IN THE HIGH COURT OF TANZANIA

DODOMA SUB REGISTRY

AT DODOMA

DC CRIMINAL APPEAL NO. 79 OF 2023

(Originating from District Court of Singida, Criminal Case No. 32 of 2020)

YUSUPH SHABAN..... APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of last order: 14/03/2024

Date of Judgment: 04/04/2024

LONGOPA, J.:

This appeal challenges the decision of the District Court of Singida which convicted and sentenced the appellant to serve life imprisonment for committing rape contrary to section 130 (1) (2) (e) and 131 (1) of the Penal Code,Cap.16 R.E 2019.

It was alleged on the 1st count that on unknown diverse dates of January 2020 at Utemini area, within Singida district the accused did have sexual intercourse with a girl aged seven years and a pupil of Utemini Primary School. On the 2nd count it was alleged that on the same date the accused did have sexual intercourse with a girl aged 6 years. The appellant denied the charge and the prosecution called a

total of five witnesses to testify and establish the case against the appellant. Upon conclusion of the hearing of the case, the appellant was convicted and sentenced thereof. Being aggrieved by conviction and sentence, the appellant decided to challenge the decision by way of appeal on seven grounds and two were prayers, as reproduced hereunder for easy of reference: -

1. *That, I pleaded not quilt when the charge was read against me before the trial court.*
2. *That, the trial court failed to note contradicting testimony, while PW1 told the trial court that on inspecting PW2 and PW3 she discovered that children private parts (vagina) were swollen, there was some blood and fluid discharge while the medical doctor namely Martha Mlonga (PW4) said that on examinations of victims on 23/01/20220, she found both victims had bruises at their vagina and their hymen perforated, no any discharge or swollen vagina, who said the truth before the trial court? It is evident that this was a cooked case against appellant.*
3. *That, as a proof of a cooked case against appellant, Doctor Martha Mlonga said that she found bruises around necks of both children while PW1 said that PW3 had bruises on her neck, which was the truth before the trial court?*
4. *That, Medical Doctor namely Martha Mlonga (PW4) gave her testimony before the trial court without any*

supporting document (she did not tender any PF3) for either PW1 or PW2, thus she gave a mere story before the trial court, and her testimony can not hold water.

5. *That, the law demand that every witness in criminal cause to be examined upon oath or affirmation (Ref: the case of* ***Mwami Ngura V/S Republic*** *CRIMINAL APPEAL NO.63/2014 TCA-DODOMA - UNREPORTED), also in order to abide with section 198 (1) of the CPA (CAP.20 R:E 2002), but PW1, and PW2 are children of tender age, no "voire-dire" test was carried out as demanded by the law in giving their testimonies, this was also the clear violation of section 127 (2) of the Tanzania Evidence Act, Cap.6 R.E 2002). Also, Ref: CRIM.APP.NO.57/2010 TCA Arusha* ***Mohamed Sinyenye V/S Republic*** *and also* ***Hassan Hatibu V/S R.****Criminal Appeal No.71 of 2002. Thus conviction and sentence interred by the trial court was injustice.*

6. *That, both PW2 and PW3 were taught by their mother to say what they told the trial court in order to cook case against appellant so that he could not get his Tsh.200,000/= four months salary, something which PW1 did not deny before the trial for the job which she said of selling grilled meat. Thus, it is evident that "claim of Right" resulted to this case.*

7. *That, I was convicted and sentenced not because of the strength of the prosecution case (proof of beyond reasonable doubt) but due to the weakness of my defense.*
8. *That, I pray Honorable High Court to quash both conviction and sentence of the trial court and set me to liberty.*
9. *That, I wish to be present during hearing of my Appeal.*

The appellant prays to this Honourable Court to allow this appeal, by quashing the conviction and setting aside the sentence of seven years imprisonment and let him at liberty.

On 14/03/2024 when this appeal called for hearing, the appellant appeared in person while the respondent was represented by Ms. Neema Taji learned State Attorney.

