THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Cheborion Barishaki, Hellen Obura & Eva Luswata JJA)

CRIMINAL APPEAL NO. 014 OF 2019

OKELLO AKIMASI OKALANY::APPELLANT

VERSUS

UGANDA:::RESPONDENT

(Appeal from the decision of Hon. Justice Oyuko Anthony Ojok holden at Soroti High Court in Criminal Session Case No. 161of 2016 delivered on 12/03/2019)

JUDGMENT OF THE COURT

Introduction

The appellant was indicted, tried and convicted of the offence of rape contrary to sections 123 and 124 of the Penal Code Act in the High Court at Soroti before Oyuko, J. He was sentenced to 57 years and 4 months' imprisonment. He has now appealed to this Court against both the conviction and sentence.

Background to the Appeal

The facts of this case in so far as we have ascertained from the court record are that on 8/03/2016, the victim Imau Anna Loy (PW3) was returning home around 8:00pm when she met the appellant and another person (Ochen). They approached her, grabbed her, threw her down and forcefully had sexual intercourse with her in turns as the other would be restraining her by holding her until she became so weak and defecated on herself. The matter was reported to police, investigated and the appellant was arrested and charged with the offence of rape. He pleaded not guilty but was found guilty and convicted after a full trial.

He was sentenced to 57 years and 4 months' imprisonment after deducting the period of 2 years and 8 months he had spent on remand. Aggrieved by that decision, the appellant has appealed to this Court on the four grounds of appeal that are set out in the Memorandum of Appeal as follows;

> *"1. That the learned trial Judge erred in law and fact when he failed to comprehensively evaluate all the evidence adduced before him thus arriving at a wrong conclusion.*
>
> *2. That the learned trial Judge erred in law and fact when he held that the prosecution had proved the participation of the appellant whereas not.*
>
> *3. That the learned trial Judge erred in law and fact when he held that prosecution had destroyed the defence of alibi adduced by the appellant whereas not*
>
> *4. That the learned trial Judge erred in law and fact in sentencing the appellant to 57 years and 4 months' imprisonment which sentence was deemed illegal, manifestly harsh and excessive in the circumstances."*

Representations

At the hearing of this appeal, Mr. Emmanuel Muwonge represented the appellant on State Brief while Ms. Immaculate Angutoko a State Attorney from the Office of the Director Public Prosecutions represented the respondent. The appellant was not physically present in court, but he was facilitated to attend the court proceedings from Upper Prisons Luzira using zoom technology. Both parties filed written submissions which were adopted and have been considered by this Court in its decision.

Arguments for the Appellant

Counsel for the appellant sought and was granted leave of this Court under **section 132 (1) (b) of the Trial on Indictments Act (TIA)** and **rule 45 of the Judicature (Court of Appeal**

Rules) Directions (hereafter referred to as the Rules of this Court) to file a supplementary Memorandum of Appeal.

Counsel then proceeded to argue grounds 1, 2 and 3 together. He submitted that the learned trial Judge relied on the identification evidence of a single eye witness, PW3 to convict the appellant without cautioning himself or the assessors and putting the whole evidence to thorough scrutiny and assessment hence occasioning a miscarriage of justice to the appellant. He relied on ***Senoga Sempala Jafari vs Uganda, Criminal Appeal No. 34 of 2005***, ***Walakira Abas and others vs Uganda, SCCA No. 25 of 2002*** and ***Abudallah Nabulere and others vs Uganda, Criminal Appeal No. 9 of 1978*** to support his submissions. He argued that based on these cases, it is clear that a conviction based solely on doubtable, false or mistaken visual identification causes a degree of uneasiness because such evidence can give rise to a miscarriage of justice. He added that there is always the possibility that a witness though honest may be mistaken.

