

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KUMI
CRIMINAL SESSION CASE. 88 OF 2013
UGANDA V ODUMUNA SIMON

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The accused person in this case is charged with two counts. In count one, he is charged with rape c/s 123 of the penal code. It is alleged that between the months of December 2010 and December 2011 at Ajuket village, Kapir sub-county, Ngora district, the accused person had unlawful carnal knowledge of Abeja Susan with consent but obtained by force, threats and intimidation.

In count 2, the accused is charged with incest c/s 149 (1) of the Penal code. It is alleged that between December 2010 and December 2011, the accused had sexual intercourse with Abeja Susan who was to his knowledge, his daughter.

With regard to count 1, the prosecution had a duty to prove beyond reasonable doubt that the accused person had unlawful carnal knowledge of the complainant without her consent or if the consent is obtained by force or intimidation or threats or by false representation as to the nature of the act.

With regard, to count 2, the prosecution had a duty to prove beyond reasonable doubt that accused person had sexual intercourse with the complainant who was his daughter. Consent of the victim is irrelevant.

The evidence of PW1 Abeja Susan whom i believed, shows that in 2010, she started living with her father, the accused person, after she left her matrimonial home. He administered herbs for her to conceive but in fact it was to weaken her. I am grateful to the assessors for their input on this point.