IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

CRIMINAL APPEAL NO. 257 OF 2021

(Originating from the decision of the District Court of Kigamboni at Kigamboni, in Criminal Case No. 51 of 2021, by Hon. Mchome-PRM dated 29th day of September, 2021)

MOHAMED SELEMANI ALLY ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

JUDGMENT

14th February & 9th March, 2022

ISMAIL, J.

The appellant was arraigned in court and convicted of the offence of rape, contrary to sections 130 (1) (2) (e) and 131 (1) of the Penal Code, Cap. 16 R.E. 2019. Consequent to the conviction, the District Court of Kigamboni at Kigamboni before which the appellant appeared, sentenced him to imprisonment for a term of thirty (30) years. The victim of the alleged rape incident was NM (in pseudonym), a girl of five years of age who, it alleged that on 15th June, 2020, at Unasoroni street in Kigamboni District in Dar es Salaam Region, was carnally known by the appellant. On

the fateful day, it is alleged, the victim was sent by PW1, her mother, to pick a water basin but she disappeared for some time. After a while, PW1 grew anxious and this is when she asked her sibling who informed her that the victim was in the abandoned house. On searching in one of the rooms of the said house, PW1 found the appellant and the victim, both naked. She testified that she saw the appellant raping the victim. Information was relayed to PW3, the victim's father who reported the matter to the hamlet chair (PW4) before the matter was escalated to police.

The police issued the victim with a Police Form No. 3 (PF 3) that enabled her to be medically examined. Findings of the examining doctor, PW5, concluded that the victim had been carnally known. The victim's vaginal walls had enlarged and she lost her virginity.

Investigation into the matter concluded that the appellant was culpable. When the appellant was arraigned in court on a charge of rape, he pleaded not guilty. This necessitated a trial that culminated in the conviction and eventual sentence to thirty years' custodial sentence. The verdict was received with utter disgust, hence the decision to institute the instant appeal. The petition of appeal has raised eight grounds of appeal, paraphrased as follows: ***One***, that the trial magistrate erred in law and fact by failing to comply with section 127 (2) of the Evidence Act, Cap. 6 R.E.

2019 for not showing how she extracted the victim's (PW2) promise while *voire dire* was not conducted; ***two***, that the trial magistrate erred in law and in fact by convicting the appellant while the testimony of PW1 was substantially at variance with that of other prosecution witnesses, with respect to whether the incident was committed on 11th June, 2020 or 15th June, 2020; ***three***, that the trial magistrate erred in law and in fact by convicting the appellant based on an improbable, implausible and fabricated evidence which was doubtful and inconsistent, taking into consideration age of the victim; ***four***, that the trial magistrate erred in law and in fact by entering a conviction in a case where penetration was not established by PW2 (the victim), thereby rendering the testimony of PW5 and Exhibit P5 unreliable; ***five***, that the trial magistrate erred in law and in fact by convicting the appellant in a case which was poorly investigated, and that the prosecution contravened the requirements under sections 48, 50, 51, 53 and 57 of the Criminal Procedure Act, R.E. 2019; ***six***, that the trial court erred in law and fact by disregarding the defence testimony; ***seven***, that the trial magistrate misdirected herself in law and in fact by recording the testimony of PW2, PW3, PW4 and PW5 without properly complying with the provisions of section 210 (1) (a) of the Criminal Procedure Act, R.E. 2019 (CPA); and ***eight***, that the trial magistrate erred

in law and in fact by convicting the appellant while the prosecution's evidence failed to prove the case beyond reasonable doubt.

Hearing of the appeal was done through written submissions whose filing was consistent with the schedule drawn by the Court. The appellant enjoyed the usual privilege of setting the ball rolling.

He began by submitting that the case for the prosecution was not proved in accordance with the provisions of section 3 (2) of the CPA and several court decisions which place an obligation on the prosecution to prove the case beyond reasonable doubt. These include ***Jonas Mkize v. Republic*** [1992] TLR 213; ***Joseph John Makune v. Republic*** [1986] TLR 44. In the latter, it was held:

> *"The cardinal principle of our criminal law is that the burden is on the prosecution to prove its case, no duty is cast on the accused person to prove his innocence."*

With respect to ground one, the argument by the appellant is that a *voire dire* test was not conducted before PW2 testified in court. He argued that failure to conduct the test meant that the court did not ascertain the ability of the said witness to understand the nature of the oath. In this case, the appellant contended, no evidence exists to show that questions were posed consistent with section 127 (2), and the holding in the cases

of ***Godfrey Wilson v. Republic***, CAT-Criminal Appeal No. 168 of 2018; and ***Hassan Yusuph Ally v. Republic***, CAT-Criminal Appeal No. 462 of 2019 (both unreported).

