

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

DC. CRIMINAL APPEAL NO 12 OF 2022

(Originating Criminal Case No. 204 of 2020 in the District Court of Urambo before
Hon. M.M. Makonya, RM.)

APRONIA MATHEW APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGMENT

Date of Last Order: 24/07/2023

Date of Delivery: 10/08/2023

MATUMA, J.

Apronia Mathew the Appellant herein was charged and convicted with the offence of grievous harm contrary to section 225 of the Penal Code [Cap 16 R.E 2019] before the District Court of Urambo.

It was alleged that on the 05th day of October 2020, the appellant unlawfully did pour hot water on various parts of the body of one Asha Musa @ Mabuyu. Upon her own plea of guilt, the appellant was convicted and sentenced to serve a term of seven (7) years imprisonment.

Aggrieved by the said conviction and sentence, the appellant is now before this court on appeal with two grounds which mainly raises one major complaint to the effect that in the absence of the PF3 and evidence establishing the extent of injuries suffered by the victim, the appellant was wrongly convicted of grievous harm instead of common assault.

When the appeal came for hearing, the appellant was present in person and represented by Mr. Amos Gahise learned Advocate while the respondent was represented by Mr. Mmary Nurdini and Orster Kemilembe learned State Attorneys.

Both parties were in agreement that the facts of the prosecution did not establish and or prove the offence of grievous harm. Mr. Gahise learned advocate for the appellant submitted that the appellant pleaded guilty by misapprehension of the facts as the charges read to him were perceived by her that she committed a common assault. It was not her intension to plead guilty to the charge of grievous harm because the victim was not seriously injured.

The learned advocate faulted the trial Court for not complying with section 320 of the Criminal Procedure Act which requires the Court to assess the real committed offence despite of the fact that the accused pleaded guilty. He argued that, if need be, this Court may call for further evidence. He was of the further argument that the appellant could have not known the difference between grievous harm and common assault and therefore the trial court should have satisfied itself of the real committed offence. He cited the case of ***Rojeli Kalegezi & 2 Others vs The Republic, Criminal Appeal no. 141,142 and 143 of 2009*** to the effect that the charge must be read in the language understood by the accused.

Mr. Mmary Nurdini learned state attorney citing the cases of ***Zuberi Sikitu vs The Republic, Criminal Appeal no. 298 of 2016 (CAT)*** and ***Laurence Mpinga vs The Republic (1983) TLR 166*** argued that the appellant admitted the facts that she unlawfully poured hot water to the victim but the PF3 was not tendered so that to make the demarcations of

common assault, assault causing bodily harm or grievous harm. He was of the view that this Court should substitute the conviction into the offence of common assault and proceed to release the appellant because she has already spent three years in jail.

After hearing the submissions from both parties and going through the lower court's records, I join hands with both learned counsels that indeed the extent of injuries suffered by the victim was not established by the facts of the prosecution. A mere pouring of hot water to the victim do not suffice to prove that the offence of grievous harm was committed.

The facts on record shows that the appellant was at her home when the victim invaded her on allegations that the appellant was committing extra-marital affairs with her husband. By that time the appellant had her water on fire preparing them for bathing. To rescue herself from the unlawful attacks by the victim, she took the water from the fire and poured the same to the victim. The facts do not state the degree of hotness or heat the water had reached by the time the appellant was necessitated to take it off the fire and pour the same to the victim. Worse enough and as rightly pointed out by both parties the PF3 was not tendered at least to show the extent of injuries suffered by the victim.

The conviction was thus founded on speculative views that so long as the water poured to the victim was hot then the offence committed was grievous harm.

The parties have called this court to substitute the conviction from grievous harm to a common assault whose sentence is one year and proceed to release the appellant who has already spent three years in jail. With due respect, I cannot do so. The Appellant was charged for the offence of grievous harm and the prosecution owed the duty to prove

such offence. Since the facts narrated by the prosecution did not prove the offence charged the remedy is an acquittal. We have seen that it was the victim who unjustifiably went to attack the appellant at her home. The appellant what she did was to defend herself. Therefore even if the facts would have established the offence of grievous harm still the appellant had a clear defence of self-defence.

I therefore allow this appeal and quash the appellant's conviction. The sentence of seven years meted against her is hereby set aside. I order her immediate release from custody unless otherwise held for some other lawful cause.



MATUMA
JUDGE
10/08/2023

COURT

Judgment delivered in the presence of the appellant and advocate Ally Maganga who holds brief of advocate Amos Gahise and in the presence of Aneth Makunja learned State Attorney. Right of appeal explained.



MATUMA
JUDGE
10/08/2023