THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF DODOMA

AT DODOMA

DC. CRIMINAL APPEAL NO. 63 OF 2022

(Originating from the District Court of Dodoma in Dodoma in Criminal Case No. 41/2021)

AMOS MAYOMBE@NYAMANGA.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

Date of Judgment: 18/10/2023

A.J.Mambi, J.

In the District Court of Dodoma at Dodoma, the appellant **AMOS MAYOMBE@NYAMANGA** was charged with the offence of unnatural offense c/s 154 (1) (a) of the ***Penal Code, Cap 16*** [R.E.2019]. It was alleged that on the 12th day of April 2021 the accused was alleged to have canal knowledge to one young girl (for purposes of this case 'a victim') against the order of nature. It appears from the trial court records the victim was born in 2007 thus by the time (2019) the incident occurred the victim had 12 years old. The Trial Court found

the accused guilty as charged. He was convicted and sentenced to 30 years imprisonment.

Aggrieved, the appellant appealed to this court challenging the decision of the trial District court the following similar grounds:

1. **THAT**, the trial court grossly erred in law and fact when convicted the appellant while the prosecution side did not prove the offense of Rape against the Appellant beyond all reasonable doubts.
2. **THAT**, the trial court grossly erred in law and fact when convicted the appellant basing on procedural irregularities.
3. **THAT**, the trial court grossly erred in law and fact when convicted the appellant without considering that the prosecution evidence was cooked and fabricated basing on the ground that why there was a delay of send the victim to the hospital for medical checkup immediately after the matter to have reported in the authority and there was no reason as to why such delayment.
4. **THAT,** the trial court grossly erred in law and fact when convicted the appellant without considering that there was a need of corroboration evidence from the one alleged that the victim was taken to her as a house mad so as to come and shake hand the prosecution side failure to summon draw inference to the evidence of the prosecution case.
5. **THAT,** the trial court grossly erred in law and fact when convicted the appellant without considering that the caution statement was received inconsistence with the required of the

law hence caused miscarriage of Justice in the part of the appellant.

6. **THAT**, the trial court grossly erred in law and fact when acted on the evidence of PW2 which was not properly scrutinize as PW2 in his testimony addressed the court that he was told by the victim's mother that the victim was raped at the same time sodomized while the charge sheet was about the offence of unnatural offense of unnatural offence dur to that likely the offense was planted to me since I was not in god term with the victim's mother as I said before there was misunderstanding due to the dispute of peace of land.
7. **THAT**, the trial court grossly erred in law and fact when did not consider the Appellant defense when analyzing and evaluating the whole evidence after both party to have submitted their evidence the trial court only acted on the prosecution's evidence in other words the appeal was heard in isolation form.
8. **THAT**, the trial court grossly erred in law and fact when did not consider the evidence of the age of the victim simply because the whole witness of the prosecution side did not come with the real age of the victim.

During hearing, the appellant appeared unrepresented while the Republic was represented by Ms. Sara, Mr. Mwakifuna and Ms. Tausi. The appellant adopted all his grounds of appeal and said he had nothing to add.

Responding to the grounds of appeal collectively, the learned State Attorneys led by Ms. Ms. Sara, for the Republic, submitted that, they

don't support all grounds of appeal. She argued that the court relied on the evidence of the victim (PW4) and the evidence of her aunt (PW2) as indicted under the proceedings under page 20 and 12. The learned State Attorneys submitted that the evidence is clear that when the incident occurred the victim immediately reported the matter to her mother (PW3) before she reported to the police. She argued that there was little delay in reporting the matter but, the reason for delay to send the victim to the hospital was explained by PW3. They further submitted that the records of the trial court are clear that he trial magistrate considered the evidence of both parties as indicated pages 8,9,10 and 12 of proceedings. The learned State Attorneys the accused admitted in his caution statement and the document was properly tendered and admitted as per the provisions of the law such as section 250 & 251 CPA. They argued that the appellant volunteered to be recorded his statement under cautioned statement and the procedure was in line with the law.