Regarding ground two, the contention by the appellant is that the testimony of PW1 (the victim's mother) and that of PW3 contradicted each other, especially on the date on which the alleged incident occurred. He argued that the contradictions in the testimony meant that the case against the appellant was not proved. Failure by the prosecution, the appellant contended, was contrary to the holding in ***Abel Masikiti v. Republic***, CAT-Criminal Appeal no. 24 of 2015 (unreported), in which the Court guided as follows:

> *"In a number of cases in the past this court has held that it is incumbent upon the Republic to lead evidence showing that the offence was committed on the date alleged in the charge sheet which the accused was expected and required to answer. If there is any variance or uncertainty in the dates then the charge must be amended in terms of section 234 of the CPA. If this is not done the preferred charge will remain unproved and the accused shall be entitled to an acquittal. Short of that a failure of justice will occur."*

Moving on to ground three of the appeal, the argument by the appellant is that there was no evidence of penetration. He argued that,

according to the testimony of PW3, it is improbable that, at his age, the appellant would rape a five-year old girl and be able to walk alone properly and without crying or screaming for help. The appellant took the view that it defies logic that PW1 would see her daughter being raped and leave from the scene and do nothing. The same was also said of PW3, the victim's father.

The appellant also contended that there was a contradiction in the testimony of PW3 and that of PW4. He argued that his conduct subsequent to the alleged incident was inconsistent with evil doing and that that explained why he did not flee after the alleged incident. He called upon the Court to hold that the appellant was innocent and that the case against him was a sheer fabrication.

The appellant's contention with respect to ground four of the appeal is that PW2 did not establish that she was penetrated. This is in view of the fact that PW2 did not prove that she carried any pain or bruises, and if, during the incident, she had her mouth covered to suppress any possible screaming. The appellant contended that the testimony of PW5 was unreliable and lacking in credibility, since no penetration would be done to a girl of five years of age without causing bruises and bleeding. It was his

argument that swelling of labia majora, while the hymen was intact would not establish the offence of rape.

On ground five, the argument by the appellant is that the manner in which he was arrested and interrogated was not proper. He argued that the local government leadership was not involved in his arrest, making the arrest illegal and a violation of the law. The appellant further contended that the police officers who investigated the case and issued the PF3 were not called to testify on the date the incident was reported.

Regarding ground six, the argument is that the appellant's conviction was based on the weakness of his defence, contrary to the law which requires that conviction be based on the strength of the prosecution's case. The appellant contended that a different conclusion would be arrived at had the court assessed the evidence of both sides as a whole. On this, he cited the decision of the Court of Appeal of Tanzania in ***Husseln Iddi & Another v. Republic*** [1986] TLR 166; and the decisions of the Court of Appeal for East Africa in ***Lockhart Smith v. Republic*** [1965] EA 211 and ***Okoth Okale v. Uganda*** [1965] EA 555.

The appellant's contention in ground seven is that the provisions of section 210 (1) (a) of the CPA were not observed when the trial court

recorded the testimony of PW2, PW3, PW4 and PW5. He read an incurable omission since the said provision is couched in mandatory terms. He urged the Court to attach no evidential value to the discrepant testimony.

Wrapping up the submission, the appellant argued with respect to ground eight of the appeal by submitting that, for reasons stated in the rest of the grounds, the case against him was not proved beyond reasonable doubt. He urged the Court to find the appeal meritorious and allow it.

The respondent's submission was equally forceful. The respondent maintained that the trial court's decision was unblemished.

With regards to ground one, the argument by the respondent is that the requirements of section 127 (2) of Cap. 6, as elaborated in the case of ***Godfrey Wilson v. Republic*** (supra) were not followed, rendering the testimony of PW2 non-compliant and untenable. The respondent urged the Court to expunge it from the court record. It was the respondent's submission that ground one of the appeal is meritorious and should be allowed.

