

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA  
CRIMINAL REVISION NO. 34 OF 2023**

**MABULA S/O MELI ----- APPELLANT**

**VERSUS**

**THE REPUBLIC ----- RESPONDENT**

**JUDGMENT**

29/9/2023 & 23/10/2023

**ROBERT, J:**

This is an appeal by Mabula s/o Meli (hereinafter referred to as "the appellant") against the judgment of the District Court of Sengerema (trial court), which convicted him of the offence of rape and sentenced him to 30 years' imprisonment. The appellant has raised seven grounds of appeal and four additional grounds of appeal. The prosecution, represented by State Attorneys, Benedicto Ruguge and Hellena Mabula, has opposed the appeal, arguing that the conviction and sentence should be upheld.

The appellant was charged with rape under sections 130(1)(2)(e) and 131(1) of the Penal Code, (Cap. 16 R.E. 2022). The prosecution alleged that on 2nd September, 2022, the appellant had unlawful sexual intercourse with an 11-year-old girl, a student of standard three, at Mission village, Sengerema District in Mwanza region. The victim, PW1, testified that the appellant, who is their neighbor, forced her into the act

when she was in his house despite her resistance. The appellant denied the charges, asserting that he was sick and sleeping in his house on the day of the alleged incident. The trial Court, after considering the evidence presented by both parties, found the Appellant guilty and sentenced him accordingly. Dissatisfied with the decision, the Appellant filed this appeal challenging both the conviction and sentence.

In the petition of appeal before this court, the appellant has meticulously outlined several grounds of appeal, each challenging various aspects of the trial court's judgment. Upon careful examination, the court finds it imperative to reproduce these grounds for thorough consideration and evaluation:-

1. *That the trial magistrate erred in law and fact to convict while he failed to append his signature soon after recording the evidence of each and every witness, this makes the entire evidence adduced being null and void hence no authenticity;*
2. *That the presiding magistrate was misdirected in law and fact for convicting while PW1 failed to raise an alarm and was not threatened, and the act in issue is among the reflex action that coming of abnormal hue is automatic*
3. *That the trial magistrate erred in law and fact for convicting by acting upon an afterthought piece of evidence, particularly the evidence of PW1 unreasonably delayed to report the felony to her parents, police station or teachers who are very close to her in a normal life of studying*

4. *That the lower court misdirected in law and fact to convict while no penetration was proved*
5. *That PW1 evidence was not corroborated with any cogent evidence considering her evidence was received contrary to section 127 (2) of the Tanzania Evidence Act*
6. *That the Trial Magistrate misdirected in law and fact to convict by relying and acting upon inconsistency and discrepancy pieces of evidence, PW2 found the vagina was open without going further as to whether the situation was natural or manmade*
7. *That the prosecution side failed to prove the charge levelled against him.*

Further to these grounds, the appellant filed additional grounds of appeal as follows:-

1. *That the trial Court erred in law to convict the appellant by relying and acting upon the doctor's evidence which was received against the law because the victim was raped on 2/9/2022 and examined on 10/09/2022.*
2. *That the trial Court erred in law to convict the appellant by relying and acting upon PW1's evidence which was received against the requirement of law since the victim's age was 11 years old the procedures were not considered*
3. *That the trial court erred in law for not considering his defence and his sister's evidence instead she agreed with the prosecution's weak evidence which showed a clear biased conclusion.*
4. *That the clinic card and PF3 were not audibly read out before the court by the witness.*

When the appeal came up for hearing, the appellant appeared in person without a legal representation. When given an opportunity to

highlight on his grounds of appeal, he implored the Court to take into consideration his seven grounds of appeal and four additional grounds of appeal in the determination of this appeal.

In response, the Respondent, represented by State Attorneys Benedicto Ruguge and Hellena Mabula, countered each ground of appeal raised by the Appellant.

