

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**RM. CRIMINAL APPEAL NO. 4 OF 2022**

**JOSEPH S/O PAUL @ SIMON ..... APPELLANT  
VERSUS**

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

(Appeal from the decision of the Court of the Resident Magistrate of Katavi at Mpanda)  
(F. U. Shayo, RM)

Dated 2<sup>nd</sup> day of December 2021

In

Criminal Case No. 51 of 2021

**JUDGMENT**

26/07 & 29/08/2022

**NKWABI, J.:**

Over his conviction and sentence for raping a girl aged five years contrary to section 130(1), (2)(e) and 131(3) of the Penal Code, Cap, 16 R.E. 2019 the appellant has presented before this court a petition of appeal which is comprised of two grounds of appeal as follows:

1. That the trial Court erred at law and fact by convicting the appellant on the case which was not proved beyond reasonable doubt.
2. That the Trial Court erred at law and fact by not considering that the evidence of PW6 who testified in Court that he found nothing (no sperms) in victim's vagina.

It was claimed in the Trial Court that the incidence happened on 14<sup>th</sup> day of May 2021 at around 2000hrs at Kaseganyama village within Tanganyika District which is within Katavi region. The victim had gone to collect a mobile phone from the saloon. PW3 Juma, a barber, was startled by unusual sounds back of the saloon where he works. He decided to make follow-up. He found the appellant laying on top of a girl having sex with her. He arrested the appellant and raised an alarm.

PW5 Janeth who also responded to the alarm, inspected the girl's genitalia and found oozing (trickling) blood and saw semen. The appellant was arrested. Later, the girl was sent to the hospital for check-up which was done by PW6 Kinara who opined that the girl had been penetrated by a blunt object. PW5 was not cross-examined at all and PW6 was not cross-examined on any particular matter in respect of the rape.

In the trial, the appellant disputed having committed the offence. He claimed to have been arrested while coming from his farm. He was sent to the police station and on the next day is when he was accused of raping the girl. He was sent to court two weeks after been arrested while for all that time he was in police custody. The trial court was satisfied with the evidence on the

prosecution, rejected his defence. Convicted him and sentenced him to life imprisonment.

The appellant was dissatisfied with both conviction and sentence the appellant filed this appeal to this Court to protest his virtuousness.

Meanwhile the hearing of this appeal was conducted orally, that is, through oral submissions. The appellant appeared in person, unrepresented, while the respondent was duly represented by Ms. Marietha Maguta, learned State Attorney.

In submission in chief, the Appellant merely prayed the court to adopt his grounds of appeal as his submissions.

Responding to the appeal, Ms. Maguta informed this Court she supports the conviction and sentence. She argued both grounds of appeal together, pointing out the reason for her approach that the grounds of appeal relate. She, at the outset stated that in the trial court they had 6 witnesses, however, the victim was disqualified so they had five witnesses.

Ms. Maguta was of a further contention that the appellant was arrested at the scene of offence by PW3. That witness explained what happened. PW3 found the appellant raping the child. He raised an alarm and the appellant was arrested at the scene. PW3 evidence is corroborated by the evidence of PW4 and PW5.

She also added that PW5 checked the victim and found her with sperms and blood stains. PW5 was not cross examination by the accused, thus the appellant admitted the fact. She referred me to the cases of **Athuman Rashid V. Republic**, Criminal Appeal No. 264/2016 Court of Appeal of Tanzania at Tanga - unreported and **Nyerere Nyaguye V. Republic**, Criminal Appeal No. 67/2010 found on (Tanzilii).

Ms. Maguta also stated that the evidence of the doctor PW6 corroborates the evidence of the other witnesses. She insisted they proved the charge beyond reasonable doubt by direct evidence and expert evidence and prayed the appeal be found unmerited. All the grounds of appeal have no merit because proof by sperms is not a legal requirement. She then asked I dismiss the appeal.

To finalize his submissions, the Appellant urged this Court to reject the submission of the respondent. He then prayed for his release from prison.

Now, the very crucial question that remains unresolved is whether the charge was proved beyond reasonable doubt. The appellant does not believe that the charge sheet was proved beyond reasonable doubt because the matter was not reported at the earliest possible opportunity and some material witnesses were not called to testify.

On her side Ms. Maguta strenuously submitted that they proved the charge beyond reasonable doubt basing the oral evidence of the victim. She referred this Court to the decision of the Court of Appeal in **Seleman Makumba V. Republic [2006] TLR 379** proved that the best evidence is that of the victim. The victim's evidence is corroborated by the evidence of the Doctor who examined. Also, there is the evidence of the father of the victim.

I agree with Ms. Maguta's contention that proving rape does not require proof that semen were ejaculated into the female organ and actually the doctor who examines the victim should prove that he found such semen in

the female sex organ. Proof of rape requires proof of penetration however slight. The 2<sup>nd</sup> ground of appeal is unmerited I dismiss it.

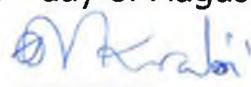
Concerning the 1<sup>st</sup> ground of appeal in which the appellant laments that he was conviction over the offence that was not proved beyond reasonable doubt, I accept Ms. Maguta's submission and the evidence proves that the appellant was arrested at the scene of offence by PW3. PW3 found the appellant raping the child. PW3 also raise an alarm and the appellant was arrested at the scene. I also accept that PW3 evidence is corroborated by the evidence of PW4 and PW5.

The above reasons dispose the appeal in favour of the respondent. I find that this appeal has no merits. I dismiss it. Conviction entered and sentence imposed by the trial court against the appellant are upheld.

It is so ordered.

**DATED** at **SUMBAWANGA** this 29<sup>th</sup> day of August 2022.



  
J. F. NKWABI

**JUDGE**