

**IN THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
SUMBAWANGA DISTRICT REGISTRY  
AT SUMBAWANGA**

**DC CRIMINAL APPEAL NO. 31 OF 2021**

*(Originating from Criminal Case No. 155 of 2020 from District Court of  
Sumbawanga)*

**JUSTINE S/O PETER ..... APPELLANT**

**VERSUS**

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

**JUDGMENT**

*Date of Last Order: 07/10/ 2022*

*Date of Judgment: 12/12/2022*

**NDUNGURU, J**

This appeal arises from the decision of the Sumbawanga District Court at Sumbawanga (henceforth the trial court). The appellant **Justine Peter** was arraigned in Criminal Case No. 155 of 2020 of offence of rape contrary to **section 130 (1) and (2) (e) and 131 (1) (3)** of the Penal Code, Cap 16 RE 2019. He was found guilty, convicted and sentenced to serve thirty (30) years imprisonment and as well to pay compensation of Tshs. 2,000,000/= to the victim.

Aggrieved by the trial court decision, the appellant lodged to this court six (6) grounds of petition of appeal. These grounds are reproduced as hereunder: -

- 1. That the learned trial magistrate erred in law and fact to convict the appellant for the offence of rape based on insufficient and un-credible evidence of PW2 the alleged victim regarding to the nature of the alleged offence.*
- 2. That the learned trial magistrate erred in law and in fact to believe the testimonies of PW2 which was not satisfactory on account that PW2 did not report the incident soon after the alleged rape and that it was un-usual if she raised an alarm. That no one comes to help her.*
- 3. That the learned trial magistrate erred in law and in fact to convict the appellant based on exhibit of PF3 which was tendered un-procedurally without showing that the specimens done by doctor shows that the sperm seen at vagina belongs to the accused in order to prove the charge beyond.*
- 4. That learned trial magistrate erred in law fact and for failure to evaluate the evidence of both sides*

*and write judgement balance the evidence of both sides instead required the appellant to prove his innocence instead of raising reasonable doubts in the minds of the court.*

*5. That the learned trial magistrate erred in law and fact to ground conviction to the appellant without considering the defence of alibi raised by the appellant and without recording that the victim of crime was the truth full witnesses and the reasons for saying so.*

*6. That the learned trial magistrate erred in law and in fact to ground conviction to the appellant based on circumstantial and hearsay evidence of prosecution witnesses PW1, PW4 and PW7 without corroboration.*

Briefly, the fact of the case is as follows; that on 16<sup>th</sup> of June 2020 accused who is also the victim niece called the victim to go to his restaurant to help him with restaurants works, upon arrival he told the victim to enter in one of the rooms in that restaurant to fetch bicycle spear part for him, when the victim entered the room the accused followed her at back and surrounded her waist by using his arms and forcefully pulled her

on the mattress, he undressed her he also undressed himself and raped her after the incidence went back home crying.

The accused person was arrested and as earlier hinted charged before Sumbawanga District Court. After full trial he was found guilty, convicted and accordingly sentenced.

When the appeal was called on for hearing, the appellant appeared in person, unrepresented; whereas the respondent *cum* Republic had the legal service of Ms. Safi Kashindi, the learned State Attorney.

Arguing in support of his appeal, the appellant prayed for the court to adopt his grounds of appeal and prayed for the appeal be allowed.

In reply, Ms. Safi Kashindi, learned State Attorney, resisted the appellant's appeal. Ms. Kashindi was of the argument that PW2 is the victim of crime and in her testimony, she told the trial court on how he was raped. That PW2 reported to her brother-in-law the event. She submitted that the evidence of PW2 is credible because she is the victim of the crime. She referred the case of **Seleman Makumba vs Republic** [2006] TLR 369.

Ms. Kashindi submitted that the trial court evaluated the evidence of PW2 as far as the credibility and demeanour of the witnesses. The court

had no reason to discredit the witness, thus she said the 1<sup>st</sup> and 2<sup>nd</sup> reasons be dismissed. The learned State Attorney went on submitting that PW2 reported the matter immediately after the event, thus she was aware of what she was doing.

With regard PF3, Ms. Kashindi submitted that the exhibit was admitted as per the required procedure. She argued that proof in rape cases is penetration as provided under section 130 (1) of the Penal Code. Thus, the ground is devoid of merit.

As to the fourth ground, Ms. Kashindi submitted that the court considered the evidence of both sides. She argued that at page 7-8 of the typed judgement the trial court considered the evidence of prosecution and defence. The ground be dismissed.