Counsel further submitted that the learned trial Judge failed in his duty to evaluate the appellant's defence of alibi to determine whether the prosecution had placed him at the scene of crime. He argued that the appellant's alibi which was corroborated by his wife Iyito Irene Mary (DW2) was not disputed by the evidence of the prosecution as they failed to place him at the scene of crime. He added that the appellant was steadfast and consistent even during cross examination by the prosecution. Counsel relied on the decision in ***Bogere Moses vs Uganda, SCCA No. 1 of 1998*** in which the Supreme Court held that it is the duty of the prosecution to destroy the defence of alibi raised by an accused person by putting him or her at the scene of crime at the time the offence was committed.

It was counsel's argument that it is clear from the judgment in the instant case that the learned trial Judge solely relied on the prosecution evidence without testing the defence evidence. He supported that argument with the decision in ***Uganda vs George William Simbwa, Criminal Appeal No. 37 of 1995*** where the Supreme Court held that the court

must examine both the prosecution and defence evidence before coming to a decision as opposed to examining the prosecution evidence in isolation of the defence evidence.

In regard to ground 4, counsel submitted that there were many mitigating factors in favour of the appellant that the learned trial Judge did not consider. They include the fact that the appellant was; a first offender, a young married man of 27 years and had spent $2^1/_2$ years on remand. Counsel therefore argued that the sentence of 57 years and 4 months' imprisonment which was imposed on the appellant is illegal, manifestly harsh and excessive in the circumstances. He relied on the decision in ***Tamale Richard vs Uganda, CACA No. 19 of 2012*** and ***Rwabugande Moses vs Uganda, SCCA No. 25 of 2014*** to buttress his argument.

In conclusion, counsel prayed that this appeal be allowed and the sentence be set aside and substituted in accordance with the law.

Arguments for the Respondent

Counsel opposed the appeal and raised a preliminary point of law that the first ground of appeal as raised by the appellant offends rule 66 (2) of the Court of Appeal Rules in so far as it fails to specify the point of law or fact or mixed law and fact the appellant contends were wrongly decided. He urged this Court to apply the decision in ***Sseremba Dennis vs Uganda, Criminal Appeal No. 480 of 2017*** and strike out that ground of appeal.

In the alternative and without prejudice to submission on the point of law, counsel responded to counsel for the appellant's submission on ground 1 that he argued together with grounds 2 and 3 of the appeal. He submitted that whereas the evidence of identification was that of a single identifying witness, the conditions for identification were favourable and the evidence was cogent and well corroborated though there is no legal requirement for corroboration. She argued that the victim testified that it was 8:00pm when the incident happened, she had known the appellant before for a year as a neighbour, they walked

together for a distance before he and his accomplice attacked her, she was able to identify the appellant by the aid of the moonlight, he spoke with her prior to raping her and the incident took a long time. Counsel submitted that these conditions were deemed favourable for correct identification by the learned trial Judge.

She also argued that the learned trial Judge cautioned himself by way of question at page 39 of the court record before convicting the appellant. Further, that the evidence of PW3 was corroborated by that of PW4 although plurality of witnesses is not necessary in sexual offences. She relied on the Supreme Court decision in ***Abudalla Nabulere and 2 others vs Uganda (supra)*** and ***Ntambala Fred vs Uganda, SCCA No. 34 of 2015*** in which it was found that a conviction can be solely based on the testimony of the victim as a single witness, provided the court finds her to be truthful and reliable.

Regarding the appellant's alibi, counsel submitted that prosecution discharged its burden of destroying the appellant's defence of alibi. She contended that the prosecution adduced very strong evidence of identification by PW3 which proved to the required standard that the appellant was at the scene of crime and participated in raping the victim which evidence was corroborated by PW4 whose evidence also placed the appellant at the scene of crime around the time the offence was committed.

Counsel invited this Court to find the prosecution evidence cogent and its witnesses truthful and credible. He prayed that the finding of the learned trial Judge as regards participation of the appellant and all other ingredients of the offence be upheld by this Court.

