IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)
AT DODOMA

DC. CRIMINAL APPEAL NO. 90 OF 2020

(Originating from District Court of Singida at Singida Criminal Case No. 230/2019)

ABDUL BAKARI.....APPELLANT
VERSUS
THE REPUBLIC.....RESPONDENT

JUDGMENT

25/8/2021 & 15/09/2021

KAGOMBA, J

On 15/5/2020 the Appellant ABDUL BAKARI was convicted on a count of rape contrary to section 130(1) (2) and 132 (1) of the Penal Code Cap 16 Vol 1 R. E 2002 of the laws; and on a count of impregnating a secondary school girl contrary to section 60A(1) and (3) of the Education Act Cap 353 as amended by Section 22 of the Written Laws (Miscellaneous Amendment) (No. 2) Act of 2016. The conviction and eventual sentencing to imprisonment for thirty (30) years on each count was entered by the District Court of Singida at Singida in Criminal Case No. 230 of 2019, where the appellant (then "accused") was arraigned following serious allegations against him.

It was alleged before the District Court of Singida (the "trial Court") that ABDUL BAKARI on unknown dates of February 2019 at Mpititi Mudida village, Mudida Ward, Mtinko Division within the district and region of Singida, did have sexual intercourse with one Kesia D/O Joel, a fifteen (15)

years girl and in the process did impregnate her. Kesia was a form two student at Mudida Secondary School.

Before the trial Court five witness were called by prosecution to prove the case and several exhibits were also tendered for the same purpose. In summary of PW1 Joel Makya who is the father of the victim told the Court that his daughter, Kesia was born on 4/7/2004 and he submitted an affidavit to prove the age of her daughter which was admitted as exhibit "P1". PW1 also told the Court that on 14/2/2019 the victim could not go to school on account of stomach pain and headache. He asked the victim's mother to check the daughter. The mother came with the shocking news that the daughter was pregnant. The father (PW1) went to see the school administration where he was given a letter to take his daughter to Mudida dispensary for checkup.

The checkup result showed that the victim was eight months pregnant. The accused person was mentioned to PW1 as the one responsible for the pregnancy. This was revealed by Kesia, the victim herself. The Village Executive Officer and Ward Executive Officer were informed by PW1 of the incident. The accused person was arrested and taken to Mtinko Police Station where they were this time given a PF3 and took the victim to Mtinko Hospital. Upon examination, for the second time it would seem, the result were that the girl had a pregnancy of eight (8) months.

On cross examination during trial PW1 told the Court that the accused person had a habit of going to the home of the victim's father and that the victim named the accused person the as man responsible for the pregnancy.

The second witness was PW2 Kesia D/O Joel, the victim, who told the Court that on 13/10/2019 at night her parents called her to inquire about her health but she lied to them. She told the Court about the medical examination that was done on her and the results that she was eight months pregnant. She mentioned the accused person as the man responsible who started to sex with her since 2018 when she was in form one.

PW2 gave an account of how it happened on day one of her sexual intercourse with the accused person. She told the trial Court that the accused person had rented a room near the victim's home. That, the accused person was frequenting the victim's home so much that they were calling him brother. She said that she was being sent by the accused person to buy him some items at a nearby shop. In the course of this "brotherly" relationship, one day in 2018 the accused person went to the victim's home and told the victim to go to the accused's rented room so that he could send her to a shop. The victim obliged. However, on arrival at the accused's door the accused person seduced her to enter inside so that she could not be seen by neigbhours. The victim again obliged. She entered the room and was given juice to drink and then the accused person told her that he wanted her for sex. PW2, the victim, told the Court that, she refused to sex and told the accused person that she is a student. She told the trial Court that the accused person closed the door and took her to bed and did sex. She said it was day time. That the accused person told her to go back (home?). Later it became a continuous habit. She told the trial Court that last time they sexed was in June 2019.

On cross examination, PW2 told the Court that they started sexual intercourse in early 2018. That, the accused person switched on the radio and warned her not to tell anybody. She also told the Court that she has never had sexual intercourse with anybody other than the accused person who had warned her against doing sex with anybody else.

The third witness, PW3, John S/o Joseph, a medical doctor at Mntinko hospital, told the trial Court he examined the victim on 19/10/2019 when the victim and her father visited the hospital with PF3. He told the Court that after doing ultrasound he found the victim was 32 weeks and two days pregnant, the fetus had a heart rate of 139 and that the expected date of delivery was 9/12/2019. He added that having examined the victim he filled in the PF3 which was admitted in Court during trial as exhibit "P3".

