

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DODOMA DISTRICT REGISTRY**

**AT DODOMA**

**DC CRIMINAL APPEAL NO. 01 OF 2023**

(Appeal from the District Court of Singida at Singida original Criminal  
Case No. 70 of 2021)

**SILVANUS VEDASTUS MKINGIRA.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

*Date of Judgment:* 18/10/2023

**MAMBI, J.**

In the District Court of Singida at Singida, the appellant **SILVANUS VEDASTUS MKINGIRA** was charged with the offence of unnatural offense c/s 154 (1) (a) of the ***Penal Code, Cap 16*** [R.E.2019]. the facts from the prosecution as indicated under the trial records indicates that the accused on the different dates on the month of November 2022 did commit unnatural offence by sodomizing a young boy aged 10 years old. on the 12<sup>th</sup> day of April, 2021 the accused was alleged

to have unlawfully had canal knowledge to one young boy (for purposes of this case 'a victim'). It appears from the trial court records the victim was born in 2007 thus by the time (2019) the incident occurred the victim had 10 years old. The Trial Court found the accused guilty as charged. He was convicted and sentenced to 30 years imprisonment.

Aggrieved, the appellant appealed to this court challenging the decision of the trial District court the following similar six grounds:

1. That, appellant was charged, convicted and sentenced on a defective charge based on incorrect provision of the law, taking into account the alleged age of the victim, an irregularity that goes to the root of the matter and prejudiced the appellant and occasioned miscarriage of justice.
2. That, time span from the last order of the court to pronouncement of judgment went beyond stipulated ninety (90) days as required by the law, without any legal justifiable reason.
3. That, detention period at police station was unreasonably long that is twenty six (26) days, without any justifiable reason,

contrary to legal requirement taking into account the nature of the offence.

4. That, appellant's defence relating to CCTV cameras stationed in the residence where alleged incidence claimed to have occurred, that could have shown the footage was ignored by the trial court.
5. That, there was variation of evidence tendered by the prosecution witnesses relating to date and time, when the matter was reported to police station, when the victim was taken for medical examination, and when PF3 was issued, but the trial court went on to convict and sentence the appellant.
6. That, the prosecution case was not proved beyond reasonable doubt as required in criminal law.

During hearing, the appellant appeared unrepresented. The Republic was represented by Ms. Sara, Mr. Mwakifuna and Ms. Tausi. The appellant adopted all his grounds of appeal and said he had nothing to add.

Responding to the grounds of appeal collectively, the learned State Attorneys led by Ms. Ms. Sara, for the Republic, submitted that, they don't support all grounds of appeal. She argued that the court relied

on the evidence of the victim (PW1) and the evidence of her aunt (PW2) as indicted under the proceedings under page 20 and 12. The learned State Attorneys submitted that the evidence is clear that when the incident occurred the victim immediately reported the matter to her mother (PW3) before she reported to the police. She argued that there was little delay in reporting the matter but, the reason for delay to send the victim to the hospital was explained by PW3. They further submitted that the records of the trial court are clear that the trial magistrate considered the evidence of both parties as indicated pages 8,9,10 and 12. The learned State Attorneys the accused admitted in his caution statement and the document was properly tendered and admitted as per the provisions of the law such as section 250 & 251 CPA. They argued that the appellant volunteered to be recorded his statement under cautioned statement and the procedure was in in with the law.

I have thoroughly gone through the grounds of appeal and submissions from both parties as indicated above. Having summarised submissions from both the appellant and prosecution, I now revert to the appeal at hand. I have indeed considerably gone through and

considered all grounds of appeal, submission from the republic/prosecution and the records. In our case in hand, and from the grounds of appeal by the appellant it appears that the key issues at were are that, whether the prosecution case was proved beyond reasonable doubt and whether the magistrate erred in his decision. The other issue is whether the evidence of the victim who is a child of tender age mandatorily need to be corroborated with CCTV as claimed by the appellant in his fourth ground of appeal.