I have thoroughly gone through and summarized the grounds of appeal and submissions from both parties as indicated above. Having summarised submissions from both the appellant and prosecution, I now revert to the appeal at hand. I have indeed considerably gone through and considered all grounds of appeal, submission from the republic/prosecution and the records. In our case in hand, and from the grounds of appeal by the appellant it appears that the key issues here that whether the prosecution case was proved beyond reasonable doubt and whether the magistrate erred in his decision. The other issue is whether the evidence of the victim who is a child of tender age

mandatorily need to be corroborated as claimed by the appellant in his fourth ground of appeal.

I will start addressing the issues as to whether in rape cases it is mandatory for the evidence of the victim of tender age to be corroborated. The appellant on his fourth ground has alleged that, it was mandatory for the victim evidence to be corroborated. The learned state attorney for the respondent, submitted that in an offence of rape of a child of tender age what was supposed to be proved is sexual intercourse and penetration.

In my firm view, it is a cardinal principle in rape cases as also rightly submitted by the learned state attorney that in rape offences the best evidence is that of the victim as clearly underscored in the case of ***Selemani Mkumba v. R Criminal Appeal No. 94 of 1999 (unreported)***. What was to be observed by the trial court was the reliability of the said evidence. In other words it is not mandatory for the evidence of the victim to be corroborated as what is required is the victim to tell the truth and reliable evidence. Indeed, the trial records (proceedings) show that the evidence of the victim was corroborated by the evidence of PW1 (her aunt who immediately attended the victim after incidence). Indeed the evidence of PW1 and the police officer (PW1 D6404 D.SSgt Gaudience) show that PW1 found the accused with the victim inside the house before he locked the door and went to report to the police where the accused was immediately arrested.

I have made reference to the records (judgment and proceedings) from the trial court and found that that, all witnesses testified the same

evidence that the accused actual did have sodomize the girl who the child of a tender age (twelve years old).

The issue as to whether corroboration is mandatory or not in rape offence has been well explained by the court in various decision and the legal principle has now been clearly set. The position of the law is now clear that in rape cases there is no need of corroboration. In my considered and firm view, the complaint that the evidence of a victim needed corroboration has no merit since the law does not provide mandatory requirement for corroboration of the victim evidence in offences relating to sex or rape.

It should be noted that the purpose of corroboration in most cases required only to support or confirm which evidence is sufficient and credible. I wish to refer the case of ***Mbushuu alias Dominic Mnyaroje and Another v Republic (1995) TLR 97 (CA)***, where the court underscored and held that,

> *"Courts look for corroboration when, in the light of all the evidence, a witness is worthy of belief. The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm or support that which as evidence is sufficient and satisfactory and credible."*

There are other more authorities that have clearly clarified the question of corroboration. For instance the court in the case of ***Hassan Juma Kanenyera and Others v Republic (1992) TLR 100 (CA)***, held that, "it is a rule of practice, not of law, that corroboration is required of the evidence of a single witness of identification of the accused

made under unfavourable conditions; but the rule does not preclude a conviction on the evidence of a single witness if the court is fully satisfied that the witness is telling the truth."

From the above findings in line with the above cited cases it is undisputed fact that, corroboration is not compulsory to ground conviction as even the evidence of a single witness especially when it is an evidence of the victim in rape case. The Court in ***Ayubu Hassan Vs Republic, Criminal Appeal No. 79 Of 2009, CAT, Tanga (Unreported), observed*** that

> *"...what matters is the competence and credibility of witnesses and nothing more..."*

In his appeal, the appellant has also contended that, the prosecution did not prove charge against him beyond reasonable doubt. This raises the issue as to whether the prosecution discharged its legal duty of proving the case beyond reasonable doubt.

The position of law is very clear when it comes to the legal duty of proving the case beyond reasonable doubt in criminal cases which lies to the prosecution. This court has frequently underscored that it is a general rule in criminal responsibility that the onus of proving the charge against the accused beyond reasonable doubt lies on the prosecution and is part of law. Ignoring this principle may be regarded as unforgivable mistake. See the case of ***Jonas Nkize v. Republic 1992 TLR 213 (HC).***

The issue at hand is whether the prosecution proved beyond reasonable doubt the charges on rape alleged to have been committed by the accused. Among the important elements to prove the offence

of rape is penetration of the male organ. In the case at hand there is no any doubt that there was penetration and sexual intercourse has been proved and the accused/appellant had carnal knowledge with the victim (PW3).