In support of the appeal, the appellant prayed to adopt the grounds of appeal as contained in the petition of appeal to form part of his submission. He stated that the case was fabricated against him as he had been claiming against the victim's mother. The victim's mother failed to pay him thus decided to fabricate. This was what made the whole case to be instituted.

Ms. Taji the learned State Attorney on her submission stated that, the respondent objects the appeal and urged this court to upheld conviction and sentence imposed on the appellant. She argued that grounds can be argued together as failure to prove the prosecution case

beyond reasonable doubt. The offence was rape contrary to section 130 (1), (2) (e) and 131 (1) of the Penal Code.

It was learned State Attorney's submission that the prosecution called a total of 5 witnesses. PW2 and PW3 were the victims of the offence. On page 14 to 17 there were adherence to section 127 (2) of the Evidence Act, Cap 6 R.E 2019, the child of tender age should promise to tell the truth. PW1 and PW2 identified the appellant as the one who sexually molested the victims. The incidents happened twice according to their testimonies. PW2 narrated that appellant did took her and had carnal knowledge of her. The appellant was preventing the victim to raised alarm. Appellant was said to had threatened the victim that she will be killed. The same incident was repeated to PW3.

The same incident happened on next day. PW2 informed her mother on the occurrence of the incident. PW1 had just physically examined PW2, she sound swollen vagina and discharge. The same was for PW3 who informed about the incident. The victims informed PW1 that appellant threatened them not to inform anyone as they would be killed.

This was corroborated by PW4 who is the medical doctor. At page 21 of the proceedings, on 23.1.2022 examined PW2 and PW3 who appeared to be 6 and 8 years respectively. PW4 found bruises on the PW3 and virginity had perforated and there were bruises on the neck. It was PW4's conclusion that there was penetration by blunt object. PW4 also examined PW2, found bruises on the neck and vagina and concluded that there was penetration by blunt object. PF3 for both were

filled admitted as Exhibit PE3 collectively. The same was read and not objected by the appellant.

PW1 testified that appellant was sleeping at the sitting room where the victims had stated to be the place where appellant penetrated them. The age of the victims was proved by clinic card as they were born on 2012 and 2014 respectively. Clinic cards for PW2 and PW3 were tendered and admitted as Exhibit PE1 and PE2 before the same were read out loudly.

Totality of the evidence of these witnesses, there was proof that the victims were raped by the appellant. The PF.3 was tendered and admitted to establish penetration of the victims. There are cases which provides that evidence of victim can be sufficient to prove the case as it was held in the **Selemani Makumba vs R** [2006] TLR 379.

According to respondent's submission, it is not true that conviction was based on the weaknesses of the defence case but on page 7 of the judgment the court indicated it is the appellant who was responsible to the commission of the crime. It was underscored that failure to cross examine on material aspect by the appellant amounted to admission that it is true that he committed the offence. In **Syprian Atanas Kibogo vs R**, Criminal Appeal (Unreported) – the Court has lucidly observed that failure to cross examine the witnesses on crucial matter is amounting to admission that such stated fact is the truth.

It was reiterated that the evidence of the prosecution was watertight to establish the case beyond reasonable doubt. The court relied on this strong evidence. According to the respondent, there was

no contradiction of the prosecution evidence as the evidence was clear to establish the guilty of the appellant.

Further, the respondent's learned State Attorney urged this Court to rectify the penalty of the appellant as the same is not clear as it has not stated whether life imprisonment is for both counts. This court should correct that, so the same to be clearer as the conviction was for both offences.

In the rejoinder the appellant stated that the victims could not have gone to school if they were penetrated. Their age does not support them to walk to school and back home. According to the appellant, the fact that victims went to school by walking on the day allegedly to have penetrated previous night is an indication that the rape did not happen. Also, evidence of the medical doctor, examination was in 2022 while he was in prison. It was the appellant's statement that he is not responsible.

Upon the perusal of the record from the District Court of Singida on this matter as well as the submissions by the parties to ascertain whether the appeal before me is meritorious. I am constrained to analyse the available evidence from the record to ably determine the issues raised in the grounds of appeal.

