IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[ARUSHA DISTRICT REGISTRY]
AT ARUSHA.

CRIMINAL APPEAL NO. 96 OF 2019
(Originating from the District Court of Babati, Criminal Case No. 124 of 2019)

AMANI YUSUPH @BARAKA ..... APPELLANT

Versus

THE REPUBLIC ..... RESPONDENT

JUDGMENT

3rd May & 9th July, 2021

Masara, J.

In the District Court of Babati (the trial Court), the Appellant stood charged of the offence of Rape, contrary to Section 130(1) (2) (e) and 131 (1) of the Penal Code, Cap. 16 [R.E 2002]. When the charge was read over to him, the Appellant pleaded guilty. When the facts of the offence were also read over to him, the accused pleaded by saying that the victim was his girlfriend and that they had sexual affairs. The Appellant was therefore convicted on his own plea of guilty and sentenced to statutory sentence of 30 years imprisonment. The Appellant was aggrieved by both conviction and sentence imposed on him; he has therefore preferred this appeal on the following grounds:

a) *That, the trial court erred both in law and fact when it failed to evaluate and examine the said plea of guilty of the appellant;*
b) *That, the trial magistrate erred in law and in fact when she convicted and sentenced the appellant with the offence which he did not enter plea of guilty;*
c) *That, the learned trial magistrate erred both in law and fact when he convicted the appellant instantly with a serious offence without giving him a chance to consult an advocate or any legal advice/accessory; and*
d) *That, the whole trial court proceedings and decision were unfair marred by irregularities and hence reaching wrong decision.*

On 3/5/2021, the Appellant added six new grounds of appeal as follows:

a) *The learned trial Magistrate erred in law and fact by Convicting and sentencing the appellant without ascertaining the age of the victim;*

b) *That, the learned trial Magistrate erred in law and in fact when she failed to scrutinize the statement of the facts as a result arrived at a wrong decision;*
c) *That, the plea of guilty by the Appellant at the trlal Court was not unequivocal. The proceedings of the trial Court do not suggest that the charge sheet and the particulars thereof was read out and explained to the appellant to the language best known to him;*
d) *That, the trial (sic) erred in law and in fact when he failed to scrutinize the facts which were adduced by the prosecution side. The name of the victim which was a material element in the charge the appellant was facing was not mentioned in the memorandum of facts;*
e) *That, the Prosecution failed to tender a medical report, in the case like one at hand a medical report like PF3 would be a vital document to form part of the facts so as to satisfy the trial Court that the plea of an accused is indeed an unequivocal; and,*
f) *That, the trial Court erred on points law and facts in that he convicted the appellant on an improper plea of guilty.*

Basing on those grounds, the Appellant prays that the appeal be allowed by quashing the conviction and setting aside the sentence thereby letting the him at liberty.

At the hearing of this appeal, the Appellant appeared in Court in person unrepresented, while the Respondent Republic was represented by Ms. Tusaje Samwel, learned State Attorney. The appeal was argued *viva voce*.

During his submissions in Court, the Appellant appear to have abandoned some grounds of appeal. Submitting in support of the first ground of appeal, the Appellant contended that the trial Magistrate did not ascertain the age of the victim of the alleged rape while it is the requirement of the law to ascertain the age of the victim in case of statutory rape. He insisted that the Court records are silent on the date, month and year of the birth of the victim. He maintained that the prosecution did not tender any document to prove that the victim was 16 years old.

Illustrating on the 2nd ground of appeal, the Appellant submitted that he was convicted of rape on his own plea of guilty but there is no record to prove that the offence and statement of facts were read over to him in the language that he understands. He added that the name of the victim was not disclosed in the statement of facts.

The Appellant also contended that in the statement of facts, it was stated that the relationship started by writing of letters but there was no letter that was tendered. The date the incident was reported to the police and the date the Appellant was arrested were not mentioned, stated the Appellant. The Appellant urged the Court to consider all his additional grounds of appeal, praying that the Court allows his appeal and acquit him.

Contesting the appeal, the learned State Attorney stated that the Appellant was convicted on his own plea of guilty. She cited Section 360(1) of the Criminal Procedure Act, Cap. 20 [R.E 2019] stating that an appeal cannot lie against an accused's own plea of guilty, unless certain circumstances as detailed in the case of ***Laurent Mpinga Vs. Republic*** [1983] TLR 166 exist. That the decision provides four grounds under which an appeal against own plea of guilty can be preferred stating that none of them fit the circumstance of the present appeal.

Submitting on the first ground of appeal the learned State Attorney submitted that there are obvious distinctions between a full trial and a plea. She submitted that when the age of the victim was read over to the Appellant as part of the facts constituting the offence, he admitted it; which means there was no requirement of further proof.

Regarding the plea of guilty, the learned State Attorney averred that the Appellant pleaded guilty after the charge was read over to him and also when

the statement of facts was read and explained to him. She maintained that the charge sheet and the statement of facts are always read in Kiswahili even if the records are in English. The Appellant also signed in the statement to prove what was read over to him.

Submitting on the missing name of the victim, Ms Tusaje propounded that the name of the victim was not revealed due to child protection; adding that they normally refer victims of sexual offences as victims or by their initials. According to the learned State Attorney, other matters complained about should have come from evidence but the plea of guilty short circuited them by pleading guilty.