The first ground of appeal challenges the validity of the trial court's proceedings due to the alleged failure to append the magistrate's signature after recording witness testimony. However, the respondent argues that this ground has no merit, as the court records demonstrate that the magistrate did append his signature after recording witness testimony. Upon review of the trial court record, it is evident that the magistrate did indeed sign after recording the testimony of each witness, as evidenced by the proceedings cited by the respondent. Therefore, this ground lacks merit and is dismissed.

The second ground of appeal questions the victim's failure to raise an alarm during the alleged rape thereby challenging the alleged incident. Counsel for the Respondent contended that the absence of an alarm or resistance from the victim does not negate the element of non-consent required for the offence of statutory rape. They emphasized that the victim's minor status renders her incapable of giving legal consent,

regardless of her actions during the incident. This Court is aware that the offence of statutory rape, as charged, does not hinge on the victim's consent due to the victim's minor status. Therefore, even if a minor does not resist or vocalize objection during the commission of the act, it does not negate the occurrence of rape. In statutory rape, such as this one, the focus shifts from the victim's consent to the perpetrator's actions and whether he engaged in sexual intercourse with a minor, regardless of any purported consent. Consequently, this ground of appeal is devoid of merit and is therefore dismissed.

The third ground of appeal focuses on the delay in reporting the incident. The Appellant argues that the victim's failure to immediately report the alleged rape casts doubt on the credibility of her testimony. Additionally, he suggested that the delay could imply fabrication or manipulation of evidence. On their part, counsel for the Respondent addressed the delay in reporting the incident by highlighting the victim's tender age and the circumstances surrounding the offence. They argued that the victim's delay in reporting is understandable given her age and the trauma she experienced. Moreover, the victim testified at the trial Court that she was prohibited by the appellant from reporting the incident and her mother was not present at home at time of the alleged rape.

They relied on the case of **Selemani Hassani vs Republic**, Criminal Appeal No. 203 of 2021, CAT at Mtwara (unreported) at page 17 to argue that the victim's immaturity should be considered in assessing the reason for delayed reporting of rape incident by the minor. They emphasized that, the alleged delay does not undermine the evidence, especially when corroborated by other witnesses.

Considering the victim's young age and the circumstances surrounding the offence, such as the appellant's threat and the victim's immaturity, this Court finds no reason to doubt the victim's testimony based solely on the alleged delay unless there is insufficient evidence to prove the alleged offence. Therefore, this ground is dismissed.

The fourth ground of appeal challenges the proof of penetration. The Appellant argues that the evidence presented was insufficient to establish beyond a reasonable doubt that penetration occurred. He maintained that without conclusive evidence of penetration, the conviction for rape cannot be sustained. Counsel for the respondent argued that penetration was adequately established through the victim's testimony and medical examination which corroborated the occurrence of penetration. They argued that the evidence presented by the prosecution is sufficient to support the conviction. This Court is satisfied that, both the victim's testimony that the appellant inserted his "dudu" in her private parts and



the medical evidence given by PW3 who conducted medical examination to the victim and observed that her hymen was not intact support the finding of penetration. Thus, this ground of appeal is rejected.

The fifth ground asserts that the victim's evidence lacked corroboration and therefore should not have been relied upon by the trial Court. Conversely, Counsel for the Respondent opted to oppose this ground as well as the second additional ground of appeal which faults the trial court for relying on the victim's evidence (PW1) which was allegedly received against the requirement of law due to her tender age. They argued that the testimony of PW1 was recorded in compliance with section 127(2) of the Evidence Act. Page 4 of the trial Court proceedings indicates that the witness promised to tell the truth which is the requirement of law for a child of tender age. They challenged the Appellant's assertion regarding the lack of corroboration for the victim's testimony arguing that, the victim's evidence was corroborated by her mother's testimony (PW2) who saw the victim's private parts and proved the victim's age through exhibit P1. Moreover, the victim's evidence was corroborated by the medical evidence and the testimony of PW3, the Doctor who examined the victim and established that she was penetrated.

More importantly, the learned counsel for the Respondent submitted that section 127(6) of the Evidence Act exempts the requirement for

corroboration in criminal proceedings involving sexual offences to a child of tender years if the court is satisfied that the child of tender years or the victim of the sexual offence is telling nothing but the truth.