The fourth witness was PW4 Godwin S/O Raphael, a teacher at Mudida Secondary School where the victim was schooling. He told the Court that the victim was one of his students in form IIA and he came to know of her absence on 7/10/2019.

PW4 tendered a certified copy of attendance register which was admitted as exhibit "P4" showing that the victim had not been attending school since the reports from hospital was received, from 7/10/2019.

The prosecution case was closed after receiving the testimony of PW5 WP 12372 DC Anna who told the trial Court that she investigated the case at Singida Central Police, where, they issued PF3 and took the victim to Sokoine Health Hospital where the girl was found to have been 32 weeks

pregnant. She told the trial Court that the accused person denied to have committed the offence.

After the above evidence was adduced the trial Court found the accused person with a case to answer. Upon his defence the accused person told the trial Court that he had a difference/dispute with the victim's father concerning some stolen properties, a difference which was once resolved. After his defence the Court framed one issue; whether the prosecution did prove the case beyond reasonable doubts. Upon analysis of the evidence adduced in Court, the trial Court found the prosecution had proved the case beyond reasonable doubt, convicted the accused person and sentenced him to a total of 60 years imprisonment. It is for this conviction and the sentence meted out to him that the accused person (non Appellant) has appalled to this Court.

In the Petition of Appeal, the Appellant stated ten (10) reasons for appealing to this Court. However, three reasons are not worthy the grounds of appeal but statements and prayers. The remaining seven reasons can be summarized and grouped into the following grounds of appeal, which this Court is going to address:

1. That, the trial Court erred in law and in facts for not noticing contradictions in prosecution witness and basing conviction on such contradictory evidence.
2. That, the trial Court erred in Law and in facts by accepting the testimony of PW2 who was 15years old as she adduced her testimony without taking an oath contrary to requirements of the law.

3. That, the Court erred in law and in facts by convicting the accused person basing on the weakness of his defence rather than the strength of prosecution evidence.

On the date set for hearing of the appeal, the appellant appeared in person under custody while the respondent (the Republic) was represented by Mr. Kyando learned State Attorney. The appellant prayed the Court to adopt the Petition of Appeal as his submission on his appeal. He prayed the Court to allow his appeal and set him free.

Mr. Kyando for the Republic supported both the conviction and sentence by the trial Court. He submitted that the offence of rape and impregnating a student required the prosecution to prove penetration of the accused's penis into the victims vagina, and absence of consent therefore as main ingredients of the offence. He argued that penetration was proved by the testimony of PW2, the victim who adduced evidence to the effect that she knew the appellant since 2018 till October, 2019, that the appellant was the only person she sexed with, the appellant warned her not to tell anybody and that she feared telling anybody until when she came to know she was 32- weeks pregnant. The learned State Attorney argued that the testimony of PW2 was corroborated by the evidence adduced by PW3 a medical doctor who examined PW2 and found that she was 32-weeks pregnant, plus PF3 tendered in Court to that effect. The learned State Attorney argued that the PF3 showed that the victim had done a sexual act which resulted into pregnancy which showed that there was penetration.

To augment his argument on proof of penetration, the learned State Attorney referred to the case of **SELEMAN MAKUMBA V. R [2006] TLR 379** where it was stated by the Court that reliable evidence in rape cases is the evidence of the victim, in this case the PW2. He also referred to the provision of Section 127(7) of the Evidence Act [Cap 6 R.E 2019] to the effect that in cases of sexual offence involving children, credible evidence is that adduced by the child. He argued that basing on the cited authorities, the evidence of PW2, the child victim, which was corroborated by PW3 medical doctor was enough and indeed proved beyond reasonable doubts that the appellant committed the offences charged.

Mr. Kyando further submitted that the trial Court cautioned itself in taking the testimony of PW2 and found her testimony credible. He said for that reason the evidence adduced was capable of sustaining the conviction. To cement on the strength of PW2's evidence, Mr. Kyando referred to the case of **GOODLUCK KYANDO V. R. [2006] TLR 363** where the Court stated that every witness has a right to be believed.

