

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CR-SC-0080-2008

UGANDA.....PROSECUTOR

VERSUS

OKIRING JAMES.....ACCUSED

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

JUDGMENT

The accused person known by the names Okiring James is indicted together with another not arraigned for rape contrary to sections 123 and 124 of the Penal Code Act.

The allegation by the prosecution is that together with another still at large on the 18th day of October 2007 at Apuuton II village, Kaboloi Parish in Pallisa District, the accused had unlawful carnal knowledge of Asio Jane without her consent.

The accused pleaded not guilty to the indictment.

The case for the prosecution as can be deduced from the witness testimonies was that the complainant (PW.I) Asio Jane was travelling from Pallisa Town to Katuke village. She was riding a bicycle laden with a sack of maize. Unfortunate to her, the sack of maize fell off the bicycle. At the scene of the mini-accident was the

accused Okiring James and two of his colleagues one of whom was called Yobu the other was Eseuna. The two offered to help. After that, the accused and others followed her. It would appear the accused developed ideas about the complainant. All of a sudden he held her hand backwards. Yobu kicked her legs and she fell down backwards. The accused called upon Yobu to assist because he complained PW.1 was strong. The accused removed his shorts, sat on her stomach, removed his penis and pushed it “into her” and forced her into sex. All this happened with the assistance of Yobu. As the accused played sex Yobu was holding her legs.

The accused held her mouth so that she could not make noise. After the accused finished playing sex, Yobu did the same with the help of the accused. After Yobu, the accused wanted to repeat the act but they heard noise of an approaching motorcycle and they ran away. PW.1 crawled to the main road while crying. The motorcycle stopped and the passenger on the motorcycle called Opolot was known to her. He asked her what had happened to her. She narrated her ordeal to him. She revealed that she had been raped. At that juncture the chairperson LC.I found her narrating to Opolot what happened. When asked she told the chairperson that she knew her assailants as the accused person, Okiring, Yobu and Eseuna. That Eseuna did not rape her but took away her bicycle. The complainant, Opolot and the Chairperson LC.I went to the latter’s home. Later at 2:00A.M. The matter was reported to police at Pallisa. She was taken to Hospital by a police woman called Acam where a doctor examined her. That the accused had never proposed to her a love affair. She knew him casually because she used to pass through his village.

PW.2 Tukei Lawrence the LC Chairman confirmed that he met PW.1 and Opolot Stephen together with one Oduku along Pallisa/Agule road junction. PW.1 was

narrating how she had been raped. Together they went to the LC Chairman Apuuton II village who mobilized people to mount a search for the culprits. That PW.1 did not mention her assailants to him.

PW.3 No.12603 D/W Sgt Acam Florence visited the scene of rape led by the victim. She drew a sketch plan and recorded statements from witnesses including Okodesi, and Tukeiu.

PW.4 Opolot Stephen testified that he indeed met the complainant after hearing an alarm while he travelled on a motorcycle. The motorcycle stopped to help PW.1 who was asking for help. PW.1 told him that she had been raped but the rapists ran away on hearing the sound of a motorcycle. She said she could recognize the assailants if she saw them. She did not know their names. PW.4 led her to the LC. Chairman Tukei and left her there.

PW.5 D/ASP Mugido Bruhan recorded the charge and caution statement which was admitted in evidence after a trial within a trial. In the statement the accused admitted to have committed the offence. The statement was admitted as Exhibit P.2. Court found that the statement was voluntarily procured.

In his defence, the accused re-affirmed his denial of the indictment. He testified that he did not know the complainant. He saw her for the first time while testifying against him in court. Today he is wondering why she made such allegations against him. That on the day in question he was at his home throughout. He was surprised to be arrested by the LC.I Chairman at 9:00p.m. He was taken to the

chairman's home where he met two motorcycles on which he was taken to police. At police he was told he was a suspect in a rape case. He denied the offence.