Having reviewed the proceedings of this matter, the court notes that the victim's testimony constitutes the primary evidence against the Appellant and it was recorded in compliance with section 127(2) of the Evidence Act. While it is true that her evidence was corroborated with the evidence of PW2 and PW3 as observed at page 3 and 4 of the impugned judgment, in light of Section 127(6) of the Evidence Act, the Court recognizes that the victim's testimony, even without corroboration, can form the basis for conviction if the Court is satisfied that she is telling the truth. In this case, after assessing the credibility of the victim's evidence, the trial Court found no reason to doubt the victim's testimony as indicated at page 6 of the impugned judgment. The Court noted that her account of the events is supported with the evidence of PW2, PW3 and PW4. Therefore, the Appellant's argument regarding the procedure of recording the victim's testimony in the second additional ground and the lack of corroboration for the victim's testimony in the fifth ground of appeal are dismissed.

The sixth ground questions the consistency of the evidence. It faults the trial Court for relying on unreliable and contradictory evidence which



undermines the credibility of the entire case against him. Counsel for the Respondent refuted the Appellant's claim of inconsistencies in the evidence presented. They argued that the trial Court properly considered the evidence, particularly that of the victim and the medical expert, and made a reasoned decision based on the available evidence.

Given the lack of specific instances of alleged inconsistencies or contradictions provided by the Appellant and upon review of the trial records, the Court finds no substantive basis to uphold the sixth ground of appeal. The Appellant's general assertion of inconsistencies does not withstand scrutiny, as the prosecution's evidence was coherent and consistent overall.

Therefore, the Court dismisses the sixth ground of appeal, as the Appellant failed to demonstrate any material inconsistencies or contradictions in the evidence presented by the prosecution. The trial Court's reliance on the prosecution's evidence was justified.

The seventh ground asserts that the prosecution failed to meet its burden of proof. He contended that the evidence presented was weak and insufficient to establish his guilt beyond reasonable doubt. Therefore, the conviction should be overturned. In response, counsel for the Respondent asserted that the prosecution successfully proved the case against the Appellant beyond reasonable doubt. They highlighted the evidence

presented, including the victim's testimony and the corroborative evidence to support the conviction.

Upon careful consideration of the evidence presented and the arguments raised by the parties, the Court finds that the prosecution has discharged its burden of proof. The evidence presented, including the victim's testimony, medical evidence, and corroborating testimony, collectively establish the guilt of the Appellant beyond a reasonable doubt.

The trial Court correctly applied legal principles and considered the evidence in its entirety before reaching a verdict. The conviction of the Appellant is supported by credible and sufficient evidence, and there are no grounds to overturn the decision of the trial Court.

Therefore, the 7th ground of appeal, asserting that the prosecution failed to prove the charge against the Appellant, is dismissed. The Court affirms the conviction and sentence imposed by the trial Court.

I will now consider the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> additional grounds of appeal. Starting with the first additional ground, the appellant challenges the admissibility of the medical examination report due to the delay between the alleged rape incident and the actual examination. He contends that this delay undermines the reliability of the evidence. However, the Respondent argues that the delay does not violate any legal requirement and does not render the examination report inadmissible.

In assessing this ground of appeal, the Court acknowledges the absence of a specific statutory requirement mandating immediate medical examination following a sexual assault. However, the Court must consider the circumstances of this case, particularly the findings of the medical examination report and the potential impact of the delay on the reliability of the evidence.

The medical report (exhibit P1) revealed the absence of the victim's intact hymen, which can be crucial evidence in establishing whether penetration occurred, especially considering the victim's status as a minor. This substantive finding significantly strengthens the inference that sexual intercourse took place and corroborates the victim's allegations.

While the delay in the examination raises concerns, the Court finds that the substantive findings of the report outweigh the impact of the delay. The absence of the victim's intact hymen provides compelling evidence supporting the victim's account of the sexual assault.

Moreover, the delay in the examination was not adequately explained or justified by the Appellant. No evidence was presented to suggest that the delay significantly affected the reliability or accuracy of the medical findings. Therefore, the Court concludes that the delay, while not ideal, does not render the examination report inadmissible.

Considering the substantive findings of the medical examination report, particularly regarding the absence of the victim's intact hymen, the Court finds that the report is admissible and carries significant probative value in establishing the occurrence of sexual intercourse.

Therefore, the Court dismisses the first additional ground of appeal and upholds the admissibility of the medical examination report. The Court affirms the trial Court's reliance on the report's findings in reaching its decision.

The third additional ground of appeal raises concerns about the trial court's failure to consider the defence evidence in reaching its decision. The Appellant argues that this failure constitutes an error of law and highlights potential bias in favor of the prosecution. Conversely, the Respondent's counsel acknowledges the trial court's oversight but contends that the strength of the prosecution's evidence justifies the conviction. The Respondent's counsel urges this Court as the first appellate court to analyze the defense evidence and dismiss it as an afterthought and lacking substantive support.

This Court is aware that the trial court's duty to assess all evidence impartially is fundamental to ensuring a fair trial and upholding the principle of justice. Failure to consider material evidence may undermine the reliability of the verdict and warrant appellate intervention.

However, after careful consideration of the arguments presented by both parties, the Court finds that while the trial court erred in failing to consider the defense evidence, the strength of the prosecution's case justifies the conviction. The prosecution's evidence, including the victim's testimony, medical evidence, and corroborating witness statements, constitutes a compelling case against the Appellant.

Furthermore, the Appellant's defense that he was framed in this offence because his sister had a quarrel with the victim's mother and assertion that he is impotent lacks substantive support and fails to withstand scrutiny. The claim of being framed due to a familial dispute appears speculative and lacks corroborating evidence. Similarly, the assertion of impotence without medical evidence to substantiate it diminishes its probative value.

Therefore, while the trial court's failure to consider the defense evidence is regrettable, it does not significantly impact the overall reliability of the verdict. The strength of the prosecution's case, coupled with the weakness of the defense evidence, supports the conviction.

Accordingly, the third ground of appeal is partially upheld to the extent of acknowledging the trial court's oversight but is ultimately dismissed. The conviction of the Appellant is affirmed based on the

strength of the prosecution's evidence and the lack of substantive support for the defense's assertions.

The fourth additional ground of appeal challenges the admissibility of the clinic card (exhibit P2) and the PF3 (exhibit P3), asserting that they were not audibly read out in court by the witness. However, a closer examination of the trial court records reveals that the contents of both documents were indeed audibly read out during the proceedings. Specifically, page 9 of the trial court records indicates that the contents of the clinic card were read out, while page 15 confirms that the contents of the PF3 were also audibly presented.

In light of this clarification, the Appellant's challenge to the admissibility of the clinic card and PF3 loses its merit. The trial court adhered to proper procedural requirements by admitting the documents into evidence and ensuring that their contents were adequately presented during the proceedings.

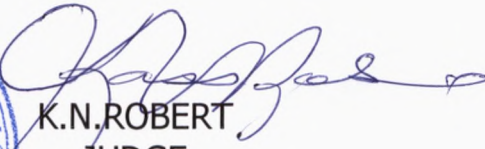
Therefore, this Court finds that there is no basis to sustain the fourth additional ground of appeal. The documents were admitted into evidence in compliance with procedural requirements, and their contents were properly presented during the trial proceedings. Accordingly, the fourth additional ground of appeal is also dismissed.



Having considered all the grounds of appeal and the respondent's arguments, the court finds that the appellant's grounds lack merit. The evidence presented by the prosecution, including the victim's testimony, medical examination, and corroborating witnesses, supports the conviction for rape. Therefore, the appeal is dismissed, and the conviction and 30-year jail term sentence are upheld.

It is so ordered.



  
K.N. ROBERT  
JUDGE  
23/10/2023

