

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT SOROTI
HCT-09-CR-SC-0040-2011

UGANDA.....PROSECUTOR

VERSUS

EGURU JUVENTINE.....ACCUSED

18.11.2013:

Accused present.

Alleluya Glory for State.

Tiyo for accused person on State Brief.

Court Clerk Ecutu.

Court: Charge read and explained to the accused person.

Accused: I deny the charge.

Court: Plea of not guilty entire.

State: I apply for a hearing date.

Assessors: Adong and Okwii Francis.

Accused: No objection.

Court: Case fixed for hearing on 20.11.2013. Accused person further remanded.

Hon. Lady Justice H. Wolayo,
JUDGE,
18/11/2013.

20/11/2013:

Accused present.

Alleluya for state.

Tiyo for accused.
Court Clerk Ecutu.

Assessors: Adong Betty Catholic sworn, Okwi Francis born again.

Court: Assessors sworn.

States: I and Counsel have agreed on Pf 24.

Tiyo: That is correct.

Court: Admitted as P. exh. 1.

State: I have three witnesses.

PW.1 Church of Uganda sworn, Tino Rhoda, 16 years old, student of Tororo Girls' School, Resident of Akeit Oburin village, Mukura sub County States:-

I know accused as my clan unclce and a vialge mate. On 05/12/2010, I was on my way from the borehole at night. On the way, there are moango trees. As I moved accused appeared in front of me, accused suddenly appeared. He held my neck and threatened to kill me if I shout. He defiled me and went away. He defiled me on the ground. I went home and told my elder sister, Alupo Ruth that day in the night. I felt pain in the neck. The defilement lasted 2 or three minutes. My sister reported to my mother and uncles. I told my sisters I felt pain in the pelvic area. My mother made a report to Mukura police post. I was referred to hospital and I went with my mother. I was examined by Dr. Iteba Goretti.

During the attack, it was dark but not very dark. I was in good terms with him prior to the incident.

Cross examination by Tiyo:

- The accused prior to the attack, had never suggested sexual relations.
- I noticed him at the mango tree but I was not bothered because he is my uncle.
- I was examined about two or three days later.
- I told the doctor about the attack prior to the examination.

- The doctor checked my private parts.
- When he attached me, I was pushing a bicycle.
- I know how to ride a bicycle and I ride a bicycle.
- It was only accused and myself when the incident happened.
- This was the first time I was having sexual encounter.

State: No re-examination.

PW.2 catholic sworn, Alupo Margaret Ruth, 23 years old Enrolled Nurse, Wera health Centre III, president of Wera states:-

I know Tino Rhoda she is my younger sister. I know accused Eguru, he is a village mate. In November, 2010, I was in the village Akeit Oburin preparing dinner. My grandmother sent Rhoda to fetch water from the borehole at about 6.00 p.m. When she went to the borehole Rhoda delayed to return, a fact that was noticed by the grandmother. She went me to check Rhoda. I rushed to the borehole but I did not find Rhoda.

I returned and reported to grandmother. Shortly after, Rhoda returned limping and crying. I asked her what happened but she did not respond except with tears. She dropped the jerrycan and bicycle and went inside the house.

At 10.00 p.m. Rhoda was crying as she held her abdomen and said she was feeling pain in the abdomen. I gave her a pain killer. At 1.00 a.m. she woke up she told me that as she returned from the borehole, Eguru accused emerged near the mango tree held her neck and raped her. That he threatened to kill her is she told anyone. I went and reported to my mother. I wanted to examine her but she declined. My mother took her to police station. My family had no grudges with the accused person.

Cross examination by Tiyo:-

- I returned from the borehole at about 7.00 p.m.
- It was getting dark. There was little light.
- I did not witness the defilement.
- I made a statement to the police.
- I don't remember if I signed the statement.
- I do not recall the date of the incident.
- The mango tree from which the accused jumped from is along, small path.
- I did not remember if Tino said she was defiled in October or November, 2010.

Tiyo: I pray to tender the police statement.

State: No objection.

Court: Marked P. exh. 1.

State: re- examination.

PW.2 told me about the defilement but not the exact date of the defilement.

She did not tell me exact date of rape.

I don't remember when I made the statement.

PW.3: Church of Uganda, sworn Anumel Deborah 47 years old, tailor, resident of Akeit Mukura Sub County, Ngora District states:-

I have a daughter Tino Rhoda she was born on 10/10/1996. I know Eguru Juventine he is my clan brother. He is a village mate. In the morning of 5/11/2010 as I was prepared to go for work, my daughter Alupo came and told me that Eguru forced Rhoda into sexual acts. She told me that Eguru forced. Rhoda continued crying. I informed LC 1 Chairman and police. The victim was examined in Ngora hospital. I had no grudge with accused person.

