

**IN THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT JINJA**

**CASE NO HCT-03 CR- SC-0323/10**

**UGANDA.....PROSECUTION**

**VERSUS**

**NGOBI ARAMANZANI ALIAS MAWULANA.....ACCUSED**

**BEFORE HON. LADY JUSTICE FAITH MWONDHA**

**JUDGMENT**

The accused was indicted on a charge of rape C/S 123 and 124 of the Penal Code Act. It was alleged that the accused Ngobi Aramanzani alias Mawulana on the 9<sup>th</sup> day of November 2007 at Bulondo Bukoba Zone Kamuli district did have unlawful canal knowledge of Nakiyemba Susan without her consent.

The prosecution had the burden to prove three ingredients beyond reasonable doubt to bring the guilt of the accused person home. Its trite law that the accused has no obligation to prove his innocence however incredible his defence can be. She or he is only convicted on the strength of the prosecution evidence against him, see *Justin nankya v. Uganda SC CR App 24/95 (Unreported) also see Okoth Okale v. R [1955] EA.*

On the first ingredient PW1 testified that on the fateful night, the accused who she had met when she was looking for the LCI chairman came and knocked on the room where he had got her to sleep. That he had carnal knowledge of her and in fact that he had three rounds of sexual intercourse.

PW2 also testified that on the material night he heard a girl making alarms. That when he went there he heard someone saying “put on a protector on your penis.” That the accused told her that he wanted it live. That he knew the voice, it was that of the

accused. That the room was open and he saw the accused and identified him as Maulana. That the girl was put down. That there was a candle light. That he feared the accused to see him so he went back to his room. I was satisfied that this ingredient was proved.

On the second ingredient, PW1 testified that when the accused came back in the night he had bought a bottle of soda which she refused to take. That there was candle light and he also had a panga. That she wanted to run away but the accused prevented her. That she shouted and as she shouted the accused opened his eyes and asked her if she knew him as he was threatening her with a panga. That he demanded sex from her. That they fought and eventually overpowered her and forcefully had sex with her. She went the following day and reported to LCI Chairman. I was satisfied that this ingredient was proved.

On the third ingredient, PW1 told court that she knew the accused before. She met him in company of another man she did not know the previous day. That the accused volunteered to get her somewhere to sleep for a night. That the accused came back later as she was sleeping and when she opened, it was the accused. There was a tadooba light. He talked to her and demanded for sex. He even had a soda which she refused to take. She knew her attacker by name and before he had sex with her they fought until he over powered her. The accused in his defence also told court that he knew his victim. He also stated that he saw the victim with another man and he left them as he went to his business. So the two knew each other. This is a case which depended on identification by a single identifying witness when conditions for proper identification are not favourable.

Its trite law that while the identification of an accused person can be proved by the testimony of a single witness, this doesn't lessen the need for testing with the greatest caution the evidence of such a witness regarding identification. Circumstances to be taken into account include the presence of light and its nature, whether the accused was known to the witness before the incident or not, the length of time and the opportunity the witness had to see the accused and the distance between them, see ***Abdalla bin Wendo and Another v. R [1953] 20 EACA 166 and Bogere Moses and Another V. U Cr App No 1/97(SC)***.

In the instant case there is no doubt whatsoever for the evidence above that the test has been proved. Favourable conditions existed so the victim identified properly her attacker and there was no possibility of mistaken identity. This was a sexual offence of rape where the victim in most cases is her own witness in the salient material all the other evidence is corroboration. In the instant case there was evidence of PW2 who had the girl/woman raising alarms and he indeed came. He heard what the accused spoke and saw him. But this in my view this is mere corroborative. It was held in the case of ***George Bangirana v. Uganda [1975] HCB 361*** as follows, it's true that a court is not prevented from convicting a person of a sexual offence on the evidence of the complaint (prosecution) alone if she is believed by the court to be a truthful witness. But the practise in such a case consistently and rightly has been that the complaint evidence be corroborated. It is generally considered unsafe to base a conviction only on the evidence of a complaint (prosecution) alone in sexual offences.

In the instant case there was ample corroboration by PW2's evidence already summarised above and there was PW3 the chairman LC1 who the victim narrated to the story at her earlier opportunity, the moment it became day. The defence of the accused consisted of emails and what he said could not shake and or challenge the evidence of the prosecution. The victim PW1 was consistent and appeared truthful. I could not doubt her testimony.

The defence submitted that PW1 told court that she made the alarm but no body came. As far as she was concerned that was not true and she was only being truthful. However PW2 testified that when she heard the girl shouting he came and infact the door was not closed and there was candle light. He saw the accused when he even recognised the voice when PW1 was pleading with him to wear a condom/protector and the accused responded to say that he wanted the body (live). PW1 could not have seen PW2 because PW2 was outside and was conscious of being seen by the accused. He even stated that he went a step behind. The accused had a panga. He was observing from a distance of a metre. He even knew PW1 as Susan Nakiyenka. It's not true that the prosecution relied heavily on PW4's evidence because even without it the defence case stands strongly. The evidence at the hearing never objected to tendering in EXP3 so it can't turn to dispute it now.

The defence case was merely a pack of lies that could not be believed. I was satisfied that the prosecution proved the third ingredient also beyond reasonable doubt.

The assessors in their opinion advised me to find the accused person guilty and convict him accordingly.

From what has already been stated in this judgment I agreed with the honourable assessors. The prosecution have proved its case beyond reasonable doubt, he is therefore found guilty and he is convicted accordingly as charged.

Faith Mwendha

**Judge**

23/09/2010