

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**RM. CRIMINAL APPEAL NO. 54 OF 2022**

(Originating from the Resident Magistrate Court of Katavi at Mpanda In Criminal Case No. 106/2021)

**SAID S/O ISSA @ WAMLOMO ..... APPELLANT**

**VERSUS**

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

24/11/2022 & 22/02/2023

**JUDGMENT**

**MWENEMPAZI, J:**

The appellant was charged in the trial Court with two counts, first, Rape Contrary to Section 130(1) and (2) (e) and 131(3) of the Penal Code, Cap 16 R.E 2019 and second one, Unnatural offence contrary to Section 154(1) (a) and (2) of the Penal Code, Cap 16 R.E 2019. In the first count it was alleged that the accused (appellant herein) on the 6<sup>th</sup> day of November, 2021 at Ikola within Tanganyika District in Katavi Region, had sexual intercourse with HIJA D/O NURU a girl aged eight (8) years old. In the second count it was alleged that the accused (appellant) on the 6<sup>th</sup> day of November, 2021 at Ikola village within Tanganyika District in Katavi Region,



had carnal knowledge of one HIJA D/O NURU, a girl aged eight (8) years old, against the order of nature.

When the charge was read over and explained to the accused person, the appellant, he denied. The case had to go for a full trial and the prosecution called three witnesses. The defendant (accused person) did not call any witness. He defended himself. At the end of the trial the Court found the accused guilty in both two counts and convicted the accused person of the offence of Rape Contrary to Section 130(1) and (2) (e), and Section 131(3) of the Penal Code, Cap 16 R.E 2019; and also Unnatural Offence Contrary to Section 154(1) and (2) of the Penal Code, Cap 16 R.E 2019. He was therefore sentenced to serve a term of life imprisonment in jail for each count.

The appellant is aggrieved by the decision, both conviction and sentence imposed. He thus filed this appeal raising four grounds of appeal. The said grounds of appeal are as follows:

1. That the trial Court erred at law by convicting and sentencing the appellant for the offence which was not proved beyond reasonable doubt as required by law.

*[Handwritten signature]*

2. That the trial Court misdirected itself by believing and relying on the evidence of PW2 Stamili d/o Alex @ Lubiosha whose evidence was full of contradiction and indeed she was an outright liar.
3. That the trial Court erred at law and fact by neglecting the evidence of the appellant who testified that the material time 25/10/2021 he quarreled with his wife (PW2) due to delay of payment of bride.
4. That the trial Court erred both at law and fact by believing on its face value and working upon its evidence of PW3 (Medical Doctor) one Mpeli s/o Festo @ Lupogo who testified that he found the victims with her hymen perforated with bruises without scientific proof.

The appellant prays that the appeal be allowed, judgment of the trial Court be quashed, sentence be set aside and he be released from jail.

At the hearing the appellant was unrepresented and the Respondent was being represented by Mr. John Kabengula, Learned State Attorney. The appellant submitted briefly on an appeal that he prays this Court to consider the grounds of an appeal and allow the appeal so that he is set free.

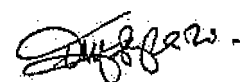
In reply Mr. John Kabengula Learned State Attorney submitted that he prays to respond to 2<sup>nd</sup> – 4<sup>th</sup> ground of appeal and lastly the 1<sup>st</sup> ground of appeal



which. The ground 2 and 3 are similar. I he responded as follows, that PW2 at page 11 – 12 testified that during the night she woke up and found the appellant absent on their bed. She went out and found the appellant at the sitting room wearing a towel. That occurred after PW2 had heard murmuring voice in the sitting room like one is being blocked from raising the alarm.

The evidence by PW2 was not shaken during cross examination. The Court was right to believe the evidence by PW2. He prayed that the ground 2 and 3 be dismissed. The Counsel for respondent submitted that, also, the ground 4 of appeal on the evidence of PW4 has been challenged as not being scientific. Though not well understood the evidence by PW3 was an expert opinion. He found the victim had been sodomised and also raped. There was a perforated hymen and bruises.

The challenge posed is not well substantiated. The evidence by the doctor was not challenged at the hearing. The Counsel had the opinion that the expert opinion evidence was not shaken. He submitted therefore that, the first ground is opposed and that it was their opinion that the prosecution proved the case beyond reasonable doubt.

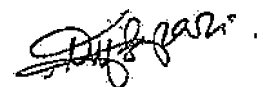


The Counsel submitted, the victim was eight years old. Thus a child of tender age. The procedure of taking the evidence of the child under section 127(2) of Evidence Act, Cap 6 R.E 2019 was complied with. The age was proved by an affidavit and also oral evidence.

Penetration was proved by the victim at page 10 of the proceedings. The victim testified that the appellant went to the victim while she was sleeping at the sitting room and confirmed to have been raped by her brother in law.

The Counsel submitted that the sentence also was proper in line with the legal requirement. He therefore prayed that the trial Courts finding, conviction and sentence be upheld.

I have read the record of the trial Court and also heard the submissions made. On the material date the accused and his wife were sleeping in their room and his sister in law, the victim was sleeping in the sitting room with other children. The accused is said to have left his matrimonial bed and followed his sister in law, a child of eight (8) years for his sexual gratification. On efforts to avoid that his wife will hear what is going on. PW1 the victim has testified that he covered his mouth with the hand.

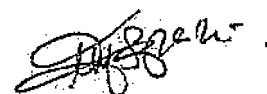


PW2 heard the unusual voice/murmuring in the sitting room she checked their matrimonial bed, her husband was missing so, she went to the sitting room and found her husband wearing a towel on his waist. She inspected her young sister on the vagina found sperms and her anus had stool.

The accused when asked by his wife, did not say anything substantive and offered to take the victim back home. He offered to give money for fare.

The testimony by PW1 was taken after complying with section 127(2) of the Evidence Act, Cap 6 R.E 2019. The age of the victim was proved by an affidavit tendered as exhibit P1.

When the victim was taken to hospital, PW3 Mpeli Festo Lupogo examined the victim and found that she had no hymen, there were noted bruises on the victim's anus, the tone of the anal sphincter muscles was reduced compared to normal. The results were filled in the PF3 admitted as exhibit P2. The results are compatible to the allegations levelled against the accused.



I have no flicker of doubt that the record has clearly shown that the case was proved beyond reasonable doubt and the complaint by the appellant lack in any merit.

Under the circumstances and for the reasons, the appeal has no merit.  
The same is dismissed.

It is ordered accordingly.



  
**T.M. MWENEMPAZI**  
**JUDGE**  
**22/02/2023**