As to the fifth ground, Ms. Kashindi submitted that the appellant did not raise the defense of alibi. In her evidence the PW2 said the appellant visited her kiosk. Thus, it is not true that the appellant was not present at the scene. The ground also be dismissed.

As to the sixth ground, it is her submission that there was no hearsay evidence whatsoever. PW2 testified what happened which PW4 told the court that he found PW2 crying at home. The witness took the victim to

the leaders at the village. PW3 is the in law of the PW2 who was informed, sent PW2 to the hospital. He was the one who reported the matter to village authority. All witnesses gave direct evidence not circumstantial. The victim had below 18 years, thus consent was immaterial. She prayed for the appeal be dismissed.

I have keenly followed the arguments of the appellant and that of Ms. Safi Kashindi for the respondent/ Republic during the hearing of this appeal. I have as well read between the lines the appellant's grounds of complaint and the entire proceedings of the trial court.

It is trite law in sexual offences that the best evidence has to come from the victim. See the case of **Seleman Makumba versus Republic [2006] TLR 384**. In this cited case, the Court held 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 women where consent is irrelevant that there was penetration"*

Resolving the first complaint raised by the appellant that the appellant was convicted based on insufficient and un-credible evidence of PW2, the victim. However, I am of the considered view that the victim

gave a detailed account of how the appellant called her to his home after asking her to go together to appellant's residence for helping in the restaurant where she was raped.

When PW2 (the victim) who is a victim in this case was testifying she had this to tell the trial court:

**I live at Matala village within Nkasi District Rukwa Region, I live with my parents. I am a student at Mtenga Secondary School Nkasi District I am in form three I was born on 16.10.2003. I remember on 16.06.2020 I was at Lyapona B village within Sumbawanga District, Rukwa Region. I went to Lyapona B village to pay a visit to my sister one Zawadi Landan. I remember on that date I went to Justine Peter at his restaurant he called me to help him to cook for customers in his restaurant but I refused. Then I went back home I found my sister who told me that she has sent her to tell me to go to his restaurant to help him cook later on agreed to go, it was 15:00hrs when I went to Justine**

**restaurant when I arrived, I found him while preparing buns (maandazi) then he told me to enter in one of the rooms to collect bicycle spoke for him. When I entered the room, he followed me back and held me tightly on my waist he pulled me on the bed he took a cloth he covered my mouth by using cloth. He undressed my clothes he also undressed himself after that he took his penis and inserted in my vagina when he finished I dressed my clothes and walked out to the dining room, the act took about five minutes at the dining room.....”**

With the above quoted testimony of the victim before the trial court it goes without doubt that, the appellant did rape the victim.

As submitted by the Ms. Safi Kashindi – Learned State Attorney, the evidence of the victim (PW2) clearly stated how the appellant undressed the victim and inserted his penis into the victim vagina.

The evidence of PW5, a clinical officer opined that the victim vagina had semen in and outside her vagina and the victim was walking while limping.

Further, the victim narration of evidence was corroborated by evidence of PW3 whom the victim first reported to him of the incident and PW5, a police officer who recorded appellant's cautioned statement upon which he confessed to have committed the crime. The appellant did not put any objection to the confession when tendered at the trial court.

The victim evidence is also corroborated by the evidence of PW7 who was the relative of the victim. PW7 told the trial court that he was at the scene of crime and she took the victim who was crying to his bother George where the victim stated to have been raped by the appellant.

As regards the appellant's complaint that trial court failed to evaluate evidence of both sides, this court is of the same position to that of Ms. Safi Kashindi, learned State Attorney that testimonies of both sides case was properly considered by the trial court. Looking at page 7 to 8 of the typed judgment the trial court analysed the testimonies of both the appellant and the prosecution.

The appellant raised the defence of Alibi, but the same did not comply to the dictate of the law.

Again, the complaint by the appellant that exhibit PF3 was unprocedural admitted is unfounded. As per the proceedings of the trial court the PF3 was properly cleared and admitted contrary to the allegation by the appellant.


It is my finding that the conviction against the appellant was based on the testimony of the victim (PW2) who gave detailed story on how she was raped by the appellant. Thus, the conviction of the appellant was based on direct evidence and not circumstantial or hearsay evidence as alleged by the appellant.

From above, it is undoubtedly the charged offence of rape was proved within the required criminal standards of proof that demands proof beyond reasonable doubt taking into account in sexual offences the best testimony has to come from the victim.

In the final analysis, I am satisfied that, the appeal before me has no semblance of merit. The same is dismissed in its entirety.

It is so ordered.



  
**D. B. NDUNGURU**  
**JUDGE**  
**12/12/2022**