

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KOBOKO
HIGH COURT CRIMINAL SESSION CASE NO. 0082 OF 2023
(Arising from Odravu CRB 0014 of 2022)

UGANDA:::PROSECUTOR

VERSUS

AZABO FAUZU ALONI:::ACCUSED

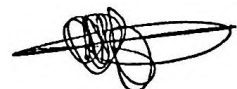
BEFORE HON. MR JUSTICE ACELLAM COLLINS

JUDGMENT

Introduction.

The Accused is indicted for the offence of Rape contrary to sections 123 and 124 of the Penal Code Act. It is alleged that on the 7th day of February 2022 at Bolomoni Village in Yumbe District the accused, AzaboFauzuAloni had unlawful sexual intercourse with AzaboZulaika without her consent.

The prosecution case is that on the said date at around 6:50pm, the accused grabbed the victim a mentally sick girl from her home and dragged her to the house, threatened to harm her if she made any noise and forcefully had sexual intercourse with her without her consent. A woman by the names of Amanywa who was passing by heard noise and when she went there found the accused having



sexual intercourse with the victim. She made an alarm, and the accused was arrested and handed over to the police. The victim was examined and found to be of unsound mind and that a sexual act had been performed on her.

Accused's evidence.

In his defense the accused person denied the offence and attributed the allegation to a land dispute between his clan and that of the victim and that he believes this is the reason for the allegation because it was made shortly after a failed attempt to settle the same.

He testified as DW1 that on the day of the alleged offence he was from the home of his neighbour by the names of Laate Peter where he was playing a game called "*dumu*" and he was with his child by the names Abdulrazak Mubaraka aged about two and a half years. After they finished playing at about 6:30pm he decided to go and buy some tablets for his mother who was sick and on his way home he passed by the home of the victim where he met the lady by the names of Aisha. She started following him while making an alarm and when people gathered she informed them that he had been having sexual intercourse with the victim. They wanted to beat him, but he pleaded with them to take him for medical examination if they are believing the lady. Fortunately, one Data David, a Secretary RWC came and prevented them from beating him and a



decision was made to take him to the police. He was then taken to Bolomoni Police Post.

The burden and standard of proof.

The prosecution bears the burden of proving the case against the accused. This burden does not shift to the accused, and he can only be convicted on the strength of the prosecution case and not on the weakness of the defence. (See: ***Ssekitoleko v. Uganda* (1967) EA 531**).

By his plea of not guilty the accused put in issue each and every essential ingredient of the offence and the prosecution has the onus to prove them beyond reasonable doubt. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The standard is satisfied once all 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 prosecution to secure a conviction against the accused for the offence of Rape, they 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 a sexual organ means a penis. Proof of penetration is normally established by the victim's evidence, medical evidence, or any other cogent evidence.

The victim in this case testified as PW1 on 11/5/23 that on the day of the alleged offence she was at home in Village 10, Bidibidi Refugee Settlement with some children as her mother had gone for a funeral in Yumbe. The accused came to their home at about 7:30pm and found when she was going inside the house to pick some cassava flour. He followed her to the house and put both of her hands on the wall and forcefully had sexual intercourse with her. One Aisha Never came and found the accused still raping her and he was arrested as he tried to escape.

Aisha Never testified as PW3. She stated that she is a neighbour to the victim's parents and on the day of the alleged incident she was on her way home from the market in the company of one Florence when she heard noise from the house where the victim resides. Florence advised that they go to the house and find out what was



happening and when they got there they found it was the victim Zulaika who was making the noise and she was telling someone to leave her alone. They entered the house and found the victim was leaning on the wall and the accused was having sexual intercourse with her. Her skirt was raised up and the accused's trouser was lowered down to the legs. They then reminded the accused that the victim was his aunty's daughter and the talked to the victim who told them that the accused followed her when she had gone to the house to collect cassava flour. They then called security and with the help of one RufasBandi he was arrested from the victim's home, and they were both taken to the police and later to the hospital.

The victim was examined at Bolomoni Health Center III by on Mangeni, a Medical Clinical Officer on 8/02/2022 who estimated her to be about 18 years based on her dental formula. That she was a known psychiatric patient and she presented with pain on the lower back and abdomen which started the previous day. Genital examination revealed that she had lacerations between the labia majora and minora and at the base of the labia minora. In his opinion the probable cause of this injury was the pulling of the skin beyond its elasticity by penile perforation. His medical report was tendered in evidence through Kizito Godfrey who testified as PW2.