With regards to grounds two and three, the respondent argued that, in rape cases, key ingredients that need to be proved is penetration and

age, in case the victim is of the age below 18 years. In this case, the respondent contended, both of these ingredients were proved, and that the question of dates is quite a minor discrepancy that should be tolerated and ignored. To aid her case, the respondent cited the decision in ***Mzee Ally Mwinyimkuu @ Babuseya v. Republic***, CAT-Criminal No. 499 of 2017 (unreported). The respondent urged the Court to dismiss the grounds of appeal.

Seeing none of the pointed out discrepancies, the respondent allayed fears that the testimony of PW1, PW3 and PW4 differed in any material sense. The respondent contended that PW1, who saw the appellant raping her daughter was devastated and failed to walk, opting, instead, to crawl to her home where she informed PW3 of the incident and that it is the latter who took PW2 to hospital. The respondent argued that people react differently to each of these issues. It was her contention that, looking at each of the testimonies, none was contradictory of the other and, if any, then the same is trifling and should be ignored.

On ground four of the appeal, the view taken by the respondent is that PW1's testimony is clear as it stated that she saw PW2 and the appellant who were both naked, and that the former was raping the former. The respondent also relied on the testimony of PW4 who stated that she

examined PW2's private parts and found that her labia majora was swollen, her vagina had sperms, and that two of her two fingers penetrated into PW2's vagina. In the respondent's view, this was sufficient to prove that PW2 had been raped, and it does not matter if the victim did not cry, scream or feel pain. The respondent was fortified in her view that penetration, however slight it may be, is sufficient to prove the offence of rape.

Regarding ground five, the respondent submitted that the appellant was arrested and taken to a local government office before he was conveyed to a police station, while PW2 was taken to a hospital for a medical check-up. The respondent's contention is that the appellant would not be arraigned in court if no investigation was conducted. She prayed that this ground should be dismissed for being baseless.

On ground six, the argument by the respondent is that this ground is barren and deserving nothing but a dismissal. The allegation of grudge with PW3 was dismissed by the trial court and the respondent contended that the same did not hold water. That is why it did not feature in cross-examination when PW3 testified. The respondent invoked the reasoning of the Court of Appeal of Tanzania in ***Nyerere Nyague v. Republic***, CAT-Criminal Appeal No. 67 of 2010; and ***Ridhiwani Nassoro Gendo v.***

Republic, CAT-Criminal Appeal No. 201 of 2018 (both unreported), in which it was held that failure to cross-examine a party is taken to be an acceptance of the truth. Since the appellant failed to cross-examine on this crucial issue, his contention at this stage is a mere afterthought.

Submitting on ground seven of the appeal, the respondent's contention is that the legal requirement under the law was complied with respect to PW1, PW3, PW4 and PW5. The respondent argued that if the witness did not ask for correction of his evidence, then that means that the testimony was correct, noting that, in any case, the appellant was not prejudiced if the said requirement was not met.

Regarding the eighth ground, the respondent's view is that the case for the prosecution was proved beyond reasonable doubt. She argued that the evidence of penetration was proved by PW1, through her testimony which appears at page 9 of the trial proceedings, corroborated by the testimony of PW3, PW4 and PW5. With respect to age of the victim, the respondent submitted that PW1's testimony was clear that PW2 was 5 years old, and that her birth certificate was tendered in court. The same was also said by PW4 and PW5.

It was the respondent's submission that age of the victim can be proved orally or by written documents one of which is a birth certificate. She argued further that such proof may be adduced by the victim herself, parent, near relative or a medical doctor. To fortify her position, the respondent cited the decisions in ***Byagonza v. Uganda*** [2002] 2 EA 351; ***Zacharia Edward v. Republic***, CAT-Criminal Appeal No. 131 of 2020; and ***George Claud Kasandra v. DPP***, CAT-Criminal Appeal No. 376 of 2017 (both unreported).

The respondent contended that PW1 and PW3, the victim's parents, and PW5 established that the victim was 5 years of age. This, the respondent argued, completed proof of the 2nd ingredient of the charge. She concluded that the prosecution proved its case beyond reasonable doubt.

Before she wound up, the respondent brought up a contention that the sentence meted out by the trial court defied the provisions of section 131 (3) of Cap. 16 which provides that a convicted offender in a rape case in which the victim is below 10 years of age should be sentenced to life imprisonment. It was her contention that the sentence imposed is way below the statutory sentence. She urged the Court to apply section 366 (1) (a) (b) of the CPA and alter the sentence.

