IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF MANYARA

AT BABATI

CRIMINAL APPEAL NO. 73 OF 2023

(Originating from Criminal Case No. 11 of 2022 in the District Court of Kiteto at Kibaya)

JACKSON NAIKO.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT:

21st November, 2023 & 19th February, 2024

Kahyoza, J.:

Jackson Naiko, the appellant, was prosecuted in the District of Kiteto at Kibaya on offence of incest by male contrary to section 158 (1) (a) of **the Penal Code**, [Cap 16 R.E.2019].

It was alleged that the appellant on diverse dates between 2017 and 2021 at Ndaleta village within Kiteto district in Manyara region, did have sexual intercourse with his daughter, one, AJZ- **(Pw1** or 'victim') a pupil of Ndaleta Primary School aged 15 years.

Having heard the case on merit, the learned trial Senior Resident Magistrate found the appellant guilty, convicted and sentenced him to serve

a minimum statutory term of 30 years' imprisonment and an order to pay compensation of Tzs. 1,000,000/- to the victim.

Aggrieved, **Jackson Naiko**, engaged Mr. Mniko, who raised two grounds of appeal, namely-

> *"1. That the trial court erred in law and fact by convicting and sentencing the appellant while prosecution failed to prove beyond reasonable doubt the charge against the appellant as per the evidence tendered before it;*
>
> *2. That the trial court erred in law and fact by failure to consider the law while determining the matter before it."*

The hearing of this appeal was by way of written submissions. Parties adhered to the scheduling orders.

A brief background from the prosecution's facts is that; the appellant is the victim's father. According to the victim, (**Pw1**), the appellant married two wives the victim's mother and Tausi Yasin (**Dw2**). The appellant separated with his first wife. The appellant was residing at Ndaleta with his one wife and eight daughters. They stayed in the house with two rooms. The girls lived in one room and the appellant and his wife occupied the

remaining room (sitting room). The victim mentioned her sisters as Elizabeth, Betty, Zawadi Stella Eliza, Elibariki and Kadadaaa.

The victim deposed that the appellant had raped or had sex with her thrice. She described that the first time the appellant raped her was in 2017 when she was in Standard two. On the that day, the appellant and his daughters went to the farm. Later, the appellant told all his daughters to go home and remain with the victim at the farm. At night, the appellant told the victim that he wanted to have sex with her. She refused. He called her in the hut which was at the farm, undressed her, he inserted his moonhood into the victim's private parts. He had had sex with her that night. The victim testified that it was very painful and she bled.

> *"It was very painful and blood came out. I did not scream to ask for help because he said if I do so he would beat me up. "*

After he finished he left the victim at the farm and went home. The following day the victim's sisters went to the farm but she decided to keep mum. She deposed that the appellant told her that he was doing all that so that she may pass examinations and became rich.

The victim deposed that the appellant raped her a second time at their home place. He came home very drunk, pulled her from the girls' room to his room, undressed her, put off his clothes and raped her. She deposed that on that day her mother had spent the night at the farm. A third time the appellant raped her was at the farm in 2020 when they were harvesting maize. She described that on that day the appellant raped her at noon in the middle of the farm. The appellant requested the victim to take water to him. She obliged.

She took water to him, he pulled her and raped her under the tree in the middle of the farm. After he finished he ordered her to get him food from the hut. She narrated that the appellant raped them after harassing their mother. After harassing and beating their mother, their mother would leave to sleep in the kitchen. Then the appellant would take that opportunity to sleep with one of his daughters.

She added that she told her mother who did nothing. On the day, their paternal aunt visited their home she was at the farm. The following day Leorkadia took them to police station, then to hospital.

The appellant evidence was that he had never had sex with the victim. He contended that it was a curse for the father have sex with your daughter. He alleged that the cases were fabricate by his former wife as she wanted wealth. He deposed that he was sick he cannot have sex. He summoned his wife Tausi Yasin, who had nothing to say.