The offence of rape is committed by any person who unlawfully has carnal knowledge of a woman or girl above 18 years of age without her consent if the consent is obtained by force or by intimidation of any kind or by fear of bodily harm or false representations as to the nature of the act or personating a husband in case of a married woman. Therefore the three essential elements of the offence of rape are:-

- (1) Carnal knowledge of a woman or girl above 18 years of age, and;
- (2) Lack of consent making it unlawful;
- (3) By the accused.

These ingredients have to be proved by the prosecution beyond any reasonable doubt. This burden does not shift *Joseph Kiiza & Anor. V. Uganda [1978] HCN 268*.

Sexual intercourse at common law known as carnal knowledge is penetration of a male organ into that of the female.

I will now deal with the first two ingredients together.

(1) Whether there was sexual intercourse without consent.

In her submission, Ms. Alpha Ogwang the learned Resident State Attorney stressed that she adduced enough evidence to prove this ingredient as required. She relied

on the evidence of the complainant, PW.3, PW.4. That these witnesses corroborated each other and their evidence was confirmed by the statement in admission made by the accused and exhibited as Exhibit P.2. That prosecution evidence supported the evidence of PW.1 who was a single identifying witness. On the other hand Mr. Mudangha learned defence counsel submitted that this ingredient was not proved because prosecution relied on evidence of a single identifying witness. Secondly that no medical evidence was adduced to prove sexual intercourse. That the doctor did not testify. That PW.1's story is a concoction and that there was no sexual intercourse.

I agree with both learned counsel that PW.1 was the only eye witness of what happened at the material time. She told court that she was sexually assaulted by the accused. The accused and another had forcible sexual intercourse with her. The offence took place before dark. PW.1 was on her way when she met the accused, Yobu and Eseuna. The accused asked her for sex. She refused thereafter both accused and Yobu wrestled her and had forceful sex with her one by one. While the accused had sex with PW.1, Yobu held the complainant to prevent resistance. He closed her mouth so that she could not raise an alarm. Yobu also had sex with the complainant after the accused. The two ran away on hearing an oncoming motorcycle. PW.1 narrated the ordeal to PW.2 and PW.3 at the roadside.

I was satisfied with the consistent evidence of the complainant. She told the truth. Just as I cautioned assessors on the need to find other evidence to support evidence of a single identifying witness, I caution myself as well. PW.1 was familiar with the assailants. The accused was an acquaintance. She usually saw him in the

village. She was travelling during day. The accused and others at large helped her lift a sack of maize she was carrying. Thereafter they moved together and talked to each other. The accused demanded for sex. PW.1 refused. Force ensued. In my view this was sufficient time for PW.1 to have confirmed the identity of the accused.

Although the other prosecution witnesses said the victim did not tell them the names, I was convinced by her testimony that she revealed the names of her assailant. The time lag between when the accused met the victim and the time the offence took place was long enough for her to have identified the accused. In the case of ***Abdulla Bin Wendo & Anor. V. R (1953) 20 EACA 186*** it was held that:

“the testimony of a single witness regarding identification must be tested with the greatest care. The need for caution is even greater where it is known that conditions favouring correct identification were difficult. What is needed before convicting is other evidence pointing to the guilt of the accused.”

The evidence of PW.1 was sufficiently corroborated by that of PW.2 who found her narrating what befell her to PW.4 Opolot Stephen. The complainant was in a distressful condition. She was crying. In sexual offences, the distressful condition of the victim amounts to sufficient corroboration. The admitted charge and caution statement (Exhibit P.2) corroborates the prosecution evidence by PW.1, PW.2 and PW.4. I have weighed the veracity of Exhibit P.2 with the entire prosecution evidence and defence and was satisfied that it was voluntarily made and confirms that PW.1 told court.

I do not agree with the submission by learned defence counsel that PW.1's evidence was a concoction because her testimony was not corroborated and no medical evidence was adduced by the prosecution. Lack of medical evidence was not fatal to the prosecution case in light of the strong prosecution evidence.

The ingredient of forceful sexual intercourse has been proved beyond reasonable doubt.

This brings me to the ingredient of whether the accused person is the culprit.