From these lengthy submissions, the singular question is whether the appeal is meritorious.

Disposal of the appeal will begin with ground seven of the appeal which decried the trial court's failure to comply with the provisions of section 210 (1) (a) of the CPA. This provision stipulates as hereunder:

> *"(1) In trials, other than trials under section 213, by or before a magistrate, the evidence of the witnesses shall be recorded in the following manner-*
>
> > *(a) the evidence of each witness shall be taken down in writing in the language of the court by the magistrate or in his presence and hearing and under his personal direction and superintendence and shall be signed by him and shall form part of the record; and*

Looking at the proceedings, what comes out is that the trial magistrate recorded the evidence in conformity with the provision of section 210 (1) (a) of the CPA, in the sense that all the requirements under it were observed. The only missing item is with respect to reading over the testimony to witnesses in compliance with section 210 (3) of the CPA. The said provision accords right to witnesses to be informed that they have a right to have their testimony read out by the trial magistrate. If they choose to have their testimonies recorded in the course of the trial, and read over

to them, then such right must be accorded to them. The substance of the said provision stipulates as follows:

> *"The magistrate shali inform each witness that he is entitled to have his evidence read over to him and if a witness asks that his evidence be read over to him, the magistrate shall record any comments which the witness may make concerning his evidence."*

From the wording of the provision, this right is not available to a party that is not a witness and, when raised, the same can only have some validity if the complainant is able to show that he suffered some prejudice as a result of such failure. Addressing the rationale for this requirement and circumstances under which it can be applied, the Court of Appeal of Tanzania held in ***Masoud Mgosi v. Republic***, CAT-Criminal Appeal No. 195 of 2018 (unreported), as follows:

> *"The rationale behind the section is not far to seek. It was intended to promote transparency in the administration of criminal justice thereby guarding against distortion in the recording of evidence by the witnesses. Luckily, the Court has dealt with similar complaints in various of its previous decisions including;* ***Repubiic v. Hans Aingaya Macha****, Criminal Appeal No. 449 of 2016,* ***Jumanne Shabani Mrondo v. Republic****, Criminal Appeal No. 282 of 2010,* ***Athumani Hassan v. Republic****, Criminal Appeal No. 84of*

2013 (all unreported). What is gathered from the above cases is that it is the witness who has the right to complain against the trial court's failure to read evidence to him. It is also evident from the above cases that the complaint can only be fatal where the authenticity of the record is in issue. There is nothing on record in this appeal that there was any complaint before the trial court that the appellant exercised his right to have his evidence read over to him. Similarly, the authenticity of the record is not in issue and thus as rightly submitted by Mr. Aboud, the irregularity did not prejudice the appellant in any manner considering that he exercised the right to cross-examine all witnesses for the prosecution. Consistent with the holdings in our decisions in ***Hans Aingaya Macha***, ***Jumanne Shabani Mrondo*** *and* ***Athumani Hassan*** *(supra), the irregularity premised on non-compliance with section 210 (3) of the CPA is inconsequential; it is curable under section 388 (1) of the CPA. In the upshot, ground one is destitute of merit and we dismiss it ...."*

Inspired by the foregoing, I take the view that this ground of appeal is hollow and I dismiss it.

Turning on to ground one of the appeal, the contention by the appellant is that PW3 was not taken through the *voire dire* process before she testified in court. The respondent concedes that the requirements set

out in section 127 (2) were given a wide berth, making the testimony ineligible and liable to being chalked off.

It is common knowledge that the current legal dispensation is a departure from what it was prior to amendment of the law. Following the amendment of section 127 of the Evidence Act (supra), through section 26 of the Written Laws (Miscellaneous Amendments) Act, No. 4 of 2016, the requirement of *voire dire,* as hitherto enshrined under section 127 (2) and (3) of the Evidence Act (supra), is no longer a requirement, and work has been cut down to only making a promise to tell the truth and not to tell lies. The new provision reads as follows:

> *"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 tell lies."*

Underscoring this position are decisions of the Court of Appeal of Tanzania in several of its decisions. These include ***Godfrey Wilson v. Republic*** (supra); ***Selemanl Moses Sotel @ White v. Republic***, CAT-Criminal Appeal No.385 of 2018; and ***Msiba Leonard Mchere Kumwaga v. Republic***, CAT-Criminal Appeal No. 550 of 2015 (all unreported). In the latter, the upper Bench guided as follows:

"... Before dealing with the matters before us, we have deemed it crucial to point out that in 2016 section 127 (2) was amended vide Written Laws Miscellaneous Amendment Act No. 4 of 2016 (Amendment Act). Currently, a child of tender age may give evidence without taking oath or making affirmation provided he/she promises to tell the truth and not to tell lies."

