

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

**(DC) CRIMINAL APPEAL NO. 28 OF 2020**

(Original Criminal Case No. 67 of 2019 of the District Court of Bahi at Bahi)

**ELIA MASUNGA ..... APPELLANT**

**VERSUS**

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

*10/12/2021 & 17/12/2021*

**JUDGMENT**

**MASAJU, J**

The Appellant, Elia Masunga, was charged with, tried and convicted of Rape contrary to sections 130(1) (2) (e) and 131 (1) of the Penal Code [Cap 16] in the District Court of Bahi, at Bahi. He was sentenced to thirty (30) years imprisonment, hence the appeal in the Court. His Petition of appeal bears nine(9) grounds of appeal in which he essentially argues that the prosecution case against him was not proved to the required standard of proof.

When the appeal was heard in the Court on the 10<sup>th</sup> day of December, 2021 the Appellant appeared in person and adopted his Petition of Appeal to form the submissions in support of the appeal in the Court. The Respondent

Republic was represented by Ms. Rachel Tulli, the learned State Attorney who did not contest the Appeal.

The Respondent Republic submitted that the offence against the Appellant was not proved beyond reasonable doubt. That the age of Joyce Blezi (PW1) the victim was not proved in the statutory Rape. That, the evidence about sexual penetration was also lacking. That, the offence was allegedly committed on the 14<sup>th</sup> day of September, 2019 but the same was reported on the 16<sup>th</sup> September, 2019 and there was no explanation as to why such delay in reporting the offence. The Respondent Republic finalized her submissions by arguing that the offence of Rape was therefore not proved beyond reasonable doubt.

The Court appreciates the submissions by the parties in support of the appeal in the Court. Indeed, the Court is inclined to agree with the parties that the prosecution case against the Appellant was not proved beyond reasonable doubt. As submitted by the Respondent it is mandatory for the age of the victim of crime to be proved in the trial court in cases of statutory rape as it was guided in **Solomon Mazala V.R** (CAT) Criminal Appeal No. 136 of 2012, Dodoma Registry (unreported). In the instant case there was contradictions of the exact age of the victim of crime (PW1) since the victim herself alleged to be 14 years of age, her father, Blezi Juma (PW2) alleged PW2 to be 15 years old and James Maginga (PW4) the medical doctor who examined the victim alleged the age of PW1 to be 14 years. There was neither a Birth Certificate tendered by the prosecution to prove the exact age of PW1 as an essential requirement in statutory Rape and also to clear the contradictions.

Section 130(4) a of the Penal Code [Cap 16] requires penetration to be proved in rape cases. In the instant case, the victim of crime (PW1)

alleged to have been raped by the Appellant, that it was the first time to have sexual intercourse. The medical doctor (PW4) conducted medical examination to PW1 and there was a Medical Examination Report, PF3 (Exhibit P1) to that effect. According to the report and the evidence by PW4, there was no bruises, no sperms and no hymen. The PF3 also revealed that PW1 had the "*history of practice of sexual intercourse*". Thus, replying on PW1's story also contradicts the Medical Examination Report. If really PW1 had hymen prior to the alleged rape, then PW1 ought to have been found with bruises and blood in her genital area, but that was not the case according to the medical doctor PW4's evidence and the PF3 thereof.

WP 9332 D/C Tabu (PW5), the investigation officer, also testified in the trial court. Her evidence also contradicted the Medical Doctor (PW4)'s evidence. PW5 alleged that she was the one who took PW1 for Medical Examination at Bahi Medical Center. That, after the examination, the doctor (PW4) told her that PW1 was penetrated. This creates doubt and thus shakes the prosecution case evidence.

The Court finds that Joyce Blezi (PW1), the victim of crime was not a credible witness since her evidence does not reflect the Medical Examination Report (PF3) as conducted on her. Her testimony in the trial court was therefore short of grounding safe conviction of the Appellant pursuant to section 127(6) of the Evidence Act [Cap 6], for the said Joyce Blezi (PW1) was neither credible nor witness of truth.

The prosecution case against the Appellant in the trial court was not proved beyond reasonable doubt as so rightly advised by the parties. The appeal is hereby allowed accordingly. The conviction and sentence thereof respectively are hereby quashed and aside accordingly.

The Appellant shall be released from prison forthwith unless he is held for another lawful cause.



  
GEORGE M. MASAJU

**JUDGE**

17/12/2021