

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE SUB-REGISTRY OF MANYARA)

AT BABATI

PC CRIMINAL APPEAL NO. 13 OF 2023

(Arising from Criminal Appeal No. 33 of 2022 Hanang' District Court, Original Criminal Case No. 118 of 2022 Endasak Primary Court)

MARIA LUCAS APPELLANT

VERSUS

JOHN GINWE.....RESPONDENT

Date of last order: 1/11/2023
Date of Judgment: 10/11/2023

JUDGMENT

MAGOIGA, J.

This is a second appeal. Before Endasak Primary Court (hereinafter referred to as the trial court), the respondent was arraigned for one count of common assault contrary to section 241 of the Penal Code [CAP 16 RE 2022]. It was alleged that on 4/10/2022 at 10:00 at Malap in Hanang' District the respondent assaulted the appellant by using a stick on her leg.

After hearing the parties, the trial court was of the view that the appellant did



not prove her case beyond reasonable doubt, hence, acquitted the respondent.

Aggrieved with the decision of the trial, the appellant preferred an appeal to the District Court of Hanang' (hereinafter referred to as the first appellate court) in Criminal Appeal No. 33 of 2022.

After hearing the parties, the first appellate court dismissed the appeal for lack of merits.

Daunted and still aggrieved the appellant preferred the instant appeal with three grounds of appeal as follows;

- 1. That, the learned magistrate of the district court erred as failed to re-analyze the evidence on the courts.*
- 2. That, the learned magistrate of the district court erred as he upheld the decision of the trial court based on minor inconsistencies of the appellant's case.*
- 3. That, the learned magistrate of the district court misdirected himself as he did not notice that the trial*



magistrate failed to apprehend the proceedings of the trial court and as a result he reached at wrong decision.

When the appeal was called on for hearing both parties appeared in person unrepresented.

When availed chance to argue the appeal, the appellant simply prayed for the court to consider her grounds of appeal and allow the appeal.

On reply the respondent contended that he did not commit the offence with which he stood charged, hence, he urged the court to dismiss the appeal.

Having gone through the parties' rival submissions as well as the record of this appeal, the sole issue my determination is whether the appeal has merits.

I have keenly gone through the records of the two courts below. The charge laid against the respondent was to the effect on 4/10/2022 at 10:00 hours he assaulted the appellant by using a stick. Since the charge was preferred under section 241 of the Penal Code, it was necessary to prove that the appellant suffered actual bodily harm.

The appellant was required to lead evidence to establish beyond reasonable



doubt that the respondent committed the offence with which he was charged. The trial court was of the view that there were contradictions on the evidence adduced by the appellant and the witnesses she called. I have gone through the testimonies of each witness. The appellant herself told the trial court that he was beaten on the thigh of the left leg while SM2 (PW2) told the trial court that the respondent assaulted the appellant on the right leg. On the other hand, PW3 told the trial court that the appellant was assaulted on the left leg. The appellant contended such contradictions are minor and should be ignored. I have considered the appellant's contention I am of the settled view that such contradictions are not minor. In the case of **Bahati Makeja v. Republic**, Criminal Appeal No. 118 of 2006 (unreported), the Court considered discrepancies in the prosecution case and stated: -

"Another observation worth making here is that while normal discrepancies do not corrode the credibility of the witness, material discrepancies do. Normal discrepancies are those which are due to normal errors of observations, memory errors due to lapse of time, or due to mental



disposition such as shock and horror at the time of occurrence of the event. Material ones are those going to the root of the matter or not expected of a normal person."

Looking at the totality of the evidence adduced before the trial court, I am of the considered view that the charge against the respondent was not proved. Apart from the contradictions pointed out as to where exactly the appellant was assaulted the charge sheet simply states that the appellant was assaulted by a stick on her leg. There was no evidence that such assault occasioned actual bodily harm.

Hence, I concur with the concurrent findings of the two courts below that the appellant failed to prove her case beyond reasonable doubt.

Consequently, the appeal stands dismissed for lack of merits.

Order accordingly.

Dated at Babati this 10th November 2023



S. M. MAGOIGA
JUDGE
10/11/2023