It is from the above evidence, the trial court convicted the appellant with the offence of incest.

Did the prove the appellant guilty of offence of incest beyond reasonable doubt?

The offence of incest by male, which the appellant is charged with, has two elements which the prosecution must establish; **one**, is the fact the victim is a granddaughter, daughter, sister or mother of the accused person and the accused person knows that.; and **two**, that the accused person had sex with that person.

In the present case, there is no dispute that the victim is the appellant's biological daughter. The appellant stated in his defence that, the victim is his biological daughter. The victim told the Court that, the appellant is her

father. Thus, I find the first element of the offence of incest by male established.

Did the appellant had had sex with the victim?

The second element is the one contested, which whether the appellant had had sex with the victim his daughter. Mr. Joseph Mwita Mniko, advocate for the appellant, submitted on the prosecution did not prove the appellant guilty beyond reasonable doubt. He advanced three grounds to support; o**ne**, that on the charge it was alleged that the victim was a student at Ndaleta Primary school while testified, the victim deposed that she was schooling at Partimbo Primary school.

Ms. Rose Kayumbo, on the first ground of appeal, submitted that the contradictions featured on evidence were not prejudicial to the appellant, citing the rule in **Joseph Thobias & Others vrs. The Republic**, Criminal Appeal No. 296 of 2019 [2023] TZCA 105 (13 March 2023).

I examined the charge sheet and the victim's testimony; indeed, there are contradictions. The charge sheet reads that the victim was a pupil at Ndaleta primary school and in her evidence, she said she was a pupil at Partimbo primary school. This is the discrepancy. The issue is it central to

weaken the victim's credibility. I am tempted to share the same views with the state attorney that the contradiction is minor and irrelevant as it relates an allegation which the prosecution is required to prove to establish the offence. It does not matter whether the victim was a pupil or not to prove the offence of incest. It is settled that minor contradictions which do not go to the subject of the matter may be ignored. See the case of In **Evarist Kachembeho & Others v. R.,** [1978] LRT n.7 where this Court observed, that-

> *"Human recollection is not infallible. A witness is not expected to be right in minute details when retelling his story"*

I find that it is true that the charge depicts that, the victim was a pupil of Ndaleta primary school whereas the victim deposed that she was a pupil of Partimbo primary school, but that discrepancy is minor. It does not by itself affect the credibility of the victim.

The appellant's advocate complained further that it was the testimonial contention of the victim (**Pw1**) that she was raped by the appellant on three occasions, two occasions in the year 2017 and another on the year 2020. The victim (**Pw1**)'s evidence regarding the year when the third occasion happened contradicted with the evidence Zawadi (**Pw2**). The victim (**Pw1**) deposed that on the third time she was raped in 2020

while Zawadi (**Pw2**) testified that the victim was raped on June of 2021, also that victim (**Pw1**) testified to have been with the appellant at the farm, but Zawadi (**Pw2**) stated that she was also there and saw the appellant lying on top of victim (**Pw1**) and later victim (**Pw1**) joined her and told her that she was raped.

The state attorney replied that there was uncontradicted evidence that the victim (**Pw1**) was raped between 2017 and 2021. The state attorney alleged that the appellant did not cross-examine the victim regarding that piece of evidence. She was of the view that it is the evidence of the victim, which proves the offence of rape.

I examined the record. I found that the victim (**Pw1**) evidence was that the appellant raped her for the third time **in 2020** in the farm harvesting. She deposed that she had gone to harvest maize with her siblings together with the appellant. Her testimony reads-

> *"The third time he raped me [in] 2020 when we were at the farm harvesting with all my other sister[s]. It was at noon hours, he called me and asked me to give him water, he was under the tree at the middle of the farm. I took him water that is when he pulled me and raped me."*

