IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB-REGISTRY

AT ARUSHA

CRIMINAL APPEAL NO. 159 OF 2022

(Arising from Criminal Case No. 97 of 2021 at Arusha District Court Babati at Arusha)

MOHAMED ATHUMAN _____ **APPELLANT**

VS

THE REPUBLIC _____ **RESPONDENT**

JUDGMENT

17/07/2023 **&** 01/09/2023

BADE, J.

The appellant herein was arraigned at the District Court of Babati at Babati on the offence of rape contrary to section 130 (1) (2) (e) and 131 (1) of the Penal Code (Cap 16, R.E 2022). The trial Court found him guilty of the offence and sentenced him to life imprisonment.

Aggrieved by the said conviction and sentence, he lodged this appeal on the following grounds;

i. That, the evidence of PW4 and PW3 was received contrary to section 127 (2) of the Evidence Act.

ii. That, the trial court violates section 214 (1) of the Criminal Procedure Act, (Cap 20 R.E 2022).

iii. That, the evidence of PW4 and PW3 was inconsistent with reality and logic.

iv. That, the conviction was based on a defective charge.

v. That, the prosecution did not prove the case against the appellant beyond reasonable doubt as required by the law, and

vi. That, the defence evidence was not into consideration during evidence analysis.

It was the prosecution case that on 14/07/2021 Mohamed s/o Athuman (accused) at Panda Mbili area within Arusha District, in Arusha Region did have sexual intercourse with a "victim" name withheld for purposes of concealing her identity a girl of eight (8) years old. He pleaded not guilty to the charge and kept on his stance to deny the facts of the case during the preliminary hearing.

During the hearing, the prosecution had a total of five witnesses while on defense side the accused person had two witnesses.

The testimonies of PW1 and PW2, the victim's parents were to the effect that, they sent their children, PW2 and PW3 to the house of their grandmother, when they left for Dodoma. They came back on 14/07/2021 but the children continued to stay with their grandmother up to 15/07/2021. On the evening of 15/07/2021, PW3 told PW1 that PW4 had been sexually abused. He asked PW4 to explain what he heard from PW3, but she hesitated for some time, later on, PW4 told him that "Mjomba kanifanyia tabia mbaya". He told him what he meant when he said "mjomba kanifanyia tabia mbaya" She replied that the accused had undressed her and penetrated her. PW2 further questioned the victim who told him that the accused who is the victim's uncle called her to his room and that as she entered, the accused did bad things to her. PW2 checked the private parts of both PW3 and PW4 and found that PW4 had a different situation than PW3.

On the other hand, PW3 who is a twin sister of PW4 testified to the effect that on 14/07/2021 around 2 p.m. she was at her grandmother's house together with the victim. That they were outside when they heard the gate open, and the accused came and instructed one of them to follow him, PW4 went inside the accused's room, he asked her if she had peed on the bed, and she denied it, he closed the door, at which

point PW3 went near the door to listen what was happening inside, she heard PW4 saying "unaniumiza". A bit later her grandmother called her and told her to go and wash their legs so as they could go to the Madrasa. She called PW4 who was still in the accused's room. The accused came out and said that she would be out soon, he opened the door and PW4 came out. She asked PW4 what did uncle did to her, and she replied that uncle

"amenifanyia tabia mbaya". PW3 further testified that she advised PW4 to tell their grandmother but she refused as she was afraid. The accused went ahead and showered, while they washed their legs and went to Madrasa. She further testified that on the following day, PW4 told their parents when they came back from Dodoma that the accused did "tabia mbaya" to her.

PW4's testimony was to the effect that on 14/07/2021 she was outside of her grandmother's house with her twin sister, PW3. The accused came and told one of them to go to his room, as she went there, he asked him if she had peed on the bed, she denied it, he told her to come closer because he was her uncle, he inserted his finger into her private part, she felt pain, and told him so much, in disregard he lay her onto the bed and lay on top of her. She told him that she was

hurting and felt pain, and he replied that he would stab her with a knife if she screamed. He had already removed his trousers and wrapped a towel around himself. When he lay on top of her, he removed the towel, he inserted his manhood into her private part, She told him that she was hurting and that her sister, PW3 was outside. The accused closed her mouth with his hands. PW4 further testified that PW3 called him and told him that grandmother was calling them so that they could go to Madrasa, and the accused replied that she was going to be out soon, meanwhile, he told her to wear her underwear and go outside. While outside PW3 asked her what is it that the accused did to her, and she replied that he did

"tabia mbaya to her". They washed their legs and went to the Madrasa. She further testified that the next day PW3 told her father that the accused did "tabia mbaya to her". They went to the police station and then to the hospital.

