IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

CRIMINAL APPEAL NO. 64 OF 2020

(Arising from Criminal Case No. 85 of 2017 of the District Court of Kahama at Kahama)

DAUDI MANAMBA @ SAMANSI..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

28th May & 25th June, 2021

MKWIZU, J

At the District court of Kahama, appellant Daudi Manamba @ Samamsi was arraigned for unnatural offence contrary to section 154 (1) (a)of the penal code. The particulars of the offence were that on 21st day of January, 2017 at about 12.00 hrs in Zongomela area within Kahama District in Shinyanga Region, appellant had a carnal knowledge of one school boy (name withheld) aged 11 years old against the order of nature. The matter was reported to the police leading to the arrest of the appellant.

Prosecution paraded three witnesses to establish the case against the appellant. PW1, Manyambo January is the father of the victim. He leant the ordeal on 21/1/2017 when he saw a blood stain in victims trouser. On questioning the victim he was informed that appellant raped him and the last time he committed the alleged offense was on that same day when the victim was coming from school. PW1 said, he immediately called WEO for Mhongolo Ward, appellant was arrested, victim was taken to the police station where he was issued with a PF3 and went for medical examination at Kahama District Hospital.

Victim of the offence gave evidence as PW2. His evidence was received after he had promised to speak the truth under the provisions of section 127 (2) of the Evidence Act Cap 6 R.E 2019.He informed the court that, on his way coming back from school, on 21st January, 2017 he met the appellant at the road . He was taken to the roadside bushes, appellant told him to bend, undressed his trouser and sodomised him. He cried but appellant closed her mouth and threatened him that he would kill him if he discloses the issue to anyone.

Victim explained further that, appellant was following him while grazing and that it was his fourth time to be sodomised by the appellant.

PW3, Robert Rwebangira is a medical practitioner by then working with Kahama District Hospital. He participated in examining the victim and tendered in evidence PF3. His examination revealed bruises in the victim's anus and that the sphincter was loose to allow anything to pass through. Appellant denied all the accusations. He termed the case as a frame up as they wanted to chase him out of PW1's house due to hatred against him by the victim's mother after she had failed to pay him his dues.

Having heard the evidence of three prosecution witnesses that included the victim of the sexual attack, aged six years at the material time, as well as the appellant's own defence, the trial court found the charges proved beyond all reasonable doubt, it convicted him and accordingly sentenced him to 30 years imprisonment.

Dissatisfied, appellant had come to this court with this appeal on four main grounds which can be condensed into two main grounds that ***the offence***

was not proved beyond reasonable doubt and two that ***the sentence of 30 years imprisonment is excessive.***

The appeal was orally heard. Unrepresented, appellant had very little to say. After adopting his grounds of appeal to form part of his submissions, he left the floor to the learned State Attorney but reserved his rights to rejoin if need be.

On his party, the learned State Attorney, Mr. Enosh Gabriel Kigoryo who represented the respondent/republic, supported the conviction and sentence. The learned State Attorney argued that, the prosecution case was proved beyond reasonable doubt by the evidenced adduced in the trial Court by PW1, the victim's father, PW2, the victim, PW3 the doctor and exhibit P1, the PF3. The learned state attorney submitted further that, PW1 had suspected something wrong on his son after he saw blood stains in his trouser, he was after inquiring, victim informed him that it was the appellant who was sodomising him.

The learned State Attorney said further that, PW2's evidence is a direct evidence. He is the victim who informed the court that he was carnally known

by the appellant. This witness was a credible witness, a victim whose evidence is of greater importance when it comes to sexual offences as emphasized in the case off **Selemani Makumba V R**, (2000) TLR 379. It was the State Attorney's contention that, even PW3's evidence supported that of the victim and in his defence, appellant could not raise doubt on the prosecution's evidence.

On the excessiveness of the sentence, Mr. Kigoryo, learned State Attorney was of the view that the appellant was properly sentenced to 30 years statutory imprisonment and therefore this ground has no merit.

