

TANZANIA / JUDGMENT

19710305 TZHC Mwanza4

COURT
TZHCDECIDED
5 March 1971

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

:-'-': F : - Hi HIGH COURT OF 'T'INZAHIL AT :!ANZA Appellate Jurisdiction CRILIIIEAL APEEKt NO. 369 OF 1 9 7 0 (original Ci'iminal Case No. 954 of 1969 of the district court of Mwanza before J. A.. Mroso Esq., resident istrete). SILVESTELI. PAUSTIN • .AITELLANT (oLic-iilL ACCUSED) versus THI REHJBLIC • • • . • • .RESPONDENT (o:Ic:-nAL EOSECTJTOP) OHARGE:— Rape contraij to sections 130 and 131 of the Penal Code.

JUDGMENT

KISANGA, .Ag.J. The appellant Silvester Fuastin was charged with mid convicted of 48 rape contrary to sections130 and 131 of the Penal Code zjld was sentenced to two years imprisonment. He now appeals against the conviction and sent The complainant .Anina Kassim in this caso was a girl aged about 18 years She said that before the incident, the appellant had proposed marriage to her but her parents rejected the proposal because she and the appellant were of different religions On 12.10.69 the complainant walldng along the road returning home at about 8 p.m., and when she was near Chopra Secondary School, the appellant suddenly appeared from behind and asked her why her parents refused his proposal for marriage, adding that the was going to 'destroy" her. He caught bold of her and felled her down in the course of which her 1 ahcrCa was torn. 1- He then rnoved her underpants and had se::ual intercourse with her. She cried but nobody cmae to her rescue. After the appellant had finished, the complainant ran hoLle and immediately complained to her grandmother (P. 11.2) who examined her and noticed blood on her vaginc The matter was reported to the police on the sane night The complainant was ten to the hospital for exnination following which the appellant was apprehended and charged with the off ence' The appellant in his sworn evidence agreed that he had sexual intercourse with the complainant but stated that he aid so with the complainant's consent. He called a witness (.H.i) who sLid, mnong other things, that one day he did entertain the coniplainnt and the appellant at his home The learned trial magistrate, however, rejected tl -ie appellants dafence and convicted him accordingly. In convicting the appellant, the learned trial magistrate accepted the evidence of the complainant md found that her evidence was adequately corroborated, but upon a closer examination of the evidence, it would seem that there of corroboration. 2 sexual intercourse itself was not in issue because it was adnit'ici by the appellant hinseif. The onl y issue in dispute :zae that of consent, because the complainant alleged that there was none while the appellant alleged that there was consent, and the question is whathur there was sufficient corroboration of the complainant on this point; The learned trial magistrate appeared to have

found corroboration on this point, from the fact that the complainant's khsnga aias torn and also from the fact that, the complainant was crying at the time she reported the matter to her grandmother, P.]² He further argued that if the complainant had consented to the act, he saw no reason why the sexual intercourse should have taken place on the road s by which the learned trial magistrate appears to suggest that if there had been cansent then the parties would have arranged to have the sexual intercourse in some private place All these points considered together might have asounted to corToboration but there was something in the evidence of the cosiplainmit's grandmother (P.VT.2) which appears to raise some doubt. This witness said that the complainant was a virgin, and that whenever the complainant returned home, she (the witness) always examined her. She said, however, that on this particular occasion, after the complainant had made the complaint, she exanined her and noticed that she had lost her virginity'. Thus since was in the habit of examining the complainant whenever she returned home, it is possible that the complainant may have consented to the act of sexual intercourse, but . since this was bound to be discovered by P. 7 11; . 2 1 then she made up a story to cover herself by maldng false allegations against the appellant In the face of such a possibility, I an unable to say that there were any independent circumstances which sufficiently corroborated, the complainant' story. Learned State Attorney at first souit to support the conviction but on second thougths he changed his mind end for the reasons indicated above, I agree that considering all the circumstances of tha case., it would be unsafe to uphold the conviction'; Consequently', the appeal is allowed, the conviction and sentence are set aside and the appellant is to be released unless otherwise lawfully dot ained Delivered in Court at Mvianza on 5th March,)971 (H, H. Lasanga) Ag JIJDGE De EOuz& for Repuslic. Appellant absent unrepresented.

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/348983/source_file/d6b4701a5638057d/19710305_TZHC_Mwanza4.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/silvester-faustin-v-the-republic-rape-tzhc-1971>

Prepared on 24 October 2026 · Esheria