IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA SUB REGISTRY)

AT MWANZA

CRIMINAL APPEAL NO 7042 OF 2024

(Originating from Criminal case No. 164 of 2022 from Sengerema District Court at Sengerema before Hon. T.G.Barnabas – SRM dated on 13th July, 2023)

BETWEEN

SOSPETER s/o FELICIAN ..... APPELLANT

VERSUS

THE REPUBLIC..... RESPONDENT

JUDGEMENT

16TH & 16TH May, 2024

A. MATUMA, J.

The appellant stood charged for rape contrary to section 130 (1)(2) (e) and 131 (1) of the Penal Code, Cap. 16 R.E 2022 in the District Court of Sengerema at Sengerema.

He was alleged to have on the 1st day of September, 2022 at about 17:00 hour at Mwabaruhi village within Sengerema District in Mwanza Region raped a victim girl aged three years old.

The appellant denied the charges which necessitated a full trial.

In that respect the prosecution paraded a total of three witnesses Jesca Jovin (PW1), Dr. Voeten (Pw2) and WP 7410 D/CPL Mponela (Pw3). After the evidence of the three witnesses was recorded, the prosecution closed its case and the Court ruled out that a primafacie case was made against the

appellant. He was addressed of his rights on defense and he replied that he will testify under oath, will have no witness to call nor will have any exhibit to tender. The matter was then adjourned in three days to come for defense hearing.

The records of the trial court show that on the defense hearing date, the appellant prayed to be reminded his charges:

"Accused: I pray to be reminded with the charge"

The charge was reminded and the appellant was asked to plead to the reminded charge in which he was recorded to have pleaded;

"Ni kweli nilimbaka mtoto wa kike mwenye umri wa

miaka 3 kwa sababu ya tamaa ya mwili"

Following such a plea, the court entered plea of guilty. Prosecution facts were narrated and the appellant is recorded to have admitted all the facts;

"I have nothing to dispute, all the narrated facts are correct"

From the foregoing historical background, the trial court convicted the appellant on his own plea of guilty and sentenced him to suffer a custodial term for life.

The appellant became aggrieved with the conviction and sentence hence this appeal with seven grounds. Six of the grounds are attacking the weight and value of the prosecution evidence. Only one of the grounds is challenging the plea to the effect that the same was an equivocal plea because the appellant is not fluent in Swahili language and has hearing problems.

Since the appellant was convicted and sentenced not on the strength and value of the prosecution evidence but on his own plea of guilty, I required the parties to address only that one ground which attacks the plea of the appellant which resulted into his conviction and sentence.

The appellant submitted that when he was in remand custody he was visited by a person who introduced himself as OCS of Sengerema Police Station and a relative of the late Justice Katiti. That person whom he don't recall the name told him that he was there to help him if he will admit the charge. They argued as to why should he admit the charge while he did not commit the offence but he was assured that the only way to be helped in the matter was to plead to the charge. He thus agreed though without a free will and when he appeared before the trial magistrate, he pleaded guilt in follow up of the instructions prior given.

The appellant insisted that the trial magistrate has nothing to blame because she recorded what transpired in court but his plea was procured by a fraudulent trick. He finally prayed that his conviction be quashed and the sentence set aside so that he is accorded opportunity to enter his defence.

On her part M/S Brenda Mayala learned State Attorney argued in opposition to the appeal. She argued that section 360(1) of the CPA does not accommodate the appeal upon which conviction was entered following the plea of guilty. She insisted that even the circumstances under which an appeal may lie against the conviction on one's own plea of guilty as stipulated in the case of ***Laurence Mpinga versus The Republic (1983) TLR 166***

do not feature in the circumstances of this case because the plea of the appellant was properly recorded and the appellant admitted all the facts.

The learned state attorney cited the case of ***Emmanuel Ambrous versus The Republic, Criminal Appeal no. 555 of 2017*** CAT to the effect that when the accused pleads guilty, he must explain what he pleads and then the facts be read and the accused be invited to plead on the facts the procedures which were fully adhered to. She also referred this court to the case of ***Khalid Athumani versus Republic (2006) TLR 83*** on the processes upon which a conviction may be entered against an accused who pleads guilty.

