

IN THE HIGH COURT OF TANZANIA
(IRINGA DISTRICT REGISTRY)
AT IRINGA
APPELLATE JURISDICTION

DC. CRIMINAL APPEAL NO. 2 OF 2020
(From Ludewa District Court at Ludewa,
Criminal Case No. 16 of 2019)

ALBERTO S/O MTEGAAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

KENTE, J;

Before the District Court of Ludewa the appellant Alberto Mtega was charged with the rape contrary to Sections 130 (1) (2) (e) and 131 (1) of the **Penal Code**. He was convicted as charged and sentenced to life imprisonment. Dissatisfied, the appellant now appeals against both the conviction and sentence.

The appellant is complaining in the petition of appeal that he was wrongly convicted as there was no independent evidence to implicate him. Moreover, he is challenging the decision of the trial

District Court on the grounds that there was no evidence showing that he was living with PW1 as husband and wife and finally that the prosecution had failed to prove the charges against him beyond reasonable doubt.

The trial Magistrate believed the evidence of the victim's mother one Bonita Mtega (PW1) and the victim herself (PW2) who were the eye witnesses in this case. He also believed one Mussa Emmanuel Lugwisha a Clinical Officer who examined the complainant and certified in his report (Exhibit P1) that indeed she was raped.

Before this court, the appellant appeared in person fending for himself. The respondent's case was advocated for by Ms. Kasana Maziku learned Senior State Attorney. It is also pertinent to state at this juncture that the appeal was argued by way of written legal arguments.

With regard to the first ground of complaint in which the appellant is challenging the decision of the trial District Court on the grounds that, his conviction was based on the evidence of PW1 and PW2 without taking into account that there was no any other

independent corroborative evidence to implicate him, I would say that there is no substance in the appellant's complaint. While I totally agree with Ms. Maziku learned Senior State Attorney on the stance of the law that true evidence of rape must come from the victim, I also think that this is one of the rare cases in which culprit was caught in the act of committing the offence or *in flagrante delicto* as it is commonly known in legal parlance. The evidence which showed that, the appellant had the carnal knowledge of PW1 did not come from the testimony of PW1 herself only, but also the testimony of her mother PW1 who told the court that when she arrived home and went straight into the bedroom, she found the appellant and PW1 lying in bed in the circumstances suggesting that they had immediately before been involved in a sexual encounter. It was the testimony of both PW1 and PW2 that having realised that he had been caught bang to rights, the appellant pounced on her, beating her severely and locked her and her children inside their house apparently with a view to preventing both PW1 and PW2 from reporting the said incident. Taking into account this evidence which was not contradicted, I am satisfied and I have no different views

from those held by the learned trial Magistrate that on the material day the appellant had the carnal knowledge of PW2 who was a young girl then aged 9 years.

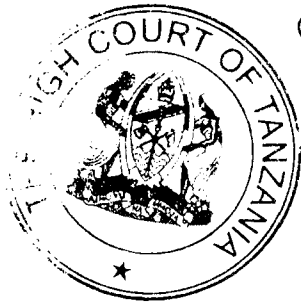
Keeping in mind what I have just said, I find it rather superfluous to consider and determine the appellant's second ground of complaint that there was no evidence showing that he was living with PW1 as husband and wife. While I entertain no doubt whatsoever that, on the basis of the evidence led by the prosecution showing that indeed the two were living together as husband and wife, I am of the view that the above finding has nothing material to bear on the appellant's culpability or innocence in this case. As will be recalled, in his defence the appellant did not lead any evidence with a view to distancing himself from the scene of the crime. In other words, the appellant's guilty was not dependent upon his living with PW1 as husband and wife. His complaints in the second ground of appeal are therefore unfounded.

On the totality and the nature of the evidence led by the prosecution side and in view of the appellant's defence version which was more or less an allocutus than defence evidence, I find the

present appeal to have no merit. The sentence imposed on the appellant is statutory under the law and I therefore sustain it. All in all, the appeal is dismissed in its entirety.

It is so ordered.

DATED at IRINGA this 2nd day of November, 2020.




P. M. KENTE
JUDGE