

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

DC CRIMINAL APPEAL NO. 56 OF 2022

(Arising from the District Court of Kongwa in Criminal Case No. 101 of 2018)

DANIEL MASINGA..... APPELLANT

VERSUS

THE REPUBLIC RESPONDENT

4/11/2022 & 10/11/2022

JUDGMENT

MASAJU, J

The Appellant, Daniel Masinga, was charged with, and convicted of **RAPE** contrary to sections 130 (1) (2) (e) and 131 (1) of the Penal Code, [Cap 16 RE 2019] before the District Court of Kongwa. He was sentenced to serve thirty (30) years imprisonment upon the allegations that he had raped one Rudia Elisha, a twelve (12) years old girl, step daughter of his on the 10th day of November, 2018 at about 13:00 hours at Norini village within Kongwa District in Dodoma Region.

Aggrieved by the conviction and sentence, the Appellant has come to the Court by way of an appeal. His Petition of Appeal is made up of five (5)

grounds of appeal, including the 5th ground that the prosecution case was not proved beyond reasonable doubt.

The layman Appellant was heard in the presence of the learned State Attorney, Mr. Salum Matibu, before the Court on the 4th day of November, 2022 as he adopted the grounds of appeal to form his submissions in support of the appeal in the Court and prayed the Court to allow the appeal accordingly.

The Respondent Republic didn't contest the appeal because the evidence adduced by Rudia Elisha (PW1) and her biological mother, Miriam Renjele (PW2) was contradictory to each other hence damaging the credibility of the said prosecution witnesses. That, one mama George their neighbour, the ten cell leader whose name was not disclosed, and the village Executive Officer before whom the Appellant allegedly confessed the crime and asked for forgiveness did not testify on the prosecution case. That, since the said persons could have formed independent witnesses, they could have been a valuable boost to the prosecution case. That, E 859 D/Cpl Othman (PW4) who interrogated the Appellant testified that he was told by the Appellant that this was the 2nd time of his committing the crime but PW1 & PW2 testified this was the first time the Appellant had committed the crime. Actually, Rudia Elisha (PW1) testified that she felt pain when the Appellant

sexually penetrated her. That, Miriam Renjele (PW2), testified that she inspected PW1's genitalia and found blood and sperms while the victim of crime (PW1) didn't testify that her mother did inspect her genitalia. This apparent contradictions or rather silence leaves much to be desired on the prosecution case witnesses (PW1 & PW2).

In rejoinder the Appellant submitted that he did not commit the crime but his wife Miriam Renjele (PW2) just famed him up because he was aware of her adulterous adventures and she wanted to be free to maintain her adulterous sexual relations in his absence. That, had he confessed before the police officer, he could have been taken to the justice of the peace.

That said, the Court takes no issues with the submissions made by the parties. Indeed, the prosecution case leaves much to be desired in terms its witnesses and the evidence thereof. The Medical Examination Report [PF 3-Exhibit P1] even does state as to whether or not there was penetration of PW1's genitalia. The report notes that PW1's vagina was seen opened, but does not expound on what caused the "*opened vagina*". The Report was as good as nothing. The testimony by Dr. Ally Yohana (PW3) was not so much worth. That is to say, the allegations of Rape were not proved beyond reasonable doubt despite of there being the Appellant's cautioned statement [Exhibit P2], which was admitted in evidence without being objected by the

Appellant because of his being ignorant of the procedural law governing proceedings before the trial court. But he contested it upon being read over to the Court. Had the Appellant confessed the crime there could have been no trial, he could have been convicted of the offence on his own plea of guilty right away when the charge was read over to him and asked to enter plea.

Lastly, prior to PW1 testifying, the trial court recorded that "*this witness is the minor who promised to tell the truth before this Court and not else, she has not been forced, harassed or induced anyone*" but the record reveals nowhere, the said minor witness so promised. This adventure by the trial court was not in line with section 127 (2) of the Evidence Act, [Cap 6 RE 2019]. The unprocedurally adduced evidence by PW1 is hereby expunged from the record of the trial court. This done, the prosecution case hangs on a too thin thread of evidence to ground sustainable conviction against the Appellant.

The meritorious appeal is hereby allowed accordingly. The conviction and sentence against the Appellant respectively are hereby quashed and set aside. The Appellant shall be released forthwith from prison except if there was a lawful cause.



GEORGE M. MASAJU

JUDGE

10/11/2022