

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

RM. CRIMINAL APPEAL NO. 48 OF 2022

(Originating from Criminal Case No. 52 of 2022 of Katavi Resident Magistrates' Court at Mpanda)

MATONDO KUYI @ HORONG.....APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Date of Last Order: 21/11/2022

Date of Judgement: 19/12/2022

MWENEMPAZI, J.:

Before the Resident Magistrates' Court of Katavi at Mpanda, the appellant was arraigned for the offence of rape contrary to Section 130 (1) (2) (e) and 131 (1) & (3) of the Penal Code [Cap. 16 R. E. 2019], whereas he first appeared in the trial court on the 10th October, 2022 and as the charge was read over and explained to him, he then pleaded not guilty to the offence charged. However, as the trial court proceeded with the Preliminary Hearing, the appellant changed his plea from 'not guilty' to 'guilty'.

Therefore, the trial court convicted him on his own plea of being guilty for the offence charged and he was sentenced to serve life imprisonment.

Being dissatisfied with both conviction and the sentence of the trial court, the appellant filed a petition of appeal consisting of four (4) grounds of appeal which are as hereunder;

1. That the trial court erred at law and fact by taking the Evidence of the victim a person of a tender age without inquiring if she understood the merits of speaking the truth.
2. That the trial erred at law and fact by convicting the appellant on a case which was not proved beyond reasonable doubt.
3. The trial court erred at law and fact by not considering the evidence of the medical doctor who examined the victim and found her genital parts were raped without using scientific instruments/proof.
4. That the trial court erred both at law and fact to rely on the prosecution evidence that the appellant admitted the offence while he did not admit.

In the scope of his grounds of appeal, the appellant prays for this court to give its decision in his favour and release him from prison and set him free.

During the hearing of this appeal, the appellant represented himself, meaning he had no legal representation while the respondent was represented by Mr. John Kabengula learned State Attorney.

As he was invited to argue for his grounds of appeal, the appellant submitted that he prays to be released and set free as he did not commit the

offence.

Responding to the submission made by the appellant, Mr. Kabengula started off that the appellant has brought four grounds of appeal and that his side objects the appeal. He then added that, at the outset that the appellant is not required to appeal as per section 360 (1) of Criminal Procedure Act which provides for no appeal on conviction based on plea of guilty.

The learned State Attorney proceeded that, the appellant pleaded guilty and admitted to the facts and repeated to do so when he was reminded the charge, he admitted to have committed the offence. Furthermore, he said Exhibits were tendered and PF3 was admitted in Court and compliance of the Criminal Procedure Act, but he did not object to any.

He submitted further that the offence for which the appellant was charged with is according to the law, whereas he was charged under section 130(1) (2) (e) and 131(1) and (3) of Penal Code, Cap 16 R.E 2019. In that, Mr. Kabengula said the appellant understood what offence he was charged with, and therefore he pleaded basing on full knowledge of the offence as per section 228(1) of Criminal Procedure Act.

Mr. Kabengula clarified even further that, the victim's age was established and the facts established that the appellant raped the victim. However, he insisted that the age was not objected to and also the PF3 which was tendered and admitted in evidence was not objected. And that, the Court before convicting the appellant, it satisfied itself to the fact that all elements have been established and that the appellant has pleaded guilty. Mr. Kabengula referred this Court to the case of **Richard s/o**

Lionga @ Sinageni Vs. The Republic, Criminal Appeal No. 14 of 2020 and he insisted that the appellant was rightly convicted and sentenced, and therefore they pray for this Court to uphold the conviction and sentence.

In rejoinder, the appellant submitted that he did not commit the offence, but only that people say and fabricate this case against him. That he was found on the road and got arrested. That the bodaboda who found him took him on the road and since they were working together, he was not suspicious of anything, but then he was accused of raping a child. That is all.