PW5, a medical doctor testified that on 16/07/2021 he received a girl of 8 years old who claimed to have been raped. She was accompanied by her father. He did a medical examination of her vagina and found out that it had bruises, the hymen was not intact and it was reddish.

He also found out that there was penetration of a blunt object such as a finger, a penis, a carrot or a cucumber.

On his defense, the accused testified as DW1. His testimony was to the effect that on 14/07/2021 in the morning, he received a phone call, they went to Lemushuku to harvest beans. He came back home at 8 p.m. In the morning he went "kwa Mrombo" to look for labor work, but he was not feeling well so he went to a pharmacy to buy some medicine, and that is when he was arrested and taken to the police station. DW2, the accused's mother testified that she was staying with PW3 and PW4 from 10/07/2021 up to 15/07/2021 when they went back to their parents. A short while after PW3 and PW4 went home, PW2 came and asked her why her daughter said her uncle did "tabia mbaya" to her. PW4 was called, she inspected her private parts but she was in good condition. DW3 concluded the defense evidence by testifying that on 14/07/2020 she was at the house of DW1. DW2's grandchildren came from school and found them outside, they went inside, then they came outside to their grandmother, they washed their clothes and she helped them to fetch water from a pit.

This appeal was argued orally, the prosecution was represented by learned State Attorney Eunice Makalla while the appellant was represented by learned Advocate Victor Bernard.

In submitting to the 1st ground of appeal the learned advocate argues on behalf of the appellant that evidence of PW4 and PW3 were received contrary to section 127 (2) of the Tanzania Evidence Act, Cap 6 R.E 2019 ("TEA"). He further contended that section 198 (1) of the Criminal Procedure Act, Cap 20 R.E 2022 ("The CPA") requires any witness to give evidence on oath or affirmation as per the Oaths and Statutory Declarations Act Cap. 34 RE 2019, except for the exception under section 127 (2) of the TEA. That PW3 and PW4 were both said to be of 9 years old as they were twins. In his view their evidence is governed by section 127 (2) of the TEA, so the trial court needed to examine whether the said children understand the meaning and nature of oath or affirmation, if they do then section 198 (1) would apply, and if they do not understand the nature of oaths, then they would need to promise the court to tell the truth and not lies.

Moreover, he contends that when reading the proceedings he could not find anywhere where the said witnesses were asked if they understood the nature of oaths or affirmation and promised the court

to tell the truth and not lies. It is the appellant counsel's contention that the inquiry of these two witnesses did not establish whether they knew the meaning of oaths before the trial court allowed them to give their evidence under section 127 (2) of the TEA. This omission rendered their evidence valueless and should be expunged from the records. To support his position, he cited the case of **Ramson Peter Ondile vs R**, Criminal Appeal No. 84 of 2021, CAT (unreported), where it was held that the trial court erred in not taking evidence as per requirement, and thus discard the same from the record. Also, in the case of **Omary Awamu vs R,** Criminal Appeal No. 335 of 2019 (unreported) it was held that the omission is fatal rendering the evidence valueless. He prays this court to expunge the evidence of PW3 and PW4 from the record.

Regarding the 2nd ground, he submitted that the trial court violated section 214(1) of the CPA which gives a procedure to be followed when a magistrate who started a trial is unable to continue after having recorded the whole or part of the evidence. He further argues that the successor magistrate may proceed on the recorded evidence of the predecessor magistrate, or in his discretion, resummons the witness if they deem it necessary for the interest of justice. The successor

magistrate must inform the accused person of his statutory right to have the trial recommenced or continue. He further added that there is a permissive language the rationale being that discretion should be exercised with care for the primary purpose of establishing the demeanor of any witness as well as their credibility. It is the appellant's contention that the first magistrate on this matter was P. A. Kisinda, PSRM and she received the evidence of the prosecution witnesses PW1 and PW2, later on 25/02/2022 the file had been reassigned to Hon. P. Meena following the transfer of Hon. Kisinda, referring to page 18 of the trial court proceedings. That on 21/04/2022 the trial continued before Hon. Meena without informing the appellant of his statutory right to have the trial recommenced or continue. He further argues that this prejudiced the right of the appellant as the magistrate failed to adhere to section 214 of the CPA. To support his position, he cited the case of **Liamba Sinanga vs R,** 1995 TLR 97. That the language in section 214 of the Criminal Procedure Act is mandatory in that the 2nd successor magistrate was duty bound to inform the appellant of his right that the witness who testified before the 1st magistrate be resummoned and testified before the 2nd magistrate if the appellant so wishes, which was not done.

