

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**  
**DODOMA DISTRICT REGISTRY**  
**AT DODOMA**

**DC. CRIMINAL APPEAL NO. 63 OF 2023**

(C/F Criminal Case No. 27 of 2023 before District Court of Chemba)

**SARIHINA JUMA .....APPELLANT**  
**VERSUS**  
**THE REPUBLIC.....RESPONDENT**

**JUDGMENT**

Last Order: 15<sup>th</sup> November, 2023

Date of Judgment: 26<sup>th</sup> January 2024

**MASABO, J:-**

Sarihina Juma, the appellant herein, was sentenced to thirty (30) years imprisonment by the District Court of Chemba (the trial court) after pleading guilty to the charge of rape committed against Namnyaka Albatai. It was the prosecution's case that the appellant committed the offence of rape contrary to the provisions of sections 130(1) (2) (a) and 131 (1) of the Penal Code, Cap. 16 R.E 2022.

The factual background of the case is that, on 29<sup>th</sup> April 2023 at Mtemsele street within Soya Village within Chemba District in Dodoma, the appellant met the victim who was with her daughter. After meeting them he grabbed the victim and pooled her into a shamba where he raped her. After the incident, he was arrested on the same day and sent to Chemba police station and later on arraigned before the trial court. When the charge was placed at his door he plead guilty a plea which moved the trial court to invite the

prosecution to read the facts. The facts were read to him read out the facts of the offence and response he admitted all of them to be true. In corroboration of the facts, one exhibit, that is a PF3 was tendered and admitted as exhibit P1. Based on these, the court entered a conviction of rape c/s 130(1)(2)(a) and 131(1) of the Penal Code and sentenced him to thirty (30) years imprisonment.

Aggrieved, the appellant appealed has appealed before this court armed with the following five grounds: **one**, the trial magistrate misdirected himself in law and facts to hold that the appellant's plea was equivocal. **Two**, there was procedural irregularities on the admission of exhibit P1-PF3. **Three**, the charge sheet was defective since the age of victim was not stated. **Four**, the prosecution did not read the facts of the offence rather, the court conducted a preliminary hearing. **Fifth**, the trial court erred in convicting the appellant by using the provision of the Criminal Procedure Act.

On 15<sup>th</sup> November 2023, the parties appeared before me for hearing of the appeal. The appellant appeared in person unrepresented whereas Mr. Francis Kesanta learned State Attorney appeared for the respondent. The appellant being a lay person did not submit in support of his ground of appeal. He prayed the same to be positively considered.

In reply, Mr. Kesanta objected the appeal on the following reasons: First the appellant's plea was unequivocal. He knew that he was charged of rape and the statement read indicated the name of the victim. The place at which the offence was committed was stated. Even in his mitigation, he stated that he

should be leniently punished as his relatives were in pursuit of an amicable settlement. Thus, the first ground of appeal is with no merit. On the second ground of appeal he admitted that indeed the PF3 was not read out in court, hence an irregularity. However, he quickly retorted that, the irregularity in the admission of the exhibit is of no effect to the conviction as it was not based on the exhibit but the plea of guilty.

On the 3<sup>rd</sup> grounds of appeal as regards the age of the victim, he replied that much as it is true that the age of the victim was not mentioned, the omission has no effect to the conviction as the provision against which the appellant was convicted is not predicated on the age of the victim. Rather, it is on the consent of the victim. He clarified that the age of the victim would have been important had the appellant been charged of statutory rape that is, rape of a girl below 18 years which is not the case in point as the facts read out indicate that the victim was an adult. As for the 4<sup>th</sup> ground, Mr. Kesanta reiterated his submission in support of the first ground and on the last ground he submitted that it has no merit as the appellant was not convicted under section 312 of the Criminal Procedure Act, Cap 20, RE 2022. Rather, he was convicted of the offence of rape contrary to section 130(1)(2)(a) and 13(1) of the Penal Code, Cap 16. In conclusion he argued that the appeal is devoid of merit and prayed that it be dismissed. The appellant had nothing to rejoin.

After considering the submissions above and the lower court record which I have thoroughly scrutinized, I will now proceed to determine the appeal. Two questions await to be answered, namely, whether the appellant's plea

was equivocal hence improperly convicted. As the parties herein and the record are at common that the appeal arises from a conviction emanating from the appellant's own plea of guilty, it is apt, I think, to start with the general rule on similar appeals. The law is settled that an appeal arising from a conviction entered after the appellant's own plea of guilty shall not be entertained save where it concerns the extent or legality of the sentence. This is in accordance with section 361(1) of the Criminal Procedure Act which provides that:

No appeal shall be allowed in the case of any accused person who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence.

The appeal may also be entertained where the plea was equivocal. As stated by this court (Samatta, J as he then was) in the case of **Laurent Mpinga v. Republic** [1983] TLR 166 which has been cited with approval in numerous decisions of the Court of Appeal including in **Josephat James v. Republic**, Criminal Appeal No. 316 of 2010 [2012] TZCA TanzLII (unreported) and **Mtumwa Silima @ Bonge v. R**, Criminal Appeal No. 11 of 2019, [ 2021] TZCA 123 TanzLII, a plea may be considered equivocal where:

1. That, even taking into consideration the admitted facts, the appellant's plea was imperfect ambiguous or unfinished and, for that reason, the lower court erred in law in treating it a plea of guilty;



2. That, appellant pleaded guilty as a result of mistake or misapprehension;
3. That, the charge laid at the appellant's door disclosed no offence known to law; and
4. That, upon the admitted facts, the appellant could not in law have been convicted of the offence charged.

