

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**DC. CRIMINAL APPEAL NO. 68 OF 2023**

(Original Criminal Case No. 05 of 2023 in the District Court of Sumbawanga at Sumbawanga)

**JUSTINE OCTAVIA @ MPULA ..... APPELLANT**

**VERSUS**

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

24/10/2023 & 30/11/2023

**JUDGMENT**

**MWENEMPAZI, J.**

The appellant was arraigned in the District Court of Sumbawanga for committing Unnatural offence contrary to section 154(1) (a) and (2) of the Penal Code, [Cap 16 R.E 2022]. It was alleged that the accused person on the 6<sup>th</sup> day of December, 2022 at Chanji area within Sumbawanga Municipality and Rukwa Region did have carnal knowledge with DDG, a girl aged nine (9) years old against the order of nature.

When the charges were read over and explained to him he denied hence the trial Court registered plea of not guilty. The case went for a full trial whereby the prosecution called three witnesses and the defendant called two

witnesses himself inclusive. At the conclusion, the trial Court found him guilty to the charge and convicted him accordingly. He was thus sentenced to serve a life imprisonment in jail and pay Tshs. 1,500,000/= to the victim as compensation.

The appellant is aggrieved with the conviction and sentence, hence the present appeal. He has raised five grounds of appeal namely:

1. That the prosecution case not proved beyond reasonable doubt.
2. That the trial magistrate did not asses the credibility of the prosecution witnesses since their evidence was inconsistent as even PW3 (doctor) who examined the victim failed to prove that bruises which were observed were caused by the penetration of penis or else.
3. That the trial magistrate was totally wrong in law point and fact by convicting and sentencing the appellant without considering there was no mitigation of the accused in the judgment.
4. That the defense adduced by appellant was not considered.
5. That the trial Court erred in law and fact by convicting and sentencing the appellant without taking into consideration that this case lacked proper investigation as no cautioned statement was tendered before

the Court even the police officer who investigated the case was not called.

The appellant prays that the appeal be allowed, judgment and conviction be quashed and sentence set aside so that he is released and set free.

At the hearing the appellant was unrepresented and the respondent was being served by Mr. Mathias Joseph and Frank Mwigune, State Attorneys. The appellant submitted briefly by praying this Court to consider the grounds of appeal and allow the appeal.

Mr. Mathias Joseph, learned State Attorney submitted for the respondent. He submitted that the respondent is supporting the appeal. The basis of their support is the first ground of appeal, that the case against the accused person was not proved beyond reasonable doubt.

He submitted that normally in sexual offences, the best evidence is that of the victim. It has to stand and narrate the event how it happened. Then the evidence of the doctor is expected to support that of the victim.

In this case the appellant was convicted of unnatural offence contrary to section 154(1) (a) and (2) of the Penal Code, [Cap 16 R.E 2022].

The victim was called and testified at page 8 of the type proceedings. Her evidence has deficiency. She failed to state when the event took place and also failed to state how the event occurred.

It was also expected that the evidence by the doctor (PW3) to corroborate the victim's story. However, the doctor's evidence is contradictory. The doctor (at page 15 – 16 of proceedings) testified that he did not see any problem but again he says there were bruises. But he does not explain the cause of the bruises. Due to the deficiency, there is doubt and the learned State Attorney opined that the case was not proved beyond reasonable doubt. The prosecution evidence generally does not say when the event took place. In the case of **John Julius Martin Versus the Republic**, Criminal Appeal No. 42 of 2020, Court of Appeal of Tanzania at Arusha (page 12) the prosecution was obliged to prove the dates and place the event took place. The learned state attorney had the opinion that the prosecution failed to prove the case as complained.

There is also contradiction between the victim and PW2 at page 9 – 10 of the proceedings. It shows that the appellant lived as the husband and wife

with PW2. The victim was also living with the couple. But the victim says he saw the appellant once. That brings doubt.

The learned State Attorney rested his case by praying that appeal be allowed by resolving doubts in favour of the appellant.

I have read the record of the trial Court, and also I have heard the submissions made by the parties. The issue to be resolved here is whether the case against the appellant was proved beyond reasonable doubt.

The learned State Attorney has pointed out that there was deficiency in the evidence tendered by the prosecution. In the testimony of the victim, she failed to testify when the event occurred and how it happened. That there was discrepancy in the testimony of the victim and that of PW2. While PW1 testified that she saw the appellant once, PW2 testified that the appellant was her husband and lived together as such for two years. Also that the doctor who examined the victim had unclear testimony. He testified that he examined the victim and found she had no problem but again that she had bruises near the anal area and other laboratory tests indicated negative result.

I have as well noted that while the victim's mother testified that she saw her daughter troubled on 06/12/2022, and that she asked her the problem and after she had known what had happened, she went with her at the police and later to hospital; the doctor testified to have received the victim on 08/12/2022.

In the submission by the State Attorney the prosecution did not lead evidence to prove where and when the event took place. He cited the case of **John Julius Martin Versus the Republic**, Criminal Appeal No. 42 of 2020, Court of Appeal of Tanzania at Arusha to show that to be a deficiency which weakens the prosecution case. In the case of **John Julius Martin Versus the Republic** (supra) it was held that:

*"Legally, where a place of commission of the offence is mentioned in the charge, evidence must be led to prove that indeed the appellant committed the offence at that place".*

I am satisfied that the case was not proved to the required standard as complained by the appellant and also affirmed by the prosecution. There

are doubts on the date the event happened, also place was not proved and contradiction among witnesses on the dates of event.

For the reasons the appeal by the appellant has merit and it is therefore allowed. Judgment of the trial Court and conviction are quashed, sentence set aside and the appellant should be released forthwith unless he is being held for another lawful cause.

It is ordered accordingly.

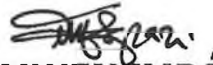
Dated and signed at **Sumbawanga** this 30<sup>th</sup> day of October, 2023.



**T.M. MWENEMPAZI**

**JUDGE**

Judgment delivered in judge's chamber in the presence of appellant and Mr. Mathias Joseph and Mr. Jackson Komba, learned State Attorneys for respondent.



**T.M. MWENEMPAZI**

**JUDGE**

**30/10/2023**