With regard to the 4th ground, the learned counsel submitted that the appellant was convicted on a defective charge. That, he was charged under sections 130 and 131 (1) of the Penal Code. He further argues that the said charge was defective for failure to include subsection (3) of 131 of the Penal Code. He insisted that the charge was required to read contrary to section 130 (1) (2) (e) and section 131 (1) (3) of the Penal Code. It is the appellant's contention that since the charge was defective the rights of the accused person were prejudiced because he failed to appreciate the seriousness of the offence facing him so that he could prepare his defense or engage legal assistance, and the said omission has occasioned a failure of justice to the accused. To support his position, he cited the case of **Omari Awamu** (supra).

About the 3rd ,5th and 6th grounds of appeal he submitted that the evidence of PW3 and PW4 was inconsistent with reality and logic. This is because the trial court was told that after alleged rape the victim was called by their grandmother and was told to wash their legs so that they can attend Madrasa, and according to the testimony of PW4, she went to Madrasa and the following day she went to school. That this is illogical because an 8-year-old girl cannot be raped by a 22-year-old man and the victim never cried, neither was any blood found in her

underwear, nor was she unable to walk to the Madrasa thereafter, and attended school the following day.

Moreover, he submitted that at the trial there was no evidence adduced to show that the victim was found in pain, or in any way she was experiencing pain, insisting that the victim's evidence was inconsistent with reality and logic. That PW1 at page 8 of the trial court proceedings stated that the appellant sent PW3 to call mama Hassan so that the appellant would be left alone with the twins and commit the alleged offence; which is contrary to what was testified by PW3 who never mentioned mama Hassan in her testimony. He insisted that their evidence was not only untrue but it also created doubt on the prosecution's evidence, making the prosecution failing to prove the case beyond reasonable doubt.

Further he contends that the prosecution did not call a crucial witness (DW2) the victim's grandmother who had a custody of the children when their parents travelled to Dodoma, DW2 testified that she inspected the victim in her private parts and found that she was not raped. That there is allegation that the testimony was cooked by the victim's father as they had a conflict, a fact not controverted but the trial magistrate did not take into consideration the appellant's evidence.

In opposing the appeal, Ms. Makala, submitted regarding 2nd ground of appeal that the appellant's counsel argument is misconceived and intended to mislead the court. The cited provision gives the magistrate the discretion to resummon the witness or proceed with the hearing where the preceding magistrate ended. She further argues that section 214 (1) of the CPA does not require the magistrate to ask the accused to proceed or resummon the witness, it is not what the law states. She added that the procedure was proper, not contravening the code or any other law, as the succeeding magistrate had informed the accused of the reason why the matter is with her and not with the previous magistrate. That, the cited cases do not support the appellant's contention as they do not support the provision which the appellant cited.

With regard to 1st ground of appeal, she submitted that the requirement of section 127 (2) of the TEA was complied with. That, PW3 and PW4 were not asked if they understood the meaning of oath or would tell the truth or not, she referred this court on page 20 and 23 of the proceedings. It is the learned state attorney's contention that PW3 said that she knows that the person who tells lies will be burnt to death and

thus it was sufficient to show that section 127 was complied with. That PW4 made it clear that she understood the meaning of telling the truth.

In response to the 3rd ground of appeal, Ms. Makalla countered that despite there being inconsistencies in the testimonies of PW4 and PW3, those inconsistencies are minor, were not going to the root of the case, and did not flop the prosecution case.

Responding to the 4th ground of appeal, she retorted that the enabling provision cited in the charge was enough and constituted the offence. That the absence of subsection 131 (3) of the Penal Code does not make the charge sheet defective.

Countering the 5th ground, she maintains that the case was proven beyond reasonable doubt and 5 witnesses had testified. That, their testimonies sufficed for the trial court to convict the appellant.