Further in relation to unequivocal plea, the Court of Appeal in **Michael Adrian Chaki vs. R**, Criminal Appeal No. 399 of 2017 [2021] TZCA 454 (unreported), instructively held thus, there cannot be an unequivocal plea on which a valid conviction may be founded unless these conditions are conjunctively met:-

1. The appellant must be arraigned on a proper charge. That is to say, the offence , section, and particulars thereof must be properly framed and must explicitly disclose the offence known to law;
2. The court must satisfy itself without any doubt and must be clear in its mind, that an accused fully comprehends what he is actually faced with otherwise injustice may result.
3. When the accused is called upon to plead to the charge, the charge is stated and fully explained to him before he is asked to state whether he admits or denies each and every particular ingredient of the offence. This is in terms of section 228(1) of the CPA.

4. The facts adduced after recording a plea of guilty should disclose and establish all the elements of the offence charged.
5. The accused must be asked and must actually plead guilty to each and every ingredient of the offence charged and the same must be properly recorded and must be clear.
6. Before a conviction on a plea of guilty is entered, the court must satisfy itself without any doubt that the facts adduced disclose or establish all the elements of the offence charged.

In the present case the appellant has, through the first and fourth grounds of appeal, challenged his plea for being equivocal as the facts read to him did not disclose the elements of the offence of rape. From the record and as stated above, the appellant was charged of rape contrary to sections 130(1) (2) (a) and 131 (1) of the Penal Code Cap. 16 R.E 2022 the particulars of which being that on 29<sup>th</sup> April 2023 at Soya Village within Chemba District he had carnal knowledge of the victim without her consent. Much as the age of the victim was not stated, the provision under which the appellant was charged suggested that, the rape was committed against an adult person. As for the charge sheet it appears to be full compliant with section 132 of the Criminal Procedure Act. It contains a statement of the specific offence with which the appellant was charged and the particulars capable of affording him reasonable information as to the nature of the offence he was charged.

Regarding the procedural irregularities, what transpired in the trial court after the appellant was arraigned in court and what has culminated into the instant appeal is shown in pages 2 to 4 of the proceedings. Having examined these proceedings, I have found out that the procedure followed after the recording of the accused's plea is pregnant with two obvious irregularities. As per the law, after the appellant's plea of guilty is entered and recorded, the trial magistrate has to invite the prosecution to narrate the facts of the offence and in the end, require the accused to comment on the facts by stating whether or not he admits them. This is in accordance with section Section 228 of the Criminal Procedure Act which provides that:

"(1) The substance of the charge shall be stated to the accused person by the court, and **he shall be asked whether he admits or denies the truth of the charge.**

**(2) If the accused person admits the truth of the charge, his admission shall be recorded as nearly as possible in the words he uses and the magistrate shall convict him and pass sentence upon or make an order against him,** unless there appears to be sufficient cause to the contrary."[Emphasis added].

To the contrary, the trial magistrate having recorded the appellant's plea conducted a preliminary hearing, a procedure conducted under section 192(1) of the Criminal Procedure Act in case the accused person denies the charge. Essentially it is aimed at ascertainment of matters not in dispute



henceforth accelerating the trial. For clarity section 192(1) provides as follows:-

192(1) Notwithstanding the provisions of sections 229 and 283, if an accused person pleads not guilty the court shall as soon as is convenient hold a preliminary hearing in open court in the presence of the accused and his advocate (if he is represented by an advocate) and the public prosecutor to consider such matters as are not in dispute between the parties and which will promote a fair and expeditious trial.

In **Issa Bakari and 4 Others vs. R**, Criminal Appeal No. 121 of 2008 (CAT-Unreported) the court stated among others that:-

We are of the view that the provisions of section 192 (1) of the CPA, it is lucidly provided there in that, where an accused person pleads not guilty, the court shall hold a preliminary hearing to consider such matters as are not in dispute between the parties and which will promote a fair and expeditious trial. Also see **Efraim Lutambi vs. R** [2006] T.L.R 265 and **Tundumbali Yumba vs. Republic**, Criminal Appeal No. 70 of 2008,

The conducting of preliminary hearing following the plea of guilty entered by the appellant was, therefore, against the spirit of the provisions of the law alluded above and in essence it vitiated the entire proceedings.

The second irregularity rests on the facts read out to the appellant. As stated above, the law requires that after a plea of guilty is entered and the prosecution is invited to narrate the facts, the facts so narrated should disclose the essential ingredients of the offence. Thus, in the present case,



the facts narrated by the prosecution had to disclose the two essential ingredients of rape, that is, penetration of the appellant's male organ into the victim's vagina and that the victim did not consent to it. The facts read to the victim in what was termed preliminary hearing, did not disclose the first essential element above hence defective.

In the foregoing, I have found the first and fourth grounds of appeal meritorious and I uphold them. As these two grounds suffice to dispose of the appeal, I will not proceed to determine the remaining grounds.

Accordingly, this appeal is allowed. The proceedings, conviction and sentence are hereby quashed and set aside. For the interest of justice, I remit the case file to the trial court for retrial before another magistrate with competent jurisdiction.

It is so ordered.

**DATED** at **DODOMA** this 26<sup>th</sup> day of January, 2024



A handwritten signature in blue ink, consisting of stylized loops and a horizontal line extending to the right.

**J. L. MASABO**  
**JUDGE**