

TANZANIA / JUDGMENT

# Ramadhan Said Chata 2

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA (IRINGA SUB-REGISTRY) AT IRINGA CRIMINAL APPEAL NO. 38919 OF 2023 RAMADHAN SAID CHATA ..... APPELLANT VERSUS THE REPUBLIC ..... ,.....  
RESPONDENT (Appeal from the Judgment of the Resident Magistrates Court of Iringa at Iringa)  
fHon. S.A. Mkasiwa - PRM1 dated the 22nd day of September 2023 in Criminal Case No. 12 of 2023

## JUDGMENT

Date of Last Order: 16/08/2024 & Date of Judgment: 13/09/2024 S. M. Kalunde, J.: This is an appeal challenging decision of the Resident Magistrates Court of Iringa sitting at Iringa in Criminal Case No. 12 of 2023. In that case the appellant was charged and convicted with the offence of rape contrary to sections 130(1) and (2)(e) and 131(1) of the Penal Code [Cap. 16 R.E. 2019]. The particulars of the count show that on diverse dates in March 2023, at Mwangata Area within the District and Region of Iringa, the appellant did unlawfully have carnal knowledge of GDL (name and identity withheld) a girl of eight (17). To prove the charges against the appellant, the prosecution questioned three witnesses; the victim, GDL (Pw1); her mother, NAM(Pw2); and the doctor Michael Augustine Kibiki (Pw3). In addition to witness testimonies, the prosecution tendered as evidence a copy of the Medical Examination Report, Police Form No. 3 (Exhibit P1). The appellant, Ramadhan Said Chata (Dwl), defended himself on oath. He did not call any witness or tender any exhibit. The summary of evidence was as follows: the victim (Pw1) recounted that sometimes in February 2023 he met the appellant whilst enroute to purchase charcoal. The appellant approached her and asked for her mobile number. She did not have a mobile phone thus the appellant offered her a SIM card. The victim received the SIM card and communication lines were open between the two. The victim used her aunt's phone to communicate with the appellant. In subsequent communications the appellant requested sexual intercourse from the victim. Initially, the victim resisted. However, sometimes in March 2023, the victim caved in and opened channels for a: sexual relationship. Subsequently she was invited at the appellant's house where she was allegedly raped by the appellant. The victim claimed that, in March 2023 alone, the appellant raped her three times. The victim testified further that, at one point her aunt noticed the intimate conversations between the victim and the appellant on her phone. The aunt forwarded the conversations from the SIM card to her mobile phone and forwarded the same to the victim's mother (Pw2). Thereafter, on 7th day of May 2023, the appellant called on the victim's SIM card. The call was intercepted by the victim's mother and

aunt. Through the phone a trap was arranged so that the victim would visit the appellant's house and thereafter the appellant would be apprehended. Unbeknown to the appellant, the victim accepted an invitation to visit his house. The victim went to the appellant's house, got in and sat alongside the appellant. Immediately thereafter, the victim's parents and the street chairperson broke into the appellants house and found the victim was seated with the victim. The victim alleged that, when he was interrogated, he confessed that they had a sexual relationship. He was then arrested and taken to the police station. Pw2 recounted that on the 6th day of May 2023, she noticed that her daughter was engaged in a sexual relationship with the appellant. She interrogated the victim and after some time the victim conceded that they were involved. Thereafter, on the 7th day of May 2023, they set up a trap to arrest the appellant. The victim went to his house and went in. Later, the street chairperson and her parents went in and found the victim inside the appellant's house. The appellant was arrested and taken to the police station. The victim was taken to the hospital for medical examination. The victim was medically examined by Pw3 at Iringa Referral Hospital. In his examination, Pw3 did not observe any bruises on the victims' labia majora or labia minora. He did not see any blood discharges from the victims' private parts. The doctor observed that there were no immediate signs of forced entry into the victim's vagina. However, it was apparent to Pw3 that the victim was penetrated because she had no hymen. He also diagnosed that the victim had Bacterial vaginosis. The results of the medical examination were reflected in the medical examination report which was admitted in evidence as Exh. Pl. 3 In defending himself the appellant testified that he knew the victim's father and that they had agreed for him to repair his sofa couch. He alleged that on 7th day of May 2023, he was arrested on suspicion of being involved in theft. He was taken to a police station where he was charged for rape. He denied having met or knowing the victim. He was also perplexed that a seventeen years old would be raped one, twice or thrice without reporting the matter to the village government. The appellant denied committing the alleged offence. As already pointed out above the trial resident magistrates court convicted the appellant as charged. It was satisfied that the victim's evidence was sufficient to ground conviction against the appellant. The trial court was also satisfied that the prosecution had successfully established that the victim was penetrated and that she was below 18 years. It was also held that the appellant was positively identified as the culprit. Protesting his innocence, the appellant faults the trial court in his petition of appeal containing nine grounds of complaint as follows: "1. That, the trial Magistrate erred both in law and fact to convict and sentence the appellant relying on defective charge sheet which its particulars are insufficient in terms of the date of the said incident.

