

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL NO. AAU 56 OF 2013
(High Court HAC 127 of 2011)

BETWEEN : BIJENDRA

Appellant

AND : THE STATE

Respondent

Coram : Chandra RJA

Counsel : Mr. J Savou for the Appellant
Mr. L Fotofili for the Respondent

Date of Hearing : 17 October 2014

Date of Ruling : 26 November 2014

RULING

1. The Appellant was charged on a representative count of Rape contrary to section 207(1) and [2](a) of the Crimes Decree No.44 of 2009.
2. The Appellant was convicted and sentenced to 13 years imprisonment with a non-parole period of 11 years on 11th April 2013.

3. The victim who was 24 years of age had been suffering from serious acne. Her Aunt had contacted the Appellant who was known to have witchcraft powers to heal and wanted him to treat the victim. The victim was told that she had to go through a “process” to cure her of her ailments. On the pretext of making her go through the “process” the Appellant had raped her five times after her Aunt had pushed her into her bedroom with the Appellant during the night on the day that she was said to go through the “process”.
4. The Appellant filed an appeal against his conviction which was 10 days out of time.
5. The grounds of appeal set out in the amended petition of appeal are:
 - i. The learned Trial Judge caused the trial to miscarry when he relied upon the hearsay evidence of the complainant when mentioning the complainant’s aunt one Umra in his summing up at paragraph 12 and 13 without the said Umra being summoned as a witness nor made available for the Appellant.
 - ii. That the trial counsel acted contrary to Appellant’s instructions when the trial counsel agreed as part of the agreed fact that the complainant’s story was relayed to her co-worker.
6. At the hearing of the leave to appeal application Counsel for the Respondent stated that he was not objecting to the application of leave being considered by Court though it had been filed 10 days out of time and therefore enlargement of time to file an application for leave is granted and the grounds of appeal would be considered for the purpose of granting leave to appeal.

Ground 1

7. Ground 1 is based on the fact that the learned trial Judge in his summing up at paragraph 12 and 13 had mentioned about the complainant’s Aunt who was not called in as a witness in the case.

8. The complainant gave evidence regarding the offence committed on her. The Appellant is seeking to argue that there was no corroboration of the evidence of the Complainant and that mentioning the complainant's Aunt in the summing up amounted to using hearsay evidence.
9. In paragraphs 12 and 13 the learned trial Judge had summed up the evidence given by the complainant during the trial. In her evidence the complainant had narrated the sequence of events that led to commission of the offence. She had given evidence regarding the commission of rape by the Appellant.
10. It was argued on behalf of the Appellant that the evidence of the complainant should have been corroborated by leading the evidence of the Aunt.
11. Under section 129 of the Criminal Procedure Decree of 2009 corroboration is no longer required in cases involving sexual offences and there is no requirement of a warning to be given by the trial Judge to the Assessors regarding corroboration. Therefore there was no requirement for the complainant's evidence to be corroborated by calling the Aunt of the complainant as a witness to corroborate the evidence of the complainant, nor was there any requirement of a warning to be given to the Assessors regarding corroboration. The Assessors could act on the evidence of the complainant alone.
12. Ground 1 has no merit and is not arguable.

Ground 2

13. Ground 2 is based on the fact of the Appellant complaining about his Counsel for not following his instructions.
14. The Appellant being present throughout the trial had no cause to complaint about his Counsel. There is no material placed before Court regarding this ground as regards what

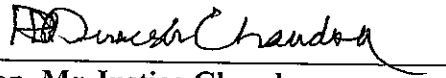
instructions were given by the Appellant to his Counsel, which he states were not followed by Counsel. If he had any complaints about him, he could have complained about same during the trial or immediately after the trial.

15. This ground is not arguable and has no merit.

Order of Court

Application for leave to appeal is refused.




Hon. Mr Justice Chandra
RESIDENT JUSTICE OF APPEAL