IN THE HIGH COURT OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

DC. CRIMINAL APPEAL NO. 06 OF 2023

(Originating from the District Court of Mlele at Mlele in Criminal Case No. 120 of 2022)

SEBASTIAN KAPUFI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

20th November, 2023 & 20th February, 2024

MRISHA, J.

In this appeal both the appellant **Sebastian Kapufi** and the respondent **Republic** have joined hands in faulting the trial court which is the District Court of Mlele at Inyonga, for convicting and sentencing the appellant to serve a sentence of life imprisonment in respect of two counts to wit; Rape contrary to section 130 (1) (2) (e) and 131 (1) and (3) of the Penal Code, Cap 16 R.E 2022 hereinafter to be referred to as the Penal Code, and Unnatural offence contrary to section 154 (1) (1) (a) and (2) of the Penal Code.

The evidence that led to the incarceration of the appellant can be summarised as follows: -

On 13.10.2022 SS (PW3) whose name is withheld due to the nature of the case and her tender age of eight (8) years old, arrived at her parent's home where she found her mother one **Rahma Charles** (PW2); she was coming from her usual place of playing commonly known as *"Kwa Das"*. After her arrival, PW2 noticed that PW3 was not normal as she went directly to be and she even refused to take lunch when PW2 called her for lunch, and she appeared to be uncomfortable.

On the following day, PW3 told her mother that she had missed her father who by that time was not living with PW2. Upon being told so, PW2 disseminated that information to **Shabani Juma** (PW4), a father of PW3, then on 14.10.2022 PW4 approached the home of PW2 and picked PW3 to his home.

While there, PW4 noticed that something was wrong with his daughter as PW3 was not walking properly and she had trouble when sitting. After learning that situation, PW4 phoned PW2 and advised her to inspect PW3 after returning home.

That on 16.10.2022 PW4 returned PW3 to PW2 who after inspecting PW3's private parts when PW3 was asleep, noticed some bruises on the

fore and rear private parts of PW3, then on the following day which was 17.10.2022, PW2 took PW3 to Inyonga Police Station and reported the matter to PW5, WP 9853 D/C **Tausi** who interrogated SS (PW3) alone and that is when PW3 informed her that she previously knew the appellant as she used to meet with him at Kwa Das where they used to watch television.

That on the fateful day, the appellant took her to his home where they found no one, then the appellant undressed her and went on to penetrate her. She screamed but the appellant shut her mouth. That the appellant also penetrated her against the order of nature. That after doing so, the appellant returned her at the video place and threatened her that he would kill her if she could tell her mother about the incidents.

Thereafter, PW5 told PW2 what had happened to her daughter, then she issued PW3 with a PF3 and PW3 was taken to Inyonga Health Centre for medical examination where they met PW1, **Beatrice Mwambope**, a medical practitioner who examined PW3 on her vagina and anus.

Her examination revealed that there were bruises in the vagina of PW3 and in the anus, she observed that the sphincter was loose to the extent that faeces could be seen from the rectum. According to the testimony

of PW1 the bruises she had observed from the private parts of PW3, were of five days past because she did not see blood stain. She opined that the bruises were caused by a blunt object. Thereafter, the said PF3 was admitted as Exhibit P1 and the Birth certificate of PW3 was admitted as Exhibit P2.

On his part, the appellant who also called **Hadija Alex Juma** (DW2), **Veronica Philipo** (DW3) and **Juliana Mwanandenje** (DW3) as his witness during defence hearing, testified before the trial court that on 13.10.2022 he spent almost the whole day painting colour on the house of DW2.

His evidence was supported by that of DW2, DW3 and DW4 who all claimed to be the appellant's neighbours. They also told the trial court that on that day the appellant left home in the morning and went to his work place where he stayed for the whole day time; hence they did not see the accused or any child during that time.

