



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIMINAL CASE NO. 0046 OF 2011**

UGANDA ::: PROSECUTOR

VERSUS

MEWUVA ALEX & ANOTHER ::: ACCUSED

JUDGMENT

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

Alex Mewuva – A1 and Joel Mawa alias Munge – A2 and others still at large stand indicted on the charge of rape contrary to section 123 & 124 of the Penal Code Act. The particulars of the charge are that the accused persons in the night of 29th August 2010 at Kijumbura Trading Centre Masindi District had unlawful carnal knowledge of Faidah Moreen without her consent.

Rape is an offence comprising the following essential ingredients;

1. Sexual intercourse involving the victim
2. Lack of consent by the victim or use of force against the victim
3. Participation of the accused person in the commission of the offence.

Burden of proof:-

It is well established principle of our criminal law that, in order for prosecution to secure a conviction in a criminal charge such as the present case before court, they must prove beyond reasonable doubt all the ingredients of the offence with which an accused person is charged.

At the preliminary hearing two medical examination reports PF3 and PF24 were admitted in evidence under section 66 of TIA.

To discharge this burden prosecution called the following witnesses;

Dr. Senyonyi – Masindi Hospital, he carried out a medical examination of the victim Faidah Moreen. He found that she was 20 years of age. He also found an old rapture of the hymen. He found no injuries to her private parts. He also found no evidence of force being used in the sexual act. There were no injuries to her thighs, legs, elbows etc. Briefly Dr. Senyonyi found no evidence that the victim was involved in sexual intercourse less alone forceful sexual intercourse.

PWII was Dr. Bategana. He examined both A1 & A2. He found A1 to be between 18 – 20 years of age while A2 was found to be between 20 & 35 years of age. Both had sound mental status.

The 3rd witness was the victim herself,

the 4th witness was the victim's mother Rose Enjaru

The 5th witness was Prosper Omaki LCI Chairman Kijumbura Village.

Prove of the ingredients;

1st ingredient, sexual intercourse involving the victim; to prove this 1st ingredient of the offence, prosecution relied on the direct evidence of the victim Faidah Moreen herself. She told Court how the fateful night at about 11:00Pm, a group of young men including the accused persons accosted her and grabbed her and had sexual intercourse with her in turns. The victim's mother testified as PWIV told court that after her daughter narrated her ordeal to her she immediately reported the matter to the LCI chairman. There was also the evidence of Dr. Senyonyi. In my opinion and entirely worthless piece of evidence in appendix III of PFIII. Out of thirteen questions there were two hesitant answers. There is no finding in that report that sexual act was done to the victim. Be that as it may I believe the evidence of the victim and her mother. I am reinforced by the circumstantial evidence derived from the observations of the mother and the chairman. Her mother observed that her daughter was soiled all over. Her knickers which was recovered at the crime scene was too soiled to be touched. I am convinced that the victim was intercourse using the word of Counsel Lubega. I hold therefore the 1st ingredient therefore has been delivered to the standard laid down in the law.

The 2nd ingredient, the absent of consent. Prosecution relied on the evidence of the victim who gave her testimony as PWIII. She told court as a group of attackers having beaten and chased off one Bruno her companion to the drug shop that evening grabbed her threw her down and held her mouth and raped her in turn. PWIV Rose Enjaru testified in court in collaboration of the evidence of the victim. She told court that she heard her daughter coming home crying. As she opened the door the victim threw herself at her. She was full of mud. She told her mother that she had just been raped by a group of many young men numbering almost 15. On the evidence of these two witnesses, Faidah Moreen and her mother, I am convinced that forcible sexual intercourse took place. This ingredient has therefore been proved beyond reasonable doubt.

Participation of the accused persons; to prove this ingredient prosecution relied on the evidence of a single identifying witness under conditioned very unfavorable to proper identification. The law governing identification by a single witness and favourable conditions is well settled. I am therefore duty bound to exercise extreme caution in my handling and treatment of evidence of identification under such circumstances before arriving at the conclusion that the accused persons were properly identified and placed to the crime scene.

In the case of A2 Joel Mawa alias Munge, the victim told court that she never identified him at the crime scene. In agreeing with my assessor on this point I find that A2 Joel Mawa was not placed at the crime scene. I therefore acquit him of the charge against him and order his immediate release.