I will start addressing the issues as to whether in rape cases it is mandatory for the evidence of the victim of tender age to be corroborated. The appellant on his fourth ground has alleged that, it was mandatory for the victim evidence to be corroborated with electronic of device for CCTV. The learned state attorney for the respondent, submitted that in an offence of rape of a child of tender age what was supposed to be proved is sexual intercourse and penetration.

In my firm view, it is a cardinal principle in rape cases as also rightly submitted by the learned state attorney that in rape offences the best evidence is that of the victim as clearly underscored in the case of

***Selemani Mkumba v. R Criminal Appeal No. 94 of 1999***

***(unreported)***. What was to be observed by the trial court was the reliability of the said evidence. In other words it is not mandatory for the evidence of the victim to be corroborated as what is required is the victim to tell the truth and reliable evidence. I am aware that electronic evidence from CCTV is admissible under our laws, but the evidence from CCTV at the trial court was not an issue. On top of that, since the victim clearly testified on how the appellant forced him to be sodomized, and since there were other witnesses to corroborate the victims evidence there was no need to use CCTV as evidence. Indeed, the trial records (proceedings) show that the evidence of the victim was corroborated by the evidence of PW1 (her aunt who immediately attended the victim after incidence).

I have made reference to the records (judgment and proceedings) from the trial court and found that that, all witnesses testified the same evidence that the accused actual did have sodomize the girl who the child of a tender age (twelve years old).

The issue as to whether corroboration is mandatory or not in rape offence has been well explained by the court in various decision and

the legal principle has now been clearly set. The position of the law is now clear that in rape cases there is no need of corroboration. In my considered and firm view, the complaint that the evidence of a victim needed corroboration has no merit since the law does not provide mandatory requirement for corroboration of the victim evidence in offences relating to sex or rape.

It should be noted that the purpose of corroboration in most cases required only to support or confirm which evidence is sufficient and credible. I wish to refer the case of ***Mbushuu alias Dominic Mnyaroje and Another v Republic (1995) TLR 97 (CA)***, where the court underscored and held that,

*"Courts look for corroboration when, in the light of all the evidence, a witness is worthy of belief. The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm or support that which as evidence is sufficient and satisfactory and credible."*

There are other more authorities that have clearly clarified the question of corroboration. For instance the court in the case of ***Hassan Juma Kanenyera and Others v Republic (1992) TLR 100 (CA)***, held that, "it is a rule of practice, not of law, that corroboration is required



of the evidence of a single witness of identification of the accused made under unfavourable conditions; but the rule does not preclude a conviction on the evidence of a single witness if the court is fully satisfied that the witness is telling the truth."

From the above findings in line with the above cited cases it is undisputed fact that, corroboration is not compulsory to ground conviction as even the evidence of a single witness especially when it is an evidence of the victim in rape case. The Court in ***Ayubu Hassan Vs Republic, Criminal Appeal No. 79 Of 2009, CAT, Tanga (Unreported), observed*** that

*"...what matters is the competence and credibility of witnesses and nothing more..."*

In his appeal, the appellant has also contended that, the prosecution did not prove charge against him beyond reasonable doubt. This raises the issue as to whether the prosecution discharged its legal duty of proving the case beyond reasonable doubt.

The position of law is very clear when it comes to the legal duty of proving the case beyond reasonable doubt in criminal cases which lies to the prosecution. This court has frequently underscored that it is a general rule in criminal responsibility that the onus of proving the



charge against the accused beyond reasonable doubt lies on the prosecution and is part of law. Ignoring this principle may be regarded as unforgivable mistake. See the case of ***Jonas Nkize v. Republic*** ***1992 TLR 213 (HC)***.