The appellant argued that the prosecution did not prove the case beyond reasonable doubt and the magistrate convicted him basing on the evidence from the victim. The prosecution submitted that the case was proved beyond reasonable doubt using the witnesses including the victim. There is no doubt that a prosecution case must, as the law is, be proved beyond reasonable doubt. This in simple, means that the prosecution evidence must be strong to leave no doubt to the criminal liability of an accused person.

Before, answering the above issues, it is pertinent to consider one of the key elements of an offence of rape which is the main root of this case. While the prosecution in their submission argued that the best evidence for rape comes from the victim so long as there is prove of penetration, the appellant in his grounds of appeal submitted that in our case the element of penetration and offence of rape have not been proved by PW4 and the prosecution. Indeed, the law that is the Penal Code, Cap 16 is very clear on the ingredients of an offence of rape. In this regard the most relevant provision is section 130 (4). Under section 130 (4) (a) of the Penal Code, Cap 16 [R.E 2002], as observed also by the court in ***Mahona Sele versus Republic Criminal Appeal No. 188 of 2008*** (unreported) that penetration is an essential ingredient of the offence. It is the position of law and from various authorities through court cases that the main evidence for an

offence of unnatural offence or rape, is the evidence from the victim. It has also been clearly stated by the court from some decided cases that the main and best evidence in rape case which is similar to our case is the evidence from the victim.

However, it is the duty of prosecution to prove the criminal cases such as rape beyond reasonable doubt by proving to the court that the victim was actually raped by the accused and there was penetration. The legal position is that the evidence must be clear and credible without leaving any doubt that would lead to injustice to the innocent accused. This can also be reflected from the case of ***AINEA GIDEON VERSUS REPUBLIC, CRIMINAL APPEAL NO. 183 OF 2008,*** where the court held that:-

> *"... In order to establish the offence of rape, the following elements have to be proved:-*
>
> 1. *That there was penetration;*
> 2. *That there was lack of consent; and*
> 3. *That it was the appellant who committed the act."*

To finally answer the issues as to whether the prosecution has proved the case beyond reasonable doubt, I will revert to evidence relied by the prosecution. As rightly submitted by the learned State attorney, Ms. Catherine that the main evidence in rape case, is the evidence for the victim and the records clearly show that the Victim and other witnesses clearly testified that the victim was actually raped by the appellant. The Victim at page 20 and 21 of the proceedings clearly

stated how she was sodomized by the appellant. The victim at page 20 states that;

"On 12.04/2021 while at home at Sasagila Amosi took me as a house maid. Alinivua nguo na kunitomba matakoni (He undressed me and sodomized me)".

Indeed, the evidence of the victim is corroborated by the evidence her aunt (PW3) who at pages17 and 18 of the proceeding clearly testified who she arrested the appellant inside his house and she locked the door before she reported the matter to the police where the police (PW1) immediately arrested the accused. It is also on the records as testified by (PW1 D6404 D.SSgt Gaudience) that the appellant in his caution statement admitted to have sodomized the victim on the material date. The evidence of prosecution was corroborated by the doctor (PW2) who examined the victim and found her anus was not tight and had bruisers including semen indicating she was sodomized. From the above evidence by the witnesses, it is clear that the prosecution proved the charges of unnatural offence against appellant beyond reasonable doubt.

I agree with the republic submission through the learned State attorney that this is the position of law that the main victim in offences related to rape case such as unnatural offence in our case which is similar to our case is the victim. To clearly address this position, I wish to refer the case of ***SELEMAN MAKUMBE VS REPUBLIC, 2006 TLR***, the Court in this case clearly stated and held at page 379 that:

> *"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."