Ms. Tusaje fortified that the Appellant in his mitigation confirmed that he was arrested and even parents met to resolve the issue. She cited the case of ***Ramadhani Haima Vs. The D.P.P***, Criminal Appeal No 213 of 2009 (unreported) which she believes to be *in parimateria* with the appeal under consideration.

In his rejoinder submission, the Appellant contended that he was forced to plea by police who tricked him that if he admitted he would be released. He denied to have made any mitigation.

I have placed deserving weight on the grounds of appeal. I have also revisited the trial Court records. After hearing the arguments made by the Appellant as well as the learned State Attorney, I am settled in my mind that the only issue calling for determination is *whether the Appellant's plea of guilty was unequivocal.*

In the first ground of appeal, the Appellant complains that the name and age of the victim were not disclosed. That argument is misconceived. I have revisited the trial Court record, it is on record that the names of the

victim and her age appear in the charge sheet as Sophia d/o Reginald, a girl of sixteen (16) years old. Also, rightly as submitted by Ms Tusaje, the names of the victim are not reflected in the statement of facts, but her age (16 years) was reflected in the statement of facts. However, the practice has been that hiding the victim's name is for the purpose of child protection, therefore placing the victim's name in the statement of facts would amount to exposing the identity of the child who is a victim of rape contrary to the rules of child protection.

When both the charge sheet and the statement of facts were read to the Appellant, he pleaded to have raped the victim, and he even added that the victim was her girlfriend whom they had sexual affairs for more than once. He also signed his admission. Therefore, the claim that the plea was equivocal at this stage appear to be an afterthought.

The allegation that the age of the victim was not proved is equally unfounded. I hold this view because the age could not be proved at the time when the charge and the statement of facts were read to the Appellant. Proving the age of the victim was subject of trial, when evidence on the victim's age would be adduced and exhibits as proof would be tendered. Since the Appellant opted to plead guilty, the process was short circuited. Procedurally, once the accused pleads guilty, using the learned State Attorney's words. Once a trial court is satisfied that the Accused has of his own will pleaded guilty, it makes a finding and therefrom conviction follows. There is no room for that court to record evidence of either of parties or their witnesses. Therefore, the Appellant's complaint not well founded.

Regarding the language in which the charge and the facts were read to the Appellant, it is true that the records do not show whether the same was

read in a language that he understands. However, it has been a cherished long-time procedure of Courts in Tanzania that when a charge sheet and facts of the case are read to the parties, they are read in Kiswahili, although the record is in English. The Appellant does not seem to suggest that he is not conversant with Kiswahili or that the charge and the facts were not made in Kiswahili. I therefore do not see merits in this complaint. The Appellant also tries to make the Court believe that he pleaded after being tricked by the police officers. This complaint is not substantiated. He has not disclosed the interest of the police officers on his plea of guilty. That complaint is bound to fail as well.

According to section 360 (1) of the Criminal Procedure Act, Cap. 20 [R.E 2019], no appeal shall lie on the accused's own plea of guilty. The provision provides:

> *"360.- (1) No appeal shall be allowed in the case of any accused person* ***who has pleaded guilty and has been convicted on such plea by a subordinate court except as to the extent or legality of the sentence.*** *"*(Emphasis added)

An appeal arising from an accused's unequivocal plea of guilty can only be preferred when challenging the sentence met on him but not conviction. In the appeal under consideration, the Appellant challenges the conviction and not the sentence. Courts have set circumstances under which an appeal on the accused's own plea of guilty can succeed. Ms Tusaje cited the case of ***Laurence Mpinga Vs. Republic*** (supra), a decision which has been cited by the Courts with approval on many occasions. In that case, at page 168 of the report, it was held that:

> *"Such an accused person may challenge the conviction on any of the following grounds:*
> *1. that, even taking into consideration the admitted facts, his plea was imperfect, ambiguous or unfinished and, for that reason, the lower court erred in law in treating it as a plea of guilty;*
> *2. that he pleaded guilty as a result of mistake or misapprehension;*
> *3. that the charge laid at his door disclosed no offence known to law; and,*

4. that upon the admitted facts he could not in law have been convicted of the offence charged."

The circumstances of the appeal under consideration do not fit in the above cited decision owing to the fact that the Appellant's plea of guilty was unequivocal.

As it was held in ***Ramadhan Haima Vs. The D.P.P*** (supra), the circumstances akin to the appeal under consideration, I find no imperfection, ambiguity or incompletion whatsoever in the facts narrated by the prosecution when the matter was heard. When the statement of facts was read to him, the Appellant responded in the following words:

"It is true your honour victim was my girl friend and we had sexual affairs".

Also, during mitigation, the Appellant is recorded to have stated:

"this case has been finished after being arrested the parents seated down and settled the matter".

From the above quoted words, one can safely conclude that the Appellant was aware of the charge against him and the plea he entered was from his own volition, not induced by any misapprehension. The plea entered by the Appellant was unequivocal and the acceptance of the facts suffice to warrant conviction. The raised issue is resolved in the negative.

Guided by the above analysis, the appeal is devoid of merits. It stands dismissed in its entirety.

Order accordingly.

THE HIGH COURT OF TANZANIA

Masara, J.
JUDGE
9th July, 2021