After a full trial, the trial court was satisfied that the prosecution side had successful established their case against the appellant. Hence, the appellant was convicted in respect of all counts and sentenced, as above stated. In a bid to rescue himself from the prison hard labour and clear his current status from being a convict of sexual offence to an innocent

girl child, the abovenamed appellant lodged with the court a Petition of Appeal which is predicated into the following grounds of grievance: -

1. The Trial Court erred in law (sic) ad fact by convicting the appellant relying on exhibit P1 which was a PF3 and evidence of PW1 a medical doctor which does not prove penetration conclusively.
2. That the trial court erred at law and fact by not discovering that the medical examination of the victim by the doctor PW1 was conducted after five days which is not required by law.
3. That trial court erred in law and fact by convicting the appellant relying on uncorroborated evidence of PW3.
4. That the trial court erred in law and fact by convicting the appellant on the basis of a caution statement which was unlawfully procured.
5. That the trial court erred in fact and law to convict the accused on the case which was not proved beyond reasonable doubt as the requirement of the law.

The appellant had no legal representation when the matter was called on for hearing. On the other side, Ms. Maula Tweve, learned State Attorney appeared for the respondent Republic. As per the practice, it

was the appellant who began to make his submission in respect of his grounds of appeal.

His submission was very brief. He stated that the five (5) grounds of appeal contained in his petition of appeal, are self-explanatory. Hence, he prayed to the court to adopt them so that they form part of his submission in chief. He also urged the court to consider those grounds of appeal, allow his appeal and set him free.

He further submitted that on 26.03.2022 he was sick after he had undergone a stomach operation at the hospital to the extent that he could not commit the offences he was charged with due to such health condition.

It was also his submission that the prosecution evidence stemmed from the evidence of family members who are husband and wife together with the landlady who was PW1, a medical doctor.

If that was not enough, the appellant complained that he requested the trial court to order the re-examination of the victim and himself in order to see whether he had committed the charged offences, but the trial court did not do that.

In supporting the appeal, Ms. Maula Tweve submitted that after reading the grounds of appeal by the appellant, they support the present appeal basing on the fifth ground of appeal. She submitted that the law states that the evidence of victim is the best evidence in rape cases.

That the evidence of the victim must be credible and must be considered if it corroborated by the circumstance of an offence of rape. She said that such position of the law was stated in the case of **Mohamed Said Rais vs Republic**, Criminal Appeal No. 167 of 2022, CAT at Dar es Salaam (unreported).

She further submitted that in the case at hand it is shown at page 9 of the trial court typed proceedings that while testifying before the trial court, PW3 failed to mention the date, time and even a day when she was raped which means that her evidence does not have connection with the charge sheet which was filed before the trial court.

The learned counsel went on submitting that the details of when the victim was raped, were disclosed by the victim's parent who is PW2. That in her testimony PW2 on 13.10.2022 she saw PW3 being lazy and complained to her that she was not feeling well, but PW2 did not testify that such condition was caused by rape meaning that records are silent on that important aspect.

She further submitted that the victim of the alleged sexual offences did not mention the appellant at the first instance as the person who raped her despite having several chances of doing so. For instance, she said on 13.10.2022 PW3 was with her mother who is PW2 until the following day, but she did not tell PW2 that she was raped.

Also, the learned counsel submitted that on 14.10.2022 PW3 was with her father but she did not mention the appellant as the rapist; it is until 17.10.2022 when she decided to tell the police that the appellant is the one who raped her.

Ms. Maula Tweve added that although PW2 testified that the reason why PW3 failed to mention the appellant as the rapist on the first instance is because she was threatened by the appellant, but that evidence was not spoken by PW3. She referred the court to the case of **Marwa Wangiti Mwita and Another vs Republic** [2002] TLR 39 to support her stance.

For the above circumstances, the counsel for the respondent Republic submitted that the prosecution side failed to prove the case against the appellant beyond any reasonable doubts.

