

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

DC CRIMINAL APPEAL NO. 08 OF 2022

(Originating from Criminal Case No 71 of 2021 Mbinga District Court at Mbinga)

BONUS NCHIMBI APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

JUDGEMENT

Date of last Order: 30/05/2022
Date of Judgement: 06/07/2022

MLYAMBINA, J.

The Appellant herein being dissatisfied with the decision of the Mbinga District Court at Mbinga (henceforth The Trial Court) in *Criminal Case No. 71 of 2021*, appealed to this Court armed with three grounds of appeal as follows: *One*, the Trial Magistrate erred in law and in facts for upholding the decision of the trial Court which convicted and sentenced the Appellant while the prosecution failed to prove their case beyond reasonable doubt. *Two*, the Trial Magistrate erred in law and in facts by admitting the evidence of EVELINA SALVANUS NDUNGURU while she is not a mother's victim. The mother's victim has been mentioned by both

victim and doctor that her name is EVELIN MSUHA. *Three*, the Trial Magistrate erred in law and in facts by considering uncorroborated evidence which is contrary to the law.

At the hearing date, the Appellant appeared in person while Ms. Shose Naiman, the learned Senior State Attorney appeared for Respondent, the Republic.

At the hearing, the Appellant had nothing to submit rather he craved leave of this Court to adopt his grounds of appeal to form part of his submission. He further prayed the conviction and sentence entered by the trial Court to be set aside so that he can be set at liberty.

In reply, the Senior State Attorney objected the appeal, supported the conviction and sentence imposed to the Appellant. She argued the grounds of appeal in seriatim. On the first ground, the Appellant challenged the Trial Court decision on ground that the Republic did not prove its case beyond reasonable doubt. To the contrary, Ms. Shose said they proved their case beyond reasonable doubt by parading four witnesses. The victim was PW2. After promising to say the truth, she told the Court that the Appellant took her from a restaurant to his room, where the Appellant inserted his penis into her vagina. On that material

date, the victim slept with her sisters Happy and Ritha. The victim stated that she got pain.

The counsel averred that, PW2 was not cross examined by the Accused Person. The proceeding shows that the Appellant had no any question(s). This shows what was stated by the victim was proper. The evidence of PW2 was corroborated by PW1 who is the mother of the victim.

Ms. Shose continued to submit that; PW1 told the Court; on 23/7/2021 in the morning while on the way to her restaurant, where the victim and her sisters slept, she met with PW2. The victim was crying and pulling up her legs *"akitembea anavuta miguu huku analia"*. PW1 saw the victim crying and bleeding from her mouth. She saw her with sperms and blood coming from her vagina.

PW1 stated that; she went to the restaurant and found the accused person getting out of his room and told her that he took the victim out of her room because she wanted to be bitten by the dogs.

The evidence of PW1 was not shaken by the Accused Person. The later asked if they are living together. The other evidence is that of PW3 who is the father of the victim. PW3 proved that the victim is aged four (4) years. He stated that; on 23/7/2021 his wife came from the

restaurant with the victim. His wife called him and he wake up to witness his daughter who was bleeding. His daughter told them that Bonus inserted his Penis to her vagina. She was bleeding and sperms were coming out of her vagina. The victim told them that it is the Appellant who raped her.

The other witness is PW4. He was the Medical Doctor who examined the victim. PW4 stated that on 23/7/2021 the victim was brought to her for check up with her mother one Avelina Msuha. After examination, she filled out a PF3. They required PW4 to examine her if she was raped. She examined her and found bruises and bleeding from her vagina. She had no hymen "*Bikira*", which concluded *that* a blunt object was inserted to her vagina.

The evidence of PW4 was not shaken by the Appellant. PW4 tendered PF3 which was not objected. The Appellant question did not shake the prosecution evidence. It was the Respondent's submission that the case of prosecution was proved beyond reasonable doubt.

Coming to the second ground, that the trial Court erred in law and facts by admitting the evidence of Evelina Salvanus Ndunguru while she is not a victim's mother. Ms. Shose submitted that the victim's mother is Evelin Msuha as mentioned by the victim and the Doctor. Ms. Shose

thought that such error did not go to the root of the case. If the Appellant would have cross examined the witness, he could have known if the victim's mother had other names. It is PW2 who proved the rape case and PW1 was corroborating the evidence of PW2. Ms Shose found the second ground lacks merits.

The third ground was that; the Court erred in law and fact on relying to the uncorroborated evidence which is contrary to the law. Ms Shose, in reply, insisted that, the evidence of PW2 was corroborated by all witnesses and exhibit P2 (PF3). She supported her arguments with the case of **Selemani Makumba v. R.** (2006) TLR 379 specifically at page 384 which state that; the best evidence comes from the victim herself. She prayed this appeal to be dismissed for lack of merits. The conviction and sentence be sustained.

After careful consideration of the documents and oral submission from both parties, this Court noted that, all grounds filed by the Appellant in his petition of appeal tends to challenge the prosecution case. Therefore, the issue to be determined in this case is; whether the prosecution side proved their case beyond reasonable doubt.

It is a cardinal rule that, the prosecution side has to prove their case beyond reasonable doubt. Section 2 (3) of the *Evidence Act [Cap 6 RE 2019]*, provides *inter alia* that:

(2) A fact is said to be proved when-

(a) in criminal matters, except where any statute or other law provides otherwise, the Court is satisfied by the prosecution beyond reasonable doubt that the fact exists;

The afore position was insisted by the Court in the case of **Godfrey Paulo, Frank Warioba, Nelson Mbwire v. Republic** [2018] TLR 486, also in the case of **Hamisi Mbwana Suvo v. Republic** [2017] TLR 160 to mention the few, where the Court insisted that; the prosecution is duty bound to prove their case beyond reasonable doubt.

Following the duty of the prosecution side to prove their case through the evidence brought before the Court, the prosecution has the right to bring who ever person to testify against the accused as long as he will build the prosecution case and not the witness whom the accused wants. This was also insisted in the case of **Abdallah Ramadhani v. Republic** [2013] 1. The Appellant argument upon PW1 that she was not the victim's mother does not hold water and it can not

change the fact that the accused raped the victim even if the prosecution would have been summoned another person to testify.

The Appellant told this Court that the trial Court convicted him based on uncorroborated evidence. I went through the trial Court record including the trial Court judgement and discovered that; the evidence of PW2 who was a victim was corroborated by PW1, PW3 and PW4. The later was a doctor who examined the victim and discovered that she was in deed raped. Even if the victim's evidence was not corroborated, the Appellant should understand that in rape cases even the evidence of a victim alone is enough to grant a conviction against the accused as long as it is credible enough to prove the case.

Moreover, in the case of **Selemani Makumba** (*supra*), it was held that the best evidence in rape cases is the evidence of the victim herself. Therefore, it is not mandatory for the corroboration of evidence in rape cases. The victim herein explained to the Court that it was the accused who raped her and her evidence was corroborated with the evidence of PW1, PW3, PW4 and PF3. At this juncture, it is the findings of this Court that the prosecution proved their case beyond reasonable doubt that the victim was raped by the Appellant.

In the upshot, I have no reasons to fault the trial Court decision. Henceforth, I hereby dismiss the appeal for want of merits. The Trial Court decision is hereby sustained. It is so ordered.



Y. J. MLYAMBINA

JUDGE

06/07/2022

Judgement pronounced and dated this 6th day of July, 2022 in the presence of the Appellant and learned Senior State Attorney Tumaini Ngiruka for the Respondent.



Y. J. MLYAMBINA

JUDGE

06/07/2022