

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

*(Coram: Cheborion Barishaki, Hellen Obura and Eva Luswata, JJA.)*

**CRIMINAL APPEAL NO. 378 OF 2019**

5 **SSEMAKULA SAIDI:.....:APPELLANT**

**VERSUS**

**UGANDA:.....:RESPONDENT**

*(Appeal from the decision of the High Court of Uganda at Mpigi before Kaweesa, J delivered on the 25/09/2019 in Criminal Session Case No. 021 of 2018.)*

10 **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 by the High Court (Kaweesa, J.) on the 25/09/2019 and was sentenced to 20 years imprisonment.

15 **Background**

The facts of this case as ascertained from the court record are that on 10/09/2017 the appellant while at Gwatiro Village in Butambala district had unlawful carnal knowledge of N.M without her consent. He was consequently tried and convicted of the offence of rape and sentenced as aforementioned.

20 Being dissatisfied with the decision of the trial court, the appellant appealed to this Court on the following grounds;

1. *That the learned trial Judge erred in law and fact when he found that the appellant had been positively identified as the perpetrator of the said offence.*



2. That the learned trial Judge erred in law and fact when he meted out a manifestly harsh and excessive sentence against the appellant.
3. That the learned trial Judge erred in law when he passed an illegal sentence to the prejudice of the appellant.

5 The appellant implored this Court to allow the appeal, quash the conviction and set aside the sentence and, or in the alternative reduce the sentence. The respondent opposed the appeal.

### Representation

At the hearing, Mr. Henry Kunya, represented the appellant on State brief whereas Ms. Sherifah Nalwanga, Chief State Attorney from the Office of the Director Public Prosecutions  
10 (ODPP) represented the respondent. The appellant followed proceedings from Kitalya Mini Max Prison via video link. Both Counsel filed written submissions which were adopted and have been considered in this judgment.

### Appellant's Submissions

Counsel submitted in respect of ground 1 that the undisputed facts on record reveal that the  
15 victim, N.M (PW1), was sexually molested by a man whom she only identified by his voice as the incident happened at night under circumstances with limited or questionable sources of light. That the victim during cross-examination categorically stated that she was not able to see the face of her attacker. Counsel also argued that whereas the victim claimed to have identified the appellant by his voice, she confirmed in her examination in chief that she had  
20 never had any conversation with the appellant before the incident.

Counsel faulted the learned trial Judge for relying on the decision in **Sabwe Abdul vs Uganda, SCCA No. 19 of 2007** for the proposition that to identify a voice one does not necessarily need to have talked to that person. He distinguished the decision of **Sabwe Abdul vs Uganda** (supra) from the instant case whilst arguing that whereas in the former there was  
25 close proximity between the victim and the appellant who used to come to their home and