I had a cursory review of Zawadi (**Pw2**)' evidence which the only variance was to the year when the offence occurred but the other testimony was the same. Both deposed that the offence was committed when they were harvesting maize. They, both deposed that the appellant ordered the victim to take water to him. The victim contended that after she took water to the appellant pulled her and raped her whereas Zawadi (**Pw2**) deposed that after the victim took water to the appellant, she saw the appellant lying on of the victim. I find it apt to produce part of Zawadi (**Pw2**)'s testimony-

> *"In June, 2021 I was at the farm in Nadosoito, we were harvesting, maize, I was with [XX] water (sic). Then father sent [XX] water (sic) from the hut house in the farm. I was still harvesting and caring maize. [XX] went and brought water. As I was still caring maize and taking them where we were putting them together, I saw them, father was lying on top of [XX] under a tree. I went on carrying maize and taking them to where we were putting them."*

As shown above, the only variance was as to the year when the offence was committed but the other evidence was similar. The variance as to the year when the offence was committed is minor. In **Twalaha Ally Hassan V. R.,** Criminal Appeal No. 127/2019, the Court of Appeal found the variance in the evidence of Pw1 and Pw8 as to whether PW1 bumped into PW8 before or after PW1 had gone to her home directly from the scene of the crime *a*

minor incongruity. On the same vein, I find the contradiction as to the year when the appellant is alleged to committed the offence on the third time, a minor variance as it is ***a minute detail which appears to have been caused by lapse of memory.*** In **Twalaha Ally Hassan V. R.,** (supra) the Court of Appeal observed as follows-

> *"In the instant appeal, the discrepancy between the testimonies of PW1 and PW8 is clearly a minor incongruity.* ***Whether PW1 bumped into PW8 before or after PW1 had gone to her home directly from the scene of the crime is a minute detail which appears to have been caused by lapse of memory****. Anyhow, it does not detract from the prosecution case that PW8 saw a distraught and weeping PW1 shortly after the fateful incident and that she learnt from her that the appellant had raped her. Consequently, the sixth ground of appeal fails."*

The appellant's advocate submitted that there was another contradiction between victim (**Pw1**)'s testimony that of Zawadi (**Pw2**) as who were present at the farm when the victim alleged that the appellant raped her for the third time. The appellant's advocate submitted that the victim (Pw1) testified that they were only two at the farm, her and the appellant, Zawadi (**Pw2**) testified that she was there and saw the appellant lying on top of the victim (**Pw1**). He was left at limbo whom to trust

between Zawadi (**Pw2**) and the victim (**Pw1**). He also said that lying on top was different from having sex.

I wish to state that the appellant was facing five cases. It was easy for anyone to mix up the facts from one case to another or from one incident to the other in the same case. As record bears testimony, the victim (**Pw1**) deposed that she was raped twice in the farm. The first occasion was at night and that is when they were only two, the appellant and the victim. The second occasion of rape in the farm was during the day when they were harvesting maize. On that day, the victim deposed that she was harvesting maize with all her sisters. Thus, on the third occasion, Zawadi (**Pw2**) was present in the farm. For that reason, there is no contradiction. I find no merit in that complaint.

The appellant's advocate invited this court to find that Zawadi (**Pw2**) was shot of proving that the appellant raped the appellant. He submitted that lying on top someone does not suffice to prove the offence of rape. The state attorney replied that rape is proved by slight penetration.

I agree with the appellant's advocate that man lying on top of a woman does not prove rape. Thus, the fact that the appellant lied on top of her

daughter was not enough to prove that he raped her. However, in the present case apart from the evidence of Zawadi (**Pw2**) that he saw the appellant lying on top of the victim (**Pw1**), there is the evidence of the victim (**Pw1**) that the appellant raped her. The victim (**Pw1**)'s evidence complemented Zawadi (**Pw2**)'s evidence, thus, the appellant lied on top of the victim (Pw1) raping her.

The appellant's advocate complained that the trial court did not consider the evidence of the appellant. He cited a litany of cases but supplied the rules in **Hamis Khalfani Dauda vrs. The Republic**, Criminal Appeal No. 231 of 2004 and **Kaimu Said vrs. The Republic**, Criminal Appeal No. 391 of 2019 (both unreported).