She went on submitting that even the evidence of a medical doctor which she expected could help to corroborate the evidence of a victim is

doubtful because she examined PW3 five days after the alleged incidents of rape and claimed to have seen bruises on the urinal part of the victim. According to her, that evidence raises some reasonable doubts because within five days PW3 could have cleaned her private parts.

Basing of the above reasons, the counsel for the respondent Republic reiterated her previous position that she supports the appeal and prayed that the convictions entered against the appellant be quashed, the sentences passed there to be set aside and the appellant be set free.

I have carefully gone through the submissions of both parties along with the authorities cited by the counsel for the respondent Republic in supporting the present appeal. I have also considered all the grounds of appeal raised by the appellant and I will deal with each of them, though the counsel for the respondent Republic has only relied on the fifth ground to support the appeal. The roadmap to my deliberation and determination of the present appeal, will be focusing on whether the present appeal has merit.

Looking on grounds number one and two, it is apparent that they are intended to challenge the trial court for convicting the appellant without considering that exhibit P1 which is the PF3 and the evidence of PW1, a medical doctor who conducted medical examination of PW3, the victim

did not prove penetration and the opinions of the said medical expert are doubtful due to the fact that he conducted examination of PW3 after a lapse of five days. Hence, I will deal with them all together.

In arguing about those grounds, the counsel for the respondent Republic has submitted that since the victim of an offence was examined five days after the commission of the alleged offences, then that leaves a doubt whether there was penetration because PW3 might have cleaned her private parts and therefore it could be impossible to detect the bruises on her private parts.

Admittedly, for a period of five days, it could be difficult to detect the signs like sperms or faeces if someone had been raped and carnally knowledged against the order of nature, but the concern here is whether bruises or other visible effects could not have been seen by PW1 after a lapse of five days. The word *"bruises"* is normally used to express the plural; it stems from the noun *'bruise'*.

According to Colin McIntosh, **Cambridge Advanced Learner's Dictionary**, Fourth Edition, Cambridge University Press, 2015 the word, *"bruise"* has been defined at page 191 to mean,

> *"...an injury or mark where the skin has not been broken but is darker in colour, often as a result of being hit by something..."*

From the above definition, I am of the considered opinion that a bruise sustained by the victim of sexual offence in five days past, can still be detected; it is opposed to where the same had been sustained long time ago in which can it can be difficult to detect it to human healing process and capacity of cells.

I also had an opportunity to scrutinize exhibit P1 which is the PF3, the reasoning of the learned trial magistrate on that aspect together with the evidence of PW1, a medical doctor. The said exhibit shows clearly that upon examination of the victim who is PW3, PW1 observed the following: -

> *"The patient named above attended with complain of Anal and vaginal painful; on examination there is visible bruises on around the vaginal with faecal incontinence around the Anus and tender when touched"*

Also, when testifying before the trial court, PW1 stated the following at pages 3 to 4 of the typed proceedings: -

> *"I went on to diagnose the girl in her vagina, I saw bruises at her vagina. But also, I was amazed when I saw (sic) feces at the urine area. I asked her mother to clean her. I had to diagnose her anus; I saw the sphincter was loose to the extent that (sic) feces could*

be seen from rectum. When I asked the girl, she told me that she was also penetrated by penis in her anus. The bruises seemed to be of three to five days, as there was no longer blood, and there was already infection. The bruises seemed to be occasioned by blunt object. Compared with the information availed to me by the child, the bruises might have been caused by penis".

Again, during cross examination, the appellant did not express his doubts about the end results of the medical examination conducted by PW1 by pressing her to justify how she could detect those signs after a lapse of five days. This can be observed at page 5 of the typed proceedings where PW1 responded to the appellant's questions as follows: -

"Her sphincter was loose. Her vagina was loose. What I testify is the truth, I was not alone."

