

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)**

AT DODOMA

(APPELLATE JURISDICTION)

(DC) CRIMINAL APPEAL NO. 19 OF 2020

(Original Criminal Case No. 25 of 2019 of the District Court of
Singida at Singida)

JUMANNE RAMADHANI APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

6/5/2020 & 27/5/2020

JUDGMENT

MASAJU, J

The Appellant, Jumanne Ramadhani, was charged with, and convicted of Rape contrary to sections 130 (1) (2) (e) and 131 (1) of the Penal Code, [Cap 16] and Impregnating a Secondary School Girl contrary to section 60A (3) of the Education Act, [cap 353] by the Resident Magistrate Court of Singida at Singida. He was sentenced to serve 30 years in jail, on each offence the sentences thereof running consecutively. That is to say, the Appellant was condemned to serve 60 years in prison,

hence this appeal against both the conviction and sentence. The Appellant is said to have raped and impregnated his own biological daughter, one Fadhila Jumanne Ramadhani then 16 years old girl and a Form II Student at Mtinko Secondary School.

According to the particulars of offence (1st count: Rape) on the charge sheet, the Appellant *"on diverse unknown day of October, 2017 to 16th day of January, 2019 at Malolo village, Mtinko Ward Mtinko Division within District and Region of Singida had sexual intercourse with one FADHILA D/O JUMANNE RAMADHANI a girl of sixteen (16) years and a Form II Student at Mtinko Secondary School."* The particulars of offence (2nd count: Impregnating a Secondary School Girl) were that the Appellant *"on diverse unknown day of October, 2017 to 16th day of January, 2019 at Malolo village, Mtinko Ward Mtinko Division within District and Region of Singida Impregnate one FADHILA D/O JUMANNE RAMADHANI a girl of sixteen (16) years and a Form II Student at Mtinko Secondary School."*

Indeed, there is zero doubt that the victim of crime Fadhila Jumanne Ramadhan (PW1) was Form II B Student at Mtinko Secondary School as per Ester Jacob Tarimo (PW3), Mtinko Secondary School Form II B January, 2019 Attendance Register (Exhibit P2) when she was 16 years

old, according to her mother Amina Shaban (PW2), and her Affidavit (Exhibit P1). That by the 23rd day of January, 2019 the said Fadhila Jumanne Ramadhani was allegedly 29 weeks old pregnant school girl as per Esther Jacob Tarimo (PW3) Dr. Deus John Nzela (PW4), the Medical Examination Report (PF3 Prosecution Exhibit P4). The maternity clinic card (Prosecution Exhibit P5) put the alleged pregnancy at 7 months old. The mind boggling problem is the identity of the person who was responsible for the two offences taking into account the fact that the Appellant (DW1) denied committing the offences during his defence in the trial Court and when he appeared before the Court to argue his appeal on the 6th day of May, 2020 in the absence of the paternity proof of the child, if any, born of the alleged sexual relations between the father and his daughter.

During the trial, Fadhila Jumanne Ramadhan (PW1) testified that the Appellant, her father is the one who impregnated her, for he had been having sexual inter course with her several times since she was in class seven. The said Fadhila Jumanne Ramadhani (PW1) did not state or disclose as to whether or not she had sexual relations with some other persons apart from her own biological father (the Appellant). The Prosecution case evidence is indeed, silent on this aspect. Even when

Fadhila Jumanne Ramadhan (PW1) testified in the trial Court she did not state that the Appellant was the only person to have had sexual relations with her. The prosecution witness, WP 7596 DC Veronica (PW5) did not record the witnesses statements, she just collected the exhibits and sent the police case file to the State Attorney. Since the said witness didn't investigate the case, her evidence in the trial Court was not helpful on shedding light on who really was responsible for the two sexual offences.

The Court is of the considered reasoning and position that since even the dates on which the Appellant allegedly had carnal knowledge of her daughter Fadhila Jumanne Ramadhan (PW1) are not known, and the said Fadhila Jumanne Ramadhan (PW1) has not testified that she didn't have any other person who had carnally known her apart from the Appellant, it would be a medical departure from the standard of proof in criminal justice to hold the Appellant responsible for the two offences in the circumstances where the Appellant was not charged with incest as well, for the alleged victim of crime was his biological daughter. The Court is therefore of the considered position that the prosecution case was not proved beyond reasonable doubt in the trial Court, the benefit of doubt thereof going to the Appellant. Indeed, the Appellant had stated in the 6th ground of appeal

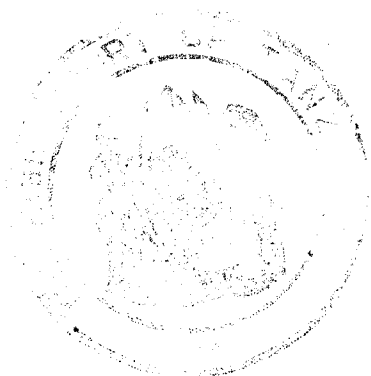
that there was doubt that he had actually raped and impregnated his own daughter, which ground the Court finds meritorious.

That being the case the Respondent Republic's contest of the appeal, when the appeal was heard in the Court on the 6th day of May, 2020 through the service of Ms. Ngolo Dabuya, the learned State Attorney that the prosecution case had been proved beyond reasonable doubt in the trial Court on the strength of evidence by Fadhila Jumanne Ramadhan (PW1) allegedly corroborated by PW4 is not so powerful. The 2nd, 4th, 6th and 9th Appellant's grounds of appeal are worth of merit. The said grounds of appeal were adopted by the layman Appellant along with other grounds of appeal in the Petition of Appeal to form his submissions in support of the Appeal in the Court as the Appellant prayed the Court to allow the appeal and let him free, for allegedly he did not commit the offences he had been convicted of in the trial Court. Indeed, as so rightly submitted by the Respondent Republic in the right of **Seleman Makumba V. R [2006] TLR 379** in sexual offences, the true evidence is that of the victim of crime. But the said evidence should be credible and true as per section 127 (7) of the Evidence Act, [Cap 6] in order to be acted upon by the Court to hold one criminally liable for a sexual crime. Equally important is that in

Hija Mgeni Mohamed V. R (CAT) Criminal Appeal No. 195 of 2011

Dar es Salaam Registry (Unreported) it has been held that evidence has to be led that the victim was indeed raped on the date particularized on the charge sheet not mere assertions that the accused was the victim's lover.

That said, the meritorious appeal is hereby allowed accordingly. The conviction and sentence are, respectively, quashed and set aside. The Appellant should be released from prison forthwith unless otherwise lawfully held.




GEORGE M. MASAJU

JUDGE

27/5/2020