Mr. Kyando further submitted that the proof of consent to the sexual act by the victim was immaterial in law as the victim was a child of 15 years old and a student of form II. He said the evidence adduced by PW2 and PW4, her teacher showed that the victim was a child who could not consent. On poof of her age, he submitted that PW1 the victim's father tendered an affidavit of the birth of the victim to show thats he was a child. He thus found the appellant was properly convicted and sentenced by the trial Court and prayed this Court to uphold the decision of the trial Court accordingly.

Having careful gone through the submissions of the parties, I find one issue to be determined by this Court. The issue is whether the appellant's conviction and sentence by the trial Court is proper in law.

Before addressing the main issue, I wish to address one assertion made in the submission of Mr. Kyando regarding proof of penetration. In h submission Mr. Kyando has attempted to make an assertion that the pregnancy of the victim was a proof of penetration. I hold a different view. Pregnancy does not necessarily prove penetration of an accused person's penis into the vagina of a victim. Without dwelling on this argument, I would say that with advancement of medical science, pregnancies obtained remotely without any sexual intercourse are no news especially in well-equipped hospitals not only in developed world but also in our country. As such, it is dangerous to assume these days that whenever there is a pregnancy there was penetration of a man's genitals into the woman's sex organ. I resist to cite other example from the Holy books. Suffice to say in this regard that proof of penetration is a legal requirement in a case of rape and in this particular case such proof was not fully done. I shall revert to address the consequences of failure to prove penetration in this case. It all depends on the strength of the testimony of PW2 to conclude whether the prosecution side discharged its duty to prove penetration.

The first ground of appeal as recoined from the Petition of Appeal is on contradictions in prosecution evidence. The appellant has cited several pieces of testimonies which to him were contradictory. Ixtract and produce them here below:

i. While it is alleged that the appellant did have sexual intercourse with the victim on unknown date of February 2019 (as per page 1 of the trial Court judgment), on checkup of 14/2/2019 at Mudida dispensary the victim was found to be 8-months pregnant.

ii. While PW1 Joel Makya alleged that his daughter was taken for examination on 14/2/2019, PW2 Kisia Joel alleged that it was on 13/10/2019.

iii. While PW1 Joel Makya alleged that the victim was taken to Mudida Dispensary on 14/02/2019, PW3 John Joseph told the trial Court that he received the victim at Mtinko Hospital where he was a doctor on 19/10/2019.

iv. While PW3 John Joseph, examined the victim on 19/10/2019 PW4 Godwin Joseph a teacher at Mudida Secondary school alleged that the victim stopped attending school since the report from Hospital was received from 07/10/2019.

In the cases of **GAPCO UG. LTD. V AS TRANSPORT LTD, Civil Appeal No. 7 of 2007; SELLE AND ANOTHER V. ASSOCIATED MOTOR BOAT CO. LTD ANDOTHES [1968] E. A. 123** and in other case decided by this Court and the Court of Appeal, the duties of a first appellate Court have been well spelt. The Court, on first appeal has the duty to subject the whole evidence adduced during trial to a fresh exhaustive scrutiny by re-evaluating it and draw fresh conclusion therefrom as if it were a retrial of the case. In doing so, however, the first appellate Court shall take cognisance of the fact

that it never had an opportunity to examine the witnesses. I would now embark into discharging this duty in respect of the first ground of appeal as well as for remaining two other grounds, as far as applicable.

Regarding existence of contradictions cited by the appellant in the evidence adduced during trial, I shall address each set of the alleged contradiction as shown in paragraph (i) – to (iv) herein above. In paragraph (i) the appellant contests how the victim could be found to be eight (8) months pregnant on 14/02/2019 while it is alleged that the appellant had sex with her sometimes in February 2019. He states in the Petition of Appeal that such contradiction makes it evident that it is someone else who raped the victim and not the appellant. My first duty in dealing with this alleged contradiction is to determine whether the contradiction exists at all. It is true that on page 1 of the trial Court judgment, the trial magistrate recapped the particulars of offence as per the charge sheet showing that the appellant did have sexual intercourse with the victim on *"unknown dates of February, 2019."* It is also true that the evidence of PW1 is captured on page 2 of the judgment showing that on 14/2/2019 when the victim was taken for check up to Mudida dispensary the result showed that she was eight (8) months pregnant. As such the facts on which the appellant finds first contradiction are existing in the judgment. Would it then be said that there is a contradiction in the prosecution case? I think the answer is 'yes', and I shall demonstrate.

