

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MWANZA

AT MWANZA

CRIMINAL APPEAL NO. 56 OF 2023

(Originated from Bukombe District Court in Criminal Case No.249/2022)

VICENT WILSONAPPELLANT

VERSUS

THE REPUBLICRESPONDENT

JUDGMENT

17/8/2023 & 29/9/2023

ROBERT, J.:

In the District Court of Bukombe, the appellant, Vicent Wilson, stood accused and subsequently found guilty of two charges. The first charge pertained to the crime of Rape, as delineated in sections 130(1)(2)(e) and 131(1) of the Penal Code, (Cap. 16 R.E. 2022). The second charge involved the offense of Impregnating a school girl, contravening section 60A of the Education Act, as amended by section 22 of the Miscellaneous Amendment Act No. 2 of 2022. At the end of the trial, the trial Court imposed a sentence of thirty years' imprisonment for each offence, with the directive that the terms be served concurrently. Dissatisfied with the judgment rendered by the trial Court, the appellant has lodged this appeal seeking redress against the said decision.

The prosecution contended that during an unspecified evening in July 2022, at Iponya Village within Mbogwe District, Geita Region, the appellant engaged in sexual intercourse with a primary school girl of sixteen years old, whose identity remains undisclosed in this judgment. Additionally, it was asserted that on the same date, the appellant allegedly impregnated the aforementioned victim as a consequence of their sexual encounter. Despite the appellant's denial of these allegations, subsequent to a comprehensive trial, he was found guilty and convicted accordingly. Following the rendition of the aforementioned sentence, the appellant initiated this appeal, articulating three distinct grounds of appeal enumerated as follows:-

- 1) *That the trial Magistrate court erred in law and facts to convict the Appellant whereas the prosecution side has failed to prove the offence of Rape and Impregnating a school girl that have been committed by Appellant beyond reasonable doubt and the court didn't consider the defence given by the Appellant.*
- 2) *That the trial Magistrate Court erred in law and facts in convicting the appellant based on hearsay evidence given by the witnesses Pw1, Pw3 and Pw4 No among of those witnesses who proved in the trial court that the Appellant was the one who committed the said offences.*

- 3) *That the prosecution side failed to prove if the Appellant was the one who impregnated the victim Debora Mashauri it could be better to prove this case by using DNA.*

When this matter was brought before the court for hearing, the appellant appeared in person, unrepresented, while the respondent was represented by Ms. Sabina Chogogwe, Mr. Benedicto Ruguge, and Ms. Hellen Mabula, State Attorneys.

When given the opportunity to address the court, the appellant requested that the grounds outlined in the petition of appeal be considered in the adjudication of the appeal.

In response to the first ground of appeal, Counsel for the Respondent, Ms. Sabina Chogogwe, contended that the ground raised three key issues: Firstly, whether the prosecution had adequately proven the offense of rape; Secondly, whether the offense of impregnating a schoolgirl was substantiated; and Thirdly, whether the appellant's testimony was duly considered.

Beginning with the first issue, Ms. Chogogwe argued that the offense of rape was established beyond reasonable doubt. She emphasized the testimony of the victim (PW2), which detailed a romantic relationship with the appellant and occurrences of sexual activity in various locations. Citing

the legal precedent established in the case of Seleman Makumba vs R, (2006) TLR 379, she asserted that the victim's testimony constituted the most reliable evidence in sexual offense cases. Furthermore, she highlighted corroborating evidence from PW1 and PW3, affirming the credibility of PW2's account. Consequently, she urged the dismissal of the appellant's argument.

Regarding the allegation of impregnating a schoolgirl, Ms. Chogogwe acknowledged the absence of concrete evidence directly linking the appellant to the pregnancy. She emphasized that not all instances of rape result in pregnancy and argued that the burden rests with the prosecution to substantiate the claim, which she asserted was not met.

Addressing the appellant's defence, Ms. Chogogwe asserted that the appellant's evidence was indeed considered, as evidenced by page 12 of the impugned judgment. However, she stated that the court found no reason to doubt the prosecution's evidence based on the appellant's submissions, thus recommending the dismissal of this ground.

