THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HIGH COURT CRIMINAL SESSION CASE NO. 0082 — 2001

UGANDA……..PROSECUTER

VERSUS.

KABAGAMBE YOVANI…….ACCUSED

BEFORE: THE HONOURABLE MR. JUSTICE V.T.ZEHURIKIZE

JUDGEMENT

Kabagambe Yovani hereinafter referred to as the accused is indicted for Rape Contrary to sections 117 and 110 of the Penal Code Act. It is alleged that on the 19/7/2000 at about 10.00a.m. at Kacwamba Trading Centre, Fort Portal Municipality, Kabarole District had unlawful carnal knowledge of Nyakake Tiopista without her consent. The accused denied the charge and the case went on full hearing. In a bid to prove their case the prosecution presented the evidence of 4 witnesses. In his defence the accused made unsworn statement and called no witnesses.

Briefly the case for the Prosecution is as follows. Nyakake Tiopista (PW1) testified that she was working as a house girl of one Silver and that on 19/7/2000 at around 11.OOa.m. while coming from her master's house she met the accused on the door way. He did not talk to her but merely pulled her and took her inside a room attached to the main house, resolved her knickers and forcefully had sexual intercourse with her. She could not wake any alarm as the accused held her mouth with his hand.

When her mast came, she told him about what had happened to her. After getting the report her master went to Police. She testified that her master came with a Policeman who arrested the accused and took him to Kacwamba Police post where he was detained.

Mr. Kajokore Isaac (PW2) on the other hand testified that he was the Chairman L.C.I Kacwamba and that on 19/7/2000 Mrs. Sliver reported to him that the accused had raped her

house girl. He called the accused whom he found pounding millet and they went to Mrs. Slivers home. When he confronted the accused with the allegations, the accused said that PWI was his girl friend and that she was alleging rape simply because he had not given her money after they had mutually played sex. The witness took the complainant (PW1) and the accused to Kacwamba Police Post

PW3 No. 22080 P. C. Murisaba B. Elia testified that on 19/7/2000 he was at Kacwamba Police Post when the accused, PWI and Pro. Silver came to Kacwarnba Police Post in the Company of PW2. he was detailed to visit the scene which he did the same day. The house, where the offence allegedly was committed is behind Shoka Hotel which is on the Trading Centre. The house is just behind the Trading Centre.

Doctor Ruhweza John (Pw4) is the Doctor who examined the victim (PW1) but could not ascertain much as she was in her menstrual period. He observed no injuries on her private parts or any other party of the body.

In his defence the accused stated that he knew the complainant (PW1) as she had been his girl friend for four months and they used to have sex. However, she was not happy by his failure to give her money. He gave her money once after their first sexual encounter. On 19/7/2000 they had sex as usual and thereafter she intimated to him that if by 2.OOp.m. he failed to give her money she would do something or rather cause some problems.

Later in the day he had rumours that he had raped the victim. He went with the Chairman (PW2) to the girl's home and eventually the Chairman took them to Police.

1n all criminal cases the duty of proving the guilt of the accused always lies on the Prosecution and that duty does not shift. The standard of proof by which the prosecution must prove the guilt of the accused is proof beyond reasonable doubt. See Uganda V. Dic Qjok 1992 — 93 HCB 54, Oketh Okale & others V.R.. 1965 E.A *555.*

In a charge of Rape the Prosecution must prove beyond reasonable doubt all the ingredients that is to say:

1. The act of sexual intercourse.
2. Lack of consent on the part of the victim.
3. Participation of the accused person.

In the instant case the fact of sexual intercourse was alleged by the victim (PW1) and pinned it on the accused. The accused admitted having had sex with PWI on 19/7/2000. As the fact

of PWI having had sex with the accused at the material time, I do find that the Prosecution proved beyond reasonable the two ingredients of the offence, namely that there was the act of sexual intercourse suffered by the complainant arid it is the accused person who did it.

