

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA

CRIMINAL APPEAL NO. 0266 OF 2017

(Coram: Buteera, DCJ, Mulyagonja & Mugenyi , JJA)

MUTESASIRA YASIN.....APPELLANT

VERSUS

UGANDA.....RESPONDENT

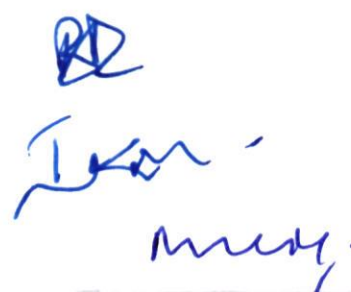
*(An appeal against the decision of J.W Kwesiga J in Kampala High Court
Criminal Session Case No. 0509 of 2016 delivered on 7th July 2017 at
Kampala)*

JUDGMENT OF COURT

Brief background

The appellant was convicted of the offence of Rape contrary to sections 123 & 124 of Penal Code Act, Cap.120. It was alleged that on the 19th January 2013, the appellant had unlawful sexual intercourse with NM (herein referred to as the victim) without her consent at Kabanyoro Village, Nangabo Sub-County in Wakiso District.

It was the prosecution's case that on the alleged date, the victim was at the roadside heading to Gayaza at around 9:00 am. The appellant, a boda boda rider agreed to take her to Opportunity Bank at a fee of 1000/=. He decided



to wait outside for her. When the victim came out of the Bank, the appellant proposed to take her where she was headed, which was Kabanyoro and they agreed to a fee of 5000/=. It is alleged that on the way to Kabanyoro, the appellant branched off to a feeder road and stopped at a bush. That the appellant pushed the victim down, tore her knickers off and forcefully had sexual intercourse with her. The victim reported the matter to the police and upon medical examination on PF 3A, she was found to have bruises on the vulva, the probable cause being injuries by blunt trauma and rough force. The appellant was arrested and charged with rape. After a full trial, the appellant was convicted and sentenced to 20 years' imprisonment. Dissatisfied, the appellant now appeals to this court against both conviction and sentence basing on the following grounds:

Grounds

1. That the learned trial Judge erred in law and fact when he relied on the evidence on record of PW1 and PW2 as credible witnesses, which was full of contradictions and inconsistencies thereby arriving at a wrong decision.
2. That without prejudice to the foregoing, the learned trial Judge erred in law and fact when he passed a sentence of 20 years' imprisonment upon the appellant, which is illegal, harsh and excessive thereby occasioning a miscarriage of justices.

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Representation

At the hearing of the appeal, the appellant was represented by Ms. Sheila Kihumuro on State brief while the respondent was represented by Ms Sherifah Nalwanga Chief State Attorney, from the office of the Director of Public Prosecutions. The appellant appeared via video link from Upper Maximum Prison Luzira. Both counsel informed court that they filed their written submissions and prayed that court adopts them for the determination of the appeal. This was granted by court.

Submissions for the appellant

Ground one

Counsel submitted that prosecution presented two witnesses, NM who was PW1 and the Medical doctor PW2. Counsel argued that the evidence adduced by the prosecution contained contradictions on material issues and as such was insufficient to sustain a conviction. Counsel submitted that the first contradiction was in respect to the victim's medical examination. She contended that during cross examination, the victim PW1 indicated that she was examined either on the same day or the next day, whereas the medical report was dated 23rd January 2013, which the medical doctor PW2 confirmed. Counsel argued that this points to four 4 days from the date of 19th January 2013 on which the alleged act occurred.

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