Having heard the parties for and against this ground, it is my firm findings that the conviction was wrongly entered because the trial court entered conviction without satisfying itself on whether the narrated facts established the offence charged. The appellant was convicted merely because he had pleaded guilty of the offence.

The trial Magistrate having taken the admission of the facts by the appellant jumped to convict him without stating as to whether he was satisfied that the facts established the offence charged. He only remarked;

> *"Accused person found guilty and convicted on his own plea of guilty with the offence of Rape C/S 130(1)(2)(e) and 131(1) of the Penal Code, Cap. 16 R.E 2022, after this court satisfied that the plea of accused is unequivocal plea".*

That was totally wrong, an accused person is not convicted merely because he has pleaded guilty and admitted all the facts of the case but because the admitted facts constitute all the necessary ingredients of the offence and have established the guilty of the accused. In the case of Emmanuel Ambrous supra which was cited by the learned State Attorney the court of appeal made it clear that the court must examine the facts of the case put to the accused and determine whether they sufficiently disclose the ingredients of the offence. In the instant case as quoted supra, the trial court did not examine the facts nor stated anything relating to them.

In the case of ***Rutha Alex v. The Republic Criminal appeal no. 294/2015*** the Court of Appeal of Tanzania quoting the case of ***Boniface Aiden versus the Republic, Criminal Appeal no. 35 of 2012*** held that the trial court should not proceed to convict an accused person on a plea of guilty unless

> *"Before entering a conviction a trial court must ensure that an accused has fully understood and appreciated the charge that is laid against him and intends to plead guilty thereto."*

In that respect, the court can only ensure itself that the accused has understood fully the nature of the charges against him and intends to plead guilty on them only when the charges are properly drafted without technical terms and if any, they are explained to the accused in a simple language he could understand. In the instant case the charge alleged that the accused person **"did have sexual intercourse"** with the victim. The facts repeated the same words without explaining to the accused now the appellant that

sexual intercourse meant penetration of the vaginal by the penis to let the appellant understand that he was accused to have penetrated his penis into the victim's vagina. Even in the case of Khalid Athumani supra which was again cited by the learned State attorney, at page 83 the Court of appeal of Tanzania held that the when the accused pleads guilty to the charge, the trial magistrate should explain to the accused person all the essential ingredients of the offence charged. All this is done to ensure that the accused understands clearly the charge and its nature to avoid offering a plea under misapprehension of the facts.

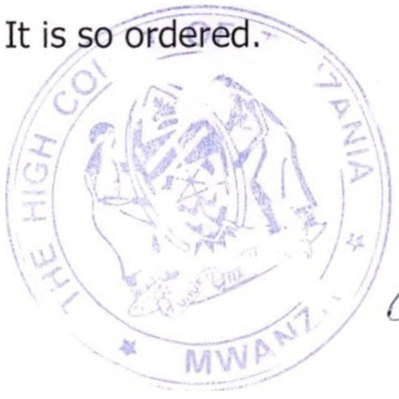
To avoid misleading the accused on his plea it is desirable for the facts to disclose clearly how the accused executed the offence. The accused shall then plead on those facts and if admits them all the court may proceed to convict him upon satisfaction that he intended without ambiguity to plead guilty.

It should be known that facts of the case in the circumstances where an accused person has pleaded guilty, are a substitute of formal evidence which might have been adduced in a normal trial had he pleaded not guilty. Therefore, the facts must be a summary of evidence which establishes the guilty of an accused person to the charge and the trial court must determine them and make a finding whether they carries all essential weight to convict. They should not be taken as simple, just a mere procedure. And that is why the Law requires that the trial court should also satisfy itself whether the admitted facts are sufficient enough to warrant a conviction in the meaning that they have carried all necessary ingredients of the offence and established the guilty of the accused.

Since the trial court did not comment on the facts of the prosecution on whether they were made simple to be understood by the appellant and they carried all necessary ingredients of the offence establishing it to warrant the conviction, I find that the conviction on the appellant's own plea of guilty was wrongly entered. I thus quash the conviction of the appellant and set aside the sentence of life imprisonment. To make it clear, the proceedings of the trial court as from 13/07/2023 when the matter came for defense hearing onwards are hereby quashed.

I order the appellant to be sent back to the trial court to have his defense evidence recorded and judgment on merit be entered.

It is so ordered.



A. MATUMA

JUDGE

16/05/2024