Also, in making his reasoning, the learned trial magistrate concurred with the opinions of PW1 as the medical expert. This can be inferred at pages 9 to 10 of the typed judgment of the trial court as hereunder:

"The testimony of PW1 as an expert, though not binding to this court, as exhibited by PF3 (Exhibit P1) persuades this court to believe the prosecution's version that indeed SS was penetrated,

regardless as to who did penetrated SS, but the evidence of PW1 and Exhibit P1 proves the fact that SS was penetrated in her vagina and against the order of nature."

From the above excerpts, and the failure of the appellant to cross examine PW1 on the important aspect, as pointed above, I do not see any reason to fault the findings of the learned trial magistrate who in my considered opinion, correctly evaluated the prosecution evidence and arrived at the conclusive finding that indeed PW3 was penetrated and raped. I therefore differ with the counsel for the respondent Republic who attempted to show some doubts on the evidence of PW1, and proceed to find that grounds number one and two of the appellant's petition of appeal, have no merits.

The above takes me to ground number three in which the appellant has faulted the trial court for convicting him by relying on uncorroborated evidence of PW3. This ground need not detain the court much in addressing it.

I agree with the counsel for the respondent Republic that the best evidence in rape cases is that of the victim of an offence of rape; see **Alfeo Valentino vs Republic**, Criminal Appeal No. 92 of 2006,

Shaban Said Likubu vs The Republic, Criminal Appeal No. 228 of 2020 and **Mohamed Said Rais vs Republic** (supra) (all unreported).

It is also important to point out at his stage that the law allows the court to convict the accused based on uncorroborated evidence of a victim of sexual offence who is a child of tender age provided the court satisfies itself that such witness tells nothing but the truth after assessing the credibility of that witness. This is provided under section 127 (6) of the Evidence Act, Cap 6 R.E. 2019 (the Evidence Act).

In assessing the credibility of PW3, the learned trial magistrate considered two undisputed facts; first, that not only that PW3 and the appellant knew each other, but also the appellant/accused used to play/joke PW3 by pulling each other and even kissing PW. Secondly, the appellant/accused used to offer some money to PW3 as gifts.

This being the first appellate court with power to reevaluate the evidence adduced before the trial court, I had to reevaluate the evidence of PW3 along with the one adduced by the appellant in order to see whether it meets the threshold stipulated under the provisions of section 127 (6) of the Evidence Act.

When testifying before the trial court, PW3 was recorded to have said that:

"I remember, Seba summoned me and told me that he will buy sweets (pipi) for me, he took me to his place instead, it is near to the secondary school. We entered the house, no one was present, Seba closed the door. I was afraid, he undressed me, my "hijaab". He took off his clothes. He took off his pants. He put his penis at my urinating place, I screamed, he shut my mouth. He also penetrated me in my anus. He returned me at the video place. It was that day only that he took me at his place. He told me, if I tell my mother he will kill me."

The above piece of evidence by PW3 tells that according to PW3, it was the appellant who raped and carnally known her against the order of nature. It incriminates the appellant and no one else to the extent that one could expect to hear some reservations from the appellant, if at all he is not the one who did those brutal and uncivilized conducts to the appellant.

During close examination, the appellant asked PW3 several questions which were intended to confuse her, but she was firm and maintained that he is the one who summoned and slept with her on the day in question. The interesting fact is that in the course of probing such prosecution witness, the appellant neither asked her whether he is the

one who undressed her, immersing his penis into her private parts, nor did he press her to prove that he threatened her just after raping and carnally knowing her against the order of nature.

The law in our jurisdiction is well settled that failure to ask a witness on an important aspect is tantamount to acceptance of the truth on what the witness has testified before the court; see **Jacob Mayani vs The Republic**, Criminal Appeal No. 558 of 2016 and **Hamis Hassan Jumanne vs The Republic**, Criminal Appeal No. 397 of 2021 (all unreported).

Since in the present appeal, it has been observed that the appellant failed to cross examine PW3 on important aspects which constitutes the ingredients of an offence of Rape and Unnatural offence, I find the principles stated in those cited cases to be applicable in the present case and I give credence to the evidence of PW3 which to my view reveals nothing, but the truth as rightly found by the trial court.

