IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

(CORAM: KILEO, J.A., ORIYO, J.A., And JUMA, J.A.)

CRIMINAL APPEAL NO. 587 OF 2015

RAMADHANI JUMANNE ..... APPELLANT

VERSUS

THE REPUBLIC ..... RESPONDENT

(Appeal from the decision of the Resident Magistrate Court of Singida at Singida)

(W.E. Lema, PRM (Ext. Jurisdiction)

dated the 4th day of December, 2015
in
PRM. Criminal Appeal No. 49 of 2015

JUDGMENT OF THE COURT

15th & 19th April, 2016

KILEO, J.A.:

The appellant was charged and convicted of rape contrary to sections 130 (1) (2) (e) and 131 (1) of the Penal Code in the District of Iramba. The particulars of offence have it that:

Ramadhani s/o Jumanne charged on the 26th day of April, 2003 at about 22.00 hrs at Matyuku village within the district and region of

Singida did have carnal knowledge of one Sophia d/o Ismail without her consent.

He appealed to the High Court, which pursuant to section 45 (2) of the Magistrates' Courts Act, Cap 11 R. E. 2002 transferred the appeal to be heard by Hon. W. Lema, Principal Resident Magistrate with extended jurisdiction. The appellant was unsuccessful in his appeal hence this second appeal.

The brief facts of the case as were revealed at the trial are to the effect that at around 22.00 hrs on 26th April 2003 at Matyuku village while the victim, (PW1) and her siblings (PW2) and Johari (who did not testify) were sleeping, the appellant who was their neighbor gained entry into their room without invitation and proceeded to rape PW1.

The appellant denied to have committed the crime adding that due to impotency he was incapable of having sexual intercourse with anyone.

The appellant appeared before us in person at the hearing of his appeal. The respondent Republic was represented by Ms Lina Magoma, learned State Attorney.

The appellant filed five grounds of appeal in which he basically impugned the decision of the first appellate court for failure to consider his defence and for sustaining a conviction on a case that had not been proved considering that essential witnesses did not testify.

When we called upon the appellant to address us on his grounds of appeal he opted that the learned State Attorney submits first.

Ms Magoma outright supported the appeal but on legal grounds. She submitted that the appellant was convicted on a charge that was fatally defective. Elaborating, the learned State Attorney claimed that the charge filed against the appellant which was under section 130 (1) (2) (e) of the Penal Code did not mention the age of the victim and further complicated the matter by stating that the appellant had carnal knowledge of the victim 'without her consent'. Ms Magoma also opined that the failure to prove the age of the victim completely negated all the proceedings in the case. She referred to our decision in **Solomon Mazala v. the Republic,** Criminal Appeal No. 136 of 2012 (unreported) in support of her submission.

The appellant, understandably being a lay person, did not have anything to add to the learned State Attorney's submission.

The matter need not detain us. We ascribe to the learned State Attorney's submission that the way the charge was framed did not meet the requirement imposed by section 132 of the Criminal Procedure Act, Cap 20 R. E. 2002 which requires that a charge contain such information as to give reasonable information to an accused as to the nature of the offence charged. The section provides:

> **"132. Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged."**

The particulars of the charge which we have already mentioned before claimed that the appellant had sexual intercourse with Sophia Ismail without her consent, yet the section that was cited creating the offence charged is section 130 (1) (2) (e) of the Penal Code which is statutory rape. In statutory rape consent is immaterial. The age of the victim was

not even mentioned in the charge sheet which, as rightly pointed out by Ms Magoma, further complicated the matter. In **Solomon Mazala v. the Republic,** supra, the Court discussing section 130 (2) (e) of the Penal Code held:

> *"The cited provision of the law makes it mandatory that before a conviction is grounded in terms of section 130 (2) (e) above, there must be tangible proof that the victim was under 18 years at the time of commission of the alleged offence.* "

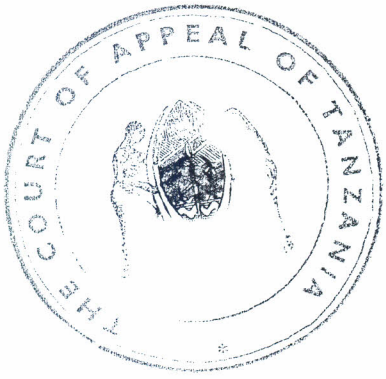
In this case neither was the age of the victim mentioned in the particulars of the charge nor was there any proof that the victim was actually under eighteen years of age at the time the crime was committed. As a matter of fact the particulars of the charge were so confusing that the appellant could not be expected to make an informed defence in the circumstances. In **Isidori Patrice v Republic**, Criminal Appeal No. 224 of 2007 (unreported) this Court stated:-

> *"...It is now trite law that the particulars of the charge shall disclose the essential elements or ingredients of the offence. This requirement hinges on the basic rules of criminal law and evidence to the effect that the prosecution has to prove that the*

accused committed the actus reus of the offence with the necessary mens rea. Accordingly, the particulars, in order to give the accused a fair trial in enabling him to prepare his defence, must allege the essential facts of the offence and any intent specifically required by law."

In the end we have no other option to take but to agree with the learned State Attorney that the charge was incurably defective, and it being so, all the proceedings which flowed from the defective charge were negated. In consequence thereof, we allow the appeal by Ramadhani Jumanne though on different grounds. Conviction entered against him is quashed and sentence is set aside. We order his immediate release from prison unless he is held therein for lawful cause.

DATED at **DODOMA** this 18th day of April 2016.



E. A. KILEO
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

I. H. JUMA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL