

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT SUMBAWANGA

DC CRIMINAL APPEAL NO. 09 OF 2019

*(Originating from Criminal Case No. 178 of 2016 from Resident
Magistrate Court of Katavi at Mpanda)*

ALLY S/O RASHIDI @ ALLY MWIZI APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

Date of last Order: 06/08/2020

Date of Judgment: 30/10/2020

JUDGMENT

C.P. MKEHA, J

The appellant was arraigned before the Resident Magistrate's Court of Katavi of unnatural offence contrary to section 154(1)(a) of the Penal Code. It was alleged by the prosecution that on 17th day of June, 2016 at "Kotazi" Area within Mpanda District in Katavi Region, the appellant, did have carnal knowledge against the order of nature to one lady aged 25 years, who in this judgment shall be referred to as "S J" or the victim interchangeably. When the charges were read over to the appellant, he protested his innocence. However, at the end of trial, the appellant was found guilty as charged. He was convicted and sentenced to be imprisoned for thirty (30) years. The appellant was not satisfied with conviction and sentence. He thus appealed to this court. That is how present appeal found its way before this court.

The initial Petition of Appeal consists of the following grounds of appeal:

1. That, the trial court erred at law by convicting the appellant on charges which were not proved beyond all reasonable doubt as required by law
2. That, the trial court erred both at law and fact by believing evidence of PW3 who testified that he found sperms, bruises and blood in the victim's anus without proof whatsoever.
3. That, the trial court erred at law and fact to convict the appellant by assuming the role of the prosecution side and admitting the so called sperms testified before the court by PW3 to be emitted by the appellant without scientific proof.
4. That, the trial court misdirected itself by convicting and sentencing the appellant without considering that none of the prosecution witnesses testified to have seen the appellant sodomizing the victim.

The appellant's supplementary petition of appeal consists of the following grounds:

1. That, the judgment is in contravention of provisions of section 312(2) of the Criminal Procedure Act as the trial Magistrate cited incomplete and unfinished section of law something which violated the mandatory requirement.
2. That, the trial court erred in law and fact to convict the appellant basing on prosecution evidence which lacked material facts to constitute such conviction and
3. That, the trial court massively and incurably gone astray in law and fact to convict the appellant relying on ingredients of prosecution evidence without taking into consideration that the same were contradictive, problematic and unsusceptible of proof (sic).

When the appellant was invited to argue his appeal he merely adopted all his grounds of appeal.

Mr. Peres learned State Attorney resisted the appeal. The learned State Attorney submitted that, while the appellant was of the view that his case was not proved and that Exhibit P2 was not filled basing on scientific proof, it was the respondent's position that the case had been proved to the required standard.

The learned State Attorney made reference to the testimonies of PW1, PW2 and PW4 which in his view proved the fact that the appellant committed an act of unnatural offence against the victim. He also made reference to the case of **Seleman Makumba Vs. Republic (2006) TLR 384** stressing that in sexual offences, best evidence comes from the victim as it happened in the present case. Reference was also made at page 6 of the trial court's record whereby the victim testified on how she was carnally known by the appellant against the order of nature. According to the learned State Attorney, the testimony of the victim was corroborated by the evidence of PW2, PW4 and PW5.

The learned State Attorney went on to submit that, under section 240(1) of the Criminal Procedure Act, exhibit PE2 was receivable. The learned State Attorney added that the Clinical Officer appeared to testify in the presence of the appellant. Reference was made to page 10 of the record. According to the learned State Attorney, PW3 was entitled to credence.

When the appellant rose to rejoin, he submitted that the victim was a liar who demanded to be shown her stolen properties which the appellant did not know. The appellant renounced having committed the offence.

All the appellant's grounds of appeal revolve around one main complaint that the case against him was not proved to the required standard. As such, the determinative issue in this appeal is whether there was sufficient evidence on record to lead to the appellant's conviction.

There was evidence from PW1 on how the appellant inserted his male organ into her anus and that the appellant ejected sperms into the victim's anus and that, the said event was done by the appellant after he had forcefully removed PW1's trouser and pant from her body. **See** pages 5 to 7 of the trial court's typed proceedings. It was after 19.45 hours. There was also evidence of PW5 one Machumu Manyama on how he rescued the victim from the appellant's hands when the victim was crying for help after the happening of the event. It was at about 21.00 hours. PW5 managed to identify the appellant. When PW5 ordered the appellant to release the victim, the victim complied. The appellant did not challenge PW5's testimony on those vital aspects of the case.

PW3 who was a Clinical Officer testified on how on 17/06/2016 at about 23.45 hours, medically examined the victim. He found bruises and fluid mixed with blood in the victim's anus. Upon conducting laboratory examination, he found that, the fluids were actually live sperms. PW3's findings are found on exhibit P2. **See** pages 10 to 11 of the typed proceedings of the trial court.

In his defence, the appellant did not dispute the fact that he indeed met the victim on the night of 17/06/2016 though for different reasons. He however refused to have sodomized the victim as there was no eye witness of the event and further that his sperms were not examined to come to the conclusion that what PW3 found in the victim's anus were indeed his sperms.

In circumstances whereby the appellant had not successfully contradicted PW1's testimony on the happening of the event, which testimony was corroborated by testimonies of PW2, PW4 and PW5 on what befallen the victim at night of 17/06/2016, the trial Magistrate was justified to arrive at a conclusion that it was indeed the appellant who carnally known the victim against the order of nature. Like the trial Magistrate, I find that, the appellant's defence did not cast any reasonable doubt to the strong case made by the prosecution. In the upshot, I find no merit in any of the grounds of appeal. The appeal stands dismissed in its entirety.

Dated at **SUMBAWANGA** this 30th day of October, 2020.




C.P. MKEHA

JUDGE

30/10/2020

Court: Judgment is delivered in the presence of the appellant in person and Mr. Mwandoloma learned State Attorney for the respondent.




C.P. MKEHA

JUDGE

30/10/2020

Court: Right of appeal explained.




C.P. MKEHA

JUDGE

30/10/2020