In my view, that evidence alone would have sufficed to convict the appellant for the two charged offences he was arraigned of before the trial court under the provisions of section 127 (6) of the Evidence Act. However, I find it opportune to address one of his complaints that the

trial court erred in law and fact for convicting him on uncorroborated evidence of PW3 who is the victim of those sexual offences.

The nagging question here is whether it is true that the evidence of PW3 was uncorroborated. I would quickly answer that question in the negative due to the reason that the evidence of PW3 was well corroborated first by the evidence of PW1, PW2, PW4 and PW5. The evidence of PW1 corroborated that of PW3 on the issue of penetration while the one adduced by PW2 and PW4 corroborated the evidence of PW3 by describing the conducts of PW3 which they observed on 13.10.2022 when PW3 approached PW2 after she encountered the sexual abuses by the appellant and on 14.10.2022 when she was with PW4, her father.

Also, the evidence of PW5 corroborated that of PW3 by telling the trial court what she had gathered after her interview with PW3, as the police officer. Her evidence not only reveals that the appellant was the one who raped and had carnal knowledge of PW3 on 13.10.2022, but also it is on record that the appellant did not ask her any cross-examination question which tells that actually it was the appellant who raped and had carnally knowledge of PW3 on that particular date. This is justified at page 14 of the trial court typed proceedings whereby upon being

given a chance to cross examine PW5, the appellant failed to do so. The document speaks by itself and I take pain to reproduce the relevant part of it as follows: -

> *"Prosecution: That is all*
>
> *CROSS - EXAMINATION BY ACCUSED*
>
> *-**No questions***
>
> *RE – EXAMINATION BY PROSECUTION*
>
> *-No questions..." [Emphasis is mine]*

From the above excerpt, it is crystal clear that by not asking any question to PW5 whose evidence appears to corroborate the evidence of PW3 to the greatest extent, the appellant was in agreement with PW5 that what the said prosecution witness had testified before the trial court regarding his involvement in the commission of the two charged offences he was arraigned before the trial court, was nothing, but true.

Another complaint from the appellant which emerged in the course of making his submission in chief before the court, was that the prosecution evidence based on the evidence of family member whom he described as the parents of PW3 and who testified before the trial court as PW2 and PW4.

On my part, I have not found any merit on such complaint. This is because first, such complaint was not raised by the appellant at the trial to enable the learned trial magistrate put his hand on it either positively or negatively; hence, it becomes an afterthought of which this appellate court cannot entertain.

Secondly, even if it could be part of the grounds of appeal, still that complaint could have not hold water because there is no law which bars relatives to testify on matters which come to their knowledge. When faced with an akin situation where the appellant complains about the testimony of relatives, this court through Mongella, J. had the following to say when deciding the case of **Kelvin John vs The Republic**, Criminal Appeal No. 05 of 2022 (HCT at Mbeya, unreported): -

> *"The law is settled to the effect that a witness' evidence cannot be discredited on ground of a witness being a family member or the person in whose favour the evidence such witness adduces...What is considered is the credibility of the witness as assessed by the trial court."*

Given the circumstances of the case at hand, I am persuaded to follow the above decision. This is because being the family members of PW3, PW2 and PW4 cannot be discredited merely because they are the

parents of PW3. What is considered is the credibility of their evidence as assessed by the trial court. As I have pointed above, PW2 and PW4 played a very big role in adducing evidence which incriminated the appellant. Hence, I find credence on the testimonies of those two witnesses. The appellant's complaint has no legs to stand.

With the foregoing reasons, it is my settled view that though by itself the evidence of PW3 could stand and entitled the trial court to ground convictions against the appellant, the same was well corroborated by other pieces of prosecutions evidence just as I have alluded above. I therefore find that the third ground of appeal is without merit and I dismiss it accordingly.