Regarding the 6th ground of appeal, that the defense's evidence was not considered, and that the material witness (victim's grandmother) who testified for the defense was not called by the prosecution; Ms. Makalla submitted that in sexual-related offences, the best evidence comes from the victim, and that evidence would have been enough even in the absence of all the other witnesses that were paraded by

the prosecution, where the trial court could have convicted the appellant. To cement his position, she cited the case of **Selemani Makumba vs R,** TLR 2003 384. She countered further that, based on the testimony of the victim, it was enough that the case was proven beyond reasonable doubt, and argued that the defense evidence did not shake the prosecution case. She maintains that the trial magistrate evaluated the evidence of the defense and concluded that the prosecution managed to prove its case. She further contended that there is no required number of witnesses to be brought before the court but rather the credence of the witnesses is what should matter. In any case, she concludes her line of argument that the absence of the grandmother as the prosecution witness did not benefit the appellant.

Rejoining, the counsel for the appellant particularly responded with regard to the 2nd ground submitting that the case cited and the other cases quoted in it are all in support of this stance and reiterated his stance on all the other grounds of appeal.

Having taken into consideration the rival arguments between parties, and going through the record of the case, I think the task before me is to determine whether this appeal is meritorious and more specifically whether the charge sheet was defective, whether the evidence of PW3

and PW4 was received in contravention of section 127 (2) of TEA, whether the trial magistrate violated section 214 (1) of the CPA; and generally, whether the prosecution proved the case against the appellant beyond a reasonable doubt.

With regard to the first issue, it is not in dispute that the appellant was charged and convicted under sections 130 (1) (2) (e) and 131(1) of the Penal Code. It is also undisputed that the proper provision is section 130(1) (2) (e) and 131 (1) (3). Now the question is whether the omission to include subsection (3) is fatal. I think not. The particulars of the offence and evidence adduced during the trial were all enough for the appellant to understand the seriousness of the offence as it was made clear that he was charged with the offence of rape of a girl under ten years old. In the case of **Omary Awamu vs R,** Criminal Appeal No. 335 of 2019 which was cited by the appellant, the court faced a similar situation and it was held that:

> *"We are of the firm view that taking into consideration the contents found in the particulars of the offence, and the evidence adduced in the trial court, there was clarity that the appellant was charged with rape of a girl under the age of ten years. Undoubtedly, this informed the appellant and*

enabled him to appreciate the seriousness of the offence facing him and eliminated all possible prejudices against his rights. We find that in the circumstances, the irregularity found in the charge is curable under section 388 (1) of the CPA".

Having cited the position above it is my view that in the instant case, the omission is not fatal in that it has not occasioned any injustice to the appellant, and it is curable under section 388(1) of the CPA.

On the 2nd issue on whether the evidence of PW3 and PW4 was received in contravention of section 127 (2) of the TEA. For ease of reference the said provision is reproduced:

"..... Section 127 (2) a child of tender age may give evidence without taking an oath or making an affirmation but shall before giving evidence, promise to tell the truth to the court and not to tell any lies".

In the case of **John Mkorongo James vs Republic,** Criminal Appeal No. 498 of 2020 (unreported) it was held:

"The import of section 127 (2) of the Evidence Act requires a process, albeit a simple one, to test the competence of a child

witness of a tender age and know whether he/ she understands the meaning and nature of an oath, to be conducted first before it is concluded that his/her evidence can be taken on a promise to the court, to tell the truth, and not to tell lies."

Similarly, in the instant case, I will reproduce what transpired in the trial court before recording the evidence of PW3 and PW4 on pages 19 and 23-24 of the trial court proceedings for ease of reference:

"Date: 21/04/2022

Coram: P. Meena- RM

Accused: Present

C/C: Ester

S.W.O: Arnold.

State Attorney: The case is for hearing; we are ready with two witnesses.

Accused: I am ready.

Court: What is your name?

PW3: My name is Maisara

How old are you? PW3: I

am 9 years old Are you

studying?

PW3: Yes, I am in class 3 at Salei Primary School

Where are you living?

PW3: I am living in Banda Mbili Mbauda

What is your religion?

PW3: I am Islamic

Are you going to the mosque?

PW3: Yes, at Banda Mbili Mosque.

Do you know if to tell lies is a sin?

PW3: Yes, I know that if a person tells lies will be burned after death

Court: I examined the witness and found out that she knows the meaning of telling the truth. Therefore, affirm and states as follows...."

" Court: What is your name?

PW4: My name is_ (name withheld)

How old are you

PW4: I am 9 years

old Where are you

living?

PW4: I am living at Banda Mbili Area Are

you studying?

PW4: Yes, at Salei Primary School

Where are you worship?

PW4: I am going to Madrasa Banda Mbili

What is you religion?

PW4: I am Muslim

Do you know the meaning of telling the truth?