Cross examination by Tiyo:-

- I was told everything by the victim.
- I know Akol.

- I don't have a land dispute in court with her.
- I know Akol , my father's sister.
- Since I was born this is my first time in court.
- I made a statement to the police.
- I don't recall if I signed it.
- The victim knows when she was defiled.

State: re-examination.

Pw.3 When I interrogated my daughter, she didn't recall the date she was defiled.

State: I apply for a adjournment to summon the doctor.

Court: Case adjourned to 4/12/2013. Accused further remanded.

Hon. Lady Justice h. Wolayo,
JUDGE,
20/11/2013.

Accused, **Catholic sworn, Eguru Juventine**, 27 years old, resident of Mukura, Akeit village, Ngora district states:-

I am a cultivator. On 05/11/2010 at night I did not perform sexual act with Tino as I was in Agogomit village, ngora district, at the home of Kedi. That s where I was staying as I was harvesting rice. It is 4 Km away from Akeit village. I only slept thee because it got dark. I was named because of a grudge over land. Some time back the grandfather of Tino Rhoda crossed the boundary and the clan mediated and the problem was settle. He encroached on our land. Tino's aunt Akol hired out a garden. Mother of Tino ad her grandfather Isiagi blocked the person who hired the garden from using it. That person is the Headmaster of Mukura Primary School. The clan resolved that the garden be returned to Akol. Akol is Tino's aunt.

On 13/11/2010, I was taken to police and hospital. As I came out of hospital, I met Anyumel, she told me my people were chancing Akol to sue them, she said she wished

me dead. Land dispute was between Anyumel Rebecca and her father Isiagi on one side, and Akol on the other side. The case reached LC.III Chairman. Akol is my aut and she was at my home.

Cross examination by state:

- I know seriousness of defilement.
- I was not informed by police about the defilement.
- I learnt of the offence on 20/11/2013 this year when I appeared before court.
- None asked where I was arrested from.
- When Anyumel said many words, I thought she wanted me in prison because after land disputes I was taken to hospital by the police.
- I was examined.
- All this time, I was not told of the allegation.
- There is a boundary dispute with the family of Tino.
- Akol has children five children in all, 2 boys they are grown ups, they live in Okunguro village in Ngora district.
- Akol is a widow. Akol has no brother.
- I made a statement at police I told the police officer that I knew nothing about the case.
- The police officer told me it was a rare case.
- Police asked me where I was arrested from.
- I was arrested by people in ordinary clothes.
- I can identify my signatures in the police statement, a charge and caution statement.
- I leant of this charge in this court.
- The police officer did not ask me where I was.
- I did not mention land dispute to police.

Tiyo:

- Boundary dispute was between Anyumel and her family and our family on eh other hand.

- Anyumel and her father cut elephant grass at the boundary and encroached on our land.
- Our families quarreled after the cutting of the grass this was in 2008.
- Do not recall date, it was resolved before my arrest.
- Prior to my arrest, Isiagi had uttered many words to me.

Tiyo: Accused will not call witnesses. That is the close of the defence case.

Tiyo: I apply for an adjournment for submissions.

Court: Submissions on 16/12/2013.

Hon. Lady Justice H. Wolayo,
JUDGE,
4/12/2013.

12/12/2013:

Accused absent.

Allelluya for state.

Tiyo for accused.

Court Clerk Ecutu.

Tiyo: Request for adjournment to 18/12/2013.

Court: Case adjourned to 18/12/2013. AFR.

Hon. Lady Justice H. Wolayo,
JUDGE,
12/12/2013.

18/12/2013:

Accused present.

Alleluya for state.

Tiyo for accused.

Adong Betty and Okwii assessors.

Court Clerk Ecutu.

Tiyo: Accused presented three defences total denial, alibi and grudges. He went to a different village. 4 miles away from scene of crime to harvest rice on the grudge – his family and that of victim had a land dispute centered on boundary marks. Mother of victim Deborah Anyumel had her own reasons.

On the prosecution evidence one of the ingredients:

Victim should be below 14 years.

PW.3 Anyumel said victim was born on 10.10.1996. The offence was committed on 5.11.2010. She was 14 years and a few weeks medical evidence is that she is 12 years. This is an opinion. The defence does not dispute the fact that there was carnal knowledge.

I pray that court finds failure to discharge burden of proof beyond reasonable doubt.

State: A sexual act took place evidence of PF 3. In her testimony, victim was aged 16 at the time. Court had an opportunity when she testified. Accused was uncle to the witness. It was not dark when she met the accused person. She shared with Alupo her sister. He has been placed at the scene. I pray court disregards alibi..

Court: SUMMING UP TO ASSESSORS:

The Prosecution has a duty to prove its case and the standard of proof should be beyond reasonable doubt. At no time does the duty shift to the accused person.

It is alleged that the accused person 5th November 2010 at Akeit village, Ngora district performed sexual act with Tino Rhoda a girl below the age of eighteen years.

Ingredients of the offence are that the child is below 14 years, that a sexual act took place and that it was the accused who carried out that sexual act.

Both Counsels conceded that the victim was aged twelve years at the time of the sexual act and that in fact a sexual act took place in view of the medical evidence.

What is in dispute is the participation of the accused person..

While corroboration in sexual offences is no longer a strict requirement, in this case the fact that the attack on the victim took place late in the evening means you need to be satisfied that conditions favoured easy identification.

You also need to look for other independent to corroborate the evidence of the victim. This evidence can be medical evidence or evidence of other witnesses.

Consider the evidence as a whole including defence case and give an opinion on whether the accused person is guilty of the offence aggravated defilement.

Hon. Lady Justice H. Wolayo,
JUDGE,
18.12.2013.

Court: For Opinion on 19.12.2013.

Hon. Lady Justice H. Wolayo,
JUDGE,
18.12.2013.

19/12/2013:

State: I don't have any previous record of the convict. He had been on remand for three years and one month. I pray for 20 years imprisonment.

Tiyo: The convict is a first offender. This was his first time to fall to temptation. He has been on remand for 3 years. He takes care of his sisters. He is a youth of 25 years.

SENTENCE.

The offence of defilement is rampant. Accused person attacked the victim on her way from the well. Everyone needs to feel safe in this country and not worry about sexual attacks. Accused is a youth a factor in his favour. Appropriate sentence is 10 years imprisonment. He has been on remand for three years. He is sentenced to seven years.

Hon. Lady Justice H. Wolayo,
JUDGE,
19/12/2013

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KUMI**

CRIMINAL SESSION CASE NO. 40 OF 2011

UGANDA V EGURU JUVENTINE

JUDGMENT

The accused person is charged with aggravated defilement c/s 129 (3) and (4) of the penal code. It is alleged that on 5th November 2010 at Akeit village Ngora district, the accused person performed a sexual act with Tino Rhoda a girl aged below 18 years.

Prosecution was led by Ms Alleluya while accused person was represented by Mr. Tiyo on State brief. Assessors were Adong Betty and Okwii Francis.

Prosecution had a duty to prove beyond reasonable doubt that the accused person performed a sexual act with the victim.

Proof of sexual act was the medical evidence in PF.3 which confirms that the victim was examined on 13.11.2010 and found that the hymen had been ruptured two to seven days prior to the examination.

What remains to be determined is participation of the accused. Although PW.1 Tino the victim cited 5.12.2010 as the date of the sexual attack on her by the accused person, this is a minor discrepancy that does not affect her credibility.

From her testimony in court, she narrated how she was on her way from the borehole at night and as she passed mango trees, the accused who was her uncle appeared in front of her. He held her neck and threatened to kill her as she shouted. He then proceeded to defile her on the ground. She returned home and shared with her sister Alupo Ruth about the ordeal.

PW.2 Alupo corroborated the victim's evidence. Alupo was at home that evening and when her younger sister delayed to return from the borehole, she went looking for her but did not find her. On reaching home, the victim arrived crying and limping. In the night, the victim complained of stomach pains and revealed to PW.2 Alupo that the accused had attacked her on the way from the borehole and defiled her.

The accused person made a sworn statement in which he claimed that he was framed because of a land dispute with PW.3 Anyumel Debora mother of the victim. Details of the dispute were scanty.

However, I am convinced beyond reasonable doubt that the accused person was put at the scene of crime by the victim who was familiar to her uncle all the sexual act was proved both by medical evidence and the victim hence there was corroboration which was further reinforced by PW.2 Alupo with whom the victim shared the ordeal.

I am in agreement with the assessors that the state has proved its case beyond reasonable doubt that the accused person performed sexual acts with the Tino and he is convicted of aggravated defilement.

Hon. Lady Justice H. Wolayo,
JUDGE,
19.12.2013.

19/12/2013:

Accused present.

Alleluya for state.

Tiyo for accused.

Court Clerk Ecutu.

Court: Judgment read out.

Hon. Lady Justice H. Wolayo,
JUDGE,
19.12.2013.

