

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA

CRIM. SESS. CASE 0099/2008

UGANDA

..... PROSECUTOR

=VERSUS =

YEBUGA MAJID

..... ACCUSED

BEFORE HON. JUSTICE J.W. KWESIGA

JUDGMENT

The accused person is indicted for Rape contrary to sections 123 & 124 of the penal code. It is alleged that on 18th February, 2008 at Aringili village in Koboko District, the accused person had unlawful carnal knowledge of ASINA DRICA without her consent.

The accused person pleaded not guilty to the indictment and therefore the burden of proof remain fully upon the prosecution. The prosecution will only be said to have discharged this burden of proof if it adduces evidence that proves the essential ingredients of the offence of rape beyond reasonable doubt.

The ingredients of the offence were summarized in the decision of **D.P.P Vs MORGAN & 3 OTHERS (1976) AC 182** and also well embedded in section 123 of the penal code. These are:-

1. That there was sexual intercourse with the complainant (a woman).
2. That the sexual intercourse was unlawful.
3. That there was no consent of the woman.
4. That the accused person participated in the commission of the offence.

See **KATUMBA JAMES Vs UGANDA Cr. APPEAL 45 OF 1999 (SC).**

In sexual offences, including rape, the victim is always the best witness in establishing the commission of the offence and identification of the accused person where the conditions for

identification are favourable. Majority of these cases are committed under cover of darkness and in secrecy therefore the victim's credibility is very vital. Proof of the elements of the offence will be found in the testimony of the victim, the testimony of other witness who saw or received the woman's report, medical evidence e.g. the vaginal injuries or male fluids found in her vaginal canal or around her female sexual organ.

In view of the above I will proceed to examine the evidence adduced in this case.

PW 1 ASINA DRICA a woman of 30 years of age while a sleep on 18th February 2008 was attacked in darkness by a man who had sexual intercourse with her without her consent. She woke up to find him already inside her having sexual intercourse. He had a panga and threatened to cut her neck and when she struggled to push the panga away from her neck it cut her finger.

After one round of sexual intercourse she managed to disengage herself, ran out of the house which was in darkness, she locked the attacker inside the house went outside to make alarm. The attacker cut the door with a panga and got out while the victim was making alarm from outside near the door. With help of moonlight she was able to recognize the attacker as YEBUGA MAJID the uncle of her husband. She immediately went to report to her husband IYALE at about 4.00 am where he had gone for a funeral. He came and saw the cut door. The matter was reported to LC 1 chairman, the following morning and the accused was arrested. The accused was well known to the victim, their houses were between 200 and 500 meters apart.

PW 2 IYALE ATAHAI the victim's husband confirmed the victim reported to him that his uncle Yebuga Majid had raped her. He received the report at about 4.00 am. That on being questioned by the LC 1 chairman the accused admitted in his presence.

PW 3 IYALE MAJID received the report and went to the scene of alleged rape he found the door cut. That the accused admitted before him having had sexual intercourse with the victim.

The accused, on 22nd February 2008 made a charge and caution statement which admitted in details how he conceived the idea and left his house at 3.00 am, armed with a panga, pushed the victim's door open, found her lying on a mattress, opened her legs and forcefully had sexual intercourse with her after which he went to his house and left her outside the house making alarm. (See P.3 B). Although he denied participation in his court testimony the rest of what he said in court are contained in the charge and caution statement.

The medical evidence (See prosecution exhibit P.1) the victim was examined the clinical officer (PW...) on 18th February, 2008 he found male semen in the vaginal canal, the vulva was stained with mucoid fluids and he concluded the above were arising from sexual penetration.

I have already stated that the victim's evidence is the best evidence in sexual offences because the victim would be possessed with the evidence of penetration identification.

PW.1 is a married woman who has a number of children, this court finds that when she said the attacker had sexual intercourse with her she appreciates and knows what she is talking about. Her evidence is corroborated by the medical evidence admitted as P 1 which found semen in her vaginal canal and sexual fluids around her vulva proving that there had been penetrative sexual intercourse.

In view of the above I find that the fact that there was sexual intercourse with the victim has been proved to the required standards.

Immediately after she realized somebody had penetrated her sexual organ and started having sexual intercourse with her, she struggled to get free but she was over powered, she was threatened with a deadly weapon, the panga that cut her finger. The attacker put the panga on her neck to subdue her further and stop her from making alarm. This is evidence of use of violence against the victim. The fact that she did not agree to the sexual intercourse before it started and the fact that there was violence and threat to use a deadly weapon if she resisted, amounts to overwhelming evidence of None-consent of the victim.

The victim was unable to recognize the man that was on top of her having sexual intercourse throughout the act. However, when she ran out of the house and made alarm, the culprit moved outside where there was moonlight and she recognized him as MAJID the accused person. The charge and caution statement, his admission before the LC 1 chairman in the presence of the victim's husband corroborated the victim's identification of the accused person.

The accused person was well known to the victim, she saw his face as he moved out of the house, she saw him ran away to his house. I am satisfied that the accused person was correctly identified as the culprit that had sexual intercourse with the victim on the material day without her consent.

I have considered the defence evidence of denial and the alleged grudge arising from the fact that the complainant owed the accused sh. 10,000/= on account of cassava that he had sold her. I have not found any relationship between the cassava transaction and this case. Even if the debt existed, I have found that the grudge is a mere allegation and if it was real it should have been put to the victim PW 1 in cross-examination. I reject the defence of a grudge.

The Assessors' analysis of the evidence agrees with my findings above they have advised me to find the accused person guilty. After due consideration, I have found the accused person guilty as charged. He is accordingly convicted.

Signed

23/9/2009

JUDGE

STATE ATTORNEY

He was remand on 4/3/2008. No criminal record. We pray for a deterrent sentence. The circumstances, it was brutal. It is degrading to the woman.

DEFENCE:

- 1) ACCUSED:- I am alone at home. My wife died she left small children under my care.
- 2) COUNSEL:- No previous record. Rape is a serious offence use discretion and be lenient.
Give minimum sentence.

COURT: The accused has been on remand slightly over 1 year. He committed the offence with brutality, he threatened the victim with a deadly weapon. He cut her finger. He was violent, he

cut the door of the house. He raped a wife of his own Nephew for which he does not seem to regret. He shows no remorse at all, all he wants is lenience. Maximum sentence of this offence is death sentence, I will discount this and I sentence the accused person to 15 (Fifteen) years sentence.

.....
J.W. Kwesiga

23/9/2009