

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**DC CRIMINAL APPEAL NO. 22 OF 2022**

*(Originating from District Court of Manyoni at Manyoni Criminal Case No. 48 of 2020)*

**RASHID ALLY .....APPELLANT**

***VERSUS***

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

*24/5/2022 & 9/6/2022*

**JUDGMENT**

**MASAJU, J**

The Appellant, Rashid Ally, was tried and convicted for the offence of Rape contrary to sections 130 (1) (2) (e) and 131 (1) of the Penal Code [Cap. 16] in the District Court of Manyoni at Manyoni. He was sentenced to serve 30 years in jail. Aggrieved with the conviction and the sentence thereof the Appellant has come to the Court by way of an appeal. The Appellant's Petition of Appeal is made up of five (5) 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 Court, the Appellant appeared in person and prayed to adopt his Petition of Appeal to form his submissions in support of the appeal in the Court, while the Respondent Republic was represented by Ms. Neema Taji, the learned State Attorney who supported the appeal.

Submitting in support of the appeal the Respondent argued that there was no credibility of the victim's evidence as section 127(6) of the Evidence Act [Cap. 6] guides. That, the victim of crime, Eva Michael (PW2) alleged that she was raped by the Appellant on the 10<sup>th</sup> day March, 2020. That, she reported the incident to her mother, Ethnat Yohana (PW1) and they went to the Police Station where they got PF3 and went to hospital for Medical Examination. That, her mother (PW1) turned hostile before the trial Tribunal. That, the Medical Doctor, Sabas Ludovick Mselle (PW4) testified to have observed bruises and that he was not sure the bruises were caused by penetration. The Respondent finalized her submission by arguing that the prosecution case in the trial Court fell short of truth and credibility thereby creating doubt. The Respondent prayed the Court to allow the appeal, quash conviction and set aside the sentence thereof.

That is what was shared by the parties in support of the appeal in the Court.

The Court appreciates the parties' submissions in support of the appeal in the Court. Section 130 (4) of the Penal Code [Cap. 16] gives a mandatory requirement of proof of penetration in rape cases. In the instant case, the Medical Examination Report (Exhibit R1) is silent on whether or not the alleged bruises on the victim of crime's genitalia were caused by penetration. Neither did the PF3 reveal at what part of the genitalia were the bruises seen. The PF3 also reveals white discharge which are not specified as to whether it was sperms or not. In his testimony the Medical Doctor (PW4) was also not sure whether the bruises were caused by penetration or not.

The victim of crime (PW2) alleged to have been on her menstrual period when the incident occurred but in the Medical Examination report the

same is not traced since the Report does not reveal blood on the PW1's genitalia but only "white discharge". This shakes the credibility of PW2's evidence as to whether she was being truthful. Thus, the Court finds that the trial court erred in relying on the evidence by the victim of the crime (PW2) which is doubtful in convicting the Appellant. the trial Court ought to have assessed the credibility of Pw2's evidence as per the requirement of the law pursuant to section 127(6) of the Evidence Act [Cap 6] and section 115 (3) of the Law of the Child Act [Cap. 13].

The remaining prosecution evidence is short of proving the prosecution case against the Appellant since even the victim of crime's Mother (PW1) herself turned hostile as the record of proceedings of the trial court so reveals and as well submitted by the Respondent.

That said, the Court is of the considered position that, the prosecution case against the Appellant was no proved beyond all reasonable doubt in the trial court. The appeal is hereby allowed accordingly. The conviction and sentence by the trial court are hereby quashed and set aside respectively. The Appellant shall be released from prison forthwith unless otherwise held for another lawful cause.



GEORGE M. MASAJU

**JUDGE**

8/6/2022