

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CASE NO: HCT-00-CR-SC-0009 OF 2002

UGANDA ::: PROSECUTOR

VERSUS

BUKENYA RONALD ::: ACCUSED

BEFORE: HON. MR. JUSTICE J.B.A. KATUTSI:

JUDGMENT:

The accused at bar is indicated for rape, an offence contrary to section 117 and punishable under section 118 of the Penal Code Act. It is alleged that the accused and other two still at large, on the 14th day of March 2001 at Kagoma Maganjo “B” zone, Nabwera sub-county in Wakiso District had unlawful carnal knowledge of Nandaula Gorreti without her consent.

In her evidence prosecutrix testified that on 14/3/2001 at around 11 p.m. as she came from Kololo where shed had been attending an election rally she passed by the home of one Senga. There she bought herself a bottle of Nile Special. Accused

was also there with other three friends also drinking. The four started making sexual advances to her but she told them to keep off her. After consuming her drink she started her journey home. Accused and two of his friends followed her. On overtaking her accused said he wanted to marry her. She told him she was not looking for men to marry. The accused grabbed her by the arm, one of his friend held her mouth wide open to stop her from making an alarm. The three then lifted her and took her to accused's room where they in turn ravished her. After satisfying their lust they ran away. She ran out half naked and raised an alarm, which was answered by some girls who were coming from the disco. Namusoke Mastula appeared as PW2. She testified that on 15/3/2001 at 2.00 a.m. She was on her way home after attending a disco. She found prosecutrix whom she knew as Naginda who told them that she had been sexually ravished by men. She said she knew only one of them called Gilbert. She was in pants only. They found her raising an alarm.

Policewoman detective constable Rose Musenero appeared as PW3. She testified that on 15/3/2001. She was on duty at Kawempe Police Station. There she received prosecutrix who reported that she had been raped by three men, one of whom was called T. Ronald Bukenya. She took her statement, which she later turned to her boss the O.C. C.I.D. who then instructed her to carry out

investigations. She gave prosecutrix police form No. 3 when she inquired people staying near the scene of crime they reported that they had heard an alarm during the previous night. Prosecutrix led her to the room where she alleged to have been raped. Nobody was there. This was in the boys' quarters. There was a lady who was staying in the main house. She too said she had heard an alarm which she said took about 30 minutes and that when she had got out she had found prosecutrix crying. She told the witness that the boys' quarters where the rape had allegedly been committed were used by Ronald Bukenya as his dwelling place. The witness looked for Bukenya but in vain. She instructed the area LDU's to look for Bukenya. They did not report any success. About five days later Bukenya was arrested by the LDU's. Dr. Martin Magoba Karyemenya examined prosecutrix. He found that prosecutrix was about 26 years old. Her hymen had been ruptured before. There was no inflammation around the vagina. He found learner abrasion over the left thigh and on the lower lip of the mouth. She also had abrasions inside the lower lip of the mouth. The injuries were consistent with her having put a resistance. They were one day old. Accused gave evidence on oath. He said on the material time he never moved out. He came back from work at 7 p.m. He went to bed at 8.30 p.m. He woke up at 5 a.m. and left for work at 5.30 a.m. That was his routine schedules. He was arrested by the LDU's on 19/3/2001 at 6 p.m. after he had returned from work. Prosecution must prove carnal knowledge. For

this purpose it is not necessary to prove that the hymen was ruptured or that there has been an omission of semen. The slightest penetration of the vagina by the male organ will suffice. In this case I had the prosecutrix before me. In the witness box she appeared to be a truthful witness. I also had Namusoke. She appeared to be a truthful witness. She testified that prosecutrix told her that she had been sexually ravished. She found prosecutrix pulling on only pants and raising an alarm. I unhesitatingly accept her evidence. Prosecution have proved that prosecutrix was sexually ravished.

On the question of consent the evidence on record is clear enough. Namusoke found prosecutrix raising an alarm. I accept the evidence of the police officer that the lady in the main house told her that she had heard an alarm which took about 30 minutes and that when she got out she found prosecutrix crying.

There is also the evidence of medical examination. All combined prove beyond reasonable doubt that there was no consent on the part of prosecutrix. Now was the accused one of the three boys who sexually ravished prosecutrix? Prosecutrix took the police officer to the scene of crime. The fact that the quarters were being used by the accused as his living quarters has not been controverted in any slightest way. I have no hesitation in finding that prosecutrix was ravished in the room of

the accused. Prosecutrix named the accused at the earliest possible moment as one of those that had raped her. I unhesitatingly accept the evidence that soon after the commission of the crime accused ran away from his place.

This is not a reaction of an innocent person. It is not a rule of law that in sexual offences an accused person should not be convicted on the uncorroborated evidence of a prosecutrix. However as a matter of prudence court must warn itself of the danger of convicting on uncorroborated evidence of a prosecutrix. I warned the assessors of this danger and I am warning myself now. Like the assessors I find that prosecution have proved their case beyond any shadow of doubt. The alibi put forward is a mere sham, which has crumbled like a house of cards.

I find him guilty of the offence charged and convict him.

J.B.A. Katutsi

JUDGE

Tumutukyi:

Accused may be treated as first offender. But the brutal way in which prosecutrix were treated calls for a deterrent sentence. There is no evidence that protection was used. Ask for deterrent sentence.

J.B.A. Katutsi

JUDGE

Accused:

I have been in prison for 1 year and 8 months. Pray for leniency.

J.B.A. Katutsi

JUDGE

Sentence and reasons for the same.

J.B.A. Katutsi

JUDGE

Accused is a first offender. He has been on remand for about 2 years now. This has to be borne in mind.

However I agree with the learned state attorney that the manner in which the crime was committed calls for censure. I deem a sence of 6 years to be on the side of leniency.

J.B.A. Katutsi

JUDGE

R/A explained.

J.B.A. Katutsi

JUDGE

11/12/2002

I certify a fee of shs. 400,000/= (four hundred thousand) to counsel on state brief.

J.B.A. Katutsi

JUDGE

11/12/2002