On ground 4, counsel submitted that the learned trial Judge recorded detailed mitigating and aggravating factors advanced by the prosecution and defence and he arithmetically deducted the period spent on remand in accordance with Article 23 (8) of the Constitution and the decision in ***Rwabugande Moses vs Uganda*** (supra). She submitted that the sentence of 57 years and 4 months' imprisonment imposed on the appellant by the trial

court is not manifestly excessive and harsh in the circumstances of this case since it falls within the sentencing range provided by the Penal Code Act and the Sentencing Guidelines. Counsel prayed that this Court disallows the appeal, and uphold both the conviction and sentence.

Decision of the Court

We have carefully studied the court record and considered the submissions of counsel for each party. We have also looked at the decisions they cited in support of their respective arguments. We are alive to the duty of this Court as the first appellate court to review the evidence on record and to re-consider the materials before the learned trial Judge, and make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. See: ***Rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions, SI 13-10*** **and** ***Kifamunte Henry vs Uganda, SCCA No 10 of 1997.***

However, before we resolve the grounds of appeal, we wish to first of all deal with the preliminary point of law raised by counsel for the respondent that ground 1 offends rule 66 (2) of the rules of this Court.

Rule 66 (2) of the Rules of this Court provides as follows;

> *"The memorandum of appeal shall set forth concisely and under distinct heads numbered consecutively, without argument or narrative, the grounds of objection to the decision appealed against, specifying, in the case of a first appeal, the points of law or fact or mixed law and fact, and in the case of a second appeal, the points of law or mixed law and fact, which are alleged to have been wrongly decided, and in a third appeal, the matters of law of great public or general importance wrongly decided".*

In the instant appeal, ground 1 was framed as follows;

"That the learned trial Judge erred in law and fact when he failed to comprehensively evaluate all the evidence adduced before him thus arriving at a wrong conclusion."

We note that in the case of ***Sseremba Dennis vs Uganda*** (supra) which was cited to us by the respondent, this Court struck out 2 grounds for offending rule 66 of the rules of this Court by failing to specify exactly the points of law or fact or mixed law and fact that the appellant contended were wrongly decided by the learned trial Judge. The two grounds that were struck out had been framed as follows;

"1. The learned trial Judge erred in law and fact when he failed to properly and adequately evaluate the evidence before him as a whole thereby arriving at a wrong conclusion.

...

4. The learned trial Judge erred in law and fact when he held that the ingredients of aggravated robbery were satisfied by the prosecution."

We note that just like the ground 1 in the case of ***Sseremba Denis vs Uganda*** (Supra) which was struck out, ground 1 of this appeal also states in general terms that the learned trial Judge failed to comprehensively evaluate all the evidence adduced before him and arrived at a wrong decision. It did not specify the particular evidence that was not comprehensively evaluated and the wrong decision that was made as a result of that failure. We therefore accept counsel for the respondent's submission that it offends rule 66 (2) of the Rules of this Court, and thereby strike it out.

We shall now proceed to resolve the remaining 3 grounds of appeal. In grounds 2 and 3, counsel for the appellant contends that the ingredient on participation in the offence was not proved. He specifically challenges the evidence of PW3, who was the single identifying witness contending that the conditions were not favourable for correct identification and so she could have mistakenly identified the appellant as the person who participated in raping her.

The law on evidence of a single identifying witness was well settled in ***Abudala Nabulere & 2 ors vs Uganda*** (supra) which the learned trial Judge relied on to arrive at his decision. The law was stated in that case as follows:

> *"Where the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused, which the defence disputes, the judge should warn himself and the assessors of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. The reason for the special caution is that there is a possibility that a mistaken witness can be a convincing one and that even a number of such witnesses can all be mistaken. The judge should then examine closely the circumstances in which the identification came to be made particularly, the length of time the accused was under observation, the distance, the light, the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence. If the quality is good, the danger of a mistaken identity is reduced but the poorer the quality, the greater the danger…"*

