

TANZANIA / JUDGMENT

Judgement Criminal Appeal No

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT MOSHI CRIMINAL APPEAL NO. 27250 OF 2024 (C/F Criminal Case No. 20273 of 2022 in the Resident Magistrates Court of Moshi at Moshi) THABIT KOSIAN KIWOPE..... APPELLANT VERSUS REPUBLIC..... RESPONDENT

JUDGEMENT

10th February & 10th March, 2025 MONGELLA, J. The Appellant was arraigned before the Resident Magistrates Court of Moshi at Moshi (henceforth, the trial Court) for the offence of gang rape under Section 130 (1), (2) (e) and 131 A (1), (2) of the Penal Code [Cap 16 R.E 2022]. The particulars of the offence as depicted from the charge are that: on 02.07.2024 at “Daraja la Basi” area within Kahe area in Moshi district, Kilimanjaro region, the appellant and another male person, who is at large, had carnal knowledge of a 15-years-old girl (hereinafter referred to as the victim or PW1). The appellant denied the charge levelled against him rendering the case to proceeded to full trial. To prove its case, the prosecution Page 1 of 22 paraded eight witnesses. The prosecution’s case was on the following account: Sometime in May 2024, the victim, after completing her grade seven studies in September 2023 at Lomwi Primary School, went to live with her grandmother (PW2) at “Daraja la Basi” street in Kahe area. She moved to her grandmother following an arrangement to enrol her in a tailoring school. PW2 owned some cattle and the appellant was a herdsman who grazed cattle belonging to several individuals including PW2. PW2’s cattle used to be handed to the appellant for grazing whereby it was PW1’s brother’s responsibility to take the cattle to the appellant. It happened that, on 02.07.2024, PW1’s brother was not there to take the cattle to the appellant. In the circumstances, PW2 assigned the victim the duty to take the cattle to the appellant. PW1 headed to “Kwa Ndivu” a location where the handover of the cattle to the appellant is usually done. She however did not find the appellant at that place. Some children at that area informed the victim that the appellant had already gone to the grazing area which was a forest. The victim then headed to the area and saw the appellant on the way. She called for him to wait for her so that she could handover the cattle to him, but the appellant kept on moving while telling her to catch up with him. She eventually reached the appellant and handed over the cattle to him. As PW1 turned to head back home, the other male in company of the appellant held PW1’s hand tightly. The appellant laid her down, Page 2 of 22 stripped off her skin tight and underpants and pulled up her gown. As the other man held the

victim's hands, the appellant pulled down his trousers to his knees and raped the victim. After finishing, the appellant dressed and held PW1's hands. The other man also took off his trouser and shorts and raped the victim as well. After the ordeal, the two men left with the cattle leaving the victim at the scene. The victim pulled herself up, grabbed her underpants and walked to a nearby farm whereby she found a woman. She narrated to the said woman on what had transpired. As the said woman sought transport for the victim; PW5, a motorcyclist, appeared at the area and rode the two of them to PW2's house. By that time PW2 had gone out searching for the victim following her delay in returning home, which got her worried. Shortly, the victim appeared on a motorcycle in company of PW5 and the Samaritan woman. Generally, the victim appeared dirty. She had dust on her head and blood stains at the back of her gown. After narrating the incident to PW2, PW5 and the said woman left. PW2 headed to the village office to report the incident. PW3, the hamlet chairman was assigned to escort the victim and PW2 to Kahe police post to report the incident. PW6 accompanied PW3 and others to the police post. Upon arrival at the police post, PW7, a police officer who attended the three, issued a PF3 and instructed them to head to hospital. Page 3 of 22 At the hospital, the victim was attended by PW4, a medical doctor. Upon examining her, he found her labia majora and minora with bruises. She as well found the victim's hymen not intact. PW4 concluded that the victim's vagina had been penetrated by a blunt object. He filled the PF3 and tendered it. The same was admitted as exhibit PE1. On the same day, around evening hours, PW3 called PW7 informing him that the appellant was seen heading back to his boss' house where he also lived. It was then that PW6, PW7 and another police officer went to the said house. They were informed that the appellant was not in. However, PW6 ended up seeing him under the bed. The appellant was then arrested and sent to Kahe police post and later transferred to Moshi central police station. On the same day, he was interrogated by PW8 who was also assigned to investigate the case. In his defence, the appellant denied the charge levelled against him. He alleged that the case was fabricated against him. Testifying on events of the day, he stated that PW2 telephoned him inquiring as to whether he had gone to the grazing ground. He replied that he was yet to leave and told her to bring her cattle at "Kwa Ndivo" area. When he reached "Kwa Ndivo," he did not find PW2's cattle. He took the other cattle to grazing and while on the way, he was telephoned by one Rashidi informing him that PW2's cattle had arrived. He told the said Rashid that he was heading to the forest. Thereafter, PW2's cattle were brought at "Bomba Mbili" area and handed over to him whereby the victim left with her dogs. Page 4 of 22 He further alleged that at around 13:00hrs, PW2 called him accusing him of raping the victim, allegations he denied. When at home, PW6 arrived and he was arrested and sent to Kahe Police Post whereby he was forced to admit that he had raped the victim so that he could marry her. He claimed to have been also persuaded to mention other culprits. He said he was then sent to Moshi Police Station and interrogated again. He insisted that the case was fabricated against him claiming that the intent behind the whole issue was to evade paying him his wages. After observing the entire case, the trial court found the appellant guilty as charged. It proceeded to convict and sentence him to life imprisonment. Aggrieved by the said conviction and sentence, he has preferred this appeal on the following grounds:

