THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

AT MBEYA

CRIMINAL APPEAL NO. 7/2020

(From the District Court of Mbarali, Mbeya No. 143/2018)

1) VITUS MANGA

2) SHINJE NYANGU @DOI

3) OMBENI MANGA .....**APPELLANTS**

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Date of last order: 15.06. 2020

Date of Judgment: 16.06.2020

Dr. Mambi, J.

In the District Court of Mbarali at Mbarali, Mbeya Region, the appellants were jointly charged with an offence of grievous harm c/s 225 of the Penal Code Cap 16 [R.E.2002]. The records from the trial court show that the appellants on the 27th day of September 2018 at 19:00 did cause grievous harm to one girl using a knife and

a stick. They were convicted and sentenced to the total of three and half years.

Aggrieved, the appellants lodged their Criminal Appeal in this Court to challenge the conviction and sentence of the trial court. The appellant preferred nine similar grounds of appeal.

The hearing of this matter was done electronically where all parties who remained at their places were electronically connected. The appellant who was unrepresented had nothing to add apart from adopting and relying on his grounds of appeal.

During hearing which was done electronically where both prates were connected through video conference, the appellants who were unrepresented adopted their grounds of appeal and they had nothing to add. The Republic through the Learned State Attorney Ms Zena James briefly submitted that she does agree with the grounds of appeal.

The Learned State Attorney submitted that, the evidence of the victim indicates that she recognized the appellants. PW1 and PW4 is clear that the appellants were identified at the scene committing the crime as charged. Ms Zena argued that all the grounds of appeal have no merit since the prosecution proved the charges against the accused/appellants beyond reasonable doubt.

The learned State Attorney further submitted that the evidence of PW1 (Victim) and PW4 is clear that the appellants caused grievous harm to her on several parties of the body.

I have thoroughly gone through the grounds of appeal raised and the submissions of both parties. The main issue is whether the prosecution proved the charges on both two counts beyond reasonable doubt on not. I am aware on the position of the law that the prosecution is required to prove the case against the accused persons beyond reasonable doubt.

The general rule in criminal cases is that the burden of proof rests throughout with the prosecution, usually the state (See ***Ali Ahmed Saleh Amgara v R [1959] EA 654)***. This means that the principal burden is on the accuser, and in criminal cases the accuser is the prosecution, usually the state". The Court of in ***Christian s/o Kaale and Rwekiza s/o Bernard Vs R [1992] TLR 302*** stated that the prosecution has a duty to prove the charge against the accused beyond all reasonable doubt and the burden of proof has always remained on the state throughout. The rationale for this principle and legal position is that since the burden lies throughout on the state (the Republic), the accused has no burden or onus of proof except in a few cases where he would be under the burden to prove certain matters. This position was clearly clarified and underscored by the court in ***Milburn v Regina [1954] TLR 27*** where the court noted that:

"it is an elementary rule that it is for the prosecution (the Republic) to prove its case beyond reasonable doubt and that should be kept in mind in all criminal cases".

There is no doubt that the trial court rightly found the appellants guilty as charged. The question before this court is that, did the prosecution proved an offence of rape beyond reasonable doubt. The trial records appears that the victim of rape (PW1) was attacked and grievously harmed on her head and near her right breast.

Looking at the records from the trial court. I have no doubt that the evidence show that the offence of was really established and proved beyond reasonable doubt. The evidence of the victim is clear that he saw the accused/appellants invading her with a knife and stick. I don't need to dwell much on this since prosecution evidence as indicated under the proceedings and judgment of the trial court is clear. In this regard I find the trial magistrate properly found the accused/applents guilty.

However, I wish to highlight that the offence under which the appellants was supposed to be charged and convicted has minimum sentence of five years. The word ***"liable"*** under the provision of the law (section 225 of the Penal Code) in my view means five years imprisonment is the maximum sentence but the court has discretion to impose lesser offence depending on the circumstance of the case. It is true the trial magistrate used her distraction and sentenced the appellant for three and half years but in my view the trial magistrate was required to be more lenient taking into account the circumstance of the case. The records show that the Trial Magistrate didn't give any reason as to why she opted

for three and half years imprisonment instead of lesser sentence while this was the first offence to the appellants. The Court in ***BERNADETA PAUL v REPUBLIC (supra)*** further observed that**:** Court in this case observed that:

> *"An appellate court should not interfere with the discretion exercised by a trial judge as to sentence except in such cases where it appears that in assessing sentence the judge has* ***acted upon some wrong principle or has imposed a sentence which is either patently inadequate or manifestly excessive".***

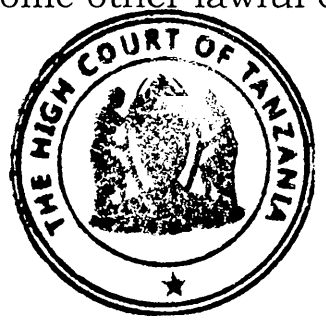
In our case in hand it is clear from the records that the Trial Magistrate acted upon some wrong principles and imposed a sentence which in my view is manifestly excessive which warrants interference of this court inevitable. In my view, the Trial Magistrate was required to be more lenient (between one and half or two years imprisonment) to the appellants given the circumstance of this case taking into account that it was his first offence. I thus find it proper for the appellants to serve two years and six months from the date they were sentenced at the trial court.

I am of the view that a term of imprisonment of two years could be a lesson for them to learn that crime does not pay. However, this court find it justice to order the appellants to serve a sentence of two years from the date they first appeared to court on hearing that is 12/10/2018. This means that the appellants have now been in custody for one year and nine months.

This means that this appeal is partly allowed to the extent of the orders I have made. The appellants will thus serve the sentence of two years imprisonment

However, considering the period the appellants have been in custody (almost two years), I find proper the appellants to be released from the prisons. I am of the view that a term of imprisonment of more one year from the date hereof, could be a lesson for them to learn that crime does not pay.

This means that this appeal is partly allowed to the extent of the orders I have made. This court thus orders the appellants to be released from prison unless they are is otherwise continuously held for some other lawful cause.



DR. A.J. MAMBI

JUDGE

16.06.2020

Judgment delivered online through virtual court this 16th day of June 2020 in presence of both parties.

DR. A.J. MAMBI

JUDGE

16.06.2020

Right of Appeal explained.

DR. A.J. MAMBI

JUDGE

16.06.2020