The analysis shall be in subsets of related grounds of appeal, as grounds generally are about on failure to prove the case beyond reasonable doubt by the prosecution. Therefore, at the end of the analysis of grounds of appeal this Court will determine whether the burden and standard of proof was met.

The first aspect is that appellant vehemently challenged the evidence of PW 2 and PW 3 to have been recorded in contravention of the requirements of the law. The appellant complains that the victims evidence was adduced without affirmation or oath as well as failure to conduct *voire dire* test.

The evidence of PW 2 and PW 3 was the evidence from children of tender age. It needs to be treated with care and in compliance with the provisions of Section 127(2) of the Evidence Act, Cap 6 R.E. 2019. The child witness should promise to tell the truth prior to adducing the evidence without affirmation or oath.

In the case of **Rashid Salehe Shaban vs Republic** (Criminal Appeal No. 163 of 2020) [2023] TZCA 17656 (26 September 2023) (TANZLII), at pages 6-7, the Court of Appeal stated that:

> *As correctly submitted for the respondent, admission of evidence of such kind of a person is regulated by section 127(2) of the Evidence Act which provides that: "(2) A child of tender age may give evidence without taking an oath or making an affirmation but shall, before giving evidence, promise to tell the truth to the court and not to tell lies." It is plain from the above provision that, giving a promise to tell the truth and not lies, is a condition sine qua non for admissibility and reliability of the evidence of a child of tender age which is given without oaths or affirmation.* ***In our judgment, the trial magistrate should have, before taking such evidence without oaths or***

> ***affirmation, caused the child to promise to tell the truth and the words constituting the promise recorded****. We have consistently said that in a number of pronouncements. Suffice it to mention the case of* ***Godfrey Wilson v. R,*** *Criminal Appeal No. 168 of 2018 (unreported) (Emphasis added).*

Importantly to note is that trial magistrate must record words constituting the promise to tell the truth or not to tell lies from the child before concluding that there is such promise.

The promise by a child of tender age to tell the truth and/or not to tell lies must be explicitly stated from the questions posed to that child witness. It cannot be inferred. In **Mussa Daud vs Republic** (Criminal Appeal No. 135 of 2020) [2023] TZCA 17946 (13 December 2023), at pages 10-11, the Court of Appeal noted that:

> *Nowhere in the reproduced passage one can gather information on the existence of the promise. Neither in the questions asked nor in the answers recorded nor in the recorded opinion of the trial magistrate we may deduce existence of the said promise. That notwithstanding, in our considered view, the promise envisioned under the provisions of section 127 (2) of the Evidence Act must be direct and in express terms made by the witness of tender age and not to be inferred from phrases made as argued by the leaned State Attorney. This, in our view, was the intention of the Legislature.*

We are therefore certain and satisfied that, the trial court recorded the evidence of PW1 without requiring her to promise to teil the truth and not to tell lies.

My perusal on the record of the trial reveals on page 14 and 17 where respective evidence of PW 2 and PW 3 was recorded the trial magistrate did enquire on the child witnesses about promise not to tell lies. Both child witnesses PW 2 and PW 3 promised not to tell lies. The duo promised to tell the truth explicitly. Thus, I am satisfied that evidence of PW 2 and PW 3 was correctly recorded and admitted upon the trial court magistrate having been satisfied that both child witnesses PW 2 and PW 3 promised to tell the truth.

It is on record that child witnesses promised to tell the truth. This is evidently reflected on pages 14-15 of the trial court's proceedings where PW 2 before recording her evidence, it is indicated as follows:

Court: *Do you know the meaning of oath?*
PW 2 *: No. I have never heard about it.*
Court: *Is it good to tell lies and do you tell lies*
PW 2 *: It is not good to tell lies and I don't tell lies*
Court*: Promise that you will speak the truth*
PW 2: *I promise that I will speak the truth*
COURT: *The child has been examined, she is intelligent enough to give rational answers and she promised to speak the truth only. Since she does not know the nature of oath, she will give unsworn evidence.*

Similarly, on page 17 before PW 3 recorded her evidence, it is indicated that:

> *COURT: Do you know what is oath*
> *PW 3: No. I have never heard about it.*
> *COURT: Is it good to tell lies*
> *PW 3: No.*
> *COURT: Do you tell lies*
> *PW 3: No. I never tell lies*
> *COURT: Who taught you so*
> *PW 3: My parents and at the Church*
> *COURT: Promise that you will speak the truth*
> *PW 3: I promise that I will speak the truth only.*
> *COURT: I have examined and found that she is capable of giving rational answers and she promised to speak the truth only. Since she does not know the nature of oath, she will give unsworn evidence.*

From these extracts on pages 14-15 and 17 of the proceedings, it is lucid that explicitly PW 2 and PW 3 promised to tell the truth only. The trial magistrate correctly probed on each of the child witnesses to know if they can understand the nature of oath and promise to tell the truth. It is from those questions that child witnesses did promise to tell the truth only.

The evidence of PW 2 and PW 3 was credible and reliable evidence having complied to the letter of the law on this aspect of ensuring that evidence complied to requirements of the law.

The appellant's lamentation challenging the evidence of victims (PW 2 and PW 3 has no iota of truth. In the light of the foregoing analysis, the fifth ground of appeal appears to lack merits. It is lucid that PW 2 and PW 3's testimonies were recorded properly in strict compliance to the requirements of the law. This ground is dismissed.

Also, the appellant attacked evidence of PW 4 medical doctor for failure to tender PF 3. The complaint is not challenging that PW 4 did not examine the victims, but the appellant is of the view that without tendering a PF 3 the evidence of PW 4 as an expert witness was a mere story that does not hold water. The complaint by the appellant is not legally sound. Evidence of expert may be oral or documentary. The oral evidence of an expert witness may be cemented by documentary evidence and in the instant case a PF 3.

This is in line with the provisions of the Criminal Procedure Act, Cap 20 R.E. 2019 that permits documentary evidence from medical practitioners to be admissible in evidence. Section 240 of the Criminal Procedure Act, provides as follows:

> *240.-(1) In any trial before a subordinate court, any document purporting to be a report signed by a medical witness upon any purely medical or surgical matter shall be receivable in evidence.*

According to this provision, documentary evidence emanating from medical or surgical matter is admissible. First, it requires that there should exists a document. Second, such document must be signed by a practitioner. Third, it must relate to the purely medical or surgical matter.

It is obvious that PF 3 is documentary evidence that relate to purely medical or surgical matter. It is normally filled in by a medical practitioner providing summaries of all the findings regarding a victim who has been examined by that medical practitioner. According to record in pages 21 and 22 of the trial court proceedings, there was a document namely PF 3 for the first victim and another for the second victim. Such document was filled in by PW 4 who is a medical doctor. The contents relate to the purely medical or surgical matter as the doctor sums up the findings having fully examined the victims. According to record, such PF 3 were collectively tendered, admitted and marked as Exhibit P3 upon obtaining non objection from the appellant.

Also, I am aware that section 62(1) (a) and (d) of the Evidence Act, Cap 6 R.E. 2019 provides that evidence of the person who saw if it is something that can be seen or if it is an opinion, it must be evidence from the person who hold that opinion and the grounds for holding such opinion. In the instant case, PW 4 is the one who holds the opinion of what she saw when physically examined PW 2 and PW 3 as well as her opinion in respect of what PW 4 observed.

The PW 4's evidence being expert evidence is not conclusive on its own to establish commission of the offence. In **Daudi Anthony Mzuka vs Republic** (Criminal Appeal 297 of 2021) [2023] TZCA 165 (30 March 2023) (TANZLII), at pages 18-19, the Court of Appeal have illustrated the nature of expert evidence and its evidential value. It stated that:

> *At any rate, it is trite that the evidence of an expert is not conclusive rather a non- binding opinion which can*

only be acted upon the court being satisfied that it was beyond circumspection. This Court and its predecessor have pronounced themselves in various decisions on the non-binding nature of evidence of experts including medics like PW3 in this appeal where it is found that there are good reasons for doing so. See for instance: ***Hilda Abel v. Republic*** *[1993] T.L.R 246 and* ***Nyinge Suwata v. Republic*** *[1959] EA 974, to mention just a few. It is no wonder that, in* ***Selemani Makumba v. Republic*** *(supra), the Court was emphatic that a medical report may help to show that there was sexual intercourse but cannot prove that there was rape stressing that, true evidence of rape has to come from the victim.*