1. That, the learned trial Magistrate grossly erred both in law and fact in failing to note that the charge was at variance with the Evidence on record.
2. That the learned trial Magistrate grossly erred both in law and fact in failing to note that the victim of the alleged offence (PW1) failed to name the suspect at the earliest possible opportunity. An omission which cannot attract the confidence of her testimony before the court of law.
3. That, the learned trial Magistrate grossly erred both in law and fact when failed to draw an adverse inference on the prosecution for failure to summon the material witnesses. Page 5 of 22
4. That, the learned trial Magistrate grossly erred both in law and fact in using weak, tenuous, contradictory, inconsistency incredible and wholly unreliable prosecution evidence as a basis of the Appellants conviction. [sic]
5. That, the learned trial Magistrate grossly erred both in law and fact in convicting and sentencing the appellant despite the charge not being proved beyond reasonable doubt against the Appellant and to the required standard by the law. Hearing of the appeal proceeded by written submissions. While the appellant fended for himself, the respondent was represented by Mr. Henry Kasiano Daudi, learned State Attorney. The appellant started addressing the 1st ground whereby he alleged that while the charge disclosed that the offence took place at “Daraja la basi” area, none of the prosecution witnesses testified the same. Explaining further, he alleged presence of variation between the testimony of PW1, PW2 and PW3 on the place of the incident. He contended that PW1 (the victim) testified to the effect that the ordeal took place at “Forest” near an area known as “kwa ndivu”. That, PW2, on the other hand, testified that she lives with PW1 at Oriyo Kahe and that, PW3 testified that the incident occurred at “Forest Kahe.” Commenting on the alleged variation, the appellant argued that the prosecution ought to have amended the charge as provided Page 6 of 22 under Section 234(1) of the Criminal Procedure Act [Cap 20 R.E. 2022]. He contended that the prosecution’s failure to amend the charge rendered the same unproved. To cement his averment, he cited the following cases: John Julius Martin & Another vs. Republic (Criminal Appeal 42 of 2020) [2022] TZCA 789 (8 December 2022); Godfrey Simon & Another vs. Republic (Criminal Appeal No.296 of 2018) [2022] TZCA 8 (11 February 2022) whereby the Court of Appeal made reference to the case of Bainth and Another vs. Republic, Criminal Appeal No.339 of 2013 (unreported) and; Salim Abdallah Maganga vs. Republic (Criminal Appeal No. 285 of 2020)
- [2023] TZCA 17680 (2 October 2023). Addressing the 3rd ground, the appellant faulted the prosecution case for failure to call material witnesses. He contended that if such witnesses were called, they would have rendered credence to PW1’s evidence. He cited the case of Azizi Abdalah vs. Republic