With respect to A1 Alex Mewuva, PWIII the victim was categorical that she recognized him by the lights of the full moon. He was wearing a white shirt moreover she had known him for a long time. They worship in the same church. She was sure he was one of her attackers. She also told court that she recognized one Ovuru with others still at long. As I noted earlier the law governing identification by a single witness in an unfavorable situation, calls on the extreme caution on the part of the court. The authorities that support this position are numerous and very clear. The leading one is **Abdullah Bin Wando and Anor V R (1953) 20 EACA 583, Nabulere versus Uganda Criminal app. no. 9 of 1978 (1979) HCB77, Bogere Moses & Another versus Uganda, S.C Cr. App. No. 01 of 1997**. I did warn my sole assessor of the critical importance of the duty of extreme care that is imposed on the assessor and the court. In Nabulela's case the court of appeal stated as follows, the reason the special caution is that there is a possibility that a mistaken witness can be a convincing one and that even a number of site witnesses can all be mistaken. The judge should therefore examine closely the circumstances in which

identification can be made particularly the length of time, the distance, light, the familiarity of the witness with the accused persons. All these factors go to the quality of identification by the witness. If the quality is good the danger of mistaken identity is reduced but the poorer the quality the greater the danger. When the quality is good, as for example when the identification is made after a long period of observation or in satisfactory condition by the person knew the accused before the court can safely convict even though there is no other evidence to support identification provided court had greatly warned itself onto special needs for caution as in the authorities of *Yowana Sserunkuma versus Uganda, S.C Cr. App. No. 8 of 1989*, *George William Kalyesubula versus Uganda S.C Cr. App. No. 16 of 1997*, and *Moses Kasana versus Uganda C.A Cr. App. No. 12 of 1981 (1992 – 93) HCB, 47* reveals the importance of this.

In this case before me I have considered the direct evidence of the victim Faidah Moreen. At 11:00 pm there was still moon light. The rape took quite some time. The victim arrives home at 1:00am. Moreover she knew Mewuva from church which both attended. She also told court that she recognized their voices. The vigorous cross examination the witness held her round. She eructated that she show the accused with her own eyes. She expressed shock that all the injuries she sustained in her private parts were never reflected in Dr. Senyonyi's medical report. With regard to the contradiction in her police statement, she attributed this to her state of her mind as a result of tremor of her ordeal. Circumstantial evidence pointing to the accused persons may also be found in the evidence of PWV Prosper Owachi the LCI Chairman of the village. This witness told court that the victim gave him the particulars of her attackers and he knew all of them including the accused person in the dock. He also visited the crime scene where he found evidence of strangle. He also found some condoms and spoilt exhibits that were untouchable which he left at the crime scene.

Having paid close attention to the evidence on record and having also paid close attention to the circumstantial evidence, I find that the accused Alex Mewuva was placed at the crime scene as in the participation of the rape of Faidah Moreen. Unlike my assessor with whom I regret to disagree, I find that all the three ingredients have been proved beyond reasonable and find this accused guilty of the charge and accordingly convict him.

SIGNED

JUSTICE RALPH W. OCHAN

09TH SEPTEMBER 2013

ALLOCUTUS

Anna: We do not have any past criminal record of the convict before you. However, the offence under which he has been convicted is a capital offence attracting a death penalty under section 124 of the Penal Code Act. The victim in this matter a young lady had been sent to look for medicine for her sibling only to meet the convict and his colleague not only brutally raped her but also left her traumatized and stigmatized. The victim in this matter has the right to choose with whom to have sex and when to have it. This was not the case instead her modesty had been insulted the convict and his colleagues. We pray for a deserving sentence that will deter the convict and others out there not to do such act in future. We so pray.

Tugume: The convict is now 23 years old. He has a wife and two children all dependent on him. He is remorseful and regrets the incidence. He has been on remand since 7th September 2010, a period of three years and two days. There is no evidence that the victim suffered any STD or unwanted pregnancy. At 23 years, the convict needs guidance and counseling as opposed to long detention that will expose him to hard core criminals in prison. We pray that court exercise some leniency in sentencing him.

Court: Sentence will be at 9:00 O'clock tomorrow.

SIGNED

JUSTICE RALPH W. OCHAN

09TH SEPTEMBER 2013

SENTENCE

The victim of this herious crime will never be the same again. My guidance to the police is that for those suspects who were identified by the victim, in respect of those this file

should remain active. The suspects must all be arrested and prosecuted. As for you I sentence you to 10 years imprisonment.

SIGNED

JUSTICE RALPH W. OCHAN

10TH SEPTEMBER 2013