The state attorney stated that the appellant's advocate did not substantiate his contention that the trial court did not consider the accused person's evidence and even if, the same exists, then this court as a first appellate court is enjoined to cure by re-evaluation, citing the rule in **Mathayo Laurennce William Mollel vrs. The Republic**, Criminal Appeal No. 53 of 2020 [2023] TZCA 52 (20th February 2023).

It is settled that, the first appellate court, as this Court, is charged with a duty to undertake re-evaluation of evidence and if necessary come to the conclusion different from the trial court. See the rule in **Cheyunga Samson @ Nyambare vrs. R.**, Criminal Appeal No. 510 of 2019 [2021] TZCA 607 (25 October 2021). While re-evaluating the evidence, the first appellate court has duty to consider the accused person evidence if the trial court skipped to consider it. The trial court's failure to consider the accused person's defence is not aground for the first appellate court to acquittal to acquit the accused person. It is duty is to reconsider the defence together with the prosecution's case and make a find whether appellant is guilty or not. Thus, I find no merit in the second appellant's ground of appeal.

On the second ground of appeal, he submitted that the trial magistrate considered extraneous matters in her judgment, facts not pleaded, pointing at the date (11/01/2022) which was indicated at page 1 of the impugned judgment. He argued for the indulgence of this court to nullify the proceedings, allow the appeal and set aside the sentence meted out.

The Respondent state attorney submitted that there was no law, which was infringed. She called for this court to dismiss grounds of appeal.

It is true that the judgment included facts in the judgment which were not part of the charge sheet. The facts the magistrate included are ***"it was alleged by the prosecution side that on 11 the day of January 2022 at about 00:03 hrs the appellant did have sexual intercourse with her daughter contrary to the law."*** He submitted that that the trial court based its judgment on 11.01.2022 which was never testified by the respondent's witness during the trial at hand.

Indisputably, the trial magistrate included facts as to the date when the offence was committed different from the charge sheet and the evidence adduced in Criminal Case No 11/2022. The appellant was facing several cases before the same magistrate, one of them being Criminal Case No 11/2022. In all those cases the appellant was charged with the offence of incest but the dates of committing the offence varied from one case to another. In Criminal Case No 11/2022, the appellant was charged with an offence of incest by males, the particulars of the offence were different from what the magistrate stated. It is my considered opinion that, the fact that the trial magistrate reproduced facts different from the charge sheet did not prejudice the appellant.

It is on record that that the charge the court read to the appellant was had proper particulars and the appellant knew the charge against him. In addition, the prosecution marshalled evidence to prove the charge and not what the trial magistrate stated in her judgment. The appellant did not suffer any injustice from the trial magistrate's error. Thus, the error is curable under section 388 of the CPA. Section 388 provides that-

> ***388***. *Subject to the provisions of section 387,* ***no finding sentence or order made or passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error****, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order,* ***judgment*** *or in any inquiry or other proceedings under this Act; save that where on appeal or revision,* ***the court is satisfied that such error, omission or irregularity has in fact occasioned a failure of justice,*** *the court may order a retrial or make such other order as it may consider just and equitable.*

I am not persuaded by the second ground of appeal and dismiss it.

Now, the pertinent sub issue is **whether the availed evidence at trial established that the appellant had sexual intercourse with the victim**.

The appellant's advocate argued that offence of rape was not proved at all, since exhibit PE1 tendered by Dr. Archimedes Mpemba (**Pw4**) suggested no rape, as if that is not all, PW4 testified that he was told by PW1 that she had sexual intercourse many times but did not disclose the name(s).

