

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA SUB REGISTRY

AT MBEYA

CRIMINAL APPEAL NO. 69 OF 2023

(Originated from the decision of the District Court of Rungwe at Tukuyu, Criminal case No. 42 of 2023)

PAUL EDWARD MWANYONGA @ BABA BUPE..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

Date of last order: 29/8/2023

Date of Judgment: 9/10/2023

Nongwa, J.

At the district court of Rungwe, the appellant was charged with the offence of Rape contrary to section 130 (1) (2) (e) and 131 (1) of the Penal code. It was alleged on unknown date and time day of January and 27th day of March 2023 at Lukata Village within Rungwe District in Mbeya Region, the appellant unlawfully did have sexual intercourse to one a girl aged 14 years old, herein after to be referred to as a victim.

Upon the charge being read over to the accused person, he instantly admitted to have committed the offence hence the trial court convicted him and sentenced him to serve 30 years' jail on his own plea of guilty.

Dissatisfied with the decision of the trial court, the appellant filed this appeal at hand on five grounds as follows;

1. *'That the appellant was erroneously convicted not under the proper law.*
2. *That, the trial magistrate erred in law and fact when he convicted the appellant only at a single and last plea of guilty without giving him another chance to determine what he said.*
3. *That the trial court erred in law point and fact to convict and sentence the appellant without giving the appellant right to know and understand the charge against him so that he can intelligently answer them, due to fact that an appellant is illiterate thus led him to inter guilty during the plea stage.*
4. *That, the appellant was convicted and sentenced on the expense of weak (defective) charge.*
5. *That the trial court erred in law and fact to convict and sentence an appellant on emotional contrary to the law.'*

When the appeal was due for hearing the appellant appeared in person while respondent was represented by Mr. Rajabu Msemo learned

State Attorney. The appellant on his submission only prayed to be released while respondent objected the appeal.

On the 1st ground, respondent submitted that the appellant was convicted on his own plea of guilty for the offence of rape and the offence he was charged with is the same offence he was convicted hence 1st ground being baseless.

In disagreement with 2nd and 3rd grounds of appeal, Mr. Rajabu argued that there is nothing faulting the trial court proceedings on the plea of guilty. That going through the proceedings of trial court, the appellant knew the charges, pleaded guilty and admitted to the facts presented, nowhere showing that he disputed the facts as the two grounds are meritless.

On the 4th ground, the learned State Attorney, Mr. Rajabu submitted that the charge sheet was proper, contains the substance of the charges the appellant was facing and the law that provide for the offence committed, that the particulars of offence clearly explains the offence the appellant was charged with.

Submitting on the 5th ground of appeal, Mr. Rajabu argued that since the appellant pleaded guilty, admitted the facts read to him and had no objection as to the exhibits, he was not charged and convicted on trial

magistrate feelings. Referring section 360 (1) of Criminal Procedure Act establishing principal that no appeal on plea of guilty save for the sentence imposed, Mr. Rajabu contended that despite the exceptions in **Laurence Mpinga vs. Republic** [1983] T.LR 166, the appeal at hand does not fit to. The appellant pleaded guilty and admitted to the facts. He prayed for dismissal of appeal. The appellant on rejoinder insisted to be set free.

I have endeavored to go through trial court records, grounds of appeal and submission made by the parties. I will deliberate 2nd and 3rd grounds under one issue of whether the plea of the appellant at the trial court was unequivocal plea of guilty.

In the case of **Salehe Mohamed v. R** [1971] HCD No. 176 cited the decision of the defunct East African Court of Appeal in **Kato v. R.** [1971] E. A. 542 the court insisted that a court can properly enter a plea of guilty only if it can be clearly shown that an accused person has admitted to all the ingredients which constitute the offence charged.

In the case at hand, the appellant was charged with statutory rape under section 130 (1) (2) (e) of penal code. Under this offence consent is immaterial. The section read as follows,

"130 (1) it is an offence for male person to rape a girly or a woman.