[1991] TLR 71 averring that the prosecution has the duty to call all witnesses failure of which an adverse inference ought to be drawn by the trial court. In that respect, he prayed for this Court to draw an adverse inference against the prosecution for failure to call material witnesses and find the case unproved. The appellant made no submission on the other grounds of appeal. He finalized his submission by praying for the Court to find his appeal with merit, allow the same, quash the conviction, set aside the sentence and set him at liberty. Page 7 of 22 On the other hand, Mr. Daudi, learned State Attorney, opposed the appeal. Replying to the 1st ground, he denied there being any variance between the charge and the evidence concerning the place where the incident took place. He argued that the charge states that the incident took place at “Daraja la Basi” area. Referring to PW1’s testimony, he contended that PW1’s evidence was that she lives at “Daraja la Basi” and the offence occurred at the grazing forest where she took cattle to the appellant for grazing. With regard to PW2’s testimony, he argued that PW2 testified that the offence occurred at grazing ground at “Daraja la Basi” and further explained that “Daraja la Basi” is a street in Kahe area. He added that this fact was cemented by PW8, the investigator of the case who stated that the incident took place at “Daraja la Basi” Kahe area, in the wilderness and that the victim could not get help as it was in the wilderness. Responding to the appellant’s argument that the charge ought to have been amended to cure the variance between the charge and the evidence, Mr. Daudi contended that there was no reason of doing that as there was no any material variance between the charge and evidence on place the incident took place. Addressing the 2nd ground, Mr. Daudi firmly contended that PW1, the victim, named the appellant as the suspect at the earliest possible opportunity. Defending his stance, he argued that the incident took place on 02.07.2024 and the appellant was arrested on the same date showing that he was mentioned on the very same date. He added that PW3 testified that the village Chairman, Page 8 of 22 the Village Executive Officer (VEO), the victim and PW2 mentioned the appellant as the culprit. While appreciating the legal position that naming a suspect at the earliest possible opportunity is important in assuring credibility of a witness; he contended that in the matter at hand, even if the same would have not been done, it would not be fatal. He held such stance explaining that being a rape case, there are issues of trauma and stigma toward victims. He cemented his position with the case of Kennedy Paul Mosha vs. Republic (Criminal Appeal No. 578 of 2020) [2024] TZCA 413 (7 June 2024), 7 June 2024. With respect to the 3rd ground, Mr. Daudi made reference to Section 143 of the Tanzania Evidence Act [Cap 6 RE 2022] contending that the provision does not compel a particular number of witnesses to be called by the prosecution. He cemented this argument with the case of Goodluck Kyando vs. Republic [2006]. With regard to the matter at hand, he explained that the prosecution called all material witnesses. He averred that the omission to call the woman the victim first met is baseless as there is nothing that the witness could have added on the prosecution case that was not stated by PW5. Jointly submitting on the 4th and 5th grounds, Mr. Daudi was of the view that the evidence adduced by the prosecution was consistent, credible and strong starting with PW1 who testified to have been raped by the appellant and another man who was still at large; she was then assisted by PW5 who took her home where Page 9 of 22 they

found PW2. That, PW2 took her to the village office whereby they were received by PW3 and advised to report the matter to Kahe Police Station. That, PW7 received them at the station and issued a PF3 whereby they went to Mawenzi Hospital whereby PW4 examined PW1 and confirmed that she was penetrated by a blunt object. The learned State Attorney further argued that in statutory rape the prosecution has to prove three elements; one, the victim is under the age of 18; two, the victim was penetrated and; three the accused is the one who raped the victim. He referred the case of Elia Richard Shoo vs. Republic (Criminal Appeal No. 196 of 2021) TZCA 422 (10 June 2024) to support his argument. Submitting on the 1st element, he contended that PW1, the victim herself, testified that she was 15 years old. PW2, her grandmother testified the same and stated that PW1 was born on 21.09.2008. He argued that all these facts were not challenged in cross examination nor in the appellant's defence rendering the victim's age proved as per ways established in Issaya Renatus vs. Republic (Criminal Appeal No. 542 of 2015 [2016] TZCA 218 (26 April 2016) TANZLII. On the element of penetration, Mr. Daudi averred that PW1 narrated how she was carnally known by the appellant after she handed the cattle to him. He argued further that PW4 examined her and found her stained with fresh blood and blood stains in her vagina. She also had bruises in her labia majora and labia minora Page 10 of 22 and had no hymen, suggesting that she had been carnally known. In the premises, Mr. Daudi had the conclusion that the evidence of PW1, PW2 and PW4 proved rape was committed against PW1. As to the 3rd element on who committed the offence, Mr. Daudi insisted that the best evidence in the offence of rape comes from the victim. He cemented this averment with the case of Selemani Makumba vs. Republic [2006] T.L.R 329. Expounding on this legal position in relation to the evidence in this case, he contended that PW1 narrated how the appellant and another man at large committed such act. He said that the offence was committed at day time and PW1 knew the appellant from before thereby removing questions of mistaken identification. He insisted that PW1 is entitled to credence as all witnesses are entitled to credence unless there are good and cogent reasons as held in Goodluck Kyando (supra). Mr. Daudi finalized his submissions by praying for the appeal to be dismissed. I have considered grounds of appeal, the submissions of both parties and the trial court record. It appears herein that the appellant only submitted on two grounds of appeal. However, on the other hand, Mr. Daudi went a mile in his reply as he submitted on all grounds of appeal. Considering that the appellant is a layman and unrepresented and had not expressly abandoned the other grounds; I will consider all the grounds of appeal for two reasons being; one, the interest of justice and two, most of the grounds are interconnected with the question as to whether the charge was proved beyond reasonable doubt. Page 11 of 22 As it appears, on the 1st ground, the appellant alleged that there is a variance between the charge and the evidence on record as to the place where the incident took place. I admit, as submitted by the appellant, that where there is a variance between the charge and the evidence presented, the charge ought to be amended. This requirement is well enshrined under Section 234(1) of the Criminal Procedure Act. The same position was well expounded in Erasto John Mahewa vs. Republic (Criminal Appeal No. 287 of 2020) [2023] TZCA 17678 TANZLII, whereby the Court of Appeal held: "It is trite law that, the

