

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA
CRIMINAL APPEAL NO. 15 OF 2023**

BENJAMIN S/O JOSEPH ----- APPELLANT

VERSUS

THE REPUBLIC ----- RESPONDENT

JUDGMENT

29/9/2023 & 13/10/2023

ROBERT, J:-

The appellant, Benjamin s/o Joseph, was charged at the District Court of Ilemela and convicted for unnatural offence contrary to section 154(1)(a) & (2) of the Penal Code (Cap. 16 R.E. 2019). Upon conviction, he was sentenced to life imprisonment. Aggrieved, he preferred an appeal to this Court.

Briefly, the charges against the appellant were based on allegations that he had unlawful carnal knowledge of one FJ, a boy aged twelve years old (name hidden) against the order of nature on various dates in February, 2022 at Mihama area within the District of Ilemela. The victim was a trainee at Pasiansi Boys Football Team, coached by the appellant.

The appellant was alleged to have been taking the victim to his residence at Mihama in multiple occasions after training sessions and engaging in sexual activities with him.

The matter was reported to Kirumba police station, and the victim was taken to Sekou Toure Hospital for a medical examination. The victim's father (PW1) testified that he learned of the incident when the victim was returned home from school by his teacher due to fecal incontinence. The victim informed his father that the appellant had sexual intercourse with him against the order of nature. Subsequently, the appellant was charged, tried, and convicted.

During the trial, the victim (PW2) testified that the appellant had sexually abused him on multiple occasions. The medical examination conducted by PW4 (Victoria Sita) from Sekou Toure Regional Hospital revealed signs consistent with sexual penetration against the order of nature. The victim's allegations and the medical evidence formed the basis of the prosecution's case.

The appellant, in his defense, denied the allegations and called DW2 (Emmanuel Juma), who claimed that the victim's father had coerced his son to falsely accuse the appellant. The trial court rejected DW2's

Contrary to this assertion, the court agrees with the counsel for the respondent that the testimony of PW2, the victim, who made a solemn promise to tell the truth during his testimony, carried substantial weight. Moreover, the trial court took into account the medical examination report (Exhibit P-01) conducted by the Doctor (PW4), which indicated penetration. Hence, this ground is devoid of merit and is hereby dismissed.

In the third ground, the appellant argues that the trial court erred in law by failing to summon a potential witness, the teacher who initially discovered the victim's condition. However, the prosecution responded that the teacher's testimony was not pivotal in proving the alleged crime. The substance of the teacher's evidence was effectively relayed by the victim himself. This Court finds that, the teacher's role in this matter, while significant, does not diminish the strength of the case against the appellant. Therefore, this ground lacks merit and is dismissed.

With regards to the fourth ground of appeal, the appellant faulted the trial Court for relying on the evidence of PW2, which was not firmly corroborated considering that the alleged offence took place in a public area and in a daylight. However, as rightly argued by the counsel for the respondent, the evidence adduced by PW2 indicated that the alleged

offence occurred at the appellant's house, not in a public area, and that it took place when other children had left. Further to this, the testimony of PW2 is corroborated with the medical examination report (Exhibit P-01) and the Doctor who examined him (PW4). Hence, this ground is without merit and is hereby dismissed.

On the fifth ground, the appellant contends that the trial court erred by accepting the evidence of PW2, who did not promise to tell the truth under section 127(2) of the Evidence Act (Cap. 6, R.E. 2019). However, records of the trial Court indicates that during his testimony PW2 explicitly promised to speak the truth. Thus, the court finds this ground to be devoid of merit and dismisses it accordingly.

Coming to the sixth ground of appeal, the appellant argues that the court failed to consider his defense, which was corroborated by that of DW2. The counsel for the respondent argued that the trial court carefully examined the defence evidence including that of DW2 and made the determination that DW2 was not a credible witness. Looking at the impugned decision of the trial Court, it is clear to this Court that the findings of the trial court were made after a meticulous consideration of all the evidence presented. However, the trial Court was convinced that the prosecution evidence was well founded against the appellant after

assessing the victim's credibility and the fact that the victim's father was not known to the appellant prior to the alleged crime. This Court is in agreement with the trial Court's findings. Thus, this ground is without merit and is dismissed.

On the seventh ground of appeal, the appellant claims that the court erred in convicting him because PW2 (the victim) did not raise an alarm. However, the prosecution argued that, according to the evidence on record, PW2 stated that he didn't inform anyone about the incident because he was promised by the appellant that he would be made a team captain. Given the victim's age and the circumstances of this case, the trial Court was right not to consider lack of alarm from the victim as something which can undermine the evidence mounted against the appellant. Accordingly, I find no merit in this ground and I proceed to dismiss it.

On the eighth ground of appeal, the appellant asserts that the court erred in convicting him based on evidence from an unqualified expert (PW4) and that the medical examination report (Exhibit P-01) was not properly admissible. The prosecution maintained that PW4 affirmed his qualifications during his testimony as a clinical officer, making his evidence admissible. This Court is aware that a Clinical Officer is a qualified and


authorized medical practitioner to conduct medical examinations (See the Court of Appeal decisions in the cases of **Charles Bode vs Republic**, Criminal Appeal No. 46 of 2016; **Julius Kandonga vs Republic**, Criminal Appeal No. 77 of 2017; and **Ridhiwani Nassoro Gendo vs the Republic**, Criminal Appeal No. 201 of 2018). In this regard, this ground is also without merit and is dismissed.

Coming to the last ground of appeal, the appellant claims that the court erroneously relied on section 154(2) of the Penal Code, which he asserts was not applicable as the victim was above ten years of age. The court holds that section 154(2) of the Penal Code is indeed pertinent, as it pertains to children under 18 years of age, not limited to those under ten years, as argued by the appellant. Hence, this ground lacks merit and is dismissed.

In light of the foregoing, this appeal is hereby dismissed. The conviction and sentence imposed by the lower court are upheld. The appellant, Benjamin s/o Joseph, shall serve the sentence of life imprisonment as previously ordered.

It is so ordered.




K.N. ROBERT
JUDGE
13/10/2023

