

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

DC. CRIMINAL APPEAL NO. 14 OF 2022

(Originating from Criminal case No. 162 of 2021 of Manyoni District Court at Manyoni

REDBEST OMARY.....APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

23/6/2022

JUDGMENT

MASAJU, J.

The Appellant, Redbest Omary, was charged with, and convicted of RAPE contrary to sections 130 (1) (2) (e) and 131(1) of the Penal Code, [Cap 16 RE 2019] in the District Court of Manyoni at Manyoni. He was sentenced to serve thirty (30) years imprisonment, hence this appeal is in the Court against the conviction and sentence. His petition of Appeal is made of four (4) grounds of appeal, which essentially boil down to one ground thus that the prosecution case against him before the trial court was not proved beyond reasonable doubt.

The appeal was heard in the court on the 9th day of June 2022 in the presence of the Appellant in person and Mr. Matibu Salum, the learned State Attorney, for the Respondent Republic. The layman Appellant prayed the Court to adopt his grounds of appeal to form submissions in support of his appeal in the court. He prayed the court to allow the appeal because allegedly he did not commit the offence. That, the case against him was just framed up one.

The Respondent Republic did support the appeal reasoning that indeed, the prosecution case against the Appellant in the trial court was not proved beyond reasonable doubt. This is because the police officer, WP 10314 Mary, who allegedly attended the victim of crime by giving her PF3 for medical examination did not testify before the trial court so as to explain the condition of the victim when she reached the police station to report the crime, in particular to testify whether or not the victim's clothes were blood stained as per PF3 (ExhibitP1). The alleged blood stained clothes were not tendered for admission in evidence before the trial court. The same, if admitted in evidence could have strengthened the allegation of rape against the Appellant.

The Respondent Republic reasoned that neither the Doctor (PW2) nor the PF3 (ExhibitP1) thereof stated the cause of alleged bruises on

the labia majora and manora of the victim's genitalia. That the cause for the alleged bruises or penetration thereof should have been stated by the Doctor (PW3) in his own testimony before the Court and on the PF3 (Exhibit P1).

The Respondent Republic further reasoned that since the Appellant allegedly in his cautioned statement (Exhibit P2) was known to the victim's mother, for she was allegedly his charcoal customer, the said mother should have testified before the trial Court to prove the alleged relationship between the victim and her and also to testify on the age of the victim which remained unproved by the prosecution witnesses who testified before the trial court.

The Respondent Republic also submitted that the Repudiated cautioned statement by the Appellant was admitted in evidence by the trial Magistrate in the Ruling during the Inquiry and marked exhibit P2 instead of the said statement being tendered for admission by the witness WP 8468 DC Loyce (PW4) upon resumption of the trial. That, the said cautioned statement (Exhibit P2) therefore did not form part of the prosecution case evidence for having been admitted in evidence during inquiry instead of being admitted in evidence during examination

in chief of the prosecution witnesses (PW4) upon resumption of the trial.

The Respondent Republic went on to argue that according to the cautioned statement (Exhibit P2) by the appellant the scene of crime was allegedly Pepeani Round About within Manyoni town and that the offence was committed during day time. The condition at the scene was not stated as to whether or not there was thickets or any hide out structure at the said Round About, for it was unlikely for a serious crime of Rape to have been committed at such open, and road traffic busy place during broad day light. That, such allegation by the prosecution evidence (Exhibit P2) leaves much to be desired on terms of credibility.

The Respondent Republic lastly argued that the investigation officer (pw4) testified before the trial Court that the Appellant was also known as Joseph Anthony. The alleged name (Joseph Antony) appears nowhere in the charge sheet against the Appellant before the trial Court. there was no proof that the Appellant was also known as Joseph Anthony. Prosecution witnesses (PW4) might have in mind another person, one Joseph Anthony, who might have committed the crime, if any, against the victim (PW2). That is to say, the Appellant's identity was not unmistakably proved by the prosecution before the trial court.

The Court is inclined to agree *in toto* with the Respondent Republic in this meritorious appeal. Indeed, the prosecution case evidence before the trial Court suffers from want of credibility, thereby creating reasonable doubts on the prosecution case accordingly.

The Appellant's alleged cautioned statement [Exhibit P2] which was unprocedurally admitted in evidence is hereby expunged from the body of evidence on record. This leaves the prosecution case hanging on a too thin thread of evidence to support conviction and sentence against the Appellant. The Court appreciates the workmanship done by Mr. Salum Matibu, the learned State Attorney, for the Respondent Republic.

Thus, the meritorious appeal is hereby allowed accordingly. The conviction and sentence of thirty (30) years imprisonment, respectively, are hereby quashed and set aside accordingly. The Appellant shall be released forthwith from the prison unless there was a lawful cause.



GEORGE. M. MASAJU

JUDGE

23/6/2022