

**REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT JINJA**  
**HCT 03-CR-SC -NO -0328/2010**  
**UGANDA.....PROSECUTOR**  
**VERSUS**  
**MAGANDA FRED.....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 as amended. The particulars as alleged by the prosecution were that the accused Maganda Fred on the 30<sup>th</sup> day of November 2009 at Gwase Butaidi Buseranda Zone in Kamuli District had unlawful carnal knowledge of Namiyonba Justine without her consent.

The prosecution had to prove beyond reasonable doubt the following ingredients in order to bring the guilt of the accused person home in a rape charge as indicated;

1. that there was penetration of the victim's vagina
2. that the act resulting into penetration was without consent of the victim
3. that it was the accused who committed the offence (*see Katumba James v. Uganda SCCR Appeal No.45/1999*)

The prosecution brought evidence of three witnesses in addition to the agreed evidence of the arresting officer and that contained in the medical PF3 and its appendix.

PW2 the victim stated categorically that she was raped by the accused who had come to visit them. That the accused claimed to have herbs for blessings while at school and when they were out of school. That on the fateful night the accused woke her up stealthily as he had told her father and mother that the herbs were going to be free. That she woke up and they went outside. That the accused told her to lie down facing upwards and he told her to close her eyes. That he started smearing the herbs and

opened her skirt and she tried to resist it. That he told her not to fear. That he forcefully pushed her down and he slept on her and had sexual intercourse with her. That she made alarms calling her mother and father saying that the visitor had raped her. That the accused ran away. The medical evidence contained in PF3 and its appendix established that the victim who was aged 19 years had penetrative sex. That her hymen had ruptured and the rupture was recent. That there were no signs of VD. The victim had told court that she had never had sex before. The first ingredient was proved. I was satisfied.

As for the second ingredient, there was still evidence of PW2 the victim making alarms calling her mother that the accused who was a visitor had raped her. She narrated her story to her father which caused the father of PW1 to go and report to the LC. If there was consent, she could not have raised the alarm. The accused ran and he hid himself but was later arrested before the LCI chairman could write a letter referring them to police. This evidence shows that there couldn't have been consent by the accused. So I was satisfied that this ingredient was proved.

On the third ingredient again PW2 evidence was clear. The accused had come to visit them at her fathers home on the 29/11/09. he talked to them including her father ,PW1 and the mother advertising the herbs of blessings which he said that it was free of charge. He even told them that it would be administered at night though the whole procedure was not explained by him to the victim and the other children and the father and mother. When he visited he went away on 30<sup>th</sup>/11/09 but he came back. PW2 stated that when he came to wake her up, she asked him if she could light the candle and the accused answered in affirmative. This evidence was not shaken in cross examination. This meant that there could not have been any mistaken identity. When PW2 raised the alarm and PW1 woke up he found that the accused was not in the house. That it's the villagers who answered the alarm who got him hiding in the coffee garden and was arrested. He was taken back to PW1's home where the LCI chairman and PW1 found him and he was taken to Gwase Police. I was satisfied that this ingredient was proved.

The accused in his defence denied being a brother in law of PW1 though he agreed to having visited him on the material dates. He denied having raped PW2 but he

conceded to having slept with PW1 in his house. He stated that he was being framed. He denied that he was not a traditional doctor. He had made a statement at police which was not a confession and his particulars he had stated that he was a traditional doctor which he was denying. He said that the statement was not read to him though he signed it. The statement was tendered as EXD1. The evidence adduced was that the accused was claiming to be a traditional doctor and he never challenged it. PW2 told court that when the accused came to visit their home he found her and a sister to her mother who was suffering from traditional sickness and the accused said he was going back home to bring the herbs. That he took the patient back to where she was married on 01/02/09. That he left the patient there and he came back that very day 01/02/09. All that evidence was pointing to one fact that he claimed to be doctor or healer of some kind.

His defence was a mere concoction of lies which could not be believed. He didn't bother to explain why he was found hiding himself in the coffee garden. So I found no merit in defence which could cast doubt on the prosecution case. The principal State Attorney Mulindwa Badru submitted that the prosecution had proved its case beyond reasonable doubt and prayed that the accused should be found guilty and convicted accordingly. The defence conceded to the proof of ingredient one and three but contested the proof of ingredient two. He submitted that the victim consented on a number of events which culminated in the actual act of sexual intercourse. That the alarms raised were an action of embarrassment but not to show that there was no consent.

As I have already stated the evidence was overwhelming that there was no consent, the accused tricked the victim and her parents into the act. The victim and the parents believed so by trick so that could not have been consent. There was nothing the victim could be embarrassed about in order to make an alarm. That was her first time to encounter sexual intercourse. This being a sexual offence, the victim is in most cases her only witness in the material particular. All other evidence like the medical evidence is corroborative. As it was stated in the case of **George Bagirwa v. Uganda[1975] HCB page 361**. Its time that a court is not prevented from convicting a person of sexual offence on the evidence of the complainant (prosecution) alone if she is believed by the court to be a truthful witness. But the practise is such a case

consistently and rightly has been that the complaints evidence he corroborated. Its generally considered unsafe to base a conviction only on the evidence of a complainant (prosecution) in sexual offences.

In the instant case there is ample corroboration of PW2 testimony that she was penetrative sexual intercourse by the medical evidence which showed that the PW2 had a recent rapture of her hymen. It was between 1-2 days. She had told court that she had never had sex before. The conduct of the accused also corroborated PW2's. The testimony also of PW1 who said that when he woke up because of the alarm he observed that the accused was not in the house and he saw someone run away. His conduct was not innocent. His flat denial could not stand and or shake the prosecutors evidence. He appeared an artful liar and there was no sense of truth in what he was saying.

The assessors in their joint opinion advised me to find the accused guilty and sentence him accordingly. I agreed with them because of the reasons already given in this judgement. The prosecution proved its case beyond reasonable doubt and therefore found him guilty of the offence of rape. He is convicted accordingly.

Faith Mwendha

**Judge**

**9/9/10**