

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

DC. CRIMINAL APPEAL NO. 119 OF 2021

(Originating from Criminal Case No. 17/2021 at Dodoma District Court)

JAMES ABRAHAM MNYAMBWA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

30/6/2022 & 4/7/2022

JUDGMENT

MASAJU, J.

The Appellant, James Abraham Mnyambwa was tried and convicted of the offence of Rape contrary to section 130 (1) (2) (a) and 131(1) of the Penal Code, [Cap 16] in the District Court of Dodoma at Dodoma. He was sentenced to thirty (30) years imprisonment. Aggrieved with decision by the trial Court, the Appellant has come to the Court by way of an appeal. The Appellant's Petition of Appeal is made up of the seven (7) grounds of appeal in which he essentially argues that the prosecution case against him was not proved beyond reasonable doubt.

When the appeal was heard in the Court on the 19th day of May, 2022 the layman Appellant appeared in person and prayed to adopt his petition of appeal to form his submissions in support of the appeal in the Court.

On her part, the Respondent Republic was represented by Miss Neema Taji, the learned State Attorney, who contested the appeal by submitting that the prosecution case was proved beyond reasonable doubt. That, the Appellant raped the victim of crime Gissella Joachim (PW1) twice on the material night hence the opportunity for identifying the Appellant as she also managed to identify the Appellant's Bajaj Tricycle plate number which number she reported to the Police Station. That, PW1 was given a PF3 for medical examination where she was medically examined by Johnson Kenneth Ngalya (PW2) who testified that the victim had been carnally known. That, her shirt had been torn and was mud stained. That her left knee had bruises and the right foot toe was swollen. That, all these being signs of struggle between the Appellant and PW1 as she resisted rape, for the Appellant had allegedly tied her legs tearing her T-shirt and punching her to the Bajaj where he knocked her head falling to the Bajaj. That, the Appellant was identified at the scene of crime since PW1 spent enough time with the Appellant as his passenger, that the Appellant himself admits that PW1 was his passenger. That, she spent time with him negotiating about

the fare and then at the scene of crime where the two were close when PW1 resisted rape and when she was raped twice. That, this was ample time for unmistakable identification. That, the Appellant had been with the victim from 2200 hours on the 8th day of January, 2021 up to about 0600 hours on the 9th day of January, 2021 on the material night. That, PW1 also identified the Appellant at the Identification Parade as testified by A/Inspector Getrude Byeje (PW6) and the Identification Parade Register (Exhibit P3) thereof. As regards the 1st ground of appeal, the Respondent contested it by submitting that the Appellant did not contest the prosecution case evidence on Identification Parade which was conducted in accordance with the procedure. As regards the 2nd ground of appeal, the Respondent submitted that the trial Court considered the Doctor (PW2)'s evidence along with the evidence of PW1. That, as regards the 4th ground of appeal there was no evidential value of the SUMA JKT officer as against the Appellant hence non calling him to testify in the prosecution case. That, as regards the 5th ground of appeal, the victim of crime (PW1) was medically examined on the material day. That, as regards the 7th ground of appeal the Appellant's defence was considered by the trial Court. The Respondent prayed the Court to dismiss the appeal for want of merit, for the prosecution case was proved beyond reasonable doubt.

In Rejoinder, the Appellant submitted that he was photographed by the victim of crime (PW1) and her relatives prior to the identification parade the day before the identification parade was done. That, he had been in police custody for about 18 days.

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

In this appeal, the Appellant mainly takes issues with identification alleging that he was mistakenly identified by the victim of crime (PW1). The prosecution evidence in the trial court is very clear and straight forward that on the material night at around 2200 hours PW1 boarded the Bajaj Tricycle being driven by the Appellant at CBE Bus Stop. That, she sat in the front seat adjacent to the Appellant. That, they pursued the Bus which goes to Mpwapwa to no avail, a fact the Appellant himself did not dispute. They even reached Ihumwa being together in the Appellant's Bajaj Tricycle. On the way back, the Appellant diverged on a side road to the bush where the Appellant assaulted PW1 and raped her forcefully twice upon he had unsuccessfully demanded to be paid TZS 15,000/= fare by her even as PW1 pleaded with him to refrain from doing so, for she could have paid the said fare even more thereof later on. That, they spent the night together

there up to 0600 hours in the morning. That PW1 managed to identify the Bajaj Tricycle Registration Number, MC 974 CFR.

The Court is of the considered position that, PW1 had an ample time of a total of nine hours she spent in the company of the Appellant to identify him, from the time she boarded the front seat, at CBE Bus stop at 2200 hours on the 8th day of January, 2021 to the time she struggled to resist the rape incident twice to the time the Appellant took her back to Nanenane Bus Stand at 0600 hours on the 9th day of January, 2021. There was also a time the Appellant took a nap as he sat at the Bajaj's door. The trial Court so rightly considered the identification of the Appellant in light of **Waziri Aman V.R [1980]** TLR 250. Even after the criminal incident, the victim of crime (PW1) and the Appellant were able to exchange their cellular phones contact numbers for future communication, if any, between them. The Appellant was arrested by the police officer upon tracing the Appellant using his own cellular phone number he had shared with the victim of crime (PW1) and the Registration number of the Tricycle Bajaj he was driving the material night of the crime.

In such circumstances, all the possibilities of mistaken identity of the Appellant were eliminated considering the duration of time PW1 had the

Appellant under observation where she went further to recognize and identify the Appellant's Bajaj registration number.

Apart from the evidence of identification, the prosecution proved forceful penetration where the Medical Doctor (PW2) testified on the PW1's condition at the time he medically examined her. That, she was penetrated, had blood in her vagina indicating that she was also in her menstrual period, corroborating the PW1's evidence. That, her shirt was torn, her left toe swollen and had dried mud and bruises in her body/knees indicating that there was some sort of struggle. PW2's evidence corroborated the Medical Examination Report (Exhibit P1) which reveals the same facts. The Bajaj Tricycle with Registration No. MC 974 CFR which was used by the Appellant to transport PW1 to the scene of crime was also tendered in the trial Court as exhibit P5 along with the Certificate of Seizure (Exhibit P4) thereto.

There was proof of penetration as a mandatory requirement of section 130 (4) of the Penal Code [Cap 16]. There was also evidence that PW1 was carnally known without her consent as use of force was proved in the trial Court. There was also proof that the Appellant is the one who carnally known PW1 without her consent by using force and threatening her with a machete

as testified in the trial Court. The Appellant was unmistakably identified by PW1 throughout the time they spent together and at the Identification Parade as testified by PW6. There was no grudges between the victim of the crime and the Appellant, hence the victim's evidence credibility against the appeal as so rightly submitted by the Respondent Republic. Even if the impugned Identification Parade hadn't been there still the unmistakable Identification of the Appellant by the victim of crime (PW1) in the material night could be satisfactory for convicting the Appellant of the sexual offence.

Thus, the appeal is hereby dismissed for want of merit.




GEORGE M. MASAJU

JUDGE

4/7/2022