Coming to the fourth ground of appeal, it is the appellant's complaint that the trial court erred in law and fact by convicting the appellant on the basis of a caution statement which was unlawfully procured. My carefully reading of the trial court proceedings as well as the impugned typed judgment of the trial court shows that there is nowhere in those documents it shown that the prosecution side tendered the appellant's caution statement and the same was admitted by the trial court be it during a preliminary hearing, or at the trial of the appellant's case.

It seems the one who assisted the appellant in drafting the Petition of Appeal had copied and pasted that ground in the petition filed with the court; that is not a good approach and the one who did that is advised not to repeat it again. It follows, therefore, that since, the alleged caution statement was neither tendered before the trial court, nor did it form part of the trial court records, there is nothing this court can do rather than dismissing the fourth ground of appeal as well, for lack of merit.

Finally, in the fifth ground of appeal, the appellant has faulted the trial court for convicting him on the case which was not proved beyond reasonable doubt. This is the ground relied by the counsel for the respondent Republic in supporting the appeal. Much as I have said before while dealing with ground number three, the evidence of PW3 who is the victim of sexual offences of rape and unnatural offence was sufficient to warrant convictions against the appellant herein.

However, since the counsel for the respondent Republic has used the latter ground to support the appeal, I will find out whether her arguments in supporting that ground and the whole appeal are meritorious.

In supporting the appeal, the learned counsel for the respondent Republic has challenged the credibility of PW3 for her failure to mention the date and time the alleged offences were committed, secondly, she had challenged the said victim of sexual offences for her failure to mention the appellant on the first instance despite having enough time to do so. As a layman, the appellant had nothing to rejoin after the counsel's submissions.

To start with the first argument, it is true that the records are silent as to the fact that PW3 who was eight (8) years old at the time the alleged sexual offences were committed, did not mention when she was raped, but the learned counsel ought to be mindful of the true fact that the circumstances of each case do sometimes differ. This is why caselaw has developed the principle of law that each case must be treated according to its own prevailing circumstances; see **Hussen Malulu @Elias Hussen & 3 Others vs Republic**, Criminal Sessions Case No. 48 of 2021, (HCT at Shinyanga, unreported).

I subscribe to the above principle given the fact that the circumstances of the case at hand show that PW3 was threatened by the appellant just after been raped and carnally known by the said appellant against the order of nature that she would be killed should he tell her mother what

the appellant had done to her. As I have pointed above, this important piece of evidence was neither challenged by the appellant through cross examination, nor was it denied by him during defence hearing.

In the circumstances, it could be difficult for PW3 to disclose when she was raped and by who given the fact that she had already been threaten and her age was just eight (8) years by the time she had encountered such tragedy. Despite her omission to do so, it is lucky that PW2 who is her biological mother and the first person to observe some changes on the part of PW3, helped the police to know the exact date PW3 was raped which is 13.10.2022.

Her evidence was corroborated by the one adduced by PW5 whom the appellant never asked any question including whether it is true that PW3 was raped on 13.10.2022. The testimonies of PW2 and PW5 are very important because they corroborated the evidence of PW3 that it is the appellant who raped and canary known her against the order of nature and secondly, such evidence helped the prosecution to prove before the trial court that the two sexual offences the appellant was charged with were committed on 13.10.2022.

Therefore, the argument that the evidence of PW3 does not tally with the particulars of the charge sheet for failure to mention the date and time she was raped and canary known by the appellant, has no merit.

In regards to the second argument in which the counsel for the respondent Republic has challenged the evidence of PW3 for her failure to mention the appellant on the first instance, I agree with her that the records of the trial court reveal exactly what she has observed regarding PW3.

I also, agree with her that PW3 ought to have mentioned the suspect at the earliest possible opportunity for evidence to be relied, just as the Court emphasized in the well-known case of **Marwa Wangiti and Another vs Republic** (supra) and the case of **Bakari Abdallah Masudi vs Republi**, Criminal Appeal No. 126 of 2017 (CAT, unreported), if I may add.