2. That, the trial Magistrate erred in law and fact to convict and sentencing the appellant without considering that prosecution side failed to summon the material witnesses that were Agnes and the Chairperson.
3. That, the trial Court wrongly convicted and sentenced the appellant without considering that there was not any electronic evidence produced or tendered before the Court to prove that the said 4 Sim card transacted or communicated between the appellant and the victim.

4. That, the learned trial Magistrate wrongly convicted and sentence the appellant based on the contradictory and inconsistency evidence adduced by prosecution witnesses on the age of the victim.
5. That, the trial Magistrate erred in law and fact to convict and sentence the appellant basing on the PF 3 which was not the sufficient ground to corroborate the allegation basing on the fact that a mere lack of the hymen cannot warrant conviction since the fact that the same will not prove penetration.
6. That, the trial Magistrate erred in law and fact for failure to address his mind that the testimony of PW 1 was not corroborated by school Register Book nor Identity Card to prove that the victim was a school Girl of the said Mlandege Secondary School.
7. That, the trial Magistrate contradicted himself to give weight the evidence of PW 1 without considering that the same was weak to suffice conviction to the appellant.
8. That, the trial Magistrate erred in law and fact to convict and sentence the appellant by failure to evaluate deeply the evidence of the defense side.
9. That, the prosecution side failed totally to prove the case against the appellant beyond reasonable doubts. 2. That, the learned trial magistrate erred in law and fact to convict and sentence the appellant by relying on PW2 evidence who failed to inform the matter at the VEO before goes to the police station due the fact the act was so unusual to the society; In light of the above grounds, the appellant urged the court to allow his appeal and thereby quash his conviction and set aside the 5 sentence meted on him by the trial court. He also prayed for his immediate release from prison. In this appeal the appellant advocated for himself. At the opening of his submissions, he prayed to adopt all the grounds of appeal as part of his submissions. Then he went on submitting with respect to each ground of appeal. Addressing the first ground of appeal the appellant submitted that a charge was foundation in all criminal proceedings. However, the appellant argued, in the present case the charge sheet was defective for failure to indicate the specific dates when the incident happened. Instead, the prosecution guessed that the incident happened on several occasions in March 2023. In his view, the failure to indicate the specific dates when the incident happened affected him in that: firstly, he failed to understand the details of the charge against him; Secondly, he failed to properly organize his defense because he did not know the specific dates when the incident happened so that he would prepare his defense in respect of what happened on the specific dates. He contended that one month was too long, because in the same month he was sick, and he also travelled. Thus, if the charge were specific, he would have known what he was doing on those specific dates of the incident. He added that if the dates were specific, he would have called witnesses to support his testimony. The appellant concluded that the failure to state the specific dates unfairly prejudiced his defense. In the second ground, the appellant complained that the prosecution failed to summon key witnesses to render credence to their case. One of those witnesses was Agnes who mentioned a 6 person whose mobile: phone was used to communicate with the appellant,

