

TANZANIA / JUDGMENT

omary so masanika vs republic

2017 tzhc 2069 31 july 2017

COURT
TZHCDECIDED
31 July 2017

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

“ORIGINAL” IN THE HIGH COURT OF TANZANIA DODOMA DISTRICT REGISTRY AT DODOMA CRIMINAL APPELLATE JURISDICTION DC CRIMINAL APPEAL NO. 59 OF 2016 (Originating from the District Court of Manyoni Criminal Case No. 224 of 2015) OMARY S/O MASANIKA APPELLANT VERSUS THE REPUBLIC RESPONDENT JUDG EM ENT 31 st JULY 2017. Mansoor, J: This appeal arise out of the judgment dated 8th June, 2016, passed by the District Court of Manyoni in Criminal Case No. 224 of 2015, by which, the Appellant was convicted of the offence charged of rape contrary to Section 130 (1) and (2) (e) and Section 131(1) of the Penal Code, Cap 16 R: E 2002, and sentenced to Thirty Years imprisonment. “ORIGINAL” After trial, the Court reached a finding that the Appellant committed rape on the girl namely, Edina d/o Paul, and a girl of 13 years old about 22.00 hrs. at Sanza Village, within Manyoni District in the Region of Singida, on 26/12/2015. The prosecution rested its case based on two categories of evidence, namely,

- (1) the oral testimony of the PW-1, the victim, PW2, Mwajuma Yusufu. Mwajuma Yusufu allowed a little girl of 13 years to be taken by the appellant who was drunk at 22.00 hours at night to go to Mama Rose for a beer. This witness did not see the girl being raped as she went to police station the next morning and saw Edna giving a statement to the police. PW3 is the police officer that he and other officers went to the bush after it was reported that the appellant was raping the girl, and that they found a motor cycle of the Appellant on the roadside, and that they found the Appellant having sexual intercourse with Edna. This witness testifies that the Appellant managed to run away. PW4 was the nurse who examined the little girl and gave a report that the girl was raped. PW5 testified that he saw the appellant raping the little girl at the bush, but the appellant managed to run away. PW6 said he saw the girl in the motor cycle of the Appellant at 00.30 hours at night, and the girl was crying for help. That he did not help the girl, but he reported the incident to VEO. Ms. Taji the State Attorney submitted that based on the above evidence the prosecution proved the offence of rape beyond reasonable doubt. 2 “ORIGINAL” On appreciation of the evidence the court below found that the prosecution has succeeded in establishing the case against the accused and convicted and sentenced him to 30 years imprisonment. The said conviction and sentence are assailed in this appeal. The question that arises for consideration is whether the court below has erred in any manner in entering the conviction. I agree that there are contradictions between the evidence of PW3, PW4 and PW6. The charge reads that

the offence was committed at 22.00 while PW6 testified that he saw the Appellant with the victim on a motor bike at 00.30 hours at night. That he went to report to VEO, he did not state as to what time he reported to VEO, and at what time VEO and the police went to the scene of crime. It is also true that there was a contradiction on the date of the incident as PW1 and PW2 stated that the crime had happened on 26/12/2015 at 22.00 hrs, while P34 and PW4, and PW6 stated that the crime was committed on 26/12/2016 at 5.00 pm and 00.30 at midnight. It is also true that the motor cycle belonging to the Appellant which was found at the scene of crime was not seized, and it was not brought to court as evidence. 3 “ORIGINAL” I agree that the Medical examination was carried out by the Nurse contrary to Section 240 (3) of the Criminal Procedure Act, in which it is required that Medical Examination be carried out by the Medical Doctor. Again there was no birth certificate. There was no proof whatsoever given at trial, either in the form of birth certificate or school certificates to prove that the victim was below the age of 16. Proof regarding the age of the victim at the relevant time is totally insufficient, or was not given at all during trial and it does not conclusively show that the victim was below the age of 16, going by the evidence on record, there is nothing to show that the victim was below the age of 16 at the relevant time, in which case, the question of rape does not also arise for consideration. The above vital aspects have been omitted to be noticed by the court below and that has resulted in an erroneous decision. Consequently, and based on the above, this appeal has merit and is allowed; the conviction is quashed and the sentence is set aside. The Appellant is ordered to be released from prison unless he is otherwise lawfully held. ? JUDGE 31st JULY 2017 4 “ORIGINAL” Judgement delivered in Court today in the presence of the Appellant, Ms. Luwongo State Attorney for the Respondent Republic and Mr C.A.Chali the Court Clerk. tr. MANSOOR JUDGE 31st JULY 2017 5

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/197458/source_file/omary-so-masanika-vs-republic-2017-tzhc-2069-31-july-2017.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/omary-so-masanika-v-the-republic-rape-tzhc-2017>

Prepared on 14 October 2026 · Esheria