

**THE REPUBLIC OF UGANDA**

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

**HIGH COURT CRIMINAL SESSION CASE NO. 0052 OF 2023  
(Arising from Koboko Police Station C.R.B. No. 0065 of 2022)**

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

**VERSUS**

**AMANDU DENIS:.....ACCUSED**

**BEFORE HON. JUSTICE ACELLAM COLLINS**

**JUDGMENT**

**Introduction.**

The accused in this case is indicted with one count of Rape contrary to section 123 and 124 of the Penal Code Act. It is alleged that the Accused, on the 15<sup>th</sup> day of January 2022 at Tabi 'A' Village in the Koboko District unlawfully performed sexual intercourse with Koreyo Dorcus without her consent.

The prosecution case is that on the 15<sup>th</sup> day of January 2022 while the victim Koreyo Dorcus was sleeping she woke up and realized her knicker was halfway down, someone was on top of her and she was feeling pain. She asked who the person was, and he simply got



up and ran away forcing her to make an alarm which attracted her father Ezati Silvano and her mother Ederu Janet. Her father came out and saw a person run out of the victim's house. When he entered the victim's house he found her crying and when he asked her she told him the accused, Amandu Denis had raped her. He then checked the accused's house which was nearby and found he was absent but other three boys were there. The matter was then reported to the LCI Chairman Amayo David and in the presence of the LCI Chairman the victim reported that she had identified the accused as the person who raped her because he had plaited hair. The chairman questioned the accused, and he admitted having sexual intercourse with victim twice and he was taken to Dranya Police Post where the victim's father had reported the case. The victim was examined and found to have a ruptured hymen as a result of penetration.

**Accused's evidence.**

The accused on his part denied committing the offence or any knowledge of the allegations. He attributed the same to a grudge between his clan and the clan of the victim over a one-acre piece of land owned by his father. He testified that they are neighboring clans and the dispute started in December 2021 and the victim's clan is claiming land beyond the boundary. That at the time his father was in prison for a fight over the same land and the victim's father wanted to dig on the disputed land in his father's absence.



He alleges the land dispute is the reason the allegation was brought against him.

**The burden and standard of proof.**

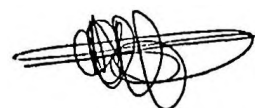
The prosecution bears the burden of proving the case against the accused. This burden never shifts to the accused person to prove his innocence. And he can only be convicted on the strength of the prosecution case and not on the weakness of his defense. (See: **Ssekitoleko v. Uganda** [1967] ES 531)

The standard of proof is beyond reasonable doubt. By his plea of guilty, the accused put each and every essential ingredient of the offence in issue and the prosecution has the onus of proving them beyond reasonable doubt. Proof beyond reasonable doubt does not necessarily mean proof beyond a shadow of doubt. The standard is satisfied once all the evidence suggesting the innocence of the accused, at its best, creates a mere fanciful possibility but not any probability that the accused is innocent. (See: **Miller v. Minister of Pensions** [1947] 2 ALL ER 372)

**Ingredients of the offence.**

For the accused to be convicted of Rape, the prosecution must prove each of the following essential ingredients beyond reasonable doubt.

- 1. Carnal knowledge of a woman or girl.**
- 2. Lack of consent of the victim.**



**3. That it is the accused who had carnal knowledge of the victim.**

**a) Carnal knowledge of a woman or girl.**

Carnal knowledge means penetration of the vagina, however slight, of the victim by a sexual organ, where sexual organ means a penis. Proof of penetration is normally established by the victim's evidence, medical evidence, and any other cogent evidence.

In this case, the evidence of the victim is that the accused is a relative and they lived in the same homestead. The night of the alleged offence she was asleep, and she only woke up because she felt pain on her chest and in her vagina. She realized that both her petticoat and her underwear had been removed and that the accused was having sexual intercourse with her, and his shorts were down by his legs.

She recognized him because he had plaited hair, there was light in the house which enabled her to see his face very well. On realizing what was happening she made an alarm and some people responded including her father. Her assailant then took off and ran away. The following morning, she was not feeling well, and she was bleeding from her private parts. She was examined and treated at Dranya Health Centre.



The victim's father Ezati Silvano testified as PW1 on 13/4/23 stated that during the night of 15/01/2022 at about 2:00am he responded to an alarm by the victim. When he got to her house he found her alone and she told him that the accused had been sleeping with her. He then went to a nearby house where the accused sleeps and found he was not there but two of his brothers were there. They told him that he had been there, but they did not know where he went. He then reported to the LC1 Chairman that the accused had slept with his daughter, and he advised him to return in the morning. When the accused returned home at 7:00am he asked him about the allegation by his daughter and he denied. The LC Vice Chairperson who is also an uncle to the accused, caned him 4 strokes and warned him to tell the truth because the victim's father was his uncle and since he was living with him misfortunes will follow him if he did not tell the truth. They then agreed that the matter be reported to the police.

