

TANZANIA / JUDGMENT

19850821 TZHC Mwanza

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TZHCDECIDED
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IN THE' HIGH COUnT OF' r11,i~;Z,ilJLI ,\T l\TH , -1iJZi-\ ~~~=-~ liKVISIOILIL J1J 3ISL'IC1I1IOH
C.EIIiUliJ.iLL .iINISION HO 1 27 01' J:984 (Oricinal Criminal Case lJoo 175 of 1984 of the District
Court of ~unda Dist::.'ict at ru.nda - :Safoc:c P. Zo Kagali - Esq. 1 Disti•ict 1,Iu_; istr <-1te) THE
R'.ii'PU"LI C g C ... ~ ~ PJOSIG:i'.L'UJ '!ersus CHACI-rn MU:iU1-LU
o... ,..... JCCUS.ZD Delifiment af a girl undal' the ~JG of fourtcan ;ire:etrs c/s 136 (I) of
the P2nal Code Cap. I6. JU K Ml:f NT ---===== KATITI 9 J:- This record was sum:noned for revision,
u1,on criminal retn::. 1:s , 1 showi11G, that tl-c,2 uccused c13ecl eiGht\';r:::n ;:/Gcll's, was upon
conviction, sentenced to fiv3 yea.rs imprisonment, plus tlvelve strokes of cor:io:ca.1-
punishmentt that were accrimpaniedpy an 'o:pd,e::. that thE: accusGc'l "\dJitiona.11~
compensate the victim of the crime, (F'.H), two hec1ds of cattlo. Tl;lG a.ccusec', upon being
arraigned, lla.d the tsmptation to plead gLlil ty, but ended by sa;ying, that the a.lle,:::ations as
contc;tinGd ii1- ~~-; -1'1 charge that wEiS recid to him werG not true!'- The trial th-2rGf01'e toolcofft
with the evid 9 nce by PHI, the complainant,, aged twelVt: yGars, t:~, :rt uas to the effect, that, on
7/6/J-984 7 the nccl.ised found her in -th-i ji0,lds where she was, gr cizing cattle, fell her
dovm ,u1d forcefully takinc; Off her underwsl:tr 1 ,:ma he had se,x , -rith her. 'l1he ~1Iedical
report Kxh T showi:t:\s how her private. pa.rts had been intarf erred with, and thu',:::i: o:t'e
necessitating treatment~ was tendered in cou:i:t and 011 ally con:f:irm,,c: by HJ.2. i\fter th@
closure of the prcscutio;_1 cc:rne, tho occused dacided and electeJ to c~efend hims@lf
unsworn. ::i:t ~:::10 the accused's conccsr,ion trial Magistr21tG driven by hurry and impc1tience,
c()nstrued thr, accnsed' s dcfGnce as a pl•a of guilty, and invitnd the: •accused to
a.ppenda(;;e ;_,_in. signiture, a6 ail1st such cleff.ncG in t:1c Coul't filo,while thc_pl"\"FJ:::cc':tion
reacted by sa.yinJ the f qpts, were as 2.danced 1:iy PWI and PW2, and :icmce the accused~s-
c-')nvection, - the Sentence and oN1e11 that tha Qccuz;-e] is now servi11g, or otherwise all the
sa.ma encumbering him. With due r2spect, .it c1oes apperu• to we, that, the trial :rc.;gi,:trate
cont:c:ivcd a. str :_11:le u -pr0cec1ure. , tn. '-'• "o_,,,,1- slv ct -L11" V "" - cu.se a purport t ea"l JT op.
ctC 2 his own plea of 3uilty. I think, the Qccused having 3ivGn cvide;;/iCe, with no defcince
1-.ritnesses to callt ths trial :~1cl8istr~te shonld h<-1vc proceeded to write and deliver::; ,/ the J\ld
0 ment in which, hG sl:nuld have .pointed out 1 th-:it the girls consent, where she is unc~cr
tl1e ,ct:~o of fourteen and the chS'll\~e is under sect ion 136 of tl1e. Penal C~•<la; ;ras -
immaterial. lior the accused h~=rvir;; pleaded not cuil ty, thE 9r ('SO cc:i ton -was e
nc1,1mbered ,~i th the burden; of proving, all the ingrediGnts c:f the offence, t~1.at ti:::c ct
ccused ,-,as charJ.E.d with, including - .th:::lt • e:ssential ingredient, that .tho girl uus under, the,

age of fourteen years. But for strange reasons the trial judge construed the defence as a plea of guilty. But, it does appear to me, that such a construction is a misguided one, for while it is true, that the accused conceded to have had sexual intercourse with PW1, it is not true that at any time after the arrest, with the prosecution, that at the time of the offence in 1985, the accused was indeed under the age of fourteen years, a very crucial element in the charged section. It is trite, that a person charged under section 36 of the Penal Code, cannot be said to have pleaded guilty to the charged offence; where he has not accepted the accusation. I have observed, that, in the case of the trial judge, the trial judge tried to solve the substantive problem, by inviting the prosecution to establish the facts. "But all that the prosecution did, was to aver that the facts were as per evidence by PW1 and PW2 already admitted, and the accused was never invited to plead that, "the same, and, that such, it is a question of speculation whether, or not, he would have admitted the truth of the contents thereof. From the above, it does appear, that the so called plea of, "guilt by reason of insanity, was unfortunately imposed, and the accused was not the origin of the sentence. All the judge said, having considered the prosecution evidence, and considering that the accused did finish his confession, and had no witness to call, it was clear and beyond doubt, that the accused did have carnal knowledge of the girl, it is equally clear that the accused was a girl (PW1) was aged twelve years, and the girl, if she had given evidence, being in material, the accused would have been found guilty; the girl's statement, if the trial judge had not short circuited the procedural steps. It is my opinion that, the procedure followed is the circumstantial case, curable under the provisions of Section 346 of the Criminal Procedure Code, the conviction is therefore upheld. I am however worried about the five years imprisonment sentence; that the accused found himself carrying on his head. I think, the accused being a first offender, and almost a youth aged 17, on the other hand, the interests of society are best served, if I understand the law, the sentence should be considered as a material for rehabilitation rather than merely a punishment.

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