The appellant argued that the said witness could have confirmed that the victim was using her phone and that she noticed their intimate conversations on her phone. She was also the one who forwarded the text messages to her mother, According to the appellant the other material witness was the street chairperson who participated in setting the trap to arrest the appellant. He is also one among the persons who found the victim at the appellant house, interrogated, and made him confess. The appellant was perplexed why the two witnesses would be called to support the prosecution case. While acknowledging that the prosecution has freedom to call any witness they wish, the appellant alleged that the failure to call these important witnesses weakened the prosecution case as it is not certain why these two key witnesses were not summoned. Turning to alleged communication between him and the victim, the appellant alleged that the prosecution failed to prove that there were indeed mobile phone communications between him and the victim. In his view, the prosecution ought to have tendered proof of communication from the: mobile phone operators that he was communicating with the victim. He added that there was no proof that the line found with the victim was registered in his own name. The appellant submitted further that since the entire prosecution case was built on communications between him and the victim through SIM card, he gave the victim, it was important for the prosecution to prove that there was such communication. He insisted that the prosecution failed to prove existence of any communication between him and the victim through the said SIM card or that the 7 said SIM card was registered in his name. The appellant believes that failure to tender the SIM card dented the prosecution case. In the fourth ground of appeal, the appellant contended that the victim and her mother contradicted one another regarding the actual age of the victim. He argued that while the victim said she was 17, her mother alleged that she was 1.6 years old. The appellant argued that, in the case under consideration, age was a key ingredient and ought to have been established beyond reasonable doubts. He argued that in view of the contradiction between the victim and her parents, age was not established. Also, the appellant questioned the prosecutions failure to present the victims birth certificate to verify her age. The appellant held a view that, if the victim and her mother differed on her age and the court believed them, the court should have believed any other person if they said that the victim was 20 years old. This, in his view, raised doubts on the prosecution case. The testimony of the doctor, Pw3 was faulted for failure to conclude that the victim was penetrated. The appellant alleges that absence of hymen was no proof of rape. He submitted that Pw3 established that there were no bruises, blood, or sperm. He added that the PF3 was recorded a long time after the victim was allegedly raped and therefore it was no conclusive proof of rape, and the trial court erred in placing reliance on the said exhibit. He also contended that it was not clear when the victim lost her virginity and in what ways. In the sixth ground of appeal the appellant faulted the prosecution case for failure to present cogent evidence that the victim was a secondary school student. He submitted that the 8 prosecution ought to have tendered her ID Card, Register Book, attendance register or a teacher to testify that the victim was student. Failure to tender proof of the age of the victim spoilt the prosecution case as there are doubts whether she was student. Regarding the weight piace on the testimony of the victim, the appellant believe that the victim's evidence

