

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

CRIMINAL APPEAL NO. 54 OF 2021

(Arising from Kilwa District Court at Masoko in Criminal Case No. 77 of 2021)

GEORGE SEIF AMIRI.....APPELLANT

VERSUS

THE REPUBLIC.....RESPONDENT

JUDGMENT

3rd Nov. & 15th Dec., 2021

DYANSOBERA, J.:

The appellant George Seif Amiri was arraigned before the trial District Court for an offence of two counts, namely, rape c/ss 130 (1) (2) (e) and 131 (1) and unnatural offence c/s 154 (1) (a) (2) both of the Penal Code [Cap. 16 R.E.2019]. He was found guilty and convicted on two counts. He was, however, sentenced to life imprisonment. It was not specified on which count. The appellant not satisfied with the trial court's decision hence this appeal. According to the petition of appeal filed on 17th June, 2021 and the additional grounds filed

on 25th October, 2021, a total of eight (8) grounds of appeal have been preferred.

The case for the prosecution established that the victim is RI was born on 14th March, 2014 and in 2020, she was six years old. On 2nd day of September, 2020 at 0600 hrs the appellant went to Zaituni Abdallah Lelonchi (PW 1), the victim's mother and collected her on the pretext that he was going to buy candy for her. He carried her on his bicycle. The victim did not go back home. PW 1 decided to trace her on several parts but in vain as by 2000 hrs, she was yet to retrieve the victim. A report was made to the leaders and a search mounted. The victim was later found at Nanjilinji along the road. She was found to have been sexually assaulted-both carnally and anally known. PW 1 reported to Nakiu Chairperson who referred her to the Hospital. PW 1 took the victim to Nakiu Health Centre where Dr. Erick Filemon Milanzi (PW 3), an Assistant Medical Officer attended the victim on 2. 9.2020 at 2200 hrs. She was six years old. According to his observation, the victim had bruises on her genitalia and on her back. She was breaking the wind frequently and could not sit. She was, in addition, discharging stool uncontrollably. The anal and vaginal parts had bruises. PW 3 filled in the PF 3 (Exhibit P 1).

In her testimony, the victim who testified as PW 2 recalled that the appellant took her with the bicycle to Nanjilinji. He undressed her and inserted his penis both in front and back, dirty staff and blood went out. The appellant warned her not to raise an alarm lest she be cut with a razor blade. After the accused was found with a case to answer, he entered his defence.

He told the trial court that on 2nd day of September, 2020, he passed at PW 1, the victim's mother who demanded from him Tshs. 200/=. The appellant gave the money to her. According to the appellant, he knew her as she was her in law. the appellant was later attacked on the way.

As to why he did not cross examine PW 2 when she was testifying, the appellant said that he was afraid. He admitted to have not been at bad blood with PW 1, the victim's mother.

After evaluating the evidence, the learned Resident Magistrate was satisfied that the appellant had committed the charged offences. He convicted the appellant on both counts and sentenced him to life imprisonment. He did not specify on which offence the conviction was entered.

At the hearing of this appeal, the appellant appeared in person while the respondent was represented by the learned Senior State Attorney, Mr. Wilbroad Ndunguru. The appellant told this court that he had filed eight grounds of appeal

as he had, initially six grounds but then filed two additional grounds of appeal. He told this court that he had nothing useful to add.

On his part, Mr. Ndunguru opposed the appeal and gave his reasons.

Having perused the trial court's record and after taking into account the grounds of appeal and the submission, I am in no doubt that the appeal has no merit. As rightly submitted by Mr. Ndunguru, the main complainant in the petition of appeal is that the appellant was convicted on insufficient evidence. However, the age of the victim was amply proved by PW 1, the victim's mother who stated that the victim was six years old having been born on 14th day of March, 2014. This evidence was not controverted by the appellant. There was evidence of penetration on both rape and unnatural carnal knowledge came from PW 2, the victim's herself. This evidence was corroborated in material particular by PW 3, a Medical Officer of Nanjilnji Health Centre. PW3 was clear that he attended the child on 2/9/2020 at 1200 hours. He found the child penetrated and unable to sit down and was releasing faeces uncontrollably. On both vagina and anus, the victim had lacerations.

With regard to identification, PW1 (victim's mother) was clear that the appellant fetched the child and went with her to the shop. The child ferried back. Tracing was conducted and retrieved the child forsaken on the road. The victim mentioned the appellant was the person last seen in company with the child.

This evidence was not shaken during the cross – examination. This means that the appellant admitted the evidence. A case in point is **Richard Matengule and Elia Richard v. R** [1992] TLR P. 5. In this case the trial court went further and considered the lies of the appellant and drew adverse inference against him.

With regard to PF 3, I agree that it was wrongly admitted in evidence. The same is expunged from the record. However, the evidence of PW3 was in sufficient detail both to the court and the appeal. This evidence supported the evidence of the victim. This court was referred to the case of **Saganda Saganda Kasanzu v. R**, Criminal Appeal No. 53 of 2019, at p. 15 used the evidence of the expunged exhibit and convicted the appeal.

The totality of evidence leaves no doubt that the prosecution proved its case beyond reasonable doubt. The appeal against conviction on both counts lacks any legal basis.

As far as the appeal against the sentence, the record is clear that the appellant, in the first court, earned life imprisonment and was ordered to pay compensation. The trial court, however, failed to sentence the appellant in the second count. As rightly argued by learned Senior State Attorney, this court has to intervene.

Accordingly, stepping into the shoes of the trial court, I sentence the appellant in the second count to life imprisonment.

The sentences are ordered to run concurrently.

Save to rectification made, the appeal fails and is dismissed in its entirety.


Order accordingly.




W.P. Dyansobera
Judge
15.12.2021

This judgment is delivered under my hand and the seal of this Court on this 15th day of December, 2021 in the presence of the appellant in person and Mr. Lugano Mwasubila, learned State Attorney for the respondent.




W.P. Dyansobera
Judge

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