

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

CRIMINAL APPEAL NO. 18 OF 2022

(C/F DC Criminal Case No. 107 OF 2021 in the District Court of Rombo at Mkuu)

EVANCE RESPIK PAUL APPELLANT

Versus

THE REPUBLIC RESPONDENT

17/06/2022, 20/6/2022

JUDGMENT

MWENEMPAZI, J.

The appellant was charged in the trial court with the offence of Rape contrary to section 130(1)(2)(e) and 131(1) of the Penal Code, Cap. 16 R. E. 2019. It was alleged that the appellant (then accused) on the 10th day of May, 2021 at about 12:30 Hours at Kiwanda Village within Rombo District Kilimanjaro Region did have carnal knowledge with one, "JJ", (name withheld to protect the child) a girl of 7 years old. When the charge was read over to the accused person, he denied to have committed the offence and the trial was conducted to prove the offence. At the end of the hearing, the appellant was found guilty as charged and sentenced to serve a sentence of thirty (30) years imprisonment. He was aggrieved and filed a notice of appeal and subsequently a memorandum of appeal with ten (10) grounds of appeal.



When the appellant was given the floor to submit on his appeal, he simply submitted that '*I want to be released I did not commit the offence I was charged with.*'

The learned State Attorney submitted that on respondent's part, after going through the proceedings and judgment and the grounds of appeal they are supporting the appeal. The prosecution failed to prove the offence beyond any reasonable doubt.

The appellant was charged with the offence of rape C/s 130 (1) (2)(e) and 131 (1)(i) of the Penal Code; Cap 16. That the accused raped a girl under 10 years old. Four witnesses were paraded in proving rape case, penetration must be proved and that the victim is under 10 years old age. In this case it is obvious, the victim was raped. The doctor proved that the victim hymen was broken. The question is who did rape the girl. The prosecution has failed to prove that it is the appellant who did rape her.

The only evidence which was relied was that of a child under ten (10) years old. It is obvious that the best evidence in rape cases comes from the victim as decided in the case of **Suleman Makumba vs Republic** [2006] TLR 379.

Despite that the best evidence is that of the victim. However, the court must warn itself that the evidence is reliable and truthful as per Section 127(6) of Evidence Act, Cap. 6 R.E. 2012.

In the typed proceedings at page 7; the victim child testified that while alone coming from school, she met the appellant whom she did not know where he stays.



They met at the area "kwa babu" she heard a person calling him as Tumaa. The accused dragged her to the bush and they had sexual intercourse. Afterward she testified that it was not the first time. She had sexual intercourse with others – uncle chief, baba Mkubwa his name is Lord of Tarakea and is Chief of Morogoro.

The evidence of the victim shows she told her grandmother who took her to hospital. PW1 went to their grandmother on the fourth day after the event. It is doubtful that the evidence is truthful. The victim is not truthful. It is possible she was lying. Even the identification of the said Tumaa is questionable. The prosecution had a duty to prove Tumaa is the appellant in this court.

PW4 is the investigator. It is WP 3175 DSGT Selestine has not testified how he came to know Tumaa and confirm that is the one responsible. Since the only evidence relied is that of the victim (PW2) and there is no corroboration, the respondent submitted that they are supporting this appeal.

I have read the judgement of the trial court, proceedings, the grounds of appeal and also heard the parties in the hearing of this appeal. Mindful of the evidence as analyzed by the learned state attorney, the accused in this case was arrested eight (8) days after the event which took place on 18th May, 2021. The event happened on the 10th May, 2021 at 12:00hours.

The way it has been presented in the evidence it is as if the event was a normal one. The child was rapped on the 10th May, 2021. She never reported anywhere and the fact was unveiled by PW1, Lucy Hussein Seleibaba on the 14th May, 2020 when she went to visit the victim's grandmother. It is not

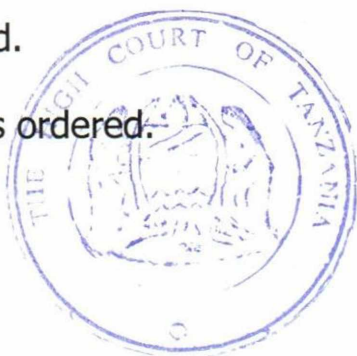


clear, if it is true that the child (victim) was suffering from the pain, how was it possible the event to go silent for all four days until when PW1 went there. Why was it that she knew Tuma, the suspect and they could not find him for all good eight days. There are serious doubts as to the veracity of the occurrence of the event as such.

I have also observed the appellant, he seems not to know the proceedings, but for sure he is aware of what is good or bad. Generally speaking, he understands good values of the society. The testimony in the defence speaks it. He testified simply "*the girl is a devil I didn't do it*". Moreover, he complained that he has head problems due to intermittent convulsions.

Due to the doubts raised and basing on the submissions made by the prosecution, I find this appeal has merit. I therefore quash the judgement and conviction of the appellant, set aside the sentence and the appellant should be released forthwith from prison unless otherwise he is being lawfully held.

It is ordered:-




T. M. MWENEMPAZI
JUDGE

Judgement delivered this 20th day of June, 2020 in court in the presence of the appellant and Ms. Mary Lucas, learned State Attorney for the Respondent.


T. M. MWENEMPAZI
JUDGE