allegations contained in the charge must be supported by the prosecution account so as to prove the charge beyond reasonable doubt. The variance between the charge and the evidence adduced can be remedied before the end of the trial by invoking the provisions of section 234 (1) of the Criminal Procedure Act [CAP 20 R.E 2022] to amend the charge for cases triable by the subordinate courts like the present one. Where the variance remains unchecked, the adverse effect is that the prosecution case will be rendered not proved.” As stated in the above cited case, where the requirement to amend the charge is violated, the charge will be rendered unproved. See also, Salim Abdallah Maganga (supra); John Julius Martin (supra) and; Godfrey Simon (supra). To this juncture, the underlying question in the case at hand, is therefore whether there is variance between the charge and the Page 12 of 22 evidence on record, as to the place the offence was committed. The appellant claims that the variation is apparent on the evidence of the prosecution witnesses. Specifically, he challenged the evidence of PW1 and PW2. The respondent, on the other hand, countered that the evidence of the prosecution witnesses elaborated in detail the place at which the offence was committed. Upon observing the trial Court record, I found the charge showing that the offence took place at “Daraja la Basi” Kahe area, within Moshi district in Kilimanjaro region. PW1 testified that she lives at Daraja la Basi area, but the offence took place at the forest where the appellant was herding cattle. PW2, on the other hand, testified that she resides at Orio Kahe with PW1 and further explained that the incident occurred at the forest in the grazing ground at Daraja la Basi. She explained that Daraja la Basi is a street in Kahe- Oria. PW2’s explanation of the geographical area mentioned in the charge is somewhat supported by PW3, the Kahe- Oria Hamlet Chairman. PW3 stated that Daraja la Basi is located between his hamlet and another hamlet. PW5, a motorcyclist who carried PW1 home, testified to have found PW1 and the woman that assisted her at Daraja la Basi. PW8, the investigator, also shed a light on the geographical appearance of the area. She stated that upon investigating, she found out that the incident took place at Daraja la Basi Kahe in the wilderness. Page 13 of 22 Considering the testimonies as elucidated above, it is my view that the mentioned witnesses sufficiently established that the offence took place at Daraja la Basi which appears to be a street in Kahe- Oria Hamlet. In fact, as well explained by PW8, the incident took place at the forest or wilderness which appear as terms used interchangeably on record although the two carry somewhat diverse meanings. PW5’s testimony backs this fact as he found PW1 seeking transport in company of a woman. This woman was located by PW1 within a short distance upon her attempt to head back home after the incident. This makes it more certain that the grazing ground at which the incident occurred was within Daraja la Basi- Kahe within Moshi District and Kilimanjaro Region. By this observation, I find that the place the offence was committed, as stated in the charge, was duly proved by the prosecution. The 1st ground of appeal is therefore found to lack merit. Under the 2nd ground, the appellant faults PW1’s evidence on the ground that she failed to name the suspect at the earliest possible opportunity. Foremost, I wish to re-state my observation that the appellant made no submissions with respect to this ground. However, for interest of justice and considering that the argument was replied to by the respondent’s counsel, I

