

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

CRIMINAL APPEAL No. 1 OF 2022

(Arising from the District Court of Karagwe at Karagwe in Criminal Case No. 64 of 2021)

JASSON LUCAS @ KAMSAGA----- APPELLANT

Versus

THE REPUBLIC----- RESPONDENT

JUDGMENT

Date of Judgment: 08.07.2022

Mwenda, J.

The appellant Jasson Lucas @ Kamsaga was arrested and prosecuted at Karagwe District Court in Criminal Case No. 64 of 2021 for rape contrary to section 130 (1) (2) (a) and section 131 (1) of the Penal Code [CAP. 16 R.E 2019]. After a full trial, the court found the appellant guilty and sentenced him to serve thirty (30) years jail imprisonment.

Being aggrieved with the decision of the Karagwe District Court the appellant preferred this appeal with five (5) grounds.

When this appeal was scheduled for hearing the appellant appeared in person without legal representation whereas the Republic marshalled Mr. Emmanuel Kahigi the learned state attorney.

In his submission in chief the appellant submitted that he did not commit the said offence. He said during the night in question he was sleeping with his wife and the said case was a fabricated against him. He submitted that before the trial court he prayed his witnesses to be summoned so as to testify but the said witnesses were not brought before the court. He then concluded with a prayer that this appeal be allowed.

In reply to the submission by the appellant Mr. Kahigi, the learned state attorney, informed this court that he supports the conviction meted against the appellant.

He further submitted that the victim (PW1) testified on how she was raped at that night and then reported the incident. He said the victim was issued with a PF3 for treatment and later the appellant was arrested on 29/03/2022.

The learned state attorney submitted that in rape cases the best evidence is that of the victim herself. To support his argument, he cited the case of *SELEMANI MAKUMBA V R [2006] TLR 376*.

He further submitted that there is no contradictions with regard to prosecution witnesses and also there was no delay in arresting the appellant as he was arrested the next day after the commission of the crime following being named at the earliest possible opportunity. He therefore prayed this appeal to be dismissed.

Having gone through the courts records as well as submission by both parties, the issue for determination before this court is whether the prosecution's side proved its case beyond reasonable doubt.

It is elementary rule of law that the burden of proof in criminal cases is on the prosecution side and the standard of which is beyond reasonable doubt. This is per *SECTION 3(2) (A) OF THE EVIDENCE ACT [CAP 6 R.E 2019]* and the precedents in *SAID HEMED V REPUBLI [1987] TLR AND MOHAMED MATULA V REPUBLIC [1995] TLR 3*.

In the present appeal, the conviction of the appellant solely based on the evidence of PW1 who is the victim. This witness testified that on the date of incident she was expelled by her father from their home after she returned late from fetching water. She testified that the appellant who is her uncle took her to his house where she was afforded a place to sleep. At around 23:00 hrs the appellant called her and told her that he wanted to have sex with her but she refused. The appellant pulled her by force to his room where he raped her. In the following day she reported the incident to her friend one Anisia Julius and later to her mother. Having received the bad news, her mother reported the incident at Kaisho Police station. The victim was issued with a PF3 and upon being examined by the doctor at Isingiro Hospital it was discovered that she was raped. Accused was then arrested on 29/03/2021.

On his part the appellant denied committing the said offence. He said on the date of incident he was at his house sleeping together with his wife.

This court have keenly analysed the evidence adduced by PW1, PW2 and PW3 and is of the view that it sufficiently proved the case against the appellant. This is so because PW1 is a credible witness whose testimony was not shaken. This witness is familiar and related to the appellant. She was lured to go and sleep at the appellants house and before going there the appellant sought approval from the victim's mother PW2 through a phone call. It is noted that PW2 is related to the appellant and there were no grudges against the appellant and the victim's family. In other words, there is no way the victim and her mother would fabricate a case against the appellant as the appellant tried to impress this court.

It is trite law that in rape cases the best evidence is that of the victim himself or herself. This principle was articulated in the case of *SELAMANI MAKUMBA V. REPUBLIC [2006] TLR 384* that;

True evidence of rape has to come from the victim, if an adult, that there was penetration and no consent; and in case of any other woman where consent is irrelevant that there was penetration."

In this matter therefore, although the victim's PF3 was tendered and admitted as exhibit P1 without its content being read to the parties still relying on the

principle in the case of *SELEMAN MAKUMBA(SUPRA)* the prosecution case remained strong. This court is aware that failure to read the contents of an exhibit is fatal and the effect of which is to render the said exhibit expunged. See the case of *JUMANNE MOHAMED & 2 OTHERS VS THE REPUBLIC CRIMINAL APPEAL NO 534 OF 2015 (CAT) AT TANGA* (unreported) the Court held inter alia that;

"...The interest of justice and fair trial demands that in all fairness an accused person is entitled to know the content of any document tendered as exhibit to enable him marshal a proper defence whenever they contain any information adversely affecting him."

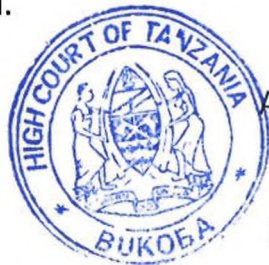
Also see *SOLOMON MAKURU MTENYA @ KAHUMBE & 3 OTHERS VS REPUBLIC CRIMINAL APPEAL NO. 40 OF 2020* while citing the case of *ANANIA CLIVERY BETELA VS REPUBLIC CRIMINAL APPEAL NO. 355 OF 2017 (CAT)*. (Unreported)

Guided by the above authority, the victim's PF3 is thus expunged from the records for failure to read its contents in court.

Although exhibit P1 is expunged from the records as I have stated above, the remaining evidence of PW1 is watertight against the appellant and as such the appellant was rightly convicted and sentenced.

From the foregoing observation this appeal lacks merits and it is hereby dismissed. The decision of Karagwe District Court in Criminal Case No. 64 of 2021 is hereby upheld.

It is so ordered.




A.Y. Mwenda

Judge

08.07.2022

This judgment is delivered in chamber under the seal of this court in the presence of the appellant Mr. Jasson Lucas and in the presence of Mr. Emmanuel Kahigi the learned State Attorney for the Republic.




A.Y. Mwenda

Judge

08.07.2022