THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT MASAKA

CRIMINAL APPEAL NO. 007 OF 2012

(Coram: R. Buteera, DCJ; C. Bamugemereire & E. Luswata, JJA)

BIGURAHO ADONIA :: APPELLANT

VERSUS

UGANDA :: RESPONDENT

(Appeal from the decision of the High Court of Uganda at Masaka, Akiiki Kiiza, J, dated 19th April 2012 in CR-AA-301/ 2010)

JUDGMENT OF THE COURT

Introduction

The appellant was convicted of the offence of Rape contrary to **Sections 123 and 124 of the Penal Code Act, Cap 120,** and sentenced to 25 years' imprisonment.

Brief Facts

On 31st/03/2007 at Rwakasorora village in Lyantonde District, the victim was on her way to see her auntie when she met the appellant in a lonely place. He suggested to have sex with her but the victim refused. He started beating her with a stick which he had in his possession. He then grabbed the victim and forced her into sex. The victim made an alarm but was over powered and the appellant had sexual intercourse with her and later ran away.

The victim reported to Lyantonde Police Station. The medical report of the victim revealed rape as per history.

The appellant was medically examined and it was revealed that he was 28 years old and with normal mental status.

The High court tried and convicted him of Rape and sentenced him to 25 years' imprisonment. Being dissatisfied with that decision he filed this appeal. He prayed that the Appeal is allowed: the conviction and sentence of 25 years are set aside.

Ground of Appeal

That the learned trial Judge erred in law and fact when he sentenced the appellant to 25 years' imprisonment which sentence was harsh and manifestly excessive in the circumstances.

Representation

At the hearing of the Appeal, the appellant was represented by Ms. Brenda Ainomugisha, on state brief, while the respondent was represented by Ms. Happiness Ainebyoona, Chief State Attorney from the Chambers of the Director of Public Prosecutions.

Case for the appellant

Counsel for the appellant submitted that the sentence of 25 years' imprisonment that was meted upon the appellant, was harsh and excessive in view of the mitigating factors in his favor and the principle of uniformity and consistency that is often followed by the sentencing court.

He stated that the appellant as a first time offender, had been on remand for 2 years, was aged 31 years, had three children and 4 orphans for his late brother that he was taking care of.

He cited the case of **Kalibobo Jackson v Uganda; Criminal Appeal No. 45 of 2001** where the appellant of 25 years was sentenced to 17 years for the offence of Rape of a 70-year-old woman. In reducing his sentence to 7 years, this Court acknowledged the seriousness of the offence but highlighted the need for consistency and uniformity in sentencing. It held:

"We think if the trial Judge considered the need to maintain uniformity of the sentence, she would certainly not have imposed the sentence. The appellant raped an old lady. That was bad. However, considering all the circumstances of the case, we think that a sentence of 17 years' imprisonment was manifestly so excessive as to cause a miscarriage of justice. It is for that reason that we allowed the appeal and reduced the sentence from 17 years to 7 years."

He also cited **Naturinda Jackson v Uganda; Criminal Appeal No. 45 of 2001.** The appellant was indicted and charged with three counts of Rape, Defilement and Aggravated Defilement. The trial court sentenced him to 18 years' imprisonment on each of the three counts to run concurrently. On appeal, this Court held that the sentence of 18 years' imprisonment was manifestly harsh and excessive and went ahead to substitute it with 10 years.

He implored this Court to exercise its powers under Section 11 of the Judicature Act, to impose a fresh sentence that it considered appropriate. He further cited **Aharikundira Yustina v Uganda; S.C. Criminal Appeal No. 27 of 2015**, where it was noted that when dealing with appeals concerning sentencing, an appellate court has the duty to ensure that it imposes a sentence that is consistent with the sentences imposed in the previously decided cases with similar facts.

He prayed that the appeal be allowed, the sentence set aside and a lesser and appropriate sentence be awarded to the appellant.