PW4: Yes, I know that if a person lies is a sin and he will go to hell and be burned after death.

Court: I examined a witness and satisfied that she knows the meaning of telling the truth, therefore affirm and state as follows....."

In the case of **Issa Salum Nambaluka vs Republic,** Criminal Appeal No. 272 of 2018 CAT at Mtwara, quoting the case of **Geoffrey Wilson vs Republic**, Criminal Appeal No. 168 of 2018 (unreported) listed some few pertinent questions for a court to be able to determine whether or not the child witness understands the nature of oaths. The court observed as follows;

"We think, the trial magistrate or judge can ask the witness of a tender age such simplified questions, which may not be exhaustive depending on the circumstances of the case as follows:

i. *The age of the child.*

ii. *The religion which the child professes and whether he/ she understands the nature of oaths.*

iii. *Whether or not the child promises to tell the truth and not lies".*

Having in mind the position in the above-cited authority, I am of the firm view that the questions listed are the ones that the trial magistrate asked PW3 and PW4 and concluded that those witnesses did understand the nature of the oath before receiving their evidence after they had affirmed.

I am also positive that the cases of **Ramson Peter Ondile vs R,** (supra) and the case of **Omari Awamu vs R,** (supra) cited by the appellant's counsel are both distinguishable from the present case as in the cited cases, the questions asked to the witness did not reveal if they understood the nature of an oath and they gave evidence neither on oath or affirmation nor promising first that they would tell the truth and not lies; whereas in the instant case, the questions revealed that the witnesses understood the nature of an oath and gave evidence after they had affirmed.

Deliberating on whether the trial magistrate violates section 214 (1) of the CPA, the said section provided as follows:

> *"Where any magistrate, after having heard and recorded the whole or any part of the evidence in any trial or conducted in whole or part any committal proceedings is for any reason unable to complete the trial or the committal proceedings or he*

is unable to complete the trial or committal proceedings within a reasonable time, another magistrate who has and who exercises jurisdiction may take over and continue the trial or committal proceedings, as the case may be and the magistrate so taking over may act on the evidence or proceeding recorded by his predecessor and may in the case of a trial and if he considers it necessary, re-summon the witnesses and recommence the trial or the committal proceedings".

Based on the above provision the word used is "may" connoting that it is not mandatory as alleged by the Appellant. The provision does not put a mandatory requirement for the successor magistrate to resummon witnesses, nor does it particularly require that the accused be asked if he/ she wants the trial to recommence or continue as alleged by the appellant. So long as the successor magistrate assigns a reason why they are taking over, as the successor magistrate did in this case on page 18 of the trial court proceedings. The law does not make it mandatory for the magistrate to ask the accused if it was their wish for the witnesses who had testified before the predecessor 1st magistrate to be resummoned.

The Court of Appeal in **Christian Orgenes Nkya vs The Republic,** Criminal Appeal No. 285 Of 2007 had guided in observance to section

214 of the CPA thus:

> *".....With respect, this ground need not detain us. Under section 214 the Magistrate taking over has the discretion to act on the evidence recorded by his/her predecessor and may if necessary, resummon the witnesses and recommence the trial. In this sense, Mwaiseje, RM properly exercised her discretion provided for under the law. We appreciate that before the amendment of the law mandatorily required the magistrate taking over to inform an accused person of his/her right to demand the witnesses who testified to be summoned."*

The appellant therein was charged on 23/2/2004 when the law had already been amended - See also Court of Appeal in **Yusuph Nchira vs R,** Criminal Appeal No. 174 of 2007 (unreported).

Having found so, the allegation that the trial magistrate violated section 214 (1) of the Criminal Procedure Act is based on an old position of the law and is no longer a good law. I find it to be baseless.

Last but not least, regarding the issue of whether the prosecution proved the case against the appellant beyond a reasonable doubt, I have found as rightly should, all the grounds are based on the evidence and the credence that the court has assigned it. It is the appellant's contention

that the evidence of PW3 and PW4 was inconsistence with logic and reality in the sense that PW4 was able to walk after the alleged rape, there was no evidence adduced that she was in pain nor was there blood found in her underwear. The counsel for the appellant also claims the existence of contradictions between the evidence of PW1 and PW3 regarding the contention that the accused before he got to rape the victim, he sent PW3 to call Mama Hassan, whereas PW3 never mentioned the said Mama Hassan in her testimony. On another note, the appellant's counsel alleges that the prosecution failed to call a crucial witness (DW2) who is the victim's grandmother; and that the trial magistrate did not take into consideration the appellant's defense.