The issue at hand is whether the prosecution proved beyond reasonable doubt the charges on rape alleged to have been committed by the accused. Among the important elements to prove the offence of rape is penetration of the male organ. In the case at hand there is no any doubt that there was penetration and sexual intercourse has been proved and the accused/appellant had carnal knowledge with the victim (PW1). The trial records show that PW1 (SM 1) in his evidence. Testified as follows:

*"siku ya tukio mwezi Novemba mshitakiwa alimwita chumbani kwake akaingiza dude lake la kukojolea sehemu ya haja kubwa. Na baada ya tukio hilo alifanya hivyo mara tano, na yeye (mwathirika) alikuwa analala kwa kuangalia chini na mshitakiwa yupo juu yake."*

The evidence the victim is also corroborated by the evidence of his teacher (PW5, victim's teacher) who testified as follows:

*Mnamo 25/11/2021 baada ya kugundua SM 1 ni mtoro niliamua  
kumhoji na akasema kijana wa kazi alikuwa anamchukua na  
kumpeleka chumbani kwake na kumlawiti!*

Reading between the lines on the above testimonies it is clear that the prosecution clearly suggest that the victim was sodomized by the appellant.

The appellant in his defence argued that the prosecution did not prove the case beyond reasonable doubt and the magistrate convicted him basing on the evidence from the victim. On the other hand, the prosecution submitted that the case was proved beyond reasonable doubt using the witnesses including the victim. There is no doubt that a prosecution case must, as the law is, be proved beyond reasonable doubt. In my view, this in simple, means that the prosecution evidence must be strong to leave no doubt to the criminal liability of an accused person.

Before, answering the above issues, it is pertinent to consider one of the key elements of an offence of rape which is the main root of this case. While the prosecution in their submission argued that the best evidence for rape comes from the victim so long as there is prove of

penetration, the appellant in his grounds of appeal submitted that in our case the element of penetration and offence of rape have not been proved by prosecution. Indeed, the law that is the Penal Code, Cap 16 is very clear on the ingredients of an offence of rape or unnatural offence. In this regard the most relevant provision is section 130 (4). Under section 130 (4) (a) of the Penal Code, Cap 16 [R.E 2002], as observed also by the court in ***Mahona Sele versus Republic Criminal Appeal No. 188 of 2008*** (unreported) that penetration is an essential ingredient of the offence. It is the position of law and from various authorities through court cases that the main evidence for an offence of unnatural offence or rape, is the evidence from the victim. It has also been clearly stated by the court from some decided cases that the main and best evidence in rape case which is similar to our case is the evidence from the victim.

However, it is the duty of prosecution to prove the criminal cases such as rape beyond reasonable doubt by proving to the court that the victim was actually raped by the accused and there was penetration. The legal position is that the evidence must be clear and credible without leaving any doubt that would lead to injustice to the innocent

accused. This can also be reflected from the case of ***AINEA GIDEON VERSUS REPUBLIC, CRIMINAL APPEAL NO. 183 OF 2008***, where the court held that:-

*"... In order to establish the offence of rape, the following elements have to be proved:-*

- 1. That there was penetration;*
- 2. That there was lack of consent; and*
- 3. That it was the appellant who committed the act."*

To finally answer the issues as to whether the prosecution has proved the case beyond reasonable doubt, I will revert to evidence relied by the prosecution. As rightly submitted by the learned State attorney, Ms. Catherine that the main evidence in rape case, is the evidence for the victim and the records clearly show that the Victim and other witnesses clearly testified that the victim was actually raped by the appellant.

From the above evidence by the witnesses, it is clear that the prosecution proved the charges of unnatural offence against appellant beyond reasonable doubt.