In the instant case, PW3 gave a detailed account of what transpired on the fateful night when she was raped. The learned trial Judge who observed PW3's demeanour as she testified was impressed that she was a truthful and sincere witness. We have no reason to doubt that observation since we ourselves did not have the opportunity to observe the witness as she testified. In evaluating the evidence on participation of the appellant, the learned trial Judge found that the conditions for correct identification were favourable and on the basis of the evidence adduced, he was satisfied that the prosecution had proved the ingredient of participation of the appellant and the other ingredients of the offence beyond reasonable doubt. He found as follows:

> *"Could it be that the PW3 (the victim) wrongly identified the accused? In the case of* ***Bogere Moses & another Vs Uganda SCCA No.1/1997*** *Court stated on identification that in convicting an accused person, one should look at;*

a) The length of time under which the accused was under observation

b) Favourable conditions for identification thus, the nature of light

c) Familiarity of the complainant to with the accused persons (sic)

In the instant case, the victim had known the accused person for a year before the incidence as admitted by the accused himself and moreover, they were neighbours, the incident? took a long time, there was zero distance between the victim and the accused, and there was also moonlight. All these circumstances were favourable to identify the accused. I find that prosecution has proved its case beyond reasonable doubt. I therefore agree with the opinion of the 2 assessors and find the accused person guilty and accordingly convicted." (sic)?

We shall ourselves re-evaluate the evidence on record as a whole in order to determine whether the learned trial Judge came to the right conclusion.

We note that PW3 testified that on 8/03/2016 at 8:00 pm she left the hotel going home and she found the appellant with his friend called Ochen Michael standing at a school called Little Stars. She had known the appellant as a neighbour for one year. He left his friend and called her and asked whether she was the one. There was moonlight which she used to identify them. They left together while his friend followed behind. As she approached a certain home, they both grabbed her and threw her down. The appellant got her neck and squeezed her throat while his friend had sexual intercourse with her. Then the appellant also came and had sexual intercourse with her while his friend was holding her and she became weak and even defecated on herself. She tried to make an alarm but was prevented by the appellant who squeezed her neck. The appellant left and her friend called Sarah came. Then she went back home and told her parents about what had happened to her. The next day, the matter was reported to police and she was referred to Atiira Health Centre for treatment.

PW4 Atengo Sarah testified that she knew both the appellant and PW3 and that on 8/03/2016 she left for the Trading Centre at 8:00 pm to go and buy a drug for her child. She met PW3 on the way and also met the appellant together with his friend Ochen near a school called Little Stars. She continued on her way and bought drugs and she went back home. Shortly after that, she heard an alarm coming from the other side and it ceased but she did not go there. After she had gone to bed, she heard someone calling her brother from outside asking him to give them a torch so that they could find out the people of the girl. It was Ochen and he was standing with PW3 whose clothes were torn. She recognised both of them with the help of the moonlight and her brother's torch. The next day, PW3's father called Elilo (PW5) came to her home together with her claiming that his daughter had been raped and he demanded to know the perpetrators who had come to her home. PW3 named the suspects and she (PW4) confirmed that indeed they had come to her home the previous night. In cross examination, she stated that PW3 was weak when she came to her home on the fateful night.

PW5 Elilo Moses who is the father of PW3 testified that on the fateful night between 10pm-11pm, while he was at his home, his wife informed him that PW3 was crying from outside. He went out and found her with no clothes since they were torn. He asked her what the matter was and she told him that she was waylaid by some boy she knew. He observed that she was weak as she kept on falling while moving and she had sustained injuries on her neck where she was twisted and she also had scratches. She told him that she had been sexually harassed by the appellant and Ochen. The next morning, he went and reported the matter to the LC1 who told him to go home and wait. He also went to the appellant's home where he found him drunk and he denied sexually harassing PW3. He disappeared from the village for some time but he was eventually arrested. In cross examination, he said that there was no grudge between him and the appellant.