I have prudently reviewed the evidence on the records. PW2, the victim, gave his evidence after he has promised the court that he would tell nothing but the truth under the provisions of section 127 (2) of the Evidence Act. His evidence is to the effect that, he was known canal several time and he never disclosed the ordeal to anyone until on 21/1.2017 when he was interrogated by his father (PW1). This, as deposed by the PW1, happened when PW1 wanted the victim to do laundry. On the process, he collected his son's clothes and noticed blood stains on one of the trouser. PW1 asked the victim whether he had any wound. It is at this stage that PW2 opened up and

disclosed that he had been carnally known against the order of nature by the Appellant who was their employee. He also disclosed that, appellant has been doing so several time following him at the grazing ground and when he comes from school. He also explained that, the last time the sodomy was committed on that very date when he was coming from school.

Having assessed his evidence plus that of his father (PW1) and that of the Doctor (PW3) and the PF3 tendered in court, trial court was satisfied that the evidence on the records is strong enough to prove the offence against the appellant.

I doubt the trial court's conclusion. Though victim gave a straight forward evidence, his evidence contradicted that of his father (PW1). He also gave no explanation of the location where the alleged raped was committed. He said, he was grabbed from the road to the bush while coming from the school, but no explanation was availed as to where exactly this happened and whether he was alone or otherwise at that moment or with other students as he was coming from school.

In his evidence PW1, Victims father stated that after he had learnt of the incident, he reported the matter to WEO who respondent thereat and arrested the appellant after he had seen a blood stained trouser. The incident was then reported to the police, PF3 was issued and victim was taken to the hospital for examination. On his party, PW2, the victim said, He was taken to the hospital the day after the disclosure of the ordeal to his father that is on 22/1/2017. His evidence at page 18 of the typed proceedings reads:

> *"My father went to WEO, and WEO came and look for me, later on the arrest Daudi Manamba and brought him to police. We came together to the police station, we were given PF3 and on the following day we went to the hospital for examination. After examination we returned the result to police station"*

Contrarywise, PW3 stated in his evidence that he receives the victim in respect of this case on 24/1/2017, three days after the reporting of the incidents to the police. This is supported by exhibit P1. The three prosecution evidence is at variance on the date the victim was taken to the hospital for checkup. PW1 and PW2 were all along together, their evidence was expected to tell one story on what happened from when the blood stains were

discovered on the victims trouser to when the victim was examined. The variance in evidence raises doubt on their credibility which should be resolved in the appellants favour.

I have also scrutinized the PF3 tendered as exhibit P1. Instead of giving the description of the state of and any injuries to the anus establishing penetration at part C of the PF3, the doctor gave a general observation that

"There is evidence of anal penetration"

On how the Doctor arrived on his remarks above, in the absence of the medical findings on the status of the anus sphincter muscles, is not explained in the records. Generally, the medical evidence leaves much to be desired especially taking into consideration that the alleged victim of sexual crime was medically examined three (3) days after the incident.

The evidence of the victim as explained above is not very clear to the point. He failed to explain with certainty how and where exactly the offence was committed. If that isn't enough also, the trouser with the alleged blood stain though used to arrest the appellant, it was not tendered in court as exhibit.

Appellant defence was a complaint over a dispute between him and the victims mother. The trial court disbelieved this evidence. Yet, even without the defence evidence, the prosecution case as stated above was not strong enough to prove the case against the appellant.

That said, the meritorious appeal is allowed. The Appellant's conviction is quashed and the sentence of thirty years imprisonment meted against the appellant is set aside. The Appellant should be released forth with from prison unless he is lawful detained.

Order accordingly.

DATED at **SHINYANGA**, this 25th day of **June, 2021**

E.Y. MKWIZU
JUDGE
25/6/2021

COURT: Right of appeal explained.

E.Y. MKWIZU
JUDGE
25/6/2021