

**IN THE UNITED REPUBLIC OF TANZANIA**

**TABORA DISTRICT REGISTRY**

**AT TABORA**

**(DC) CRIMINAL APPEAL CASE No. 43 OF 2020**

*(Original from Nzega D/Court in criminal case no. 61/2019)*

**KASANDA S/O MAJALIWA ..... APPELLANT**

**VERSUS**

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

**JUDGEMENT**

*Date of Submissions: 13/7/2022*

*Date of Delivery: 14/7/2022*

**AMOUR S. KHAMIS, J.:**

Kasanda Majaliwa is aggrieved by Judgement and sentence of the District Court of Nzega in Criminal case no. 61 of 2019 dated 22/6/2020.

Before the trial Court Kasanda Majaliwa was arraigned for the offence of rape contrary to Section 130(1) (2) (e ) and 131 (1) of the Penal Code, Cap 16, R.E 2002 which is now R.E 2022.

The prosecution alleged that on 19<sup>th</sup> day of April 2019, during night hours, while in Bukene Village, Nzega District, Tabora region, he had a carnal knowledge of 12 years girl whose name is withheld but for commence purpose will be referred as "XYZ".



Kasanda Majaliwa denied the charge and plea of not guilty was entered. Thereafter the matter proceedings witnesses testified for the Republic and the appellant was a sole defence witness.

The trial Magistrate was satisfied that the prosecution case was proved beyond reasonable doubts and entered reasonable doubts and conviction.

Consequently, the appellant was sentenced to serve thirty (30) years in Jail with six (6) strokes of the canes.

Aggrieved Kasanda Majaliwa preferred the present appeal premised on five (5) grounds, namely:

1. That the case for the prosecution was not proved against the appellant beyond reasonable doubts.
2. That the offence against the appellant was not proved because PW4 was not a qualified doctor to duly examine (medically) the victim thus, Exhibit P.2 is baseless.
3. That the evidence adduced by PW2 and PW3 was essentially hearsay, which cannot be relied upon to ground conviction.
4. That the defence of the appellant raised reasonable doubt yet the learned doubt yet the learned trial Magistrate erred in law for failure to consider it.
5. That the appellant was not accorded fair trial as both the exhibit P2 and P3, the PF3 and cautioned statement representing were met read in Court after they were cleaned for admission as exhibit.

When the appeal was called on for hearing Ms. Jaines Kihwelo learned State Attorney appeared for the Republic.

The appellant Kasanda Majaliwa tendered for himself and preferred to respond to submissions by the state Attorney.

Ms. Kihwelo commenced her submissions on the title ground of appeal of which she supported.

She contended that it was a legal requirement for a document admitted as exhibits its contents must be read aloud in language to be understood by the accused.

In support of the position, she cited ROBSON MWANJIST & 3 OTHERS V REPUBLIC (2003) TLR 218 and contended that failure to reads contents of PF3 tendered by PW4 and cautioned statement tendered by PW5 manifested lack of fair trial.

Despite of that admission, Ms. Kihwelo strongly deffered with the appellant on the other grounds of appeal.

On the first ground of appeal, she contended that the prosecution proved its case beyond reasonable doubts on the ground that the victim (PW1) stated that the victim (PW1) on how she met the appellant and went to a guest house where they "made love:.

The learned State Attorney asserted that PW1'S testimony was a sufficient evidence in rape cases.

On the second ground of appeal, Ms. Kihwelo urged this Court to disregard the appellant's assertion on the ground that upon expunging PF3 evidence of a medical doctor became redundant.

On the third ground, the state attorney conceded that PW2 and PW3 did not see the appellant committing the offence standing she added that the evidence of PW2 and PW3 corroborated PW1's evidence.

On the fourth ground of appeal, Ms. Kihwelo contended that the appellant's defence did not create any doubt on the prosecution case as it mainly consisted of general denial.

In response thereto, Kasanda Majaliwa had a very brief submission.

He adopted contents of the Petition of Appeal and rested his case on the five grounds of appeal.

The appellant insisted that he was innocent and prayed for an order of release from prison.

Upon examination of the records, and consideration of the five grounds of appeal, I am in total agreement with Ms. Kihwelo that despite of omission to read aloud contents of Exhibits P.2 and P3, PF3 and cautioned statement respectively, which are hereby expunged from the records, and a fact that PW2 and PW3 did not directly see the appellant commit the offence, strength of the prosecution case was not watered down.