The only issue is whether there was lack of consent on the part of the victim. On this ingredient there is only the evidence of the complainant who testified that the accused pulled her into a room, removed her knickers and had sexual intercourse without her consent. The evidence of the other three witnesses has no relevance to this issue. Even the medical evidence was of no use. The Doctor (PW4) was not certain whether the hymen had been ruptured and when or whether there was any inflammation or injuries around her private parts, the reason being that she was menstruating at the time of examination. PW4 did not see any injuries on thighs, elbows or arms, although the complainant (PW1) was strong and capable of putting up some resistance. In short there was no evidence to corroborate the complainant's evidence that she had been sexually abused by force or rather without her consent.

In a trial on a charge of rape it is desirable that there be corroboration of the complainant's evidence in a material particular implicating the accused — See Chila and another V. Republic 1967 EA 722. However uncorroborated evidence of a complaint can be acted upon as a basis for the conviction of the accused person provided the trial judge first dully warned himself and the assessors of the dangers of convicting on such uncorroborated evidence of victims of sexual offences. See Sebidde V. Uganda Criminal Appeal of Court of Appeal of Uganda and Chila and another V Republic (Supra)..

In the instant case, as already found, there was no corroboration of the evidence of PWI in a material particular implicating the accused, in fact the evidence of PW2 indicates that at the earliest opportunity the accused maintained that he had consentual sex with the complainant.

The question that remains is whether, in absence of corroboration I am satisfied that the complainant's evidence is truthful, Both assessors advised me to acquit the accused mainly on the ground that the evidence of the complainant was not credible nor reliable. I have no reason to depart from their unanimous opinion

. PWl was reluctant to disclose to Court as to what actually happened. She kept saying that the accused forced her into sex. Her shyness was not a sign of innocence. She told Court that she made an alarm but no body came to her rescue. According to PW3 the Police officer who visited the scene, the house where the offence is alleged to have taken place was just trading a

Centre. It is rare that such busy places could have been deserted at material time. I do believe that she never offered any resistance if indeed the accused forced her into sex. She was a strong girl and an adult capable of doing so**.** If she had done so most likely she would have inflicted injuries**,** however slight, on the accused person which could have been observed by PW2 or PW3 or Mrs. Sliver who was not even called as a witness. On the other hand she would have suffered some injuries as a result of the struggle which could have been observed by the Doctor (PW4)

Further PWl lied to Court when she said chat the first person to reported her ordeal to was Mr. Sliver. According to PW2 it was Mrs. Sliver to whom she first reported in turn she reported the matter to PW2. She must again have lied to Court when she said that the Police and her master Sliver and the wife of the accused are the ones who collected the accused from the garden where he was working after he had committed the offence. She was not supported by PW3 and PW2 • It is PW2 who as it were arrested the accused and took him to Police at Kacwamba Police Post and the Police came to the scene**,** the home where PW1 was working, when the accused had already been locked up at the above Police Post.

In any case one wonders how the accused could have confidently stayed working in his garden near the scene of the crime and how his wife would have been interested in tracing him unless this is to suggest that she was concerned with her husband's adulterous association with the complainant**.** PW l never impressed me as a truthful witness**.** 1am inclined to believe to accused's version to the effect that PWI was his girl friend and that the sexual intercourse of 19/7/2000 was had with her cosent.

In the final result and in agreement with both assessors I find that
the prosecution has failed to prove their case beyond reasonable doubt. I do acquit the accused of the offence of Rape Contrary to Sections 117 and l18 of the PenaI Code Act and set him free unless held on some other lawful charges.

Sgd. (V. T. ZEHURIKIZE)
JUDGE.
24/1 0/2002.

Court: Judgment read in open Court in the Presence of Mr. Asiimwe for the State and Mr. Nyamutale for the accused. The accused present in Court.

sgd. (V.T.ZEHURIKIZE)

JUDGE

24.l 0.2002.

Right of Appeal explained.