In his defence, the appellant gave sworn evidence and stated that he knows PW3 and PW5. He testified that on the fateful night between 8:30pm - 9:00pm, he was at the Trading Center and he later returned home at about 10:00pm. He stated that PW5, his wife, her brothers and sisters came to his home early in the morning at 6:00am. They called him and he sent his wife to find out what was happening because sometimes they would come and borrow hoes. The mother of PW3 told him to bring her some alcohol and he took for her one of the sachets he had in his house but she did not receive it, instead she asked him what time he had returned home and he told her 10:00pm. They told him that PW3 had alleged that she saw him in the company of Ochen who assaulted her and she made an alarm. He (Ochen) called his name but he kept quiet.

When they left, Ochen came and he (appellant) told him that his neighbour came to his place alleging that he assaulted their daughter. They both went to PW3's home and called her but she did not come out. She told them that she was feeling pain at the neck and he asked her whether it is true that he and Ochen were the ones who assaulted her but she seemed to have seen him. He spent home 6 days and then he went somewhere to dig a well and his wife rang the person for whom he was working with saying that he should come back home because PW3 had taken the matter to the Police station. The following morning, he walked on foot to the Police station but before reaching, he found some Police Officers who were looking for him and he was arrested. However, he denied running away from the village to go into hiding. In cross examination, he denied mentioning in his statement that he was with Ochen in the Trading Centre until midnight. He also denied going with Ochen to PW4's compound at 9:00pm. He further denied being found drunk by PW3's father the next morning. In re-examination he stated that at the time he went home he was drunk.

DW2 Iyito Irene, testified that on that fateful day, she was at home and the appellant went to the Trading Centre at 3:00pm. He returned home at 8:00pm, she served him food, he ate and went to sleep. At 5:00am the mother of PW3 came to her home with PW3, her brother

and father. They asked her whether her husband (the appellant) was around and requested her to call him. She called him but because he was drunk he could not come out. They told her that the previous night her husband and Ochen waylaid PW3 and she was not fine. She went back to the house because she was shocked but still the appellant did not come out. At 8:00am she called him and told him to go and see the person they alleged he had raped. Before he could go to PW3's house, Ochen came and he denied the allegations against them. They all went to PW3's house and when the appellant asked PW3 whether it was true he had raped her, she told him that she had no problem with him but that Okong Chris Okeji and some people were following her from behind and she did not know where they went to but some people grabbed her. The following week the appellant went to dig a well and somebody died at the Trading Centre. She called to inform him and he returned home at 3:00pm. A Police Officer called Odeke Logilu with one other Officer came to her home and arrested the appellant. In cross examination, DW2 stated that when the appellant was arrested, he had not been home for two weeks after the incident.

We have considered the principles stated in ***Abudalla Nabulere & 2 ors vs Uganda*** (supra) as we exhaustively re-appraised the evidence on record as summarised above. It is not in dispute that the appellant was well known to PW3. The evidence of PW3 indicates that she first saw the appellant and his friend Ochen standing near a school called Little Stars and the appellant even called her name to confirm that she was the one. Having known him previously for one year, she must have recognised his voice. She later saw him at a very close proximity as he had sexual intercourse with her. It was also her evidence that there was moonlight which enabled her to see what was happening. In addition, there was sufficient time for observing the appellant, since according to PW3's testimony, the appellant and his accomplice took turns in raping her. In our view, all these factors favoured correct identification by voice as well as visual identification of the appellant as rightly found

by the learned trial Judge. In ***R vs Turnbull*** (supra), court held that identification by recognition may be more reliable than identification of a stranger.

We also find corroboration of PW3's testimony in the evidence of PW4 who testified that on the fateful night at around 8.00pm as she was going to the Trading Centre to buy medicine for her daughter, she met PW3 on the way. She also met the appellant and Ochen near a school called Little Stars at about 8:00pm. She later heard an alarm which ceased and thereafter she heard someone calling her brother to give him a torch to help him identify the people of PW3. Upon coming out of her house she saw PW3 who was wearing torn clothes and she was in the company of Ochen.