was insufficient to support the charges against him because there were many fabricated events such as the number of days she was raped. He argued that if the victim managed to recall that she was raped on a Saturday and then on a Sunday as she was coming from church, why did she recall the specific dates. The appellant ridiculed the prosecution theory on the trap for failure to prove that he raped the victim and just stating where he was living. As was in his defense, the appellant passionately believed that the victim was not trustworthy. He urged the court to discard and not consider her evidence, the appellant alleged further that, it was inconceivable that the victim was raped and raised an alarm, yet she did not report the matter to any other person. The appellant was adamant that it was implausible that the victim went to his house three times even after knowing that it was a dangerous place. The appellant also faulted the learned trial magistrate for failure to consider his defense. As a remedy, the appellant invited the court to consider and re-evaluate his defense and make its own inferences and conclusions. In view of the above reasons, the appellant contented that prosecution failed to prove the case beyond reasonable doubts. He 9 thus urged the court to allow his appeal, by quashing the conviction, setting aside the sentence, and setting him free. In reply, Mr. Majid Matitu, learned State Attorney representing the respondent /republic intimated that he was objecting to the appeal. In response, the learned state counsel indicated that he was going to consolidate the third, fifth, seventh and ninth grounds of appeal as they all related to whether the charge was proved beyond reasonable doubts. The counsel proposed to separately argue grounds one, two, four and eight. Responding to complaints of a defective charge, Mr. Matitu argued that the charge was not defective because the evidence of the victim stated that the incidents happened on diverse dates in March and that she did not recall the specific dates of the rape incidents. The learned counsel argued that the charge contained statement and particulars of the offence which indicated clearly that the offence was rape which happened in March. He added that the facts of the case explained the ingredients of the offence and the accused denied the facts. The counsel concluded that the charge was correct, and the appellant was not affected in any way. In the view of Mr. Matitu the first ground of appeal lacked merits. As for the second ground of appeal, the learned state attorney submitted that the: prosecution was satisfied that the said witnesses stated by the appellant were not relevant is establishing the case. They did not Witness any incident of rape, and they only participated in a trap which was set to arrest the appellant with the victim. The counsel added what would have been testified by Agnes was also presented in evidence by Pw2, the victim's mother, in her 10 examination in chief. The counsel argued that the second ground was also devoid of merits. In relation to. ground four Mr. Matitu conceded that there were inconsistencies between the victim Pw1 and her mother Pw2 relating to the age of the victim. However, the counsel maintained that the contradiction was minor and inconsequential. The learned counsel argued that both Pw1 and Pw2 testified that the victim was born on the 2nd day of December 2006. However, the victim said she was 17 while Pw2 said she was 16 years old. The counsel argued that since Pw1 and Pw2 stated the same date of birth but differed on the actual year the contradiction was minor as it was cured by their statement on the date of birth. There was also no need for a birth certificate

as the evidence of the victim and her mother was sufficient. The counsel advised that the ground ought to be dismissed as well. Mr. Matitu was emphatic that there was also no need for the prosecution to tender the victims' ID Card, Register Book, attendance register or to call a teacher to establish that the victim was student because being a student was not an ingredient of the offence of rape. In his view, the prosecution was supposed to prove rape, and the prosecution did just that through its witnesses. Reacting on the eighth ground of appeal Mr. Matitu submitted that the appellants defense was considered by the trial court and the court was satisfied that the same did not raise any doubts on the prosecution case. The counsel added that, even if his defense was not considered, this court can re-evaluate the same and make its own findings. Submitting on the consolidated third, fifth, seventh and ninth grounds of appeal Mr. Matitu argued that, at the trial court, the appellant was charged with statutory rape under sections 130(1) and (2)(e) and 131(1) of the Penal Code. In accordance with the respective sections, the prosecution had to establish penetration, age of the victim and whether the appellant was responsible. The State counsel contended that penetration was proved by the victim who testified that she went appellants house at Mwangata (D5) where she was forced to have sex with the appellant. The learned counsel added the victim said she was raped separately on another two occasions. Her evidence was supported by Pw3 who examined the victim and noted that she had no hymen. After his examination, Pw3 concluded that the victim was penetrated by a blunt object. Mr. Matitu added that the age of the victim was proved by the victim and Pw2. As to who was the perpetrator, Mr. Matitu submitted that Pw1 stated that the appellant was a person whom she had a sexual relationship with and that they were involved in sexual intercourse on diverse dates. The learned counsel concluded thus, in view of the above evidence, the case against the appellant was proved beyond reasonable doubts and that the trial court was right in its decision<sup>4</sup> He prayed that the appeal be dismissed for being devoid of merits. The appellant's rejoinder was brief. He insisted that it was inconceivable that the victim, a seventeen year girl and student would not recall the specific dates of the incident. He invited the court to draw an adverse inference on the prosecution's failure to summon Agnes and the street chairperson who were material witnesses. The 12 appellant maintained that the prosecution failed to prove the charges against him. He pleaded that the appeal be allowed. Upon examination of the record and consideration of the arguments for and against the appeal, there is no dispute that the conviction of the appellant hinges on; one, the credible evidence of the victim (Pw1) who told the trial court that it was the appellant who, on several occasions in March 2023, raped her at his house at Mwangata (D.5). Two, that Pw1 and Pw2 narration that the communication between the victim and the appellant resulted in a trap that culminated in the arrest of the appellant. In this regard, this being a first appeal this court has a duty to reevaluate the case by subjecting the evidence presented before the trial court to fresh and exhaustive scrutiny and reappraisal before coming to its own conclusion. This court must also make due allowance of the fact that it has neither seen nor heard the witnesses Before delving into the determination of the appeal, I find it apposite highlight, albeit briefly, on the key principles in evaluation of credibility of a witness. One, settled that the credibility of a witness is the monopoly of the trial court but only as far as the demeanor

