

TANZANIA / JUDGMENT

20140226 TZHC Mwanza

COURT
TZHCDECIDED
26 February 2014

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(IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY AT MWANZA CRIMINAL
APPEAL NO 57 OF 2013 (Arising from the Decision of the District Court of Ukerewe Nansio in
Criminal Case No 23 of 2013) EMMANUEL S/O

TALALAAPPELLANT AND THE
REPUBLICRESPONDENT

JUDGMENT

19th - 27th February 2014 J. A. De- Mello, J; I released the Appellant on the by allowing the Appeal and setting aside conviction and sentence after hearing the submissions of both parties, that is the Appellant and the Republic. Judith Nyaki, the state Attorney vehemently supported the Appeal contending that charge of Rape was changed to read defilement contrary to section 130 and 131 of Cap 16 [R.E 2002], was later substituted to a charge Defilement contrary to section 141 of the same law Penal Code disregarding the facts as depicted on the charge sheet. It was her further contention that the standards for proof on such matters were quite high and ought to be proved beyond all reasonable doubt. The prosecution failed on its part to fulfil its statutory obligation set by law, to prove its case beyond all doubts. The Appellant

- j was sentenced to 15 years imprisonment and being so aggrieved has . . . i . I . presented his six grounds of Appeal but in summary' he is dissatisfied with the manner and the way in which the procedure for tendering and ' admission of exhibit for rape . was highly violated. Being limited professionally the Appellant had little or nothing of value to expound in his grounds of Appeal. _ He prayed for the Court to consider and grant accordingly. ' . From record, tThe prosecution case against the Appellant was based on the evidence of four witnesses that of PW1 Masale Robert, a child of tender ' age upon which 'voire . dire' examination testified before I the Trial Court . that he knew the well the appellant who asked PW1 who used to provide ' him water from the pond. That at the some occasion, .the Appellant ordered , ' PW1 to enter into his room forcing him to bed .. In return it was alleged, the Appellant offered the victim TShs. 1,000/= and 'piece of cloth. It was I her further testimony that she was warned not to disclose this to anyone. l If asked she should say "Nimepewa na Mzungu/'. 2 (

- The same were the evidence of PW2 Seslia Vincent~ PW3 Lydia Deogratias and PW4 Alphexed Vumi Majige. It is with this backround that PW1 assisted by the said witnesses reported the incident to the village authority. Police officer PWS WP 7083 D/C Jeniva who investigated the matter established that the child was raped by the Appellant. Upon arrest the Appellant denied to have been the culprit. In brief Counsel for the State observed that the substitution of the charge was erroneous whose consequences was not even proved. I fully agree with them based on the evidence of PWS the police officer who investigated the matter stating that :- , " I did discover, that the accused was inducing that Masa/e(sic) and take her into(sic) his house/ take her on his bed undress her, and took his penis and rub on the: part of her virgin and then went to ejaculate".(sic) If this is actually what happened, then it deserves consideration for this Court to look into for determination of the Appeal :that is Rape vis a vis • Defilement two different offences with totally different elements. Strictly speaking it is facts vis a vis charge leveled. In light of the provision of the section Section 141 of Cap 16 [R.E 2002] "Any person who/ being the owner or occupier of premises ' or having or acting or assisting in the management or ' control thereof induces or knowingly suffers any woman under the age of fifteen years to resort to or be upon: those premises for the purpose of sexual intercourse with any man whether such sexual intercourse is intended to be with any particular man or general!½ is guilty of an offence and
- I is liable to imprisonment for five years: Provided that it shall be a sufficient defence to a charge under this section if it is made to appear to the court before which that person- is charged that he had reasonable cause to believe and did in fact believe that the woman was of or above the age of twelve years.... Disregarding the above, the Trial Magistrate proceeded to convict the Appellant and sentenced him to 15 years imprisonment without reasoning 4 (along the lines. This being a fundamental and procedural irregularity I firmly and . categorically state . there was no sufficient reasons for the decision entered without probable cause to the charge. I therefore allow the Appeal as I did in my order dated 19/02/2014. The Appellant is set free unless lawfully held in the event of any other lawful cause. CAn /)~ J.~o Judge Delivered at Mwanza 1st T~::~J~ 26th day of February 2014 \\1>1' (.,\.' \" \" \" ,--:- .1t \\\": \\'~1I~1iJ,JP jl 5

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