In the case of **Furaha Alick Edwin vs Republic** (Criminal Appeal No. 410 of 2020) [2023] TZCA 46 (23 February 2023) (TANZLII), at page 19, the Court of Appeal noted that:

It is correct that the PF3 of the appellant was not tendered, however such omission did not weaken the prosecution case. At page 20 of the record, it is evident that the appellant was taken to hospital for treatment of his injuries which he sustained while trying to escape arrest.

In the instant case, record reveal a different story from the complaints of the appellant. First, the witness PW 4 categorically stated about her academic and profession qualification and 17 years of

experience. Second, narrated to have had examined the victims and found that their respective hymens were perforated. Third, she prescribed medicine to the victims to cure the injuries victims sustained in their vaginas and to prevent HIV. Fourth, the PW 4 findings were that both victims' vaginas were penetrated. Finally, PW 4 tendered PF 3 for both victims as Exhibit P3 collectively. The same was admitted and the contents of Exhibit P. 3 were read out loudly in Court. This is demonstrated at pages 21 and 22 of the trial Court proceedings that were recorded on 13/4/2023. Also, the appellant was afforded opportunity to cross examine PW 4 where she reiterated that bruises were clearly seen by eyes and the hymen was perforated for each of the victims.

I am satisfied that evidence of PW 4 was valid evidence as is the one who examined the victims and found that they were penetrated. Such evidence is credible and reliable. It cemented the evidence of PW 1, PW 2, and PW 3. Thus, the fourth ground of appeal is destitute of merits. It is hereby dismissed for want of merits.

The main question is whether the evidence on record is sufficient to warrant conviction. To address such aspects related to sufficiency of evidence, it is necessary to analyse necessary ingredients of the offence. The appellant stood charged of rape contrary to Section 130(1), (2) (e) and 131(1) of the Penal Code, Cap 16 R.E. 2022. Essentially, the ingredients are mainly two. First, there should be sexual intercourse between the accused/appellant and victim without her consent. Second, the victim was aged below eighteen years.

In the case of **Kambarage Mayala vs Republic** (Criminal Appeal No. 208 of 2020) [2023] TZCA 17944 (13 December 2023)(TANZLII), it was stated that:-

> *This provision creates an offence now famously referred to as statutory rape. What are required to be proved are two facts: One, that the accused had sexual intercourse with a girl, with or without her consent. The sexual intercourse is proved by penetration of her vagina, even a slight penetration is sufficient to constitute sexual intercourse. Two, it must be proved that, the girl is under 18 years of age and that, if she is 15 or more years of age, it must be shown that she is not his wife.*

In respect of first element on penetration, the evidence of PW 2 and PW 3 is to the effect that, on the night of 22/01/2020 the appellant penetrated each of them. The scene of crime was at the sitting room where the appellant was sleeping while the victims' mother was at her work. PW 2 and PW 3 narrated the ordeal how each was taken from the bedroom to the sitting room, undressed their clothes and the appellant undressed himself before penetrating them. It was PW 2 and PW 3's testimonies that appellant had threatened to kill the victims' if any of them would report the incident.

This evidence is corroborated by testimony of PW 1 who is the victims' mother. PW 1 stated that she was staying in the same house with the appellant who slept at the sitting room and that always the appellant was returning back home around 18:00 hours while PW 1

returned around 23:00 hours. It was PW 1's testimony that on 23/01/2020 during noon hours she noticed that PW 2 was walking with difficulty. PW 1 stated to have examined the victims who was walking with difficulty (to use PW 1 words "Alikuwa anachechemea") and PW 2 was walking while separating her legs. Upon examining PW 2, PW 1 found that PW2's vagina was swollen, there was some blood which was mixed with fluid. PW 1 inquired from PW 2 as to who did that to her and PW 2 started crying that said the person told her that if she discloses him, she would be killed.