is concerned. The credibility of the witness can also be determined in two other ways: first, when assessing the coherence of the testimony of that witness. Second, when the testimony of that witness is considered in relation to the evidence of other witnesses, including the accused. See *Gaius Kitaya vs Republic* (Criminal Appeal No. 196 of 2015) [2016] TZCA 301 (15 April 2016) TANZLII. Two, it is trite law that every witness is entitled to credence and must be believed and his testimony accepted unless there are cogent and good reasons for not believing the witness which include the fact that, the witness has given improbable or implausible evidence, or the evidence has been materially contradicted by another witness or witnesses. See *Ally Ngozi vs Republic* (Criminal Appeal No. 216 of

- 2018) [2020] TZCA 1786 (24 September 2020) TANZLII. Three, pertaining to rape cases, considering the authority in *Sei ema ni Makumba v. R*, [2006] TLR 379 it is now settled law that the best evidence is the credible evidence of the victim who is better placed to explain how she was raped and the person responsible. Other witnesses if they never actually witnessed the incident, such as doctors, may give corroborative evidence. However, it must be noted that the rule in *Selemani Makumba v. R* (Supra) is not to be taken wholesale without considering other important points like credibility of the prosecution witnesses, reliability of their evidence and the circumstances relevant to the case in point. The above view was stated by the Court of Appeal in the cases of *Pascal Yoya @ Mganga vs Republic* (Criminal Appeal No. 248 of 2017) [2021] TZCA 36 (24 February 2021) TANZLII; and *Majaliwa I hemo vs Republic* (Criminal Appeal No. 197 of 2020) [2021] TZCA 304 (15 July 2021) TANZLII. In the latter case, having made such observations the Court (Galeba, J.A) examined the aspects casting shadows of doubt in the prosecutrix and stated at page 18 thus: "In other words, although the best evidence in criminal cases arising from sexual violence, is that of the victim of the abuse as per *Selemani Makumba v. R* (supra), the above law requires that such evidence of the single eye witness, in this case the victim, must be credible. If the evidence is not credible it cannot be relied upon to ground a conviction, even when the crime is sexual. That is, 14 in our view, a proper interpretation of the above provision." I shall be guided by, among others, the above cited principles in resolving the present appeal. To confirm whether the prosecution proved the case beyond reasonable doubt I will re-evaluate the material evidence of those witnesses and consider it afresh in view of the complaints in the second, third, seventh and ninth grounds of appeal. In the respective grounds of appeal, the appellant faults the trial court for placing reliance on the incredible evidence of the prosecutrix. Considering those complaints, the issue for determination in this appeal is whether the evidence of the prosecution was that credible to the extent of proving that the appellant raped the victim. In resolving this issue, I shall consider several pieces of evidence that were not adequately considered or were inadvertently overlooked by the trial court. First, it was the prosecution case that on diverse dates in March 2023, at Mwangata Area within the District and Region of Iringa, the appellant did unlawfully have carnal knowledge of the victim. In her testimony, the victim alleged to have been convinced by the appellant to start a sexual relationship. She resisted but later agreed. She said that on the first incident of rape, the appellant invited her into his