The accused on his part denied the allegations and testified that on the day he was at the home of Laate Peter where he had gone to play a game in the company of his child Abdulrazak Mubaraka.



When he left there he went to buy some tablets for his mother who was sick, and it was only when he was passing by the home of the victim that PW3 started following him while making an alarm and he was arrested and taken to the police.

I find the evidence of the victim and that of PW3 confirms that there was a sexual act performed on her and this is corroborated by the medical report PEX1. I am satisfied that the prosecution has proved this ingredient beyond reasonable doubt.

(b) That carnal knowledge was without the victim's consent.

Lack of consent can be proved by the victims evidence, medical evidence, or any other cogent evidence. Medical evidence can prove lack of consent if the injuries as seen by the examining medical practitioner are consistent with the use of force.

The evidence of the victim in this case is that the accused had sexual intercourse with her without her consent. That he entered their house and started forcing her while she told him that she did not want but he threatened to beat her. He put both her hand on the wall and raped her. He wanted to run away after the incident, but he was arrested. PW3 also testified that when they reached the victim's home they heard her making noise and she was telling someone to leave her. Medical examination report PEX1 shows that



the probable cause of the injuries she sustained was pulling of the skin beyond its elasticity by penile perforation. The victim was a known psychiatric patient which negatives her capacity to consent to the sexual act. By her own evidence she told court that the accused entered the house on his own and she told him that she did not want but he forced her.

I am satisfied that the above evidence proves that the carnal knowledge of the victim was without her consent. The prosecution has proved this ingredient beyond reasonable doubt.

(c) That it is the accused who had carnal knowledge of the victim.

Lastly the prosecution has a duty to prove beyond reasonable doubt that it is the accused who performed a sexual act on the victim. This ingredient can be satisfied by adducing evidence, direct or circumstantial showing the accused as the perpetrator or a participant in the perpetration of the offence.

The accused denied the offence and the burden is therefore on the prosecution to lead evidence placing him at the scene of crime and sufficiently connect him to the commission of the offence.

To prove the participation of the accused the prosecution is relying on the evidence of the victim who testified as PW1 that it is the accused who raped her. That the accused is known to her as Fauzu.



That on the day he came to their home carrying a baby known to her as Mubaraka in his hand and found her when she was still outside their house. When she went inside to pick cassava flour he followed her and started forcing her. That Aisha and the mother of Hamida found him when he was still raping her, and he was caught immediately. She also testified that by the time he came it was not yet dark.

Aisha testified as PW3 and told court that she knows the accused as AloniFauzuAbiriga. That he is also called Azabo. She got to know him 7 years before the incident because he used to be a translator at Bolomoni Health Center when they had just come as refugees. That he resides outside the camp at Longi village and although he was not a refugee, his wife was a refugee. That they have been meeting and they even used to chat, and she has no grudge with him. She testified that on the day it was the accused they found having sexual intercourse with the victim and they talked to him telling him the victim was his aunt's daughter. When they talked to the victim she told them it was the accused who raped her. When they called security the accused was arrested from the home of the victim and both of them were taken to the police.

I find the testimony of the victim clear and consistent with that of PW3. I find the evidence of the two witnesses sufficient to place the accused at the scene of crime as the perpetrator of the offence. The accused denied the offence and testified that at the time of the



alleged incident while on his way home from buying medicine for his mother after spending time at the home of Laate Peter he was passing by the victims home in the company of his child by the names of Abdulrazak Mubarak. That he was at a distance of 3 meters from the house of the victim when PW3 started making an alarm which attracted people around and she informed them that he had been having sexual intercourse with the victim. He was then arrested and taken to the police after which they were taken to the hospital. I find that the prosecution has proved beyond reasonable doubt the accused committed the offence against the ^{victim} accused. The accused does not deny being at the scene. On the other hand, the victim would have no reason to lie against the accused person. I do not believe the defence of the accused that the entire complaint was made against him because of a land dispute. Even if it were true it would not have involved the victim who is a young girl in the clan and known to be of unsound mind. There is nothing to suggest that she was used to make the said allegations against him. The only reason she has said so is because the accused committed the offence.

Order.

Consequently, in agreement with the opinion of the Assessors, I find that the prosecution has proved the case against the accused beyond reasonable doubt and I find him guilty. I hereby convict him for of the offence of Rape contrary to section 123 and 124 of the Penal Code Act.



Noted to be noted that 20th day of July, 2023


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Acellam Collins

Judge

20th July, 2023