However, given the circumstances of the present case, I am with all due respect to the learned counsel, inclined to take a different view as far as the credibility of PW3 is concerned. First, it is not true that PW3 did not testify before the court that she was threatened by the appellant on the day in question, but secondly which is most important is that although PW3 was supposed to have mentioned the appellant at the earliest

possible opportunity, there was exceptional circumstances which prevented her from doing so.

The argument of the counsel for the respondent Republic would have convinced me had there been no exceptional circumstances. As I have alluded above, it is apparent that the appellant never disputed the fact that he threatened to kill PW3 should she disclose to her mother that he is the one who sexually abused her on 13.10.2022 which tells that he is actually the one who committed the offences of rape and having carnal knowledge of PW3 against the order of nature.

The argument that PW3 delayed for almost five days to mention the suspect to PW2 and the police who is PW5, does not in my view make the strong evidence of PW3 to be unreliable given the fact that she was still a child at the time of the incidents of rape and unnatural offences and she was threatened by the appellant. Like the learned trial magistrate did, I am also inclined to borrow the words of their lordship Justices of Appeal in the case of **Godson Dan Kimaro vs The Republic**, Criminal Appeal No. 54 of 2019 (CAT at Moshi, unreported) who had the following to say: -

> *"As clearly submitted by learned State Attorney, we agree that considering the immaturity of PW1 and the fear of a reprisal from*

the appellant should she spill the beans, the delay is quite understandable. It does not affect the prosecution case."

Back home, it is my settled view that the circumstances of the present appeal correlates those in the above decision. It is an undisputed fact that by the time she was raped and canary known by the appellant against the order of nature, PW3 was just eight (8) years old. It is also undisputed fact that on the day in question, the said witness was threatened by the appellant that she would be killed by him should she spill the beans by telling her mother that the appellant is the one who raped her.

In the circumstance, I find her five (5) days delay to mention the appellant on the earliest possible opportunity is understandable and does not affect the prosecution case. I am therefore inclined to find that this argument too, is without merit.

That apart, the appellant has also complained that on 13.10.2022 he was sick following a stomach operation, so he could not be able to commit the charged offences. I do not find any merit on this complaint due to several reasons. First, it is not among the grounds of appeal contained in the appellant's petition of appeal; hence it is hard for the court to entertain that complaint.

Secondly, I have observed that the appellant has told lies by saying he was suffering from stomach ache. I am fortified by that observation due to the fact that at the trial the appellant did not complain to the trial court that he had such health problem; he told the court that he was suffering from venereal disease. This is reflected at page 4 of the trial court typed proceedings where the appellant which objecting the admission of exhibit P1 was recorded to have said that:

> *"I object, I have three weeks that I have gonorrhea, but the witness testified that the child had no STDs..."*

The above excerpt depicts how the appellant was a liar. If it was true that he was suffering from such venereal diseases, then he could have expressly repeated the same in his complaint, instead of changing gears in the sky by claiming that he was suffering from stomach ache.

I am alive of the principle that the accused has no duty to prove his innocent, but that does not mean he can tell any senseless story before the court. The law is well settled that lies of an accused person can corroborate the prosecution's case; see **Felix Lucas Kisinyila vs Republic**, Criminal Appeal No. 129 of 2009 (CAT, unreported).

Having detected some lies on the part of the appellant herein, I am constrained to find out that his lies also corroborated the prosecution's

case. Hence, he cannot at this appellate stage, escape the legal consequences he began to face after the decision of the trial court.

Therefore, due to the reasons which I have endeavoured to assign herein above, I am of the settled view that the present appeal has no merit. Consequently, I dismiss it for want of merit.

It is so ordered accordingly.

A.A. MRISHA
JUDGE
20 .02.2024

DATED at **SUMBAWANGA** this 20th day of February, 2024.

THE HIGH COURT OF TANZANIA
UHURU NA UMOJA

A.A. MRISHA
JUDGE
20 .02.2024