Admittedly, Dr. Archimedes Mpemba (**Pw4**) examined the victim on 18.01.2022 and prepared the PF3 which he tendered as exhibit PE1. The exhibit PE1 showed that the "virginal penetration was likely". The victim's hymen not intact but vulva was normal. As submitted by the appellant's advocate, Dr. Archimedes Mpemba (**Pw4**) did not establish who had penetrated the victim. It is on record that the victim deposed that, the appellant had had sexual intercourse with her in 2020. Since time had passed from when she was raped, Dr. Archimedes Mpemba (**Pw4**)'s examination would not have proved anything other than that, she was penetrated or otherwise. Not only that but also, Dr. Archimedes Mpemba (**Pw4**)'s examination was not expected to prove who raped the victim. It is therefore not surprising that Dr. Archimedes Mpemba (**Pw4**)'s examination did not link the appellant with the commission of the offence. It would be misdirection to hold that the appellant did not have sexual intercourse because Dr.

Archimedes Mpemba (**Pw4**)'s examination and evidence. I am not persuaded by the appellant's advocate complaint that the appellant did not commit the offence because Dr. Archimedes Mpemba (**Pw4**)'s evidence did not prove that the appellant raped the victim. I wish to associate myself with the observation of the Court of Appeal in **Godi Kasenegala v. R.,** (Criminal Appeal 10 of 2008) 2010 TZCA 5 (2 September 2010) that-

> *"Indeed, at the trial of the appellant, one Dr. Magreth of Iringa government Hospital testified for the prosecution. Her evidence was that she examined PW2 Nelia on 20th July, 2004. She guardedly said that she found out that PW2 Nelia "vagina had been tampered with" as her hymen was broken.* ***Being an expert that was the best she could tell. It was not within her province to conclusively tell the court that PW2 Nelia had been raped and if so when.*** *That finding falls within the exclusive preserve of the court after considering all the established facts in the case. If this issue were free of authority may be we would have had to indulge in hairsplitting. But it is not.* ***It is now settled law that the proof of rape comes from the prosecutrix herself. Other witnesses if they never actually witnessed the incident, such as doctors, may give corroborative evidence.*** *...* ***Since experts only give opinions, courts are not bound to accept them if they have good reasons for doing so****. See C.D. de Souza V B. R. Sharma (1953) EACA 41..." (Emphasis added).*

The above done, the question remains, whether the appellant had sexual intercourse with the victim (**Pw1**), his daughter. The victim's evidence that the appellant had had sexual intercourse three time with her. She described that the first encounter happened at night in the farm when they were alone. It was painful and she bled. A second occasion of the appellant happened at night in their house. A third occasion, which is contested happened during the day in the farm.

The appellant's defence on oath was that he did not commit the offence. He contended that it was a curse for a father to have sexual intercourse his daughter He contended that the cases were fabricated by his former wife who wanted to have his wealth.

Mr. Mniko, the appellant's advocate submitted that, the prosecution's evidence had contradictions, which were prejudicial. As to the prosecution's submission that the best evidence of sexual offences as held in **Selemani Makumba v. R.,** is not an absolute, the wholesome application of the rule will render injustice to the innocent, citing the case of **Hamis Halfan Dauda v. R.**, Criminal Appeal No. 231 of 2009 [2020] TZCA 182. As to the issue of penetration, he argued that the allegation that the appellant was seen lying on top of the victim does not prove penetration, as it was observed

"penetration likely". On cross-examination, he argued that the records are clear that the appellant did cross-examine and that the conviction cannot be procured based on the weakness of their case, rather the strong prosecution's case, citing **John Roth @ Mtungi vrs. R**, Criminal Appeal No. 130 of 2012 [2023] TZHC 17293 (16 May 2023).