After the submissions from both sides and thorough perusal of the grounds of appeal as filed by the appellant, it is absurd if I pull out one ground and work on it. I say so because all the four grounds of appeal have not suggested whether the plea of guilty entered by the appellant was either equivocal or unequivocal. However, come sun-come rain, this appeal has to be delt with. And in doing so, the determinant issue here is **whether the plea of guilty by the appellant was equivocal or unequivocal.**

In resolving this saga, I find it best to reproduce an extract of the trial court's proceedings as hereunder;

PROCEEDINGS

DATE: 10/5/2022

CORUM: G. K. SUMAYE-SRM

S/A: DICKSON SA

ACCD: PRESENT

C/C: HAULE

Court: Charge read over and explained to the accused person who is asked to plea thereto;-

S/A: Matter is for PH let me read the charge.

Court: Charge read and explained to the accused person who is asked to plead

Accused: It is not true

Court: "PONG" Entered.

Sgd: G. K. Sumaye

SRM

10/05/2022

Court:

That the accused person particulars are as per charge sheet. The accused stands charged of one offence as it appears in the charge sheet. The victim's name is withheld to protect her dignity, she is 6 years, STD II pupil at Magula Pr. School. On 11/03/2022 the victim was going back home from the business place of her father, she met with the accused on the way. The accused held the victim by force and lay her down on the ground, undressed her by force and destroyed her under pant, Accused undressed himself and took his penis and inserted into

the victim's vagina and raped her.

The victim shouted for help, and she started bleeding after the rape, accused allowed the victim and she returned back home crying. At home the victim explained that she was raped by the accused. The Victim knew the accused, the matter was reported to the leaders of that area and later accused was taken to the police station.

The victim was given PF3 and she was taken to Katavi regional Hospital. The medical report shows that the victim was raped. Accused person was arrested and interrogated by WP 7593 CPL Salome. The accused was charged in court. He denied the charge.

*Court: **MEMORANDUM OF FACTS AGREED***

The accused personal particulars are as per charge sheet that the accused stands charged of one count as per charge sheet. Accused person admitted that he raped the girl, he pray charge be read again to him.

S/A: As the accused person admitted the rape, let me read again and explain the charge to him.

Court: Charge read and explained to the accused person who is asked to plead thereto;-

Accused Plea: Ni kweli nilimmbaka Gloria

Court: Plea of guilty entered in respect of the offence of rape.

Sgd: G. K. Sumaye

SRM

10/05/2022

S/A: Let me read the facts to the accused.

Court: Facts by S/A

That, the Particulars of the accused are as appears in the charge sheet of that accused stands charged of one count. The victim is called G.A (name reserved) she has six years old. I pray to tender Affidavit regarding the age of the victim.

Accused: I don't have objection.

Court: Affidavit regarding age of the victim is Admitted and marked as exhibit PE1.

Sgd: G. K. Sumaye

SRM

10/05/2022

Court: Content of Exhibit PE1 read and explained loudly to the accused in the language he understands (Kiswahili)

Sgd: G. K. Sumaye

SRM

10/05/2022

S/A: That, on 11/03/2022 at Magula village while the victim was

back home, she met with the accused. The accused person caught the victim and laid her down on the ground, undressed her under pants and himself and inserted his penis to the victim's vagina.

That, after he had completed to rape the victim, the accused allowed her to go home. At home, the victim explained to her parents what happened and the information was reported to the Ward executive officer and to the police station, the victim was given PF3 for medical examination at Katavi Regional Hospital.

The Hospital report shows that the victim has bruises in her private parts. I pray to tender PF3 as an exhibit.

Court: Accused is addressed in terms of S.240 (3) of the CPA and is asked if he objects.

Accused: I don't have any objection, let the PF3 be admitted, there is no need to call the medical doctor.

Court: PF3 of the victim is admitted and marked Exhibit PE2

S.240 (3) of the CPA C/W

Sgd. G. K. Sumaye

SRM

10/05/2022

S/A: Today the accused person admitted his offence when the charge of rape was read to him again, that's all.

