

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

AT DODOMA

DC CRIMINAL APPEAL NO. 50 OF 2022

(Originating from the District Court of Dodoma at Dodoma in Criminal Case No. 25 of 2019)

YOHANA CHARLESAPPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

22/9/2022 & 23/9/2022

JUDGMENT

MASAJU, J

The Appellant, Yohana Charles, was charged with, and convicted of **UNNATURAL OFFENCE** contrary to section 154(1)(a) & (2) of the Penal Code, [Cap 16 RE 2002] and **RAPE** contrary to section 130 (1) (2) (e) and 131 (1) of the Penal Code, [Cap 16 RE 2022] before the District Court of Dodoma, the trial court. He was sentenced to serve life time in prison on each offence along with corporal punishment of six (6) strokes of cane per offence upon admission into prison, hence the meritorious appeal which is made up of four (4) grounds of appeal, including the 1st ground that the prosecution case before the trial court was not proved beyond all reasonable doubt as against him.

The appeal was heard in the presence of the Appellant in person and Mr. Salum Matibu, the learned State Attorney, for the Respondent Republic on the 8th and 23rd days of September, 2022. The Respondent Republic so

rightly did not contest the appeal because the prosecution case against the Appellant before the trial court was not proved beyond reasonable as so rightly argued by the Appellant. The reasons thereof are as hereunder, thus;

First, the complaint that was reported to police was about Unnatural offence. This was stated on the Medical Examination Report (PF3). The said Report was admitted in evidence and marked "Exhibit P2". Had the allegation been both Unnatural Offence and Rape, the (PF3) could have so stated on the details of the alleged offence. But in "PART IV: SEXUAL ASSAULT CASES" the nature of complaints it is stated "suspected rape" without there mentioning anything about unnatural offence. Which is which? The alleged victim of crime being a female, there was a requirement to;

*"(i) Describe the physical state of and any injuries to genitalia with special reference to labia majoria, labia minora, vagina, cervix, anus and establish evidence of penetration: **"laceration of posterior aspect of vestibula of vagna, lacerations on the Anus"***

*(ii) Note presence of vereral infections or any discharge, blood from genitalia/anus: **"stool discharge per Anus (fecal in continuance)"***

MEDICAL PRACTITIONERS REMARKS

"There is Anal penetration and attempt of vaginal penetration, but Hymen intact".

The Medical Examination Report (PF3), the prosecution Exhibit "P2" leaves much to be desired because there was no observation by the medical officer on the state and injury, if any, to labia minora, labia majora and cervix. The stated "posterior aspect vestibula of vagina" is not part of the requirement of the medical observation where there is guided special

reference. The Medical Report (Exhibit P2) does not also state as to whether or not the sphincter muscles of the Anus had been affected. This is because there cannot be continuance of fecal discharge without there being loose sphincter muscles. The Report also did not state the nature of the weapon which caused the "laceration" or penetration observed by the medical practitioner who examined the victim of crime on the 1th day of February, 2019. So, Dr. Peter Kyamba (PW4)'s testimony as to loose sphincter muscle and blunt object was just an afterthought because he hadn't so observed or stated in the Medical Examination Report. As this was not enough, Dr. Peter Kyamba (PW4) was the only prosecution witness who alludes to fecal discharge from the victim's anus. The investigation officer D. 6404 D/sgt Gaudence (PW5), the victim's parents Joseph Shangwe (PW1) and Shukrani Mpoka (PW2) the biological father and mother respectively and Sebastian Joseph Ngailo (PW3) who saw the victim at first instance do not testify on such condition.

Second, the victim of crime who is said to be three (3) years old by the time of crime was declared by the trial court that was not capable of testifying because she was not able to speak. That being the case, her parents (PW1&PW2) allegations that she told them that "Baba huyu amenivua nguo" and "alichukua uchi wake akaniwekea kwenye uchi wangu" respectively were afterthoughts it is no wonder that the trial court so rightly did not take into account such piece of evidence.

Third, since according to Joseph Shangwe (PW1) Shukran Mpoko (PW2) and Sebastian Ngailo, Hamlet chairman (PW3) the Appellant and the victim were allegedly found naked in deep sleeping at about 00:00 hours,

how the Appellant could at the same time be cuddling the victim so that she can remain calm?

Fourth, there was a contradiction amongst the prosecution witnesses PW1 & PW2 and Pw3 on the scene of crime. PW1 & PW2 testified that the Appellant and the victim were found at the field (shamba) whilst PW3 testified that the Appellant and the victim were found at the grave yard/cemetery (eneo la makaburini). Which is which?

As the Respondent so rightly observed, this was one of the framed up cases. The trial court ought to have been keen.

Thus, the meritorious appeal is hereby allowed accordingly. The conviction and sentence on the two offences thereof are hereby quashed and set aside respectively. The Appellant shall be released forthwith from prison unless there was lawful cause.




GEORGE M. MASAJU

JUDGE

23/9/2022