house, took off her clothes and his and inserted his penis into her vagina she felt pain and raised an alarm. There is no evidence that the victim reported the matter to any person. In dealing with a similar scenario the Court in *Majaliwa Ihemo vs Republic* (supra) at page 14 stated: 15 "As to why she did not raise any alarm for all that time, her explanation was that if she did, the assailant would have stabbed her with the knife. Fair enough, that sounds convincing and appropriate, only when they were in the sitting room. But there is an immediate turnaround of events; after all that happened in the sitting room, the duo in company of one another proceeded to the bedroom to sleep. That happened with no evidence of force, threat or coercion by the appellant towards his victim. That is where the doubt kicks in. That relaxed mood ought to have made it possible for the victim to escape and raise alarm. There is too, no evidence suggesting that when the parties slept in the room from early night to following morning, the appellant continued to restrain her to the extent that she would not escape and tell neighbours of what the appellant had done to her, for an immediate arrest in the same night." Reverting to the facts in the present case, if the incident were so horrifying to the extent that she raised an alarm and the alarm could not be heard because of the loud music as alleged in her testimony, why did the victim fail to report the matter to the neighbors or anybody in the vicinity. She would have, as well, reported the matter the moment she went back home. In her further testimony, the prosecutrix alleged that she was penetrated twice by the appellant. Initially it was on a Sunday and then on a Saturday. However, she did not mention the incidents, either to her parents or anyone else. The question I ask: myself here is whether the victim, a girl of seventeen years and a secondary school student, would be raped and not report the incident in the first place? Why didn't she report the matter the second and third time? In fact, she did not report the matter at any point. It is also unfortunate that the prosecution did not lead the prosecutrix to state any reasons as to why she did not report the matter. The issue of delay in reporting the incident is not new. It has been dealt with in many cases including the case of *Yust Lala vs Republic* (Criminal Appeal No. 337 of 2015) [2015] TZCA 328 (15 October 2015) TANZLII, where the Court of Appeal was faced with an akin situation. In that case, the appellant was charged at the Resident Magistrate's Court of Manyara at Babati with the offence of rape contrary to sections 130 (1) (2) (e) and 131 (1) of the Penal Code. He was also charged with an alternative count of impregnating a schoolchild contrary to section 35 (3) of the Education Act. The Court noted that, while the offence was alleged to have been committed On 14th day of July 2013, the victim mentioned the appellant as the person responsible for the pregnancy in November

2013. The Court (Mwarija, J.A) at page 10 stated: "In our considered view, the lapse of time between the alleged rape and the time when the appellant was mentioned raises doubt on the credibility of PW1. It was her evidence that she did not mention the appellant for all that period because of his threat that he would slaughter her if she discloses to anybody that he raped her. Since she was not staying with the appellant we find it doubtful that with such a serious offence, she could for all that period fail to tell her mother about it." It is also trite that the ability of a victim or witness to name a suspect at the earliest opportunity is ah

all-important assurance of his or her reliability. This was stated by the Court in the case of Marwa Wangiti and Another v Republic, Criminal Appeal No. 6 of 1995 (unreported) that: -