The charge sheet filed at the trial Court states that the appellant committed the alleged offence "On unknown dates of February 2019", and the date is unspecified in both counts of rape and impregnating a secondary

school girl. As such the dates of commission of the offence of rape was not known but the month was February and the year was 2019. This month and year the alleged of commission of the offences is in contrast with the testimony of PW2 the victim who is on page 2 of the judgment, recorded to have testified that the accused started to have sex with her "since 2018" when she was in form one. It is PW2's further testimony that the first sexual encounter between her and the accused person was one day in 2018 when he called her to his rented room so as to send her to a shop. It is not understood why the prosecution picked February 2019 while February 2019 was the month the pregnancy was discovered and not the date the rape was allegedly committed. To say the least, the prosecution case is found wanting in this aspect as the standard of proof in criminal cases is well known and well established. It is an apparent contradiction as the appellant stated that a rape committed in February 2019 could not result in eight (8) months pregnancy in the same month of the same year. The trial Court should have seen this contradiction and should have addressed it properly.

The second set of contradiction is alleged to be between the testimonies of PW1, Joel Makya and PW2 the victim regarding the date the victim was taken to hospital for examination. The appellant states that PW1 said the victim was taken to Mudida dispensary on 14/2/2019 while PW2 the victim said it was on 13/10/2019. I have gone through the Court proceedings and found that according to the testimony of PW2 the victim mentioned 13/10/2019 as the date she was questioned by her parents regarding her health. The questioning was done at night on the mentioned date. Her testimony is very clear that she was taken to hospital on 14/10/2019. As

such I find that there was no contradiction in this aspect, despite some of omission of words in the judgment of the trial Court on page 2 para. 3.

Regarding the third set of alleged contradiction, the appellant finds contradiction between the testimony of PW1 Joel Makya and PW3 John Joseph regarding the date the victim was taken to hospital for medical examination. He stated in his Petition of Appeal that while PW1 Joel Makya alleged that the victim was taken to Mudida dispensary on 14/02/2019, PW3 John Joseph told the trial Court that he received the victim who was accompanied by her father on 19/10/2019 at Mtinko Hospital.

I have re-examined the testimonies of PW1 and PW3 in this aspect. Firstly the record of proceeding shows that the victim was taken to two different hospitals on the same day. Firstly, she was taken to Mudida dispensary when her mother also accompanied her, and later, she was taken to Mtinko hospital after the victim was issued with a PF3 by Police.

The testimony of PW1 shows that both medical examinations of the victim were on 14/10/2019. This testimony is on page 6 of the typed trial Court proceedings. It is true also that on page 9 of the said proceedings PW3 John Joseph a Medical doctor told the Court that he received the victim who was brought by her father on 19/10/2019. This means there was contradiction in the two testimonies as pointed out by the appellant. I shall discuss the significance of this contradiction on dates of examination of victim later in this judgment.

The appellant finalized his endeavor of drilling holes in the prosecution case by pointing at the contradiction between the testimonies of PW3 John Joseph, who said he examined the victim on 19/10/2019 while PW4 Godwin Raphael Waitara, the victim's teacher, alleged that the victim stopped attending the school since the report from hospital was received on 07/10/2019. This contradiction raises a question of which report the school received from which hospital. It also puts to question the credibility of the evidence in this as aspect per the appellant's Petition of Appeal.

As stated in discussion of the previous set of contradiction, it is true as per trial Court proceedings that PW3 John Joseph told the Court that he examined the victim on 19/10/2019. It is also true that as per typed copy of trial Court judgment PW4 Godwin Raphael is on record saying that the girl had not been going to school since the report from hospital was received from 7/10/2019. The witness is also on record on page 11 of the typed proceedings saying that the student had not been attending school since 7/10/2019. In his other testimony on page 10 of the typed proceedings, PW4 Godwin Raphael is on record saying that 07/10/2019 is date he took rollcall and found the victim had been absent from school. Upon being cross examined by the accused PW4 repeated that the student had not been attending school since 7/10/2019 and that the Headmaster received report from Mudida Hospital on 14/10/2019. This date of 14/10/2019 is truly different from the date of 19/10/2019 mentioned by PW3 John Joseph. It is however the same date mentioned by PW1 the victim's father.

