

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

DC CRIMINAL APPEAL NO. 08 OF 2022

*(Originating from Criminal Case No. 30/2021 at
Kongwa District Court)*

BAHATI MADEJE.....APPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGEMENT

Date of last order: 13/07/2022

Date of Judgment: 22/09/2022

Mambi, J.

In the District court of Kongwa, the appellant BAHATI MADEJE was charged with the offence of rape c/s 130(1) (2) (a) and 131 (1) of the *Penal Code, Cap 16* [R.E.2019]. It was alleged that on the 1st day March, 2021 at Norini Village, Kongwa District within Dodoma Region the appellant did had carnal knowledge with one Yudith d/o Mbeni a woman of 70 years old. He was convicted and sentenced to 30 years imprisonment. Aggrieved, the accused lodged a criminal appeal in this Court to challenge the conviction and sentence of the trial Court basing on six related grounds of appeal.

During hearing while the appellant appeared unrepresented the Republic was represented Mr. Chaula. In his submission the appellant briefly prayed to adopt and rely on his grounds of appeal.

In response, the prosecution through the learned State Attorney submitted that, all grounds of appeal by the appellant have no merits. The learned State Attorney briefly submitted that the prosecution proved the charges against the accused beyond reasonable doubt. He averred that the evidence by the prosecution witnesses such as PW1, PW3 and PW4 (doctor) was clear and the trial court properly based on that evidence in convicting the appellant. He was of the view that in sexual offences, the best evidence is that of the victim. The learned State Attorney relied his submission on the decision of **Seleman Makumba vs. R [2006] TLR 379.**

The appellant briefly re-joined that the prosecution did not prove the charges against him beyond reasonable doubt. He argued that the prosecution witnesses were not telling the truth.

Having carefully gone through the proceedings and judgment of the trial court, the grounds of appeal and submissions from both parties, I find the issue before this Court to be whether or not the evidence by the prosecution was reliable. In other words, the main issue in this case is whether the prosecution proved the case against the appellant beyond reasonable doubts or not.

The records clearly show that among all prosecution witnesses there was only one reliable eye witness, PW1 (the victim herself). Both

PW2 (Tatu Mbeni) and PW3 (Severine Elias Mdao) were told of the rape incident by the victim. On the other hand, PW4 (Juma Budeba) a medical doctor, testified that the victim reported at Mkoka Health Center on 03/03/2021 and he stated that his medical examination revealed that the victim had healed bruises in her vagina. He concluded that the victim was penetrated by a blunt stiff object.

The question is, was the testimony of PW1 and PW4 enough to convict the appellant? It is without doubt that the trial court's conviction was mainly based on the evidence of PW1 (the victim). In my view, the hands of the prosecution are not tied up from corroborating the evidence of the victim. Otherwise, the good principle in **Seleman Makumba vs. R *supra***, "that in rape cases the best evidence is that of the victim" might be misused at the detriment of an innocent accused. The prosecution has legal obligation to prove criminal cases beyond reasonable doubts and in the interest of justices such sole evidence of the victim needs to be corroborated in some cases.

It is upon the prosecution to prove beyond reasonable doubt that the victim was actually raped by the accused and there was penetration. It was essential for the Republic which had charged the appellant with raping of the victim on the material date to lead evidence showing exactly that PW1 was raped on that day See ***Ryoba Mariba @ Mungare v R, Criminal Appeal No. 74 of 2 003 (unreported)*** as discussed by the court of Appeal in ***ALFEO***

VALENTINO VERSUS THE REPUBLIC CRIMINAL APPEAL NO. 92 OF 2006.

Looking at the trial records and the way the prosecution witnesses testified their evidence, I agree with the appellant that the case against him was not proved beyond reasonable doubt. This is due to the fact that, despite the testimonies of the victim (PW1) that she knew the accused prior the rape incident as he was her village mate and despite the fact that she was raped in broad day right, still this cannot circumvent the need of corroboration. Furthermore, PW4 (the medical doctor) stated that he examined the victim after three days of the rape incident and found healed bruises. The question is why did the victim delayed to report to the hospital? It is very dangerous to convict the accused basing on mere general statement. I am of the strong view that courts should act very cautiously on uncorroborated and general statements like in the case at hand. This can be reflected from the case of ***MATHAYO NGALYA @SHABANI VERSUS REPUBLIC, CRIMINAL APPEAL NO. 170 OF 2006*** (unreported) where the Court of Appeal held that:

*"The essence of the offence of rape is penetration of the male organ into the vagina. Sub-section (a) of section 130 (4) of the Penal Code ... provides; - 'for the purpose of proving the offence of rape, penetration, however slight is sufficient to constitute the sexual intercourse necessary to the offence.' **For the offence of rape it is of utmost importance to lead evidence of***

penetration and not simply to give a general statement alleging that rape was committed without elaborating what actually took place. It is the duty of the prosecution and the court to ensure that the witness gives the relevant evidence which proves the offence". [Emphasis supplied].

As said earlier, the state or prosecution has the burden of proof in criminal cases and it includes the burden to prove facts which justify the drawing of the inference from the facts proved to the exclusion of any reasonable hypothesis of innocence. Since the burden is to prove of most of the issues in the case beyond reasonable doubt, the guilt of the accused must be established beyond reasonable doubt. In my firm view, the prosecution had to establish beyond any reasonable doubt that it was the Appellant who had raped PW1. This is in line with the trite principle of law that in a criminal charge, it is always the duty of the prosecution to prove its case beyond all reasonable doubt (See **ABEL MWANAKATWE VERSUS THE REPUBLIC, CRIMINAL APPEAL NO 68 OF 2005.**

It is trite law that in criminal law the guilt of the accused is never gauged on the weakness of his defense, rather conviction shall be based on the strength of the prosecution's case. See ***Christina s/o Kale and Rwekaza s/o Benard vs Republic, TLR [1992]*** at P.302.

The position of the law is clear that the standard of proof in criminal cases is neither shifted nor reduced. It remains, according to our law, the prosecution's duty to establish the case beyond reasonable doubts.

In the case at hand the prosecution failed to prove its case in a required standard of criminal cases.

In the circumstances, I allow the appeal, quash the conviction and set aside the sentence. I further order that the appellant be released forthwith from prison unless he is otherwise being continuously held for some other lawful cause.




A. J. MAMBI
JUDGE
22/09/2022

Right of Appeal explained.




A. J. MAMBI
JUDGE
22/09/2022

Judgment delivered in Chambers this **22nd** day of **September, 2022**
in presence of both parties.



A. J. MAMBI

JUDGE

22/09/2022