17 The ability of a witness to name a suspect at the earliest opportunity is an all-important assurance of his reliability in the same way as unexplained delay or complete failure to do so should put a prudent court to inquiry. In the present case the three incidents of rape were alleged to have happened on diverse dates in March 2023. However, they were not reported until on 6th day of May 2023, when Pw2 noticed, from text messages, that her daughter was engaged in a sexual relationship with the appellant. There was therefore a delay of almost two months. There was no evidence that she was threatened not to report the matter. In fact, her evidence presupposes that she kept communicating and going back to the appellant's house and kept the incidents a secret even from her mother. Under these circumstances, the credibility and reliability of the victim is questionable. Secondly, according to the victim at one point Agnes about the affair and forwarded their intimate conversations to her mother (Pw2). Her mother also became aware of the conversations and relationship with the appellant. However, even the mother did not take any steps to report the matter to relevant authorities. Instead of reporting the matter to relevant authorities, the mother sought advice from the victim's grandmother. The question that arises from this version of stories is whether the prosecution case is worth believing. It defeats conscience that mother will discover that her minor daughter is involved in a sexual relationship and yet fail to report the matter. Thirdly, it is evident from the records that the "smoking gun" to the appellant's arrest were the intimate text messages from the 18 communication between Pw1 and the appellant discovered by her mother, Pw2, on 6th day of May 2023. From these messages, a trap was set to apprehend the appellant. A trap was successfully set and on the on the 7th day of May 2023, the appellant was arrested at his house with the victim. This version is also not without some questionable issues: one, as correctly argued by the appellant, the prosecution failed to provide any cogent evidence that he gave a SIM card to the victim and that it was the appellant who was communicating with the victim on the phone. Two, the prosecution did not present evidence that there were intimate text messages from the appellant to the victim. In the absence of proof of such messages the prosecution version remains to be an unproved hypothesis. Three, the trap was meant to establish that the appellant was having sexual intercourse with the appellant, if indeed a trap was set and executed there was no evidence that the appellant and victim were caught in a sexual act. Four, the key witnesses who could have established that there were communications between the appellant and the victim, and that the appellant was arrested with the victim inside his house were not summoned to testify and render credence to the prosecution case. This was crucial because the appellant alleged that Pw2 did not even go to his house when he was being arrested. In my respectful view, all the above noted matters were material and prejudicial to the prosecution case as they undermined the credibility of the prosecution case to its core. While it is true that every witness is entitled to credence and his or her evidence believed and accepted unless there are cogent and good reasons for not believing the witness. One of the cogent and good reasons for not 19 believing a witness is the fact that the witness has given improbable or

implausible evidence, or the evidence has been materially contradicted by another witness or witnesses. In the present case, the circumstances narrated above in the testimony of Pw1 and Pw2 constitute good and cogent reasons to disbelieve the prosecution evidence. It is: settled that for a court to base a conviction on the evidence of a sole eyewitness, their evidence must be watertight. See *Pascal Yoya @ Mganga vs Republic* (supra). I am satisfied that, had the learned trial magistrate carefully considered and scrutinized the entire evidence on record, he would have found that the prosecution evidence was not watertight. This conclusion supports the appellants complaint in the second, third, seventh and ninth grounds of appeal. The incredibility and unreliability of the prosecutrix in the present case is heightened by the appellant's allegation that the victim's parents attempted to have him repair a sofa set which was allegedly stolen. The appellant narrated further that he was arrested whilst asleep by people who enquired whether he knew the appellant's father. When he enquired for the reasons of his arrest, he was told that the sofa which he was required to repair was suspected to have been stolen. The appellant's argument is that he was arrested on information that a person at the police station has implicated him in a burglary case. The lapses in the prosecution case, as pointed out above, served to verify his defense that he was framed. The conclusion of the matter is that this appeal succeeds on the strength of the second, third, seventh and ninth grounds of appeal. 20 For that matter, I shall not spend my energy and resources in a fruitless endeavor to resolve the remaining grounds of appeal. The appeal is therefore merited and allowed. Accordingly, I quash the appellant's conviction and set aside the sentence meted by the trial court. I order and direct that the appellant be set free unless otherwise lawfully held. The appeal is disposed in aforestated terms. DATED at IRINGA this 13<sup>TH</sup> day of SEPTEMBER, 2024. S.M.'KALUNDE  
JUDGE 21

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