While PW2 is recorded to have promised to tell the truth and nothing but the truth, the apparent fact is that extraction of that undertaking was not preceded by any procedure or process stipulated under case. In ***Godfrey Martin v. Republic*** (supra), the superior Court held that conducting of the test constitutes an imperative requirement the non-compliance of which renders the testimony adduced ineligible for consideration. This is what the respondent has conceded to. The trial court skipped this essential and mandatory procedure and, needless to say, the effect is to have the testimony of PW2 expunged from the record. This is what I do in this case.

Grounds 2 and 3 of the appeal have taken a serious exception to the testimony adduced by PW1 and PW3, terming it inconsistent and contradictory, especially with respect to the date of the incident and such other variances. The respondent agrees that there are variances which

border on contradiction in the testimony adduced with respect to dates. But the argument is that the said contradictions are minor as they did not affect the prosecution's case.

In law, discrepancies and inconsistencies in the witness's testimony are material and a matter of concern. However, such discrepancies can only be considered adversely and have an impact on a case if they are fundamental. If the discrepancies or inconsistencies are of trifling effect, then the same are, as stated in ***Mzee Ally Mwinyimkuu @ Babuseya*** (supra), tolerable and ignorable. The same view was expressed by the upper Bench in several of its earlier decisions. In ***Luziro s/o Sichone v. Republic***, CAT-Criminal Appeal No. 231 of 2010 (unreported), the following observation was made:

> "*We shall remain alive to the fact that not every discrepancy or inconsistency in witness's evidence is fatal to the case, minor discrepancies on detail or due to lapses of memory on account of passages of time should always be disregarded.* ***It is only fundamental discrepancies going to discredit the witness which count."*** [Emphasis added]

The superior Court's stance in the cited decisions is a leaf borrowed from its earlier decision in ***Disckson Elia Nsamba Shapwata & Another v. Republic***, CAT-Criminal Appeal No. 92 of 2007 (unreported), which

quoted a commentary in ***Sarkar's Code of Civil Procedure Code.*** It opined as follows:

> *"Normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to material disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be.* ***Material discrepancies are those which are normal and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a parties' case material discrepancies do.***"* [Emphasis supplied]

The decision in ***Disckson Elia Nsamba Shapwata*** (supra) restated what the Court of Appeal held in ***Mukami w/o Wankyo v. Republic*** [1990] TLR 46 to the effect that contradictions which do not affect the central story, are considered to be immaterial.

See also: ***Bikolimana s/o Odasi @ Bimelifasi v. Republic***, CAT-Criminal No. 269 of 2012 (unreported).

From the proceedings that bred the instant appeal, the obvious fact is that the central story here is the allegation of rape which stands on two key pillars. These are penetration and, given the fact that this is statutory

rape, age of the victim of the alleged rape incident. None of the cited discrepancies touch on the ingredients of the charge which is a central story. They are normal discrepancies which would not render the charge incurably defective. In any case, no prejudice or injustice has been suffered as a result of the slip up on the dates.

That said, I find other issues raised by the appellant on the reaction of PW1, or whether PW2 was taken to hospital or not, are equally insignificant and I choose to give them no weight. In sum, these grounds of appeal are destitute of merit and I dismiss them.

The appellant's gravamen of complaint with respect to ground four is that penetration was not established. This argument is premised on the contention that the victim neither cried nor screamed, and that PW5's testimony was unreliable. The view taken by the appellant is that no penetration would be done without causing bleeding or bruises.

As widely stated in a plethora of decisions, penetration constitutes a key ingredient in proving the offence of rape. Usually, such testimony comes from the prosecutrix and corroborated by a medical personnel who carried out the medical examination. In this case, however, PW2, the prosecutrix, had her testimony chalked off, owing to some legal slipups

pointed out earlier on. There remains, nevertheless, the testimony of PW1 which provides an eye witness account of what she saw the appellant doing to PW2. This testimony gave a direct evidence which is sufficiently complemented by the testimony of PW5, which confirmed that the victim had been known carnally, and that she had lost her hymen.