We further find corroboration in the evidence of PW5 who testified that when she saw PW3 on that fateful night, she was weak and kept falling while walking. In addition, she had injuries on her neck due to twisting and scratches and she told him that she had been waylaid by some boy she knew. With this evidence on record, we agree with the finding of the learned trial Judge that the appellant was properly identified by PW3 as the person who raped her and he was therefore placed at the scene of crime at the time and day of the incident.

We must observe that according to DW2's testimony, by the time the appellant was arrested he had not been home for two weeks after the incident. In the case of ***Remegious Kiwanuka vs Uganda, SCCA No. 41 of 1995 (unreported)*** the Supreme Court held that the disappearance of an accused person from the area of a crime soon after the incident may provide corroboration to other evidence that he has committed the offence. This is because such disappearance from the area is incompatible with innocent conduct of such a person. In our well-considered view, the appellant's absence from home after the incident, although explained to court by the appellant and DW2, leaves a lot to be desired and we find it to be conduct of a guilty person.

Regarding the contention that the learned trial Judge did not caution himself and the assessors before relying on the evidence of PW3 who was a single identifying witness, we take guidance from the decision of the Court of Appeal for East Africa in ***Chila and anor vs Republic, Criminal Appeal No. 80 of 1967*** in which it stated as follows;

> *"The judge should warn the assessors and himself of the danger of acting on the uncorroborated testimony of the complainant, but having done so he may convict in the absence of corroboration if he is satisfied that her evidence is truthful.* ***If no such warning is given, then the conviction will normally be set aside unless the appellate court is satisfied that there has been no failure of justice****." (emphasis added)*

In ***Kibale Ishma vs Uganda, Supreme Court Criminal Appeal No. 21 of 1998 (unreported)*** the learned trial Judge warned the assessors of the danger of acting on uncorroborated evidence of the complainant in sexual offences, but omitted to warn herself in her judgment. On appeal, the Supreme Court upheld the Court of Appeal decision that the omission by the trial Judge to warn herself did not cause a miscarriage of justice.

In ***Livingstone Sewanyana vs Uganda, SCCA No. 19 of 2006*** (supra), Mr. Vincent Tonny Okwanga learned Senior Principal State Attorney submitted that failure by the trial Judge to warn himself on the dangers of convicting the appellant on uncorroborated evidence did not occasion a miscarriage of justice to the appellant. The Justices of the Supreme Court accepted his submission and held that the failure by the learned Judge to warn himself on the dangers of convicting the appellant on uncorroborated evidence did not cause a miscarriage of justice as the learned Judge properly evaluated the evidence and applied the right principles. We must point out that in **Ntambala Fred vs Uganda (supra)** the Supreme Court found that looking out for corroboration in sexual offences should be done away with altogether as it is discriminatory to women. For as long as the Court finds the single witness truthful, that is enough.

In this appeal, we note that the learned trial Judge did not only consider the evidence of PW3 to convict the appellant but the evidence on record as a whole. He found corroboration of PW3's evidence in the evidence of PW4 and PW5. The learned trial Judge also evaluated the defence evidence against the prosecution evidence before coming to his conclusion. There was therefore no need for him to caution himself or the assessors and as such, no miscarriage of justice was occasioned to the appellant.

In conclusion, we find that there was overwhelming evidence on court record to support a conviction and therefore we cannot fault the learned trial Judge for convicting the appellant. In the result, we find no merit in grounds 2 and 3 of the appeal and therefore they must fail.

On ground 4, the appellant faults the learned trial Judge for imposing a sentence of 57 years and 4 months against him, which is illegal, harsh and excessive. His counsel submitted that there were many mitigating factors in favour of the appellant that the learned trial Judge did not consider. He therefore implored this Court to consider them and reduce the sentence. We shall ourselves re-consider both the mitigating and aggravating factors presented during the sentencing proceeding in order to determine whether or not the learned trial Judge considered them.