In her submission the learned Resident State Attorney stated that her evidence pins the accused person. That the accused's alibi was disproved. On the other hand, learned defence counsel submitted that his client was not identified by PW.1. That PW.1 contradicted herself on the identity of the accused person since she did not know his names. That there is no evidence that the accused introduced himself to the victim (PW.1). Further that PW.1 does not know who raped her since conditions were difficult at 7:00p.m, that it was dark and in the bush. That the accused was severely assaulted before he made the charge and caution statement. Finally that to show that the accused is not guilty he did not hide after the alleged crime.

After weighing the defence story with the prosecution case I am inclined to believe the prosecution version of events. According to the complainant, the offence took place at around 7:00p.m. But several events took place before the actual rape. The accused and others helped the victim lift her sack of maize. They engaged in a conversation. The accused demanded for sex. When PW.1 refused they wrestled

her and had sex in turns by force. I agree with the prosecution that the victim had enough time to observe and identify the accused. Secondly, the accused was well known to the victim. He used to play football with her son. This is enough strong evidence to disprove the accused's defence of alibi. It is trite law that an accused has no duty to prove his alibi. He only has to raise it and it remains the duty of the prosecution to disprove the defence of alibi and place the accused at the scene of crime. Further, the accused's defence is destroyed by the admitted charge and caution statement which as made voluntarily. The accused cannot be heard to plead that the statement was made under duress and is therefore inadmissible. It formed part of evidence and has been evaluated and admitted like the other evidence on record.

It is my considered view that the inconsistencies in the prosecution case wherever they accrued were not major ones and as such prosecution case could not be rejected. I regarded the inconsistencies as minor and did not point to deliberate untruthfulness. For example PW.2 arrived at the scene of crime far later than PW.4. He found when the complainant had narrated to PW.4 what befell her. I also believed that PW.1 revealed to PW.4 the identity of her assailants.

The assessors in their joint, but not so clear opinion, were of the view that prosecution had not proved the offence against the accused person beyond any reasonable doubt because the circumstances and light at the time of offence was not favourable. I do not agree with the opinion of the assessors in view of the reasons I have given herein.

Prosecution has proved beyond any reasonable doubt that the accused had forcible sexual intercourse with the complainant. There was penetration of the accused's male organ into the complainant's female organ. There was sufficient light to enable identification. There was no mistaken identity.

Consequently I will find the accused guilty and convict him of the offence of rape contrary to sections 117 and 118 of the Penal Code Act.

Musota Stephen

JUDGE

7.4.2011

7.4.2011

Accused produced.

Alpha Ogwang for State.

Mudangha for accused absent.

Magirigi on brief.

Loyce Interpreter.

Resident State Attorney: Case for judgment.

Magirigi: Ready to receive the judgment.

Court: Judgment delivered.

Musota Stephen

JUDGE

7.4.2011

Court: Mudangha arrived while judgment was being read.

Resident State Attorney:

The convict is a first offender. The offence is serious and carries a maximum sentence of death. It is a fundamental breach of human rights. We pray for a deterrent sentence to send a message to the other would be rapists and deter them from committing the same.

Musota Stephen

JUDGE

7.4.2011

Mudangha:

I apologize for coming later for I forgot case is today I was on Court of Appeal which is sitting now. I have had 3 appeals I was requested to provide authorities.

Allocutus:

I am instructed to pray for a lenient sentence. The convict is a first offender. He is a young man of 22 years now. He is remorseful and capable of reforming. Given opportunity he can contribute to the development of this country. I therefore pray that the 4 years the accused has been on remand are adequate punishment. He has learnt his lesson. Court should treat him accordingly.

Sentence and Reasons

The convict is a first offender as such I consider the respective submissions by both learned counsel with regard to that fact. However, abusing the modesty of women is deplorable and amounts to violence against women which this court must prevent. The offence of rape is therefore a serious one. I will consider that the accused has spent more than three years awaiting trial and has been waiting for his part heard case to be concluded for a year.

The convict is a young man capable of reform. He appears remorseful.

I will therefore sentence him to 18th month's imprisonment in addition.

Right of appeal explained.

Musota Stephen

JUDGE

7.4.2011