In my view, the allegation that the evidence of PW3 and PW4 was inconsistence with logic and reality is unmerited, as PW4 being able to walk unfazed; or there being no evidence of blood in her clothes cannot overturn the clear evidence of PW3 who observed that she saw when the appellant called PW4 (and this piece of evidence corroborates that of PW4), and that after she entered the room the appellant closed the door and heard PW4 claiming he was hurting her. Also in support, there was the evidence of PW5 a medical doctor who testified that after examining the vagina of the victim, he found that there was penetration by a blunt

object and the vagina was reddish, meaning it had bruises and the hymen was not intact. Also, I think the argument that the victim did not cry is unsubstantiated, as evidence revealed that the accused put his hand on the victim's mouth while threatening to stab her with a knife if she screamed.

On another note, the contention that there were contradictions in the testimonies of the witnesses is unmerited, as I agree with the learned state attorney that the contradictions pointed out by the appellant's counsel do not go to the root of the prosecution's case. In my view, the testimonies of PW3 and PW4 when they are considered along with the documentary evidence on record from the medical testimony of PW5, as well as those of the parents, it becomes clear that their evidence is natural, trustworthy, and acceptable. The trial court was proper to believe their testimony and could not be disregarded by referring to some minor contradictions. This Court has maintained time and again that minor contradictions in the testimonies of the witnesses would not flop the prosecution's case while appreciating the evidence in criminal trials. The contradictions that would discredit the prosecution evidence are the material contradictions that can be a ground to discredit the testimony of the witnesses. See **Mohamed Said Matula vs R,** [1995] TLR 3;

Chrizant John vs Republic, Criminal Appeal No 3 of 2015 (CAT Unreported)

In any case, as observed by this court sitting in Dodoma in **Hamida Nuhu and Anor vs Republic**, Criminal Appeal No 106 of 2019, his Lordship Kagomba, J. observed that we should not push the burden of proof further than what it is.... **the duty of the prosecution is to prove the case beyond a reasonable doubt** ..... **Not beyond any doubts.** [Emphasis mine]. All the doubts raised by the appellants are, in my view, not reasonable doubts at all, as they do not point to any other logical explanation from the evidence adduced as far as the ingredients of the offence of Statutory Rape are concerned. I find this ground without any merits.

On the allegation that the prosecution failed to call crucial witness DW2 who had custody of the children when the incident took place, as correctly argued by the counsel for the respondent, in the sexual offences cases the best evidence is the one coming from the victim, and failure by the prosecution to call DW2 as their witness did not weaken their case. In any case, DW2 is the mother of the accused and certainly, she would have had an interest to serve.

Regarding the allegation that the trial magistrate did not consider the defense case, this allegation is misconceived as the record on page 14 of the trial court's judgment, that the trial magistrate made a consideration of the defense case when she refused to be convinced by the accused version of the story, where it was recorded, while being cross-examined that he had a conflict with the victim's father, he never reported this conflict anywhere. She also rejected the evidence of DW2 and DW3 that on the fateful day, they were outside the house washing clothes based on the reason that the incident took place inside the room; and since DW2 is the accused's mother, naturally she would be inhibited to testify against her son. It is also on the record that in his defense, the appellant testified that on the date of the incident, he was at Lemashuku harvesting beans where he received a phone call to go work, and that he harvested the beans up to 8 p.m. when he returned home.

I am well aware of the overriding principle that the burden of proof in a criminal case lies on the prosecution side; and that the conviction will have to be on the strength of the prosecution's evidence and never on the weakness of the accused person's defence. I do think though that common sense demands that if it is true that the appellant was not at home at the date and time of the incident, that he was somewhere else,

and that he was not alone, it is imperative that he would bring along a witness to support his story. This he did not do. This is not to say that in providing the defense of alibi, procedurally, the defense would need to notify the court of his reliance on such a defense. I disallow the grounds of appeal based on the foregoing analysis.

It is my finding that the prosecution managed to prove the case against the appellant beyond reasonable doubt. Having said so this appeal is wholly dismissed for lack of merits. The conviction and sentencing of the trial court is upheld.

It is so ordered

A. Z. BADE
JUDGE
01/09/2023

Judgment delivered under my Hand and Seal of the Court in open court, this **01st day** of **September, 2023** in the presence of both parties.

A. Z. BADE
JUDGE
01/09/2023

The right to appeal is hereby explained.

A. Z. BADE
JUDGE
01/09/2023