Case for the respondent

Counsel for the respondent submitted that counsel for the appellant had failed to demonstrate how a 25 years' jail term could be regarded as excessive in comparison to the maximum sentence of death penalty that is prescribed by the law. Counsel contended that it has been decided that an appellate court will normally not interfere with the discretion of the sentencing Judge

unless the sentence is illegal or unless court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive as to amount to an injustice. He referred to **Kyalimpa Edward v Uganda; Criminal Appeal No. 10 of 1995** as was cited by the Supreme Court in **Karisa Moses v Uganda; S.C. Criminal Appeal No. 23 of 2016**.

Counsel argued that no case whatsoever is similar to another when it comes to the facts and circumstances surrounding the commission. She noted that in the instant case, the facts painted a picture of an unsuspecting vulnerable woman on her way carrying a baby on her back, attacked and beaten, strangled and her baby ripped off her back and she is sexually assaulted in such a violent manner as her baby watched.

Counsel further argued that mere reproduction of mitigating factors was devoid of merit since all the factors were properly considered by the trial court.

Regarding consistency, counsel submitted that it was in the same decision of **Aharikundira** (supra) that was relied upon by counsel for the appellant where the Supreme Court Justices emphasized respect for judicial discretion of a sentencing Judge and the fact that there is no perfect uniformity of cases.

Counsel observed that in the case of **Mubangizi Alex v Uganda; SCCA No. 07 of 2015**, the Justices found 30 years' imprisonment very lenient pronouncing that the offence of rape was very serious.

Counsel thus invited this Court to pronounce itself on the application of sentencing principles in relation to legal provisions and statutory guidelines that give ranges of the punishments. She prayed that the Appeal be dismissed and the sentence of the trial court be sustained.

Court's consideration

The law regarding sentencing and the circumstances under which an appellate court may interfere with the trial court's discretion is well settled.

In **Karisa Moses v Uganda; SCCA No. 23 of 2016**, the Supreme Court had this to say:

> **"An appropriate sentence is a matter for the discretion of the sentencing judge. Each case presents its own facts upon which a judge exercises his discretion. It is the practise that as an appellate court, this court will not normally interfere with the discretion of the sentencing judge unless the sentence is illegal or unless court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive as to amount to an injustice."**

In the instant case, counsel for the appellant has not demonstrated how excessive the sentence of 25 years' imprisonment is for an offence of Rape. This is especially because the maximum penalty as prescribed by the law is death. More so, the trial Judge considered all the mitigating factors as presented to court before pronouncing the sentence.

Whereas counsel for the appellant sough to rely on **Aharikundira** (supra), the Supreme Court went ahead to emphasize the need to respect the discretion of a sentencing Judge. It held as follows:

> **"There is a high threshold to be met for an appellate court to intervene with the sentence handed down by a trial Judge on grounds it being manifestly excessive. Sentencing is not a mechanical process but a matter of judicial discretion therefore perfect uniformity is hardly possible. The key word is 'manifestly excessive'. An appellate court will only intervene where the sentence imposed exceeds the permissible range or sentence of variation."**

In the case of **Livingstone Kakooza v Uganda; S.C. Criminal Appeal No. 17 of 1993** the Supreme Court held that:

> **'An appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature, <u>while not being precedents, do afford material for consideration:</u> See Ogalo S/O Owoura v R (1954) 21 E.A.C.A. 270.'** (Emphasis ours)

Guided by the above, we shall consider some authorities to establish whether the sentence imposed by the trial court was manifestly harsh and excessive or not.

In the case of **Mubangizi Alex v Uganda; SCCA No. 07 of 2015**, the Supreme Court Justices found 30 years' imprisonment very lenient pronouncing that the offence of rape was very serious.

In this case, the appellant was sentenced to 25 years' imprisonment for raping a woman on top of assaulting her. It was not enough for him to violate her sexually, but he also inflicted physical harm on her. For that reason alone, we would find the sentence appropriate. There is no legal reason to interfere with the trial court's sentencing discretion. The sentence of 25 years' imprisonment is accordingly upheld.

This Appeal fails for lack of merit.

Dated at Masaka this 7th day of July 2023

Richard Buteera
Deputy Chief Justice

Catherine Bamugemereire
Justice of Appeal

Eva K. Luswata
Justice of Appeal