I agree with the republic submission through the learned State attorney that this is the position of law that the main victim in offences

related to rape case such as unnatural offence in our case which is similar to our case is the victim. To clearly address this position, I wish to refer the case of ***SELEMAN MAKUMBE VS REPUBLIC, 2006 TLR***, the Court in this case clearly stated and held at page 379 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 woman where consent is irrelevant, that there was penetration."*

Having analyzed the arguments by the prosecution, I agree with their submission and find no merit in the complaint by the appellant that the prosecution had failed to prove the case beyond reasonable doubt. I wish to refer the case of ***SELEMANI MAKUMBA V. REPUBLIC [2006] TLR*** (supra) where the court held that:

*"true evidence of offence of rape has to come from the victim, if an adult, that there was penetration and no consent; and in case of any other woman where consent is irrelevant, that there was penetration".*

My perusal from the trial court documents further indicates that the records clearly show that the court below was right in its decision as the evidence shows that the charge of unnatural offence on PW1 was established beyond all colours of doubt and the prosecution had

proved the case beyond reasonable doubt. The victim (PW1) informed the court that the accused raped him on the 12<sup>th</sup> on April 2021. The appellant contended the victim evidence needed corroboration from other witnesses. In the instant case, so long as there is evidence of penetration as testified by the victim (PW1) whose evidence was supported by the doctor PW1, PW2, PW3 and PW4 and PW5 , in my firm view sexual intercourse necessary for an unnatural offence has been established. I wish to refer the relevant provision of the law (The Penal Code Cap 16, [R.E.2019]).

"Section 130 (4) of the Penal Code provides:-

*"For the purposes of proving the offence of rape:-*

***Penetration however slight*** *is sufficient to constitute the sexual intercourse necessary to the offence".*

To determine and further clarify the issue as to whether the evidence on sexual offences such as rape or unnatural offence necessarily need further corroboration or not, I wish to consult the court decision in ***JOSEPH MAPUNDA AND HAMISI SELEMANI V. REPUBLIC [2003] TLR 367*** in which the court held that;

*"In view of the provisions of section 127 of the Evidence Act as amended by section 27 of the Sexual Offences (Special*

*Provisions) Act 1998 (which is now Cap 16 [R.E.20019, **the criterion now in Sexual Offences is more on the credibility of the victim of the offence and the court can act on the uncorroborated** testimony of a single witness if it is satisfied that the witness is telling nothing but the truth”.*

The position of the law as has been occasionally held by this court is now that, “the Court can convict the accused on uncorroborated evidence of a single witness, it being a child of tender years or any victim of the sexual offence, provided that, the witness or the victim of the sexual offence is telling nothing but the truth”. This is now the criterion used in criminal proceedings on matters relating to sexual offence to determine the credibility of the witness and in particular the victim of the sexual offence.

The appellant in his appeal has also complained that the trial magistrate erred in law point and fact when made the decision basing on irregularities evidence. I have perused the proceedings of the trial court and it is clear there is no any irregularity at Additionally, the judgment of the trial court indicates that the trial Magistrate analyzed the evidence of both parties with authorities. I have carefully analyzed the sequence of evidence and events of on the way the victim was



raped by the appellant basing on the evidence presented by prosecution. I have also carefully gone through the evidence by both prosecution and defence as indicated above and my observation from the evidence on record has convinced and satisfied me that the charge of unnatural offence against the appellant was conclusively proved beyond reasonable doubt at the trial court.

I therefore, on the evidence on record convinced and satisfied that the trial magistrate was entitled to reach a finding that the case against the Appellant had been conclusively proved beyond reasonable doubt.

I have no reason to fault the finding of trial magistrate. In the event, and for the reasons stated, I am satisfied that the appeal has no merit.

I dismiss the appeal in its entirety.

It is dismissed accordingly. Order accordingly.



**A. J. MAMBI**

**JUDGE**

**17.10. 2023**

Judgment delivered in Chambers this 17<sup>nd</sup> day of October, 2023 in presence of both parties.



A handwritten signature in black ink, appearing to read "A. J. Mambi", written over the seal.

**A. J. MAMBI**

**JUDGE**

**17.10. 2023**

Right of Appeal Explained.



A handwritten signature in black ink, appearing to read "A. J. Mambi", written over the seal.

**A. J. MAMBI**

**JUDGE**

**17.10. 2023**