The mitigating factors were that the appellant was a first time offender with no previous criminal record. He was 27 years' old which means he was still young and can reform, he had spent 2 years and 8 months on remand. A lenient sentence of 15 years' imprisonment was prayed for. In aggravation, it was presented that rape is a serious offence that carries a maximum sentence of death and a minimum sentence of 25 years imprisonment, the manner in which the offence was committed was also degrading and cruel as they grabbed the victim, hit her forehead on the ground and squeezed her neck before sexually assaulting her, the impact of the offence on the victim is enormous, such degrading offences are traumatizing, the convict has also not been remorseful at all throughout the trial, the offence

is rampant. A sentence of life imprisonment was prayed for so as to serve as an example to the would be offenders.

In his sentencing ruling, the learned trial Judge stated as follows;

> *"The starting point according to the Sentencing Guidelines is 25 years for the offence of Rape. I have considered the "fact" that the convict is a first time offender and that he is young and youthful, he can reform and be useful to the society. I have also considered the period spent on remand under Article 23(8) of the Constitution and Regulation 15 (2) of the Constitution (Sentencing Guidelines) for Courts of Judicature, Direction 2013 that is 2 years. I therefore find the sentence of 60 years appropriate, less 2 years and 8 months, leaving him to serve 57 years and 4 months."*

The above excepts of the sentencing ruling indicates that the learned trial Judge considered the mitigating factors that were presented and he did deduct the period the appellant had spent on remand. We therefore find no merit in the contention of counsel for the appellant that the mitigating factors were not considered.

As regards the complaint that the sentence is harsh, we note that rape is a serious offence and the maximum penalty under section 124 of the Penal Code Act is death. However, we need to take into account the range of sentences that have been imposed by this Court in similar offences of rape committed under more or less similar circumstances.

In ***Onaba Razaki vs Uganda, CACA No. 327 of 2009,*** this Court set aside the sentence of 15 years' imprisonment for the offence of rape and substituted it with 14 years. The appellant had attacked the victim at 11:00 p.m. on her way from work and raped her in the grass.

In ***Yebuga Majid vs Uganda, CACA No. 303 of 2009,*** this Court upheld a sentence of 15 years imposed on the appellant by the trial court for the offence of rape. It held that the sentence of 15 years' imprisonment befitted the circumstances of the case.

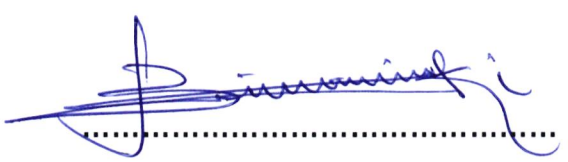
In ***Boona Peter vs Uganda, CACA No. 16 of 1997***, the appellant was convicted of rape and sentenced to 10 years' imprisonment. On appeal against sentence on the ground that it was manifestly excessive, this Court dismissed the appeal and confirmed the sentence.

We note that the sentencing range in the above similar cases is between 10-15 years' imprisonment. We therefore find the sentence of 57 years and 4 months' imprisonment imposed on the appellant manifestly harsh and excessive. We accordingly, set it aside and invoke section 11 of the Judicature Act which gives this Court the powers, authority and jurisdiction as that of the trial Court to impose a sentence of its own which it considers appropriate.

Upon considering both the aggravating and mitigating factors summarised above and the range of sentences for the offence of rape, we find a sentence of 17 years' imprisonment appropriate in the circumstances of this case. However, since the appellant had spent a period of 2 years and 8 months in lawful custody prior to his conviction, we deduct that period from the 18 years and sentence him to 14 years and 4 months' imprisonment from the date of his conviction, which is, 4/12/2018.

On the whole, the appeal against appellant's conviction is dismissed for lack of merit and the appeal against sentence is allowed in the above stated terms.

Dated at **Kampala** this 25th day of January 2024.



Cheborion Barishaki

JUSTICE OF APPEAL

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