It was PW 1 further evidence that when PW3 arrived from school, she physically inspected her and found that her vagina was swollen she had fluid and blood. PW 3 informed PW 1 that the appellant is one who inserted his penis in her vagina, and she had warned her not to tell anyone for he would kill her. It was stated that appellant applied oil to the PW 3 vagina before penetrating her.

The evidence was corroborated further by PW 4 who is the medical doctor. It was PW 4 evidence that when the victims were examined it was found that they had bruises on their private parts. According to PW 4, she examined their private parts one by one. PW4, found PW 3's vagina labia majora had bruises and her hymen was perforated, and there were bruises in the neck like she was scratched ("kukwanguliwa") by something. PW 4 stated that bruises on PW 3's vagina were caused by something blunt which penetrated in her vagina. After examination she filled the PF3.

Further, PW 4 testified that she examined PW2's body and found bruises around the neck. She also examined her private parties and found bruises. PW2 stated that she found PW 2's hymen was perforated. PW 4 also filled PW2's PF3. She prescribed medicine to cure the injuries and to prevent them from HIV infection.

Also, PW 5 narrated that on 23/01/2020 the victims were taken to hospital for medical examination, he collected the PF 3 for the victims as well as clinic cards. He stated that though the appellant did not admit having committed the offence at police station, having considered the available evidence PW 5 was satisfied that the appellant committed the offence. During cross-examination, PW 5 reiterated that the victims named the appellant as the one who raped them.

Totality of evidence of PW 1, PW 2, PW 3, and PW 4 show that there was penetration of the victims' vaginas. All the witnesses demonstrated that there was penetration of PW 2 and PW 3's vagina by the appellant.

In the case **Denis Joseph @ Saa Moja vs Republic** (Criminal Appeal No. 121 of 2021) [2023] TZCA 104 (13 March 2023) (TANZLII), at page 15, the Court of Appeal reiterated that:

> ***It is trite law in our jurisdiction that, the best evidence in the offence of rape is that of the victim of the offence.*** *In the celebrated case of* ***Selemani Makumba*** *(supra), the Court stated thus: "True evidence of rape has to come from the victim, if*

an adult, that there was penetration and no consent, and in case of any other woman where consent is irrelevant, that there was penetration.

PW 2 and PW 3 being the victims of the incident had categorically stated that it was the appellant who penetrated their vaginas at the sitting room where the appellant was sleeping while the victims' mother was not at home at that fateful day. The PW 2 and PW 3 evidence was lucid and corroborated by PW 1 and PW 4. These were the victims' mother and medical doctor respectively.

The second major ingredient is age of the victims. The conviction against the appellant as stated is what is termed as statutory rape. This is committed when the victim(s) of the offence is below the age of 18 years old.

PW 1's evidence was to the effect that the victims were born in 2012 and 2014 respectively thus in 2020 when the offence was committed PW 2 was aged 8 years old while PW 3 was aged 6 years old respectively. PW 1 tendered clinic cards for the victim which show that PW2 and PW3 are under 18 years. This evidence of PW 1 is very critical and relevant to establish the age of the victim. PW 1 being the mother of the victim was appropriate person to testify as to the age of the victims.

This Court is guided by the decision in the case of **Daudi Anthony Mzuka vs Republic** (Criminal Appeal 297 of 2021) [2023]

TZCA 165 (30 March 2023) (TANZLII), at page 11 where the Court of Appeal reiterated that: -

> *It is trite law that the victim's age can be proved through a parent, guardian, school teacher, birth certificate or the victim herself (see **Issaya Renatus v. Republic**, Criminal Appeal No. 54 of 2015 (unreported). In this case, the victim's father (PW2) testified as such that PW1 was 8 years old. At any rate, it was not suggested that PW1 was above the age of 18 years in which case consent would have been necessary.*

Indeed, evidence of PW 1, PW 2, PW 3, and PW 4 established lucidly the elements of the offence of rape for which the appellant stood charged, convicted and sentenced. The evidence of PW 1 and PW 4 corroborate the evidence of PW 2 and PW 3 who are the victims. The nature of evidence tendered by these witnesses is not contradictory as it is claimed by the appellant.