Four days after the incident on 19/1/2022, the victim was examined on Police Form 3A by Matua Adinan, a Clinical Officer at Koboko General Hospital. He estimated the victim to be 14 years old and upon examination he observed that although the hymen was ruptured there were no signs of recent trauma. By consent of both the prosecution and the defense the report was admitted in evidence as an agreed fact and marked as PEX1.

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As earlier indicated, this element of the offence can be proved by the evidence of the victim, medical evidence, or any other cogent evidence. The victim in this case alleges that when she woke up she found her petticoat and underwear had been removed and she felt pain in her private parts and that in the morning she was bleeding.

When she was examined on 19<sup>th</sup> January 2022, four(4) days after the alleged incident and although the medical examination report shows that the hymen was broken, there were no signs of recent trauma. This findings in this report do not offer any corroboration of the evidence of the victim in as far as it seems to suggest there is no evidence of recent trauma. This leaves this court with only the evidence of the victim to prove this element of the offence. However medical examination conducted four <sup>days</sup> years suggest there was no sign of any recent trauma at the time. The only inference that can be drawn from this is that there were no signs that she was involved in any form of sexual activity at the time. Notwithstanding the definition of a sexual act for purposes of this offence I am unable to find that there was a sexual act performed on the victim. I accordingly find the prosecution has failed to prove this ingredient of the offence beyond reasonable doubt.

**b) Lack of consent of the victim.**

The next ingredient the prosecution has to prove is lack of consent or that the consent was obtained by force, by means of threats, intimidation of any kind, or by fear of bodily harm. Proof of lack of

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consent is normally established by the victim's evidence, medical evidence, or other cogent evidence.

The victim testified as PW2 that during the night of the incident she was asleep in her house, and she woke up because she was feeling pain on her chest and in the vagina. That she did not talk to the person who attacked her. She then made an alarm, and the person ran away.

Having found that there is no evidence that a sexual act was performed on the victim I find that it is immaterial to establish whether there was lack of consent to a sexual act.

**c) That it is the accused who performed a sexual act on the victim.**

The last ingredient the prosecution has to prove is that it is the accused who performed a sexual act on the victim. This can be done by adducing evidence, direct or circumstantial, showing the accused as the perpetrator of the offence.

The accused denied committing this offence and stated that he did not know anything about it. He alleges that the parents of the victim brought this allegation against him because of a grudge over land. While giving his defense he was cross examined, and he attempted to deny knowing the victims parents when he said he did not know the victims father and that he had never been his



guardian. He however admitted that he lives in the neighborhood with the victim's family and their homes are about 30 meters apart. He also stated that the victim does not know him as she lives in Maracha.

To prove participation this court has to determine whether the victim was able to recognize the accused as her assailant. In circumstances of this nature, the court is required to first warn itself of the likely dangers of acting on such evidence and only to do so after being satisfied that correct identification was made, which is free from error or mistakes.

In doing so, the court considers whether the identifying witness was familiar with the accused, whether there was light to aid visual identification, the time taken by the witness to observe and identify the accused, and the proximity of the witness to the accused at the time of observing the accused.

See: *Abdall Bin Wendo v R* (1953) 20 EACA 106; *Roria V R* (1967) EA 583; *Abdalla Nabulere and 2 others v Uganda* (1975) HCB 77

In the instant case, the victim was sleeping in the same house with one Edema Paul aged 7 years. The incident happened at 2:00am and the victim in her testimony on oath stated that there was light in the house with which she was able to identify the accused. She also stated that she realized it was the accused because he had





plaited hair and that she held his head. That while her assailant fled she was able to recognize him from outside the house with the aid of moonlight.

The father of the victim on the other hand relied on the information given to him by the victim. By the time he responded to the victim's alarm he found the victim's assailant had run away. He was only told by the victim that she was attacked by the accused and that is what prompted him to rush to the house where he slept in the neighbourhood. He did not find him there but found other boys in the house who told him they did not know where the accused had gone. According to the victim she saw the accused run into that house and shortly left wearing different clothes. From the testimony of her father there is nothing to suggest that when he went there the accused had just left the house or that he had been there and changed his clothes before <sup>leaving</sup> living at the time of the alleged incident.


Other than the fact that the victim says she recognized the accused as her attacker, there is no other evidence pointing to the participation of the accused in the commission of the offence. The victim's own evidence of the fact of a sexual act being performed on her is not supported by any other evidence. In light of the above I find there is a lot of doubt as to whether there was a sexual act performed on the victim or that it was the accused who performed a sexual act on her. It is an established principle that if there is any



doubt, such doubt must be resolved in favour of the accused person.

In the final result, I find that the prosecution has failed to prove the case against the accused person beyond reasonable doubt and I acquit him. He is accordingly discharged unless held on any other lawful charges.

Dated at Koboko this 22<sup>nd</sup> day of April 2023



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**Acellam Collins**  
**Judge**