took upon myself to deliberate on this matter. On this issue, I am at one with Mr. Daudi that the appellant was indeed named at the earliest possible opportunity. Page 14 of 22 The evidence of PW1 and PW2 suggests that the incident took place between 09:00hrs and 11:00hrs. According to PW4, he medically examined PW1 at 15:00hrs. On the other hand, PW7 stated that the appellant was arrested on the same day of 02.07.2024 at around 17:00hrs. It was on the same day that the appellant was also interrogated by PW8. From the aforementioned flow of events, and estimated time in which they occurred, it is apparent that the appellant was mentioned at the earliest possible opportunity. The appellant's arrest within hours of the incident could not have been possible otherwise. This ground therefore is also without merit. With respect to the 3rd ground whereby the appellant claims failure by the prosecution to call material witnesses; I wish to point out that while the appellant submitted on this matter, he did not state what important witness was missing and what material evidence was such witness expected to present and how the omission to call such witness affected the prosecution case. In his reply, Mr. Daudi assumed the woman mentioned to assist PW1 after the ordeal was the mentioned witness. While it is true that the Court can draw an adverse inference when an important witness is not called, the same can only be done when the evidence on record is insufficient and clarity could only be achieved with the testimony of the missing witness. This was well explained in Sumitu Abdallah vs. Republic (Criminal Appeal No. Page 15 of 22 247 of 2021) 2023 TZCA 17994 (14 December 2023) TANZLII whereby the apex Court stated: "The adverse inference will only be made by the court if the prosecution evidence is not or barely adequate. Accordingly, it will not be inferred where evidence tendered is sufficient to prove the particular issue or the entire case. In order for the adverse inference to be made, the evidence of the missing witness must be such as would have elucidated a matter. The appropriate inference to draw is a question of fact to be answered by reference to all the circumstances of the particular case." Upon viewing the prosecution case, I did not find any missing facts that should have been filled by any missing witness. As reasoned by Mr. Daudi, even the mentioned woman did not have any facts that appear to be missing from the prosecution side as PW5 testified on similar facts as the victim. The woman did not know the assailant behind the crime, but only appeared to help PW1 to get home and shortly after, PW5 arrived and gave them a ride in his motorcycle. As the woman appears not being a material witness in this case, this ground also fails. On the 4th ground the appellant alleged presence of inconsistencies on the prosecution evidence. He as well challenged the prosecution evidence for being weak. However, upon observing the prosecution's evidence, I found no inconsistencies or weaknesses. Besides, the appellant never submitted on this ground to show the base of his assertions. On the contrary, the whole ordeal as narrated by the prosecution Page 16 of 22 depicted transparency in the whole process and every necessary step that ought to have been taken in the aftermath was duly observed. After being raped by the appellant at the grazing grounds in the forest, PW1 sought help from a woman who made effort to secure transport for her. PW5 took the woman and PW1 to her home where PW2 had been anxiously waiting for her. According to PW2, she appeared dirty with dust on her head and blood on her gown. Upon the incident

being narrated to her, PW2 took PW1 to the village office. In company of PW3, their Hamlet Chairman, PW1 was then sent to Mawenzi Hospital whereby she was examined by PW4. Upon examination, PW4 remarked that there were bruises on her labia majora and labia minora. There was also blood on both sides and she had no hymen. He concluded that her vagina had been forcibly penetrated by a blunt object. PW4 also testified on PW1's general appearance whereby he said that she had mud and blood on her clothes. PW6 testified on the appellant's arrest which was done by PW7 and another police. The appellant was then sent to Kahe police post and eventually transferred to Moshi central police station. PW8 was not only assigned to interrogate the appellant the same day, but also assigned to investigate the case later on. Eventually the appellant was arraigned. In my observation, I find there being no any piece of information given by any of the witness suggesting that the charge was fabricated against the appellant as he claimed. Page 17 of 22

With regard to the final ground of appeal, that is, the 5th ground; the appellant raises a major question on whether the case was proved beyond reasonable doubt. This is in fact the foundation of this appeal. I wish to start by stating that it is settled principle and law that the prosecution bears the burden to prove the charge against an accused person beyond reasonable doubt. The charge is proved when the evidence supports all ingredients of the offence as appearing in the charge. As I indicated at the beginning of this Judgement, the appellant was charged with gang rape. PW1 being a minor, consent becomes immaterial bearing in mind that the offence charged is referred to as statutory rape. Statutory rape was better described in *George Claud Kasanda vs. DPP* (Criminal Appeal 376 of 2017) [2020] TZCA 76 TANZLII whereby the Court of Appeal explained: "As highlighted above, the appellant was being accused of carnally knowing a girl aged 16 years. On account of that, the learned State Attorney was of the view that the offence section ought to have cited section 130(1)(2)(e). In essence that provision creates an offence now famously referred to as statutory rape. It is termed so for a simple reason that, it is an offence to have carnal knowledge of a girl who is below 18 years whether or not there is consent. In that sense age is of great essence in proving such an offence. The prosecution is duty bound to establish among other ingredients, that the victim is under the age of eighteen so as to secure a conviction." Page 18 of 22 See also: *Mussa Sebastiani vs. Republic* (Criminal Appeal 406 of

