

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CRIMINAL APPEAL NO. 158 OF 2004**

**(Originating from Criminal Case No. 565 of 2003**

**at Kisutu , Mr. K. Revocati, RM)**

**MOSES MBULI . . . . . APPELLANT**

**VERSUS**

**REPUBLIC . . . . . RESPONDENT**

**JUDGMENT**

**SHANGWA, J:**

This appeal is against conviction and sentence of 30 years imprisonment which were imposed on the Appellant by the Kisutu Court of the Resident Magistrate for the offence of rape c/s 130 (1) of the Penal Code as amended by the Sexual Offences Special Provisions Act, No. 4 of 1998.

There are six grounds of appeal which have been raised by the Appellant in this case. These grounds contain a lot of matters. I will just mention a few of them which I think are important to dispose of this appeal. It is on these few matters that I will only address my mind.

The first matter is that the trial court acted on the evidence of P.W.4 Roda Yohana who is a child of tender years without corroboration. The second one is that no identification parade was conducted against the Appellant to justify the correctness of P.W.4's claim. The third one is that the testimony of P.W.4 who is a child of tender years was received without conducting a voire dire. The fourth one is that the trial court erred in convicting him without taking into consideration of his defence.

Going by the trial court's record, I must state at once that the prosecution proved its case beyond reasonable doubt that on 17.10.2003 at Mikocheni 'B' within Kinondoni District, in Dar es salaam Region, the Appellant did have Carnal knowledge of P.W.4 Roda Yohana, a child aged 6 years.

As correctly submitted by **Miss Matiku** State Attorney for the Republic, the testimony of P.W.4 is corroborated by the evidence of P.W.1 C 7112 D/C Ismail a police officer who issued PF.3 to her so that the Doctor could examine her following a report that she had been raped by the Appellant. Her testimony is also corroborated by the evidence of P.W.2 Melabi Sembeti to whom P.W.4 related the incident immediately after she had been raped by the Appellant and who saw her bleeding severely from her private parts. Furthermore, her testimony is corroborated by the evidence

of P.W.3 DR Akim of Mwananyamala Hospital who examined her and found that she had truly been raped as she found dead sperms in her vagina.

Also, **Miss Matiku** correctly submitted that as P.W.4 knew the Appellant earlier before the incident, and as the incident took place during the day, the question of identification does not arise. It is on record that shortly after the incident, the Appellant sent P.W.4 to buy him cigarettes and that after she had brought him cigarettes he raped her from his bedroom.

Furthermore, **Miss Matiku** correctly submitted that there was no need to conduct a voire dire in this case. Right from the beginning, P.W.4 was clear about the fact that the person who raped her is no other than the Appellant.

In addition to that, **Miss Matiku** correctly submitted that the Appellant was given opportunity to defend himself. In fact, I agree with Miss Matiku's submission that the Appellant's ground of appeal that he was not given such opportunity and or that his defence was not taken into consideration by the trial court is baseless.

In his reply and rejoinder submissions before this court, the Appellant stated that P.W.4 Roda Yohana was taught by P.W.2 Melabi Sembeti to say that he raped her because of P.W.'2 grudges for having been divorced by him. Like the trial Court, I do not think that his accusation was based on personal grudges between him and P.W.2. In fact, no evidence was led by the Appellant to show the existence of such grudges.

For these reasons, I hereby dismiss his appeal in its entirety.



**A. Shangwa**

**JUDGE**

**30.12.2005**

Delivered in open court this 30<sup>th</sup> day of December,  
2005



**A. Shangwa**

**JUDGE**

**30.12.2005**