The state attorney was emphatic that in sexual offences, the best evidence comes from the victim, citing **Selemani Makumba v. The Republic**, [2006] TZCA 96 and **Tumaini Frank Abraham v. R.**, Criminal Appeal [2023] TZCA 17467. On the same footing, she added that penetration however slight suffices to prove sexual offences. No need of proof of existence of sperms in the victim's vagina, citing **Maligile Maingu v. R.**, Criminal Appeal No. 432 of 2021, [2023] TZCA 17303 (5th June 2023). That it was proved that the victim was raped between 2017 and 2021 by the testimony of PW1 which was not contradicted on the cross-examination, citing **Patrick Omary @ Richard v. DPP**, Criminal Appeal No. 236 of 2019 [2023] TZCA 17646 (25 September 2023). She concluded that, Dr. Archimedes Mpemba (**Pw4**) and exhibit PE1 established the element of penetration.

In the case of **Hassan Bakari @ Mamajicho vrs. Republic**, Criminal Appeal No. 103 of 2012, CAT (unreported) cited in approval in **Nkanga Daudi Nkanga vrs. Republic** (Criminal Appeal 316 of 2013) 2014 TZCA 213 (21 October 2014) the Court of Appeal observed that-

> *"...it is common knowledge that when people speak of **sexual intercourse** they mean the **penetration of the penis of a male into the vagina of a female**. It is now and then read in court records that trial courts just make reference to such words as sexual intercourse or male/female organs or simply to have sex, and the like. Whenever such words are used or a witness in open court simply refers to such words, in our considered view, they are or should be taken to mean the **penis penetrating the vagina**... "[Emphasis added).*

The state attorney, Ms. Kayumbo and the appellant's advocate, Mr. Mniko, locked horns, on whether there was a proof of penetration, of course the standard is that of a proof beyond reasonable doubt. The prosecution challenged the victim's evidence based on *inconsistencies and contradictions* regarding her evidence on the alleged third occasion of rape. The evidence regarding the first and second occasions of raped were not marred with any *inconsistencies and contradictions*. The only challenge is from the appellant's evidence that the evidence was fabricated by his former wife. The record does show what role the appellant's former wife played. The record shows

that it was the victim's aunt who reported the incident to police. The former wife was not involved. The appellant's second wife appeared as a defence witness instead of defending her husband, the appellant, she deposed that she had nothing to say.

I have no reason to fault the victim's evidence. It is settled in sexual offences the best evidence is that of the victim. The appellant's advocate stated that the evidence of the victim and Zawadi (**Pw2**) are *inconsistencies and contradictions.* I addressed the issue *inconsistencies and contradictions* of evidence between the victim and Zawadi (**Pw2**) and found that the existing *inconsistency and contradiction* was minor while some of the alleged *inconsistencies and contradictions* are non-existence. It is settled that when *inconsistencies and contradictions* are raised the Court has to resolve them. I wish to associate myself with the decision of the Court of Appeal in **Mohamed Said Matula vrs. Republic** [995] TLR 3 (CA) where it held that-

> *"Where the testimonies by witnesses contain inconsistencies and contradictions, the court has a duty to address the inconsistencies and try to resolve them where possible; else the court has to decide whether the inconsistencies and contradictions are only minor, or whether they go to the root of the matter."*

Even if, there were *inconsistencies and contradictions* in the evidence of the victim and Zawadi, (**Pw2**) was about the third occasion of rape. There were no *inconsistencies or contradictions* in the victim's evidence regarding the first and second occasions of rape. Rape or **sexual intercourse** means the **penetration of a male sexual organ into a female's sexual organ however slight it may**. The victim deposed that the appellant penetrated her for the first time when she was in standard two (Class two). She contended that it was painful and she bled. That piece of evidence is believed was sufficient to prove the offence of incest by male.

In addition, the victim deposed that, on the second occasion of rape, the appellant came home at night drank, pulled her from the room the girls were sleeping and took her to his room onto his bed and raped her. Any of the occasion between the first and second proved the offence of incest if believed. I know no law that to amount to the offence of incest by male, male should have sexual intercourse with his mother, sister, granddaughter or daughter three times. A single act and even with a slight penetration is sufficient to prove the offence of sexual offence.

