



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIMINAL CASE NO. 0048 OF 2011

UGANDA ::: PROSECUTOR

VERSUS

KARIBU PAUL ::: ACCUSED

JUDGMENT

BEFORE HON. JUSTICE MR. RALPH W. OCHAN – RESIDENT JUDGE

The accused Karibu Paul alias Oputy is indicated on the charge of rape contrary to s. 123 & 124 of the Penal Code Act. The particulars of the indictment are that the accused person on the 20th day of June 2010 at Ranch II Village now Kiryandongo District had unlawful carnal knowledge of one Irachan Joyce without her consent. The accused pleaded not guilty hence this full trial.

Rape is an offence comprising the following essential ingredients:-

1. That there was sexual intercourse involving the alleged victim
2. That the sexual act in issue was performed without the consent of the alleged victim
3. That the accused person participated in the alleged sexual act

The burden of proof is on the state. It is well established in our law that the burden of proving all the ingredients of the offence with which the accused is charged rests and remains

on the shoulder of the prosecution. The burden places a high standard of proof beyond by the prosecution to prove beyond reasonable doubt. The authority that is often sited is the case of Woolmington versus DPP, 1935 2AC, 463, that authority has been consistently upheld and applied in East Africa through the decades. See Andrea Obonyo & others versus R (1962) EA, 550, Henry H Ilanga versus Manyosa (1961) EA, 705 (C.A).

In order to discharge the burden of proof on its shoulders, the prosecution adduced evidence from the following witnesses;

1. Dr. Fred Mutabazi - PWI
2. Irachan (Rehema) Joyce – PWII
3. Awachi Agnes – PWIII

Prove of the ingredients;

Sexual act involving the victim. To prove this ingredient prosecution relied on the evidence of PWIII Irachan Joyce and PWI Dr. Mutabazi Fred. Dr. Mutabazi examined the victim on the 21st day of June at Kiryandongo Hospital. He found the victim to be of 18 years. Her hymen was ruptured in his own words long ago, there were no injuries to her private parts, there was no evidence of forcible sexual intercourse, he found multiple bruises on her thighs, chest and her left breast was swollen. These injuries were recent between 12 – 15 hours earlier.

The victim herself gave evidence. She told Court that accused beat her up thoroughly and then proceeded to rape her. People came around and found him still raping her. He jumped and ran off. He was chased by some men who came to her rescue. They arrested him and took him to the Chairman. He was later charged.

PWIII Awachi Agnes also gave evidence. She told court that when she came with some men to rescue the victim they found the accused raping her. He took off but was chased and arrested by the men who came with her to rescue the victim. I have addressed my mind very carefully with the evidence on record in respect to this ingredient.

The evidence of Dr. Mutabazi place next to his medical report are both for lack of better expression sought. The report simply says yes on the question whether there was evidence of penetration however slight. He went on to find that the hymen was also ruptured long ago.

Secondly the physical injuries the doctor found could very well be explained in terms of the heavy assault against the victim which that the accused readily admitted in committing. This raises doubts in my mind whether sexual act really occurred against the victim. As the law provides any doubt in my mind must benefit the accused.

I therefore acquit the accused on the charge of rape but convict on the offence of assault causing actual bodily harm contrary to section 236 of the penal code act.

SIGNED

JUSTICE RALPH W. OCHAN

09TH SEPTEMBER 2013

ALLOCUTUS

Anna: We do not have past criminal record of the convict before you. However, the convict took the law into his hands instead of chasing away the victim who had come to the ranch for trespass but instead went ahead to assault them. I pray he is given a deterring sentence such that he does not repeat such act in future.

Tugume: The convict who is the first offender he is an orphan having lost both parents. He is thirty three years with a wife and five children all dependent on him. He left them in Karamoja and he has been sending them subsistence while working in Kiryandongo. He regrets the overreaction and the over zealousness in protecting his boss' property. He is remorseful and promises to lead a life of a law abiding citizen. He was first remanded on 1st July 2010 and has been in custody for a period of 3 years two months and 8 days. We pray that this Honourable Court be lenient to him and treat this period as sufficient punishment of what he did so that he can rejoin his family that badly needs his support. I so pray.

Court: I sentence you to the period you have spent on remand. I warn you never to take the law into your hands.

SIGNED

JUSTICE RALPH W. OCHAN

09TH SEPTEMBER 2013