Evidence of the prosecution is sufficient to warrant conviction. I cannot agree with the appellant that the evidence is contradictory and fabricated. At this juncture, the 2nd, 3rd and 6th grounds of appeal are found to lack any backing legally thus they lack cogent merits. They deserve to be dismissed. I shall proceed to dismiss them.

The last issue is on proof of the case against the appellant to the required standard. Section 3(2) of the Evidence Act, Cap 6 R.E. 2019 provides on the standard of proof. It states that:

2) A fact is said to be proved when- (a) in criminal matters, except where any statute or other law provides otherwise, the court is satisfied by the prosecution beyond reasonable doubt that the fact exists.

The prosecution side has the duty to establish the case and to prove it beyond reasonable doubts. The evidence of PW1, PW2, PW3, PW4 and PW5 proves that PW2 and PW3 was raped.

In the case of **Chausiku Nchama Magoiga vs Republic** (Criminal Appeal No. 297 of 2020) [2023] TZCA 17810 (9 November 2023) (TANZLII), the Court stated that: -

The duty of the prosecution to prove a criminal case beyond reasonable doubt is universal and, in our case, it is statutorily provided for under section 3 (2) (a) of the Evidence Act, Chapter 6 of the Revised Laws. Further, in the case of Woodmington v. DPP [1935] AC 462, it was held inter alia that, it is a duty of the prosecution to prove the case and the standard of proof is beyond reasonable doubt. The term beyond reasonable doubt is not statutorily defined but case laws have defined it. In the case of ***Magendo Paul & Another v. Republic*** *[1993] T.L.R. 219, the Court held that: "For a case to be taken to have been proved beyond reasonable doubt its evidence must be strong against the accused person as to leave a remote possibility in his favour which can easily be dismissed.*

The main issue is whether in the circumstances of this appeal had the prosecution discharged the burden of proof to the required standard. I am certain that the answer is in the affirmative. The foregoing analysis of the evidence of the case at hand has revealed that the prosecution case was proved beyond reasonable doubt. Thus, 7th ground of appeal is devoid of merits thus it is hereby dismissed.

Having dismissed the 2nd, 3rd, 4th, 5th, 6th and 7th grounds of appeal for being devoid of any merits, the remaining grounds the 1st, 8th and 9th do not qualify to be grounds of appeal thus there is no need to address them. They are statements that are giving certain information regarding the status of the plea and prayers for the appellant upon conclusion of the analysis of the appeal and that personally the appellant should be afforded the opportunity to be present on the hearing date. Indeed, the appellant appeared in person before this Court on the date set for hearing on 14th March 2024. It is true that the appellant pleaded not guilty to the offence when the charge was read. That is the reason that prosecution had to call five witnesses to establish the offence.

This Court being the first appellate court has had an opportunity to analyse and evaluate the evidence on record. It is the finding of this Court that the trial court was correct and right to convict the appellant for both counts he stood charge as there was sufficient evidence to prove the commission of the offence beyond any reasonable doubt. There was nothing on record to warrant this Court to interfere with the findings of the trial court regarding conviction of the appellant for the two counts of rape c/s 130 (1) (2) (e) and 131 (1) of the Penal Code, Cap.16 R.E 2019.

In totality of the events, this appeal lacks merits as the prosecution proved the case beyond reasonable doubt. The appeal deserves only one conclusion which is dismissal on its entirety. I uphold both conviction and sentence of the appellant as entered by the District Court of Singida. As the appellant was convicted and sentenced to life imprisonment for each of the two counts he stood charged and convicted without specifying whether the sentences run concurrently or consecutively, it is the finding of this Court that both sentences shall run concurrently. The appeal stands dismissed in its entirety for lack of merits.

It is so ordered.

DATED at **DODOMA** this 4th day of April 2024.

E.E. LONGOPA
JUDGE
04/04/2024.