Court: The above facts are read and explained to the accused person who is asked if he admits them, below is the accused reply.

Accused: I have heard the facts you read to me all the facts are correct as I raped the victim on that date at 20:00 hours, I admit all facts.

Signed-Accused

S/A for Republic-Signed

Court: S.210 (3) of the CPA C/W

Sgd: G. K. Sumaye

SRM

10/05/2022

Court: After the accused has pleaded guilty to the charge unequivocally, I accordingly convict the accused person of the offence he stands charged in the charge sheet.

S. 235 (1) of the CPA Cap 20 R.E 2019 C/W

Sgd: G. K. Sumaye

SRM

10/05/2022

Court: Prosecution are asked if they have any record of Conviction

S/A: I don't have any record but I pray for this court to impose

the statutory sentence taking into consideration the victim is six years old, while the accused has 29 years.

(i) That, the victim may have obtained sexual transmitted diseases.

(ii) That, the victim was affected physiologically for a long time and she can be separated in the society.

I pray the court to consider S.131 (3) of the Penal Code Cap 16 R. E. 2019

Court: Accused is granted the right to mitigate the sentence below in his Mitigation.

Accused Mitigation

I don't have anything to say, I leave everything to the court as I raped the girl. That's all

Sgd: G. K. Sumaye

SRM

10/05/2022

As expected, the extract of the proceedings above reveals that the appellant's plea was not unequivocal one. In the beginning he pleaded not guilty but after the commencement of the Preliminary Hearing, he changed his plea from not guilty to guilty. In an open mind, this means that he did not understand the charge at first but later on he understood the charge against him and opted to plea guilty. In addition to that,

exhibits were tendered and he did not object, he even added that there is no need of calling the medical doctor for he has raped the victim. To me, there is no any clearer confession than this.

Nevertheless, in mitigation the appellant told the court that he had nothing to add and that he leaves everything for the court to decide as he indeed raped the victim. After that, he was sentenced to serve life imprisonment after a conviction which was the result of his own unequivocal plea of being guilty.

It has been said over and over again that, the appellant having pleaded guilty to the charge, he only has a right to appeal against the sentence as stipulated under the provisions of section 360 (1) of the Criminal Procedure Act, Cap 20 R.E. 2019. This fact was well stressed in a number of authorities but here I will only refer to the most common case of **Laurent Mpinga vs Republic (1983) TLR 166** in which Samata, J. as he then was, held, and I quote:-

"(i) An appeal against conviction based on an unequivocal plea of guilty cannot be sustained, although an appeal against sentence may stand.

(ii) An accused person who has been convicted by any court of an offence "on his own plea of guilty" may appeal against the conviction to a higher court on any of the following grounds: -

1. That, even taking into consideration the admitted facts, his plea

was imperfect, ambiguous or unfinished and, for that reason the lower court erred in law in treating it as a plea of guilty;

2. That the plea of guilty was as a result of mistake or misapprehension;

3. That the charge laid at his door disclosed no offence known to law and

4. That upon the admitted facts he could not in law have been convicted of the offence charged."

I am thus satisfied that in this case, the appellant was rightly convicted on his own unequivocal plea of guilty in that he pleaded guilty to the charge and also accepted the prosecution facts in support of the charge of rape contrary to Section 130 (1) (2) (e) and 131 (1) & (3) of the Penal Code Cap 16. R.E. 2019. I am also satisfied that the prosecution facts constituted the offence of rape to the cited provision above.

As the matter of fact, I find this appeal being devoid of merits, and as a result, I proceed to dismiss it. The conviction and sentence of the trial court against the appellant are hereby upheld.

Ordered accordingly.

Dated at Sumbawanga this 19th day of December, 2022.




T. M. MWENEMPAZI
JUDGE
19/12/2022