(2) A male person commits the offence of rape if he had sexual intercourse with a girl or a woman under the circumstances falling under any of the following descriptions.

(a).....

(b).....

(c).....

(d).....

(e) with or without her consent when she is under eighteen years of age, unless the woman is his wife who is fifteen or more years of age and is not separated from the man."

In this case the appellant was charged with an offence which is paradoxically named as statutory rape, the essential ingredient is to have sexual intercourse with a girl under 18 years, from the charge sheet, it was alleged that the appellant unlawfully had sexual intercourse with a victim aged 14 years and when charge was read to the appellant he pleaded guilty. He responded;

"It is true"

ni kweli nilikuwa nikifanya mapenzi na huyo binti".

Also, the facts were read to the appellant as seen at page 2 and 3 of the typed proceedings, where exhibits to wit PF3 and Birth certificate

of the victim showing that the victim was under 18 years of age, was tendered and admitted without any objection from the appellant and he replied as follows;

'ACCUSED: *It is true I had done sexual intercourse to her, the day I was arrested.*

No objection to the intended exhibit'

The magistrate went on to order the contents of exhibits P1 and P2 to be read out in court. Nowhere shows the appellant to have disputed the contents of the exhibits tendered.

It is my opinion that the appellant plea was unequivocal plea of guilty because he admitted to have sexual intercourse with a victim who was a girl of 14 years' age as per birth certificate of which was tendered by prosecution and received without any objection from the appellant, the facts which constituted the offence of statutory rape.

Generally, in terms of section 360 (1) of the Criminal Procedure Act [Cap. 20 R.E. 2022], except for the sentence, no appeal lies against a conviction grounded on a plea of guilty. However, under the certain circumstances an appeal lies against conviction on the accused's own plea of guilty as stated in the case of **LAURENCE MPINGA** (supra) where the High Court among other things, held that;

"An accused person who has been convicted by any court of an offence "on his own plea of guilty" may appeal against the conviction to a higher court on any of the following grounds:

1. That, even taking into consideration the admitted facts, his plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty;

2. That he pleaded guilty as a result of mistake or misapprehension;

3. That the charge laid at his door disclosed no offence known to law; and

4. That upon the admitted facts he could not in law have been convicted of the offence charged".

Also, in a recent decision of **HUSSEIN RASHID JUMANNE VS. REPUBLIC** CRIMINAL APPEAL NO. 55 OF 2020 which referred the Kenyani case of **ADAN VS REPUBLIC** (1973) 1 EA 445, the court emphasized the manner in which pleas of guilty should be recorded and seven steps to be followed in stated chronological order as follows;

1. When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand.

2. The magistrate should then explain to the accused all the ingredients of the offence charged,

3. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty.

4. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts.

5. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial.

6. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence.

7. The statement of facts and the accused's reply must, of course, be recorded.

With regard to the above cited authorities, it is my assessment that the procedure at the trial court, that ended on conviction of the appellant on his own plea of guilty, was properly followed. The plea was perfect, complete and unambiguous. It was therefore safe to rely on it to convict the appellant.

In view of 1st, 4th and 5th grounds of appeal, I will deliberate all together at once. As stated on the foregoing, the appellant was charged

with statutory rape contrary to section 130 (1) (2) (e) and 131 (1) of the penal code Cap 16 R. E 2022 and he was convicted for the same offence he was charged based on his own plea of guilty, I find that, conviction was proper, he was charged under proper provision of the law and charge sheet contained relevant information to enable him to understand the offence charged with, the charge sheet was not defective, also he was convicted and sentenced in accordance with the law and not on magistrate emotions as he claims. I find that all 3 grounds lack merit.

For the reason I have already stated above, I find no reason to fault with trial court findings, I confirm both conviction and sentence of the trial court. Appeal is dismissed.




V.M. NONGWA
Judge
9/10/2023

Right of appeal is hereby explained.

Dated and Delivered at Mbeya this 9th October, 2023 in presence of the appellant and the respondent.


V.M. NONGWA
Judge
9/10/2023