Having analyzed the arguments by the prosecution, I agree with their submission and find no merit in the complaint by the appellant that the prosecution had failed to prove the case beyond reasonable doubt. I wish to refer the case of ***SELEMANI MAKUMBA V. REPUBLIC [2006] TLR*** *(*supra) where the court held that*:*

"true evidence of offence 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".

My perusal from the trial court documents further indicates that the records clearly show that the court below was right in its decision as the evidence shows that the charge of unnatural offence on PW4 was established beyond all colours of doubt and the prosecution had proved the case beyond reasonable doubt. The victim (PW4) informed the court that the caused raped her on 12th on April 2021. The appellant contended the victim evidence needed corroboration from other witnesses. In the instant case, so long as there is evidence of penetration as testified by the victim (PW4) whose evidence was supported by the doctor (PW2), PW1, and PW3, in my firm view sexual intercourse necessary for an unnatural offence has been established. I wish to refer the relevant provision of the law (The Penal Code Cap 16, [R.E.2019].

"Section 130 (4) of the Penal Code provides:-

"For the purposes of proving the offence of rape:-

Penetration however slight *is sufficient to constitute the sexual intercourse necessary to the offence".*

To determine and further clarify the issue as to whether the evidence on sexual offences such as rape or unnatural offence necessarily need further corroboration or not, I wish to consult the court decision in ***JOSEPH MAPUNDA AND HAMISI SELEMANI V. REPUBLIC [2003] TLR 367*** in which the court held that;

> *"In view of the provisions of section 127 of the Evidence Act as amended by section 27 of the Sexual Offences (Special Provisions) Act 1998 (which is now Cap 16 [R.E.20019,* ***the criterion now in Sexual Offences is more on the credibility of the victim of the offence and the court can act on the uncorroborated*** *testimony of a single witness if it is satisfied that the witness is telling nothing but the truth".*

The position of the law as has been occasionally held by this court is now that, "the Court can convict the accused on uncorroborated evidence of a single witness, it being a child of tender years or any victim of the sexual offence, provided that, the witness or the victim of the sexual offence is telling nothing but the truth". This is now the criterion used in criminal proceedings on matters relating to sexual offence to determine the credibility of the witness and in particular the victim of the sexual offence.

The appellant in his appeal has also complained that the trial magistrate erred in law point and fact when made the decision without analyzing the evidence. I have perused the judgment of the trial court and it is clear at page 8 up to 14 the trial magistrate analyzed in detail

the evidence of the prosecution well supported with authorities. Additionally, pages 14, 15 and 16 the judgment of the trial court indicates that the trial Magistrate analyzed the evidence of the defence (appellant) with authorities. Going throughout the decision of the trial court, despite the fact that the appellant did not categorically state as to which evidence exactly was not considered by the trial court, this Court is satisfied that the trial court in its decision considered both evidence from the prosecution and the defense. I am aware that where it appears the trial court has omitted to properly analyze the evidence of both parties, this court as first appellate court can step into the shoes of the trial court and re-consider and analyze the evidence. See **Shabani Haruna @ Dr. Mwagilo vs R,** Criminal Appeal No. 396 of 2007 (unreported). I have carefully analyzed the sequence of evidence and events of on the way the victim was raped by the appellant basing on the evidence presented by prosecution. I have also carefully gone through the evidence by both prosecution and defence as indicated above and my observation from the evidence on record has convinced and satisfied me that the charge of unnatural offence against the appellant was conclusively proved beyond reasonable doubt at the trial court

I therefore, on the evidence on record convinced and satisfied that the trial magistrate was entitled to reach a finding that the case against the Appellant had been conclusively proved beyond reasonable doubt. I have no reason to fault the finding of trial magistrate. In the event, and for the reasons stated, I am satisfied that the appeal has no merit. I dismiss the appeal in its entirety.

It is dismissed accordingly. Order accordingly.

A. J. MAMBI

JUDGE

17.10. 2023

Judgment delivered in Chambers this 17th day of October, 2023 in presence of both parties.

A. J. MAMBI

JUDGE

17.10. 2023

Right of Appeal Explained.

A. J. MAMBI

JUDGE

17.10. 2023