Having confirmed existence of contradictions in the set of testimonies in paragraph (i) (ii) and (iv) my evaluation of the total effect of these contradictions in (ii) and (iv) is that the same are borne out of capturing of records rather than the facts presented by witnesses. In my view, whether examination of the victim was done on 14/10/2019 or 19/10/2019 it does not so much matter if the fact remains that the victim was found to be pregnant. However, I take serious note of the contradiction in paragraph (i) of the stated sets of contradictions regarding the date the accused is alleged to have sex with the victim. The charge sheet mention "unknown date of February 2019" which is nowhere substantiated in evidence adduced in Court during trial. In the case of **SHEMSA KHALIFA AND 2 OTHERS V. SELEMANI**, Civil Appeal No. 82 of 2012 (unreported) the Court of Appeal held that a judgment of any Court must be grounded on evidence properly adduced during trial otherwise it is not a decision at all.

In the premises of the above cited decision. I find that the trial Court erred in convicting the accused with such conspicuous contradictions between the allegation of the date of commission of offence in the charge sheet with no evidence at all supporting the commission of offence on the alleged date. I could stop here and allow the appeal.

However, in my perusal of the trial Court proceedings. I found a serious ommission which I have to point out. PW1 the father of the victim tendered the affidavit of the birth of the victim as captured on page 6 of the typed proceedings. The same was admitted as exhibit "P1" but was not read in Court as required by law. The same happened for PW2 who tendered a clinic card on page 8 of the typed proceedings, PW3 John Joseph doctor at Mtinko

hospital who prayed to tender and read to the Court PF3 of the victim dated 16/10/2019 (exhibit "P3") captured on page 9 of the typed proceedings and PW4 Godwin Raphael, a teacher who tendered an attendance register of the victim at Mudida secondary school (exhibit P4) but all these exhibits were not read in Court.

The consequence of not reading out exhibits in Court after their admission is very prominent. The same are to be expunged. Accordingly, I have no option but to expunge all the documentary evidence admitted by the trial Court. My authority for this decision is from the case of **ROBINSON MWANJISI V. REPUBLIC** (2003) TLR 218 where the Court clearly explained that;

> *"Whenever it is intended to introduce any document in evidence, it should first be cleared for admission, and be actually admitted, before it can be read out.....*
> *In the light of the foregoing, Court Exhibits 1 and 2 are expunged from the record and there will be no further reference to them".*

Similarly in the case of **GEOPHREY JONATHAN @ KITOMARI V. THE REPUBLIC**, Criminal Appeal No. 237 of 2017, Court of Appeal at Arusha stated;

> *"It is trite principle that when a document is sought to be introduced in evidence three important functions must be performed by the court, clearing the document for admission, actual admission and finally, to ensure that the same is read out in Court.....*
> *The effect of the omission as held in all the above cited cases is to expunge the documents from the record".*

Also, in **PAUL THOMAS KOMBA & ANOTHER V. THE REPUBLIC** Criminal Appeal No. 177 of 2018, Court of Appeal at Dar es Salaam had this to say;

"Consequently, such omission to read over the cautioned statement to the appellants rendered the said cautioned statement to have no evidential value and hence, we accordingly expunge it from the evidence".

Having expunged all the documentary exhibits tendered, I would now wish to embark on a rather academic exercise. Firstly, to determine what remains in the prosecution case in absence of such documentary evidence and secondly by addressing albeit briefly, the remaining grounds of appeal before finalizing this judgment.

With regard to what remains after expunging the documentary evidence, the law requires that this Court should evaluate the remaining oral evidence to see if it would have been sufficient to convict the accused. It is my considered view that the expunging of exhibit P1, the affidavit of birth of the victim should not affect the oral evidence of PW1 that the victim was born on 4/7/2004. The father or mother of a child would be able to tell the date of birth of his or her child independent of the birth certificate or affidavit. In this particular case PW1 told the trial Court that his daughter was a third born and was born on 4/7/2004. The oral evidence of PW1 which was made upon affirmation before Court is thus admissible to prove the date of birth of the victim.

The expunging of a medical clinic card which was tendered by the victim would also not affect the oral evidence that the victim was pregnant. PW3 John Joseph who is a medical doctor told the trial Court that the victim was found to be eight months pregnant. Since PW3 made a sworn testimony before the Court, his evidence that the victim was pregnant would stand.

However, I have a different view with regard to PF 3 dated 16/10/2019 which PW3 prayed to tender and read it in Court but the Court neither ordered nor recorded its reading. The expunging of PF3 of the victim would go with its contents which include the facts that the pregnancy was 32 week and expected date of delivery was 9/12/2019. The significance of this expunged PF3 is that the exhibit was to corroborate the questionable date of the commission of the offence of rape and impregnating a student as per evidence of PW2 the victim who said she first had sexual intercourse with the appellant in early 2018 but the charge cited February 2019. It is my considered view that without such documentary evidence in the PF3 the impugned testimony of PW2 will be completely eroded. What will remain is the fact that the victim was pregnant but with nothing to link the pregnancy with the commission of the offence by the accused person.

The evidence of PW4 Godwin Raphael who tendered a copy of the victim's school attendance register would not have additional consequence to the prosecution case. Its value was more corroborative than substantive piece of evidence. In **STEVEN S/O JASSON AND 2 OTHERS V. R**, Criminal Appeal No. 79 of 1999 the Court of Appeal stated.

> *"However, it is common ground that the admissibility of evidence during the trial is one thing and the weight to be attached to it is a different matter....."*

In light of this point of view which is supported by the provision of section 70 of the **Evidence Act [Cap 6 R.E 2019**] it is inversely true that despite the expunging of the wrongly admitted documentary evidence during trial, the expunging of the mentioned exhibits from record has had no significant impact. The prosecution case was already ruined by the

contradiction in evidence raised and discussed in the first set of contradiction with regard to the date of commission of the offence and the age of the pregnancy. I am mindful of the decision in **SAID ALLY ISMAIL VS. REPUBLIC**, Criminal Appeal No. 241 of 2008 (unreported) where it was stated with regard to contradiction and discrepancies in evidence that;

> *".....it is not every discrepancy in the prosecutions witness that will cause the prosecution case to flop. It is only where the gist of the evidence is contradictory then the prosecution case will be dismantled....."*

In the case at hand, the discrepancies on the date of examination of the victim in hospital will not cause the prosecution case to flop. However, I am of a firm view that the contradiction as to when the appellant had sex with the victim goes to the very root of the prosecution case as the same contradict the charge sheet. It is trite law that the prosecution has to prove the offence in the charge beyond reasonable doubt. In this respect the prosecution case failed.

The second ground of appeal was that the trial Court erred in law and fact by accepting the testimony of PW2 who was 15 years old without taking an oath, contrary to the law.

Section 127(2) of the **Evidence Act [Cap 6 R. E 2019]** provides;

> *"A child of tender age may give evidence without taking an oath or making an affirmation but shall before giving evidence promise to tell the truth to the Court and not to tell any lies"*

Section 127 (4) provides that the expression "Child of tender age" means a child whose apparent age is not more than fourteen years. In the case at hand, PW2 the victim according to the testimony of her father (PW1) was of 15 years during the commission of the alleged offence. This is to say, PW2 was not a child of tender age. As such she could not enjoy the privilege of a person of tender age by testifying without taking an oath. However, I have perused the proceedings of the trial Court and found that PW2 was sworn before giving her testimony as recorded on page 7 of the typed proceedings. As such this ground of appeal lacks merit.

The last ground of appeal is that the trial Court convicted the appellant not on strength of prosecution evidence but on the weakness in defence evidence. I have reviewed the evidence of both the prosecution and the defence but could not find any clue to support this ground of appeal.

On page 5 of the judgment the trial Court shows how it has arrived at the decision. The Court summarized the testimonies of PW1 to PW5 as well as the defence evidence and conduced that the offences has been proved beyond reasonable doubt.

As we have shown in this judgment, the judgment of the trial Court had no fault with regard to the testimony of PW2 being taken without her being sworn, neither was the judgment grounded on the weakness of the defence instead of strength of the prosecution evidence. The major fault is on the contradiction of the prosecution evidence as to when the appellant had sex with the accused person. The month of February 2019 stated in the charge sheet seriously contradicts the finding that the victim was eight

month pregnant on medical examination in the same month of February 2019. It is trite law that in criminal justice such doubts should be decided in favour of the accused person.

Accordingly, I find that the case against the appellant was not proved beyond reasonable doubts. As such the appeal is allowed, the conviction against the appellant for both counts are hereby quashed and the sentence for both counts is set aside. The appellant should be released from custody forthwith unless otherwise lawfully held.

It is so ordered.

ABDI S. KAGOMBA

JUDGE

15/9/2021