to police they traced them and arrested both the appellant and Pw1 whereby the latter was examined and found pregnant.

Pw3 Yusuph Mahuma a secondary school teacher of Masumbwe sworn and stated that Pw1 was admitted No. 3339 in 2017 but absconded just before she sat for 2018 Form II national examinations (copies of TSM 9 Form and Attendance Register (Exhibit "P1") collectively.

Pw4 G. 9265 DC Salum of Masumbwe police post affirmed and stated that following the incident and as he was duly assigned the matter, he interrogated and recorded the appellant's cautioned statement (Exhibit "P3").

Pw5 Dr. John Charles Mgosha a medical doctor of Masumbwe health center sworn and stated that as he was at work on 10/10/2019 he, in ordinary course of business examined Pw1 and he found she was 8 (eight) months pregnant (copy of the PF3 – exhibit "P4").

The appellant (himself the sole defence witness) sworn and stated that as together with Pw1 were found cohabiting each other, and in that regard having agreed/arranged for Pw1's grandfather (Pw2) to receive dowry of ten (10) cows but for some reasons the appellant failed, the grandfather wasn't happy and he reported the appellant and the latter was arrested, arraigned in court, he was so prosecuted, convicted and sentenced hence the appeal. That is it.

It appears beyond reasonable doubts convinced, the learned trial resident magistrate entertained no doubts that the secondary school girl (Pw1) was abducted from Pw2 and impregnated by the appellant hence the conviction:-

... this court finds that the prosecution prove abduction, even the accused never disputed on that he just insist on process of bargaining dowry. On issue of impregnating a school girl....the prosecution side manage to prove the offence of impregnating a school

**girl as the PW1 herself introduces to be a student,
evidence supported by PW2 her grandfather**

The issue is whether the appellant had abducted Pw1 from of Pw1 (the guardian) in her evidence, the adult Pw1 cut the long story short that she was married by the appellant since this fact in his testimonies the appellant supported only that he had failed to pay Pw2 the agreed dowry therefore on that grounds only the aggrieved Pw1's grandfather he had reported him. It is very unfortunate that the prosecution did not sufficiently counter the crucial defence evidence. Leave alone attempt to. The issue of abduction therefore was neither here nor there.

As for the issue of the appellant having impregnated a school girl, too the charges were not beyond reasonable doubts proved much as according to Pw5, Pw1 was eight (8) months pregnant and the evidence wasn't sufficiently controverted and the appellant therefore was not beyond reasonable doubts scientifically proved the responsible father much as quietly though, the appellant only admitted having had cohabited the girl and it is common knowledge that not every marriage guaranteed one pregnancies.

However, I once said it and I will repeat myself here that unless in statutory rape cases it was beyond doubts proved that the young girl was raped, any willful and apparently submissive girl shall be considered as having contributed to it all. A school girl who is, in the back of parents or in this case guardian fled the home and assumes a matrimonial life somewhere she cannot directly or indirectly seek amnesty of the Sexual Offences Special Provisions Act or Education Act for that matter. It is high

time now that to start with local government authorities (Bukombe District counsel) for that matter enact a Subsidiary Legislation that would reasonably impose criminal liability and sanction such irresponsible school girls much as the present statutory rape law is men law!

The appeal is allowed in its entirety. Unless he was legally held further for any lawful causes, the appellant be released immediately from prison. It is ordered accordingly.

Right of appeal explained.


S. M. RUMANYIKA
JUDGE

08/07/2020

Judgment delivered under my hand and seal of the court in chambers this 10/7/2020 in absence of the parties with notice.




S. M. RUMANYIKA
JUDGE

10/07/2020