

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

HC. CRIMINAL APPEAL NO. 76 OF 2019

(Arising from Criminal Case No. 03 of 2020 of the District Court of
Ukerewe at Nansio)

DENIS PHILOPO S/O MABAGALA APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

Last Order: 08.06.2020

Judgment Date: 08.06.2020

A.Z.MGEYEKWA, J

The appellant DENIS PHILOPO S/O MABAGALA was arraigned by the District Court of Ukerewe at Nansio and stand charged with an offence of impregnating a primary school girl contrary to section 60 A

(3) of the Education Act, Cap.353 [R.E 2002] as amended by the Act No. 2 of 2016.

The brief background to this appeal is that it is alleged by the prosecution that between May, 2019 and June, 2019 at Bukongo area within Ukerewe District in Mwanza region the accused did have sexual intercourse with one A D/O P aged 16 years old, a pupil of standard 7 at Bukongo Primary School and that she was impregnated.

Consequently, the appellant was convicted and sentenced as he stands now. Dissatisfied by both conviction and sentence, the appellant has appealed to this court.

In support of the appeal, the appellant filed four grounds of Appeal, which can be crystallized as follows:-

- 1. That the trial court erred to base on the evidence of a schoolgirl only due to the fact that she mentioned the accused as the culprit.*
- 2. That the trial court to conduct a DNA test to prove his responsibility for the alleged pregnancy.*
- 3. That it can be true the girl got pregnant but to mention that the accused person is responsible was not enough for the trial court to*

agree as the prosecution had to prove beyond a reasonable doubt to the case.

4. That the girl was 15 years old, it is the duty of the trial court to ask why she did not inform her parents about her pregnancy.

Following the global outbreak of the Worldwide COVID - 19 pandemic (Corona virus), the hearing was conducted via audio teleconference, the appellant, and Ms. Fyeregete, learned Senior State Attorney were remotely present.

The appellant being a layman did not have much to say he prayed this court to perform a DNA test to prove if he is responsible. He also prays the court to adopt his grounds of appeal and set him free as he is innocent.

Ms. Fyeregete in support of the appeal stated that PW3 testified in court that the appellant is responsible for the pregnancy, however, there is no evidence which shows that the appellant was responsible for the said pregnancy. She went on to state that a DNA test was not conducted, therefore, the same creates doubt as to whether the appellant impregnated the victim. For this reason, she supported the

appeal since the prosecution did not prove the case beyond reasonable doubt.

In his brief rejoinder, the appellant had not much to say, he stated that he is not able to impregnate a person and he denied having raped the victim. He concluded by praying for this court to set him free.

Having considered the grounds of appeal and the submissions made by the learned State Attorney and the appellant, I will determine the issue of ***whether or not the present appeal is meritorious.***

I have gone through the trial court records and found that the prosecution did not prove the second count; impregnating a Schoolgirl. No evidence shows that the appellant was responsible for the said pregnancy and no DNA test was conducted to prove that the appellant impregnated the victim. The same creates doubt as to whether the appellant impregnated the victim considering that the appellant has denied the chargers. For this reason, I have found that the trial court misdirected itself by convicting the appellant for an offence which was not proved beyond reasonable doubt.

With the foregoing observation, all grounds of appeal are answered in affirmative that the prosecution case did not prove the case beyond reasonable doubt and occasioned to failure of justice on the part of the appellant. It is trite law that where there is doubt the same is resolved in favour of the appellant as it was stated in the case of **Bigara Kiguru v R** Criminal Appeal No. 153 of 2011, where the Court of Appeal held that:-

"Failure to prove the case the benefit goes to the accused."

For the aforesaid reasons, facts, the principle of law and authorities, I allow the appeal, quash the conviction, and set aside the sentence imposed against the appellant. I order for an immediate release of the appellant unless held for other lawful reasons.

Order accordingly.

DATED at Mwanza this 8th day of June, 2020.


A.Z.MGEYEKWA

JUDGE

08.06.2020

Judgment delivered on this 8th day of June, 2020 via audio teleconference, and both parties were remotely present.


A.Z.MGEYEKWA

JUDGE

08.06.2020