

**“ORIGINAL”**

**IN THE HIGH COURT OF TANZANIA  
DODOMA DISTRICT REGISTRY  
AT DODOMA**

**CRIMINAL APPELLATE JURISDICTION**

**DC CRIMINAL APPEAL NO. 64 OF 2020  
( *Originating from Criminal Case No. 145/2019  
Singida District Court* )**

**JOSEPH ISSA.....APPELLANT**

***VERSUS***

**THE REPUBLIC.....RESPONDENT**

**Date of Judgement – 21<sup>st</sup> APRIL 2020**

**JUDGEMENT**

**L. MANSOOR, J:**

The Eight Year Old girl was raped, not once but four times by the same person, so it is alleged by the victim child who testified at Trial Court as PW2. There cannot be anything obscener than this. It is a crime against humanity. If the allegations are proved to be true, the accused has played with the life of a child and he does not deserve any leniency or sympathy.

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Briefly, the fact of the case is that the child was asked by the appellant to go to pick fruits in a forest. She was with PW3, her brother. PW3 saw the appellant raping the girl. PW3 saw them lying naked and appellant was lying over her. So, PW3 had witnessed the actual act and thereafter he reported to PW4 one Salum Resho, PW5 Ramadhani Kisuda who are the victim's uncles. PW4 and PW5 reported the incident to the village leaders. PW4 and PW5 said they asked the victim's mother to inspect the child's private parts, and the mother of the victim confirmed that the child was raped. PW4 and Pw5 asked the appellant if he had raped the victim, the appellant denied. Both PW4 and PW5 are related to the appellant, and so the accused, the appellant herein could have freely confessed. The Doctor examined the girl, Dr Tibaijuka Katunzi, and she testified as PW7. She said her vagina was not intact. She was not sure if the girl was penetrated, she said at page 19 of the proceedings that "it was not normal for a child of that age to be in such condition. Possibly she was penetrated". The PF3 was admitted as Exhibit P2. PF3 shows that there was no vaginal hymen, and this is proof that the girl

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was penetrated. Police who investigated the case was examined as PW6; he tendered the appellant's statement which was admitted as Exhibit P1. The proceedings at page 18 shows that the appellant who was unrepresented did not object the statement and did not cross examine the police. The statement was admitted as Exhibit P1. In the cautioned statement, the appellant had admitted raping the girl but claims that the girl had consented.

After evaluating evidence of witnesses examined by the prosecution, the District Court convicted the appellant. He was sentenced to serve a life sentence. The appellant filed an appeal raising 8 grounds of appeal.

The first ground is that he says the confession which was admitted in Court as P2 was not voluntary. He said he did not confess. Though it is not necessary for the Court to enter upon a reappraisal or reappreciation of the evidence since the appellant did not object the admission of the confession at the District Court during trial, the confession is now challenged on the appeal. I note that the District Court did not do any

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enquiries when admitting this confession since it was not challenged. This was the proven facts, and I have no hesitation in agreeing with the District Court that the confession made by the appellant in the cautioned statement before the police which is not shown to have been obtained by coercion, promise of favor or false hope or by torture etc. Is plenary in character and voluntary in its nature acknowledging his guilt-i.e. The gravely incriminating fact of the commission of rape on the girl in precise and explicit words of the appellant. This confession has been made in presence of a police officer. As ruled in many cases law does not require that the evidence of a non-retracted confession should in all cases be corroborated. However, coming to the facts of the case, the confession of the appellant is amply corroborated by the evidence of the victim (PW 2) whose testimony in turn is corroborated by PW's 3, 4, and 5 and by the medical evidence.

As regards the evidence of PW 2 who is the victim relating to the incident, the trial Court without any

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compunction has accepted the evidence of PW 2 as being substantially corroborated by the appellant's own confession. I agree with the findings of the Trial Court that the confession of the appellant made in his cautioned statement was free from any vice and held that it is beyond comprehension that the complainant, would have laid a false and reckless charge against the appellant by involving his own minor daughter in such unsavory incident for nothing not caring about her future and his own reputation and honor. There is no reason as to why a small innocent girl would have laid such a serious charge against the appellant, if it were not true. In my considered view, the Trial Court was justified in reaching a conclusion as it did and punished the offender correctly and in accordance with the law.

The age of the child was established not only by his father's testimony who testified as Pw1, but again by a medical evidence in the PF3 which was admitted as Exhibit P2, as well as the testimony of the Doctor who confirmed that the child, she examined was under the age of 12 years. There was

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no delay in lodging the claim, it has been proved that PW3 reported the incident to PW4 and PW5, and they immediately reported to the village leaders. The victim was convicted on the strength of the prosecution case not on the weaknesses of his defense. The totality of the prosecution witnesses was so strong to convict, and the conviction was not because of the defense evidence.

Based on the above, the appeal is dismissed for it lacks merits. The conviction passed by the District Court is hereby confirmed. However, I shall vary the sentence and that the appellant shall serve the sentence of imprisonment for a Term of 30 years from the date of conviction. The sentence have been varied since when the appellant committed the offence he was a very young boy of only 19 years old.

**PRONOUNCED IN OPEN COURT AT DODOMA THIS 21<sup>ST</sup> DAY OF APRIL 2021**



**L. MANSOOR**

**JUDGE**

**21/4/2021**

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Judgement delivered in Court today in the presence of the Appellants, Ms. Mwakyusa State Attorney for the Respondent Republic and Mrs. Mariki the Court Clerk.



A handwritten signature in blue ink, appearing to read "L. Mansoor", is written over the printed name.

**L. MANSOOR**

**JUDGE**

**21/4/2021**