

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CASE NO. HCT-00-CR-SC-0119 OF 2001**

**UGANDA ::::::::::::::::::::::::::::::::::::::: PROSECUTOR**

**VERSUS**

**ASIIMWE CHRISTOPHER ::::::::::::::::::::::::::::::: ACCUSED**

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

**JUDGMENT:**

The accused at the bar is indicted for rape contrary to section 117 and punishable under section 118 of the Penal code Act.

It is alleged that on the first day of July, 2000 at Bwaise III Kawala Road in Kampala District had sexual intercourse with Nansamba Harriet without her consent.

Nansamba Harriet is a spinster of 25 years of age. She testified that on 1/7/2000 at about 2 a.m. as she returned home from work – she is a bar attendant – a man came from behind, grabbed her arm and pulled her towards the charcoal stalls. He then

proceeded to undress her after which he sexually ravished her. She struggled with the man while raising an alarm and in the process bit one of his fingers as he tried to gag her. On hearing people approaching he released her and fled the scene. Some L.D.U. Personnel found her at the scene and she told them of what had befallen her. The LDU's followed the rapist. The following day when she reported to police she found a man with a bitten finger under arrest she recognized her ravisher as the accused at the bar.

Kisule Tony is an LDU operative. On 1/7/2000 while on patrol duty he heard an alarm. He followed the source of the alarm and found a woman who said she had been raped. He then saw someone trying to flee away. He together with a fellow LDU chased this man, over took him and arrested him. He recognized the accused at the bar as the man he arrested. They found accused with a bitten finger still dripping in blood. Some of the blood had stained his shirt. They took the accused to Kawempe Police Station.

Dr. Martin Wagoba Karyemenya doubles as a police surgeon. On 2/7/2000 he examined a woman called Nansamba Harriet. He was of the apparent age of 23 years. She had soft tissue injuries on her pelvic region. He also examined a man called Asiimwe on 11/7/2000. He was of apparent age of 25 years. He had a

human bite wound on his thumb and scratches over his right hand. He could not recall how old the wound was when he examined Asimwe. In his defence accused denied the charge against him.

Prosecution must prove carnal knowledge. For this purpose it is not necessary to prove that the hymen was ruptured or that there was an emission of semen. The slightest penetration of the vagina by the male organ will be sufficient. In this case prosecutrix was of the apparent age of 23 years and a barmaid. It would be a miracle to find her hymen intact. Be that as it may the medical report shows that there was penetration.

I examined the demeanor of this woman and found her a truthful witness. I accept as a fact that she was sexually ravished.

On a charge of rape absence of consent is very important and prosecution must prove that the accused had carnal knowledge of the prosecutrix without her consent. Consent obtained by force or by means of threats or intimidation or fear of harm is no consent. Evidence of some struggle or resistance by prosecutrix may be the best proof of lack of consent although this may not always be necessary.

In this case there is the presence of a bitten finger. Let me hasten to say that I accept the evidence of Harriet that she bit the finger of her ravisher. This cannot be a result of sexual ecstasy, as learned counsel for defence seemed to imply. Lack of consent has been proved without an iota of doubt.

As I have said I accept the evidence of Harriet that she bit the finger of the rapist. I accept unhesitatingly the evidence of the LDU officer that he saw a person fleeing the scene of the offence and chased him. I accept without any reservation that the person chased and arrested is now the accused at the bar. I accept the evidence of the LDU man that he found the accused with a bitten finger with blood oozing out of the wound.

The doctor who later examined the accused found him with a human bite on the thumb. With this evidence is there any need to look for corroboration?

Corroboration is right here. The alibi put forward by the accused has crumbled down like a house of cards. I am in complete agreement with the opinion given by the assessors that this man is guilty of the offence charged. He is accordingly convicted as charged.

J.B.A. Katutsi

**JUDGE**

**22/01/2003**

Court as before.

Judgment delivered.

J.B.A. Katutsi

**JUDGE**

**22/01/2003**

**Tumuhiki:**

We have no record of the past history of the accused. We take him to be the

first offender. This is a serious offence with maximum sentence of death. I call for a determinant sentence.

J.B.A. Katutsi

**JUDGE**

**Katongole:**

It is true that the offence is a very serious one. But it is also a fact that accused is a young man with a wife. He has three children. He has been in custody for 2½ years.

In spite of this he appears repentant. We call for mercy.

J.B.A. Katutsi

**JUDGE**

Sentence and reasons for the same.

It is true accused is a young man below the age of 30 years. He has been on remand for about 2½ years. However the offence he committed is a very serious one. He abused a lady and robbed her of her dignity. It does not matter that the complainant might be a woman of loose morals. She has a right to dish her goods

to a man of her choice. Accused exposed her to unprotected sex. Judging from his character he might not be safe. If that is so then he has condemned the woman to untold suffering. Courts have a duty to pretest the modesty of women. This is a young man whose libido seems to be great. There is need to protect woman folk from him by keeping him away for some time. May be after that his libido will be reduced.

I deem a sentence of 10 (ten) years not to be a minute longer. He is accordingly sentenced.

J.B.A. Katutsi

**JUDGE**

**Court:**

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

J.B.A. Katutsi

**JUDGE**

**22/01/2003**