

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

**IN THE DISTRICT REGISTRY OF TABORA**

**AT TABORA**

**DC. CRIMINAL APPEAL NO. 24 OF 2023**

(Originating from Uyui District Court in Criminal

Case No. 54 of 2022)

**SHIJA S/O MALUGU @ MALUNGA.....APPELLANT**

**VERSUS**

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

**JUDGMENT**

*Date of Last Order: 13/11/2023*

*Date of Judgment: 13/11/2023*

**MATUMA, J.**

In this appeal, the appellant is challenging the conviction and sentence meted against him for Rape Contrary to section 130 (1) (2) (a) and 131 (1) of the Penal Code, Cap. 16 R.E. 2022.

He was alleged to have raped a victim woman aged 35 years at Isuli village within Uyui District in Tabora Region. The appellant is recorded to have pleaded guilty and therefore convicted for his own plea of guilty. He was sentenced to suffer a custodial term of thirty (30) years.

At the hearing of this appeal, the appellant was present in person while the respondent was represented by Mr. Nurdin Mmary, Eva Msandi and Aneth Makunja learned State Attorneys.

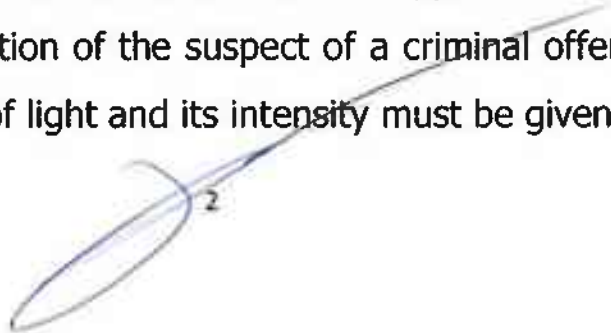
The appellant had no more than praying for acquittal on the strength of his seven grounds of appeal. Mr. Nurdin Mmary (SA) on his part urged this court to order a retrial because the prosecution facts did not state the source of light while the crime was committed at late night hours (01:00 hours).

He was of the view that since no evidence was given, the parties be accorded opportunity to give their respective evidence through a retrial order. I first thank the learned State Attorneys for being frank in the administration of criminal justice more so when they deliberately disclosed the weaknesses of their own facts for the sake of justice.

Even though I don't agree with them that a retrial order is warranted in the circumstances of this case. The appellant is alleged to have committed the offence at 01:00 hours after invading the victim's home and jumping on bed where he started to rape the victim.

The facts do not however state how was the appellant identified, how was he arrested and associated with this offence, and whether or not at the crime scene there was any light to enable the correct identification.

In the case of ***Issa s/o Magara @ Shuka versus Republic, Criminal Appeal no. 37 of 2005***, the Court of Appeal set out the principle that for proper identification of the suspect of a criminal offence, the clear evidence on the source of light and its intensity must be given.



2

Since the facts of the case when the accused pleads guilty stands in lieu of the evidence that would have been given had the case undergone a full trial, the same must be summarized to carry on board all the essential facts establishing all the ingredients of the offence.

I find that the facts in this case having not disclosed the source of light and the manner upon which the appellant was identified, it does not dictate a retrial as by doing so would benefit the prosecution by filling in the gaps.

I therefore allow this appeal on the ground of improper identification of the appellant at the crime scene. I quash his conviction and set aside the sentence of thirty years meted against him.

I order his immediate release unless he is lawful held for some other lawful cause. Right of further appeal explained.

It is so ordered.



**MATUMA  
JUDGE**

**13/11/2023**

**Court;** Judgement delivered in chambers in the presence of the applicant in person and in the presence of Mr. Nurdin Mmary, M/S Eva Msandi and M/S Aneth Makunja learned State Attorneys for the Republic/Respondent.



**MATUMA  
JUDGE**

**13/11/2023**