2018) 2021 TZCA 119 (15 April 2021). When a party is charged with statutory rape, the prosecution is duty bound to prove three things: one, the age of the victim; two, penetration of the victim by one or more than one person in a group of persons including those abetting the commission of and; three, that the accused person was responsible for the act. The elements of gang rape as advanced under Section 131 A (1) of the Penal Code were better explained in the case of *Imani Charles Chimamngo vs. Republic* (Criminal Appeal No. 382 of 2016) [2019] TZCA 30 (21 February 2019) whereby the Court of Appeal stated: "Unlike the offence of rape under section 130, the phrase: "is committed by one or more persons in a group of persons, each person in the group committing or abetting the commission of the offence" appearing in sub-section (1) of section 131A aggravates the committed offence of

rape to that of gang rape like what pertains in the offence of rape under section 130 where the prosecution must establish both lack of consent and penetration; lack of consent and penetration must similarly be proved in gang rape under section 131A. In gang rape, evidence must in addition prove the role of another person or other persons abetting or assisting in the commission of the rape. Again, the prosecution needs not prove that each member of the group achieved any penetration for the offence to be committed. Penetration by one member of the group, facilitated by another or others, will be sufficient to ground a conviction.” Page 19 of 22 The age of the victim can be proved by the victim, parents, guardians, birth certificate or a medical practitioner. See, Issaya Renatus vs. Republic (Criminal Appeal 542 of 2015) [2016] TZCA 218 (26 April 2016) TANZLII in which the Court stated: “We are keenly conscious of the fact that age is of great essence in establishing the offence of statutory rape under section 130 (1) (2) (e), the more so as, under the provision, it is a requirement that the victim must be under the age of eighteen. That being so, it is most desirable that the evidence as to proof of age be given by the victim, relative, parent, medical practitioner or, where available, by the production of a birth certificate.” From the prosecution’s account, PW1, the victim herself, stated that she is 15 years old. PW2, her guardian, reiterated her averment. There was also no contention as to her age. In the premises, the victim’s age was duly proved. As to penetration, PW1 testified that the appellant and another man inserted their manhood into her female organ one after another. The other man was at large during trial, which is the reason the appellant was singly arraigned. PW1’s testimony was backed by the testimony of PW4 who, as mentioned earlier, explained to have found PW1’s vagina with bruises, fresh blood and without hymen. He concluded that the victim was penetrated by a blunt object. This fact is also reflected in the PF3 admitted as Exhibit PE1. As to whether the appellant was the assailant that raped PW1; PW1’s evidence was very clear to the effect that she knew the Page 20 of 22 appellant prior to the incidence. This fact was also attested to by PW2 and even the appellant himself. It is on record that the incidence took place between 09:00hrs to 11:00hrs whereby PW1 had taken the cattle to the appellant only to return home carried on PW5’s motorcycle, dirty and with a bloodstained gown. The appellant being known to her and the offence having occurred during morning hours, there was clearly no chance of mistaken identity. PW1 testified that she did not know the other man, but knew the appellant. It is trite that in sexual offences the best evidence is that of the victim. See, Selamani Makumba (supra). It is also settled that witnesses are entitled to credence unless there are cogent reasons to not believe the witness. I thus find no reason to doubt PW1 in regard to her identification of the appellant. I have as well gone through and considered the appellant’s defence. In his defence, the appellant failed to raise a reasonable doubt. His entire evidence was that he was framed. According to him, on the material day, he received the cattle from PW1 who left there and then leaving him heading to graze. He however, had no detailed explanations to suggest hostility between him and the victim or any other prosecution witnesses as to indicate the case against him was fabricated. As such, the prosecution case remained unshaken. Page 21 of 22 In conclusion, it is my finding that the case against the appellant was proved beyond reasonable doubt. I thus find no merit on this

appeal and hereby dismiss it. Dated and delivered at Moshi on this 10th day of March, 2025.
X L. M. MONGELLA JUDGE Signed by: L. M. MONGELLA Page 22 of 22

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