The totality of this testimony brings me to the conclusion that penetration was established and the contention that PW5 found no bruises, or that PW2 was not bleeding carries no relevance, as far proof of penetration is concerned. I find the ground baseless and I dismiss it.

Ground five decries what the appellant considers to be poor investigation of his case and an illegal arrest with connection to a fabricated case. One of the instances of infringement is failure by the prosecution to call a police officer who issued a PF3 and a police investigator to testify on the date the complaint was lodged to the police and the result of the investigation. The argument taken by the respondent is that the police officer was lined to appear in court and testify but he became indisposed, and unable to go and testify. By saying so, the appellant was invoking an adverse inference rule against the respondent, inferring that the prosecution knew that the witnesses would have a damaging impact on their case.

A party is allowed to impute an inference adverse to a rival party where the latter fails to do what was required of him. This is provided for under section 122 of Cap. 6. The cautious application of this cherished position was elaborately explicated by the Court of Appeal of Tanzania in ***Aziz Abdalah v. Republic*** [1991] TLR 71 (CA), wherein it was held:

> *"The general and well-known rule is that the prosecutor is under a prima facie duty to call the witnesses who, from their connection with the transaction in question, are able to testify to material facts. If such witnesses are within reach but are not called without sufficient reason being shown, the court may draw an inference adverse to the prosecution. But the practical application of this rule perhaps calls for some exposition. In the first place it should be stressed that the inference referred to in that rule is only a permissible one and is normally drawn in obvious cases, where, upon reviewing the matter objectively, the court is satisfied that the inference will not result into a miscarriage of justice.*
>
> *Secondly, and this is probably what Mr. Kamba had in mind, it is not the duty of the prosecution to adopt an attitude of non-committal. It is a wrong idea that the prosecution is under obligation to call and examine all witnesses who are acquainted with the facts of the case irrespective of time (and, for that matter, consideration*

of willingness of the witnesses to speak to facts). The prosecution are expected to be always concerned with the shortening of trials. So where there is evidence that a large number of witnesses could have deposed about the incident, the absence of some of them from the list of witnesses does not generally create a doubt whether the prosecution version is to be believed.

Thirdly, even where the adverse inference is properly drawn, that does not necessarily ruin the prosecution case. ***The Court must judge the evidence as a whole and arrive at its conclusion accordingly taking into account the persuasiveness of the evidence given in the light of such criticism as may be levelled at the absence of possible witnesses.****"*[Emphasis is added]

In this case, the persuasiveness of the testimony of the prosecution, in its holistic sense was sufficient to prove the offence with which the appellant was charged. It left no gap which would require lining up of more witnesses whose testimony was not of any decisive effect. This ground of appeal is unconvincing and I dismiss it.

Ground six contends that the appellant's defence was not factored in when the trial magistrate delivered her verdict in the trial proceedings. This ground need not detain us, as the judgment is quite clear that the trial

magistrate took some considerable part of her time to consider the defence testimony. This is found at page 9 of the judgment. The conclusion that came up is that the same was quite insufficient to discredit the prosecution's case. I dismiss this ground of appeal.

With regards to ground eight, the contention is that the conviction was erroneous because the case against him was not proved beyond reasonable doubt. The respondent has viciously disputed this contention. I do not wish to dwell so much onto this ground, mainly because the discussion in all previous grounds have touched on the adequacy of the evidence adduced in support of the prosecution's case. In brief, the testimony of PW1, as corroborated by PW3, PW5 and the PF3 sufficiently discharged the burden of proof and proved that the appellant had a sole culpable role in the commission of the charged offence. In view thereof, I take the view that this ground is barren and I dismiss it.

In the upshot, I find this appeal barren of fruits and I dismiss it. As I uphold the conviction, I invoke the powers vested in the Court under sections 366 (1) (a) and (b), read together with section 388 of the CPA, to alter or vary the sentence imposed on the appellant. The sentence is enhanced from 30 years' imprisonment to life imprisonment, consistent with section 131 (3)

of Cap. 16. This is in view of the fact that the victim of the offence of which the appellant was convicted was below the age of 10 years.

Order accordingly.

Rights of the parties have been duly explained.

DATED at **DAR ES SALAAM** this 9th day of March, 2022

M.K. ISMAIL

JUDGE