Moving to the second ground of appeal, the appellant criticized the trial court for convicting him based on hearsay evidence. Ms. Chogogwe countered by affirming that the appellant's conviction relied on the direct

testimony of PW2 and corroborative evidence from PW1 and PW3, both cited in the impugned judgment.

Regarding the third ground of appeal, the State Attorney admitted the lack of evidence linking the appellant to the alleged act of impregnating a schoolgirl.

In his brief rejoinder, the appellant reiterated his objection to his conviction based on hearsay evidence. He further disputed the circumstances of his arrest and the validity of the pregnancy claim, pleading for acquittal from the alleged offense.

This Court is aware that, in criminal cases, it is incumbent upon the prosecution to prove the guilt of the accused beyond a reasonable doubt. The proof of statutory rape hinges on demonstrating penetration and the age of the victim, with consent being immaterial. This principle was affirmed in the case of **Hussein Said Nampanga v R**, Criminal Appeal No. 117 of 2011 (CAT) (Unreported). Furthermore, it is trite law that the evidence of sexual offence has to come from the victim, as stated in case of **Akwino Malata v R**, Criminal Appeal No.438 of 2019 (CAT) Unreported.

In the present case, the appellant challenges the sufficiency of evidence supporting the convictions for rape and impregnation. The

prosecution's case primarily rested on the victim's testimony, which purportedly detailed a romantic relationship with the appellant and instances of sexual activity. However, discrepancies regarding the victim's age, coupled with the absence of direct evidence linking the appellant to the impregnation, cast significant doubt on the prosecution's case. The Court emphasizes the fundamental principle that guilt must be established beyond a reasonable doubt. In this instance, the prosecution's evidence falls short of meeting this standard, particularly concerning the victim's age and the absence of conclusive evidence linking the appellant to the impregnation.

While the victim and her father (PW1 and PW2) only mentioned that the victim's age was 16 without stating the year of her birth, the affidavit regarding the victim's birth (Exhibit PE1) indicates that the victim was born on 12th June, 2006 while the School registration documents (exhibit P2) tendered by the victim's teacher indicates that the victim was born on 6th February, 2007. The Court finds that, ambiguities surrounding the documentation of the victim's age and the lack of testimony from relevant investigative authorities undermine the integrity of the proceedings. Such irregularities raise serious doubts about the reliability of the evidence presented and the fairness of the trial process.

Further to that, the appellant contends that his conviction was based on hearsay evidence. Upon meticulous review, it is evident that the trial court predominantly relied on direct testimony from the victim (PW2) and corroborative evidence from other witnesses. Hearsay evidence, if any, played a negligible role in the conviction. Therefore, the appellant's assertion regarding the reliance on hearsay evidence lacks merit.

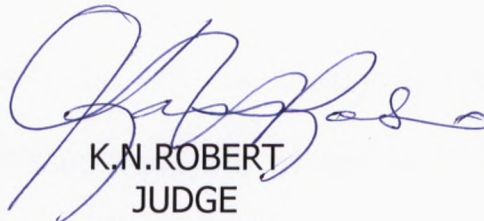
The prosecution acknowledges the absence of concrete evidence directly linking the appellant to the impregnation. Despite the victim's testimony, which purportedly inculpated the appellant, the evidence presented is insufficient to establish his culpability beyond a reasonable doubt. The prosecution failed to establish a nexus between the appellant and the alleged act of impregnation.

Having meticulously examined the grounds of appeal and considered the evidence and legal arguments presented, the Court finds merit in the appellant's appeal. The prosecution failed to establish the appellant's guilt beyond a reasonable doubt for the offences of rape and impregnating a schoolgirl. Therefore, the Court overturns the judgment of the lower court and acquits the appellant of all charges.

The appeal is allowed, and the conviction is hereby set aside. The appellant, Vicent Wilson, shall be released from custody forthwith unless held for any other lawful cause.

It is so ordered.




K.N.ROBERT
JUDGE
29/9/2023