In **CHRISTOPHER RAFAEL MAINGU V REPUBLIC, CRIMINAL APPEAL NO. 222 OF 2004** (Unreported) the Court of Appeal held that in order to prove statutory rape beyond reasonable doubt, the prosecution has to prove that the appellant had carnal knowledge of

the victim, there was penetration however slight it might have been and the said victim was a girl below 18 years of age and as such even if she had consented to the sexual intercourse, that was immaterial.

In **SELEMANI MAKUMBA V REPUBLIC (2002) TLR 379**, the Court of Appeal held that the best evidence of rape come from the victim and not others.

In the present case, the victim "XYZ" whose evidence features from page 9 to page 12 of the typed proceedings, testified that she was a standard three (3) pupil.

Further, she told the trial Court on how the appellant approached her through one Tatu and convinced by one Hadija to take money from the appellant.

Upon payment of Tshs. 25,000/= given to Hadija, the victim was ordered to go with the appellant to a guest house.

On arrival at the guest house and in the company of Ms. Tatu, the victim refused to enter into the room whereupon the appellant pulled her inside.

Explaining the situation, the victim (PW1) said

*"..... I was then alone with the accused in the bed room. I started to cry but he forced me and started to play with my womanhood with his penis. After he took off my underpants and taking off his trousers and his under pant".*

*I cried for help. I was completely naked. He inserted his manhood to my vagina. I got pain, the door was closed (locked) outside so*

*I slept there until the morning. I was crying and raising an alarm but the door was closed. The accused stopped me to raise an alarm.*

*During the morning the door was opened by the guest house attendant. The accused had sexual intercourse with me once. The accused did not wear any condom during intercourse.*

*During the morning the guest house attendant came to open and saw me. She went to tell my father. The door which was closed was that of the main entrance”*

PW1 further said upon being informed by a guest house attendant, her father and brothers went to the guest house and found the appellant in her company.

At that point, the appellant was arrested and presented to a Police Station.

The victim's evidence was corroborated with testimonies of PW2 Mtega Kessy and PW3 Hadija Madale.

According to PW2, the victim was born in January 2007 and her clinic card showing a date of birth was admitted as Exhibit P.1.

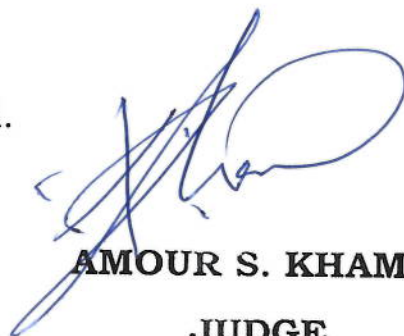
On cross examination by the appellant, PW2 stated that

*“ I found you in the morning at the bar with my daughter. You bought my daughter soda and soup.....”*

With this evidence on record, I am satisfied that the prosecution case was proved beyond reasonable doubts.

Consequently, I find no merits on the present appeal which is hereby dismissed.

It is so ordered.



**AMOUR S. KHAMIS**

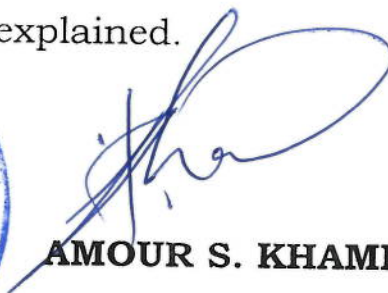
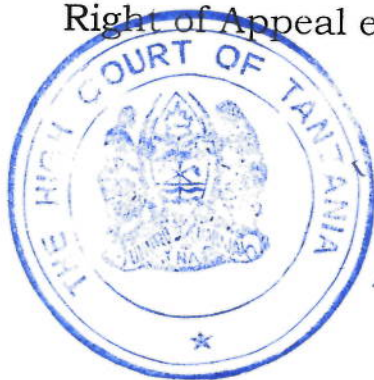
**JUDGE**

**14/7/2022**

**ORDER**

Judgement delivered in Chamber in presence of the appellant in person and Ms. Jaines Kihwelo, learned Senior State Attorney for the Republic.

Right of Appeal explained.



**AMOUR S. KHAMIS**

**JUDGE**

**14/7/2022**