The fact that the appellant's advocate complained that there were *inconsistencies and contradictions* in the evidence between the victim and

Zawadi (**Pw2**) regarding the third occasion of rape did not weakened the victim's evidence regarding the first and second of rape. I have said and I repeat that the established *contradiction* between evidence of the victim and Zawadi (**Pw2**) was that the victim deposed that the third occasion of rape was in 2020 and Zawadi (**Pw2**) deposed that it was in June,2021. I ruled out that the contradiction was minor. It did not go the root of the matter, thus, I decided to ignore.

I have noted that, it took a long time to report the appellant's criminal behavior to police or other law enforcing organs. The victim deposed that her first incident of rape happened when she was in standard two. She testified in 2022, when she was in standard seven. Thus, her first incident of rape was in in 2017. The victim deposed that the appellant told her after the first incident that he did that so that she may pass her exams and become prosperous. She also deposed that she reported to her mother who did nothing to help her. During cross-examination, the victim deposed that the appellant threatened them not to tell anyone.

The victim was 15 years old in 2022, hence, she was first raped when she was 9 yrs in 2017. She reported to her mother who did nothing. At the age of 9yrs, the victim was too younger to stand on her own and report the

incident to police or village leaders. It is settled that, silence of a rape victim or her failure to disclose her misfortune to the authorities without loss of material time does not prove that her charge is baseless and fabricated. See the Court of Appeal judgment in **Selemani Hassani vs Republic** (Criminal Appeal No. 203 of 2021) [2022] TZCA 127 (22 March 2022). The Court of Appeal observed that-

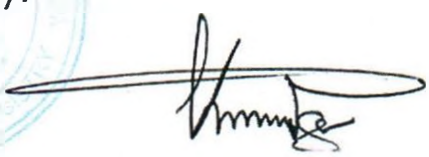
> *We think that while it can apply fairly unrestrictedly in respect of, say, cases involving property offences, it will not apply with equal force in cases concerning sexual offences* ***where immaturity of the victim, death threats or shame associated with such offences may dissuade the victim from reporting the matter with promptitude****. In this regard, we wish to quote, with approval, the observation by the Supreme Court of the Philippines in the* ***People of the Philippines v. S PO I Arnulfo A. Aure and S PO I Marlon H. Ferol, G.R****. No. 180451, October 17, 2008: "****Delay in reporting an incident of rape due to death threats and shame does not affect the credibility of the complainant nor undermine her charge of rape.*** *The silence o f a rape victim or her failure to disclose her misfortune to the authorities without toss of material time does not prove that her charge is baseless and fabricated. It is a fact that the victim would rather privately bear the ignominy and pain of such an experience than reveal her shame to*

*the world or risk the rapist's making good on his threat to hurt or kill her. "[**Emphasis added**]*

I am of the view that the victim's delay to report the incidents of rape was due to age, threats from the appellant and the fact she reported to her mother who did nothing. It is should not escape our mind the report to police was done the appellant's sister-in-law. I considered the appellant's evidence that it is his former wife who fabricated the evidence against him and formed an opinion that it did not punch hole in the prosecution's evidence. The victim's evidence regarding the first and second incidents of rape was straight and uncontradicted. I believed that the victim (**Pw1**) was credible, thus, it was proper the trial court to rely on it to convict the appellant.

In the end, I dismiss the appeal and uphold the conviction and sentence of thirty years' imprisonment.

I order accordingly.

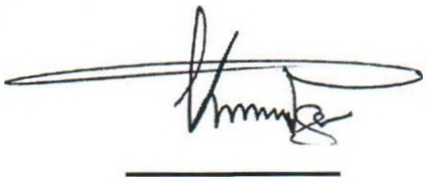


J. R. Kahyoza

Judge

19/02/2024

Court: Judgment delivered in the presence of the appellant and Ms. Rose Kayumbo, State Attorney for the Respondent. The appellant's advocate is absent as he was expecting the judgment to be delivered virtually. Fatina Haymale (RMA) present.



J. R. Kahyoza

Judge

19/02/2024