

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC. CRIMINAL APPEAL NO. 168 OF 2020

(Original Criminal Case No. 20 of 2019 of the District Court of Geita District at Geita)

CHRISTOPHER PONEJA @ TEACHER APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGMENT

8th & 26th February, 2021

RUMANYIKA, J.:

According to records one having had been charged for two counts of rape and impregnating a school girl Contrary to Sections 130(1) (2) (a) and 131 of the Penal Code Cap 16 R.E. 2019 and Section 60A and (3) (e) of the Education Act Cap 353 R.E. 2019 respectively, on 10/06/2020 Christopher Poneja @ Teacher (the appellant) was only convicted for rape and sentenced to term of thirty (30) years in jail, six strokes of the cane and payment of shs. 500,000/= being compensation to the Magdalena Pius. He is aggrieved hence five (5) grounds of appeal.

The 5 grounds of appeal revolve around points as hereunder; **(1)** that the evidence was improperly analyzed **(2)** that the trial court failed to hold that the victim (Pw1) she wasn't credible witness **(3)** that the victim's evidence lacked necessary corroboration **(4)** that late arrest and arraignment of the appellant in court it casted reasonable doubts **(5)** that essential ingredient of rape such as penetration it was not proved.

The appellant appeared in person. Ms. Lilian Meli learned state attorney appeared for the respondent Republic.

Whereas the appellant had nothing additional to the memorandum of appeal, Ms. Lilian Meli learned state attorney opposed the appeal and, in a nutshell she submitted; **(1)** that the prosecution case was proved beyond reasonable doubts because the victim was, in all aspects live and clear and she proved actual penetration one also having not consented much as it was evident that as during the fracas she attempted to raise alarms the appellant just threatened to finish her up! **(2)** Pw2 sufficiently corroborated evidence of the victim leave alone the confusing PF3 which nevertheless it was erroneously admitted in evidence therefore liable to be expunged. That is all.

Very briefly, the evidence on record reads thus;

Pw1 MP(name not real), a form II pupil of Kivukoni Secondary School – Geita she stated that as together with Aneth, now on their way back home they met the appellant @ teacher around, the latter offered to assist by administering some magic medicine on them therefore make them intelligent and the best in class that having had been done with Aneth, the appellant inserted medicine and penis into the victim's private parts but threatened to finish her up had she raised alarms or otherwise revealed the secret but she reported him after she had missed her menstruation period and conceived.

Pw2 Aneth Amos stated that pw1 was her school mate and friend and the appellant taught them "tuition" classes who, at times offered to administer some medicine to make them intelligent and pw1 went in the appellant's room for service next to her but the latter did not reveal the ordeal until after a couple of days later when she (the victim) was found pregnant.

Pw3 Jonas Kwibo Rela a teacher of Kivukoni Secondary School stated that too pw1 was a pupil thereof but now reported missing (copy of the attendance register Exhibit "P1").

The appellant, the sole defence witness denied the charges and stated that he was simply arrested on 20/06/2019 at about 14.00 hours and locked down until 25/06/019 then was arraigned in court on 03/07/019 much as no one of the victim's parents appeared in court. That is it.

In fact having defined rape, reproduced the girl's evidence and, it appears beyond all reasonable doubts convinced, the learned trial resident magistrate solely found the victim credible and witness of truth (case of **Seleman Makumba V. R** (2006) TLR 380. I am saying so because one having had remained outside and pw1 didn't even give her some hints, surely pw2 could not have witnessed what actually befell on the victim leave alone the materially confusing therefore improperly admitted PF3 which one, rightly so in my view, Ms Lilian Meli, learned state attorney asked the court to expunge.

Whereas I am aware of the principle enunciated in the famous case of **Seleman Makubma** (supra) that true evidence of rape comes from the

victim, like any others, the general rule must have an exception. Like any other human beings, the victim may have been in error or for some reasons she had internal prejudice, corrupted or something unless with some reasons to be recorded the court was sufficiently settled that the victim was but both credible and true. At least in the present case the learned trial resident magistrate he took no trouble even to assign a single reason why he believed girl. The appellant may have had, if at all threatened the victim's life therefore the girl got scared of him and for that reason she could not have raised alarms yes, but the fact that even when she was free she did not at once even tell her friend (pw2), parents or anybody else until such time she was found pregnant, her conduct wasn't consistent with a degree expected of any reasonable and credible victim/witness leave alone nonappearance of any one of the pw1's parents to whom if at all she may have had reported the incident. Pw1 may have had consented but due to untimely pregnancy she turned hostile who knows!

Whether or not the victim was found pregnant it was immaterial because as the learned trial magistrate put it, it evidenced an act of sexual intercourse but pregnancy it was not a sole conclusive evidence that the

expecting mother was raped much as the appellant wasn't scientifically proved to be the responsible father (case of **Ally Nkane V. R**, Criminal Appeal No. 21/2017 (CA)) unreported much as I also know that where the victim of rape was under age her consent is always immaterial.

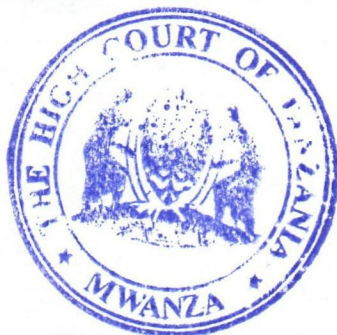
The appeal is meritorious and it is allowed. The conviction and sentence are quashed and set aside respectively. Unless he was held for some other lawful cause, the appellant be released immediately from prison.

Right of appeal explained.

S. M. RUMANYIKA
JUDGE

09/02/2021

The judgment is delivered under my hand and seal of the court in chambers this 26/02/2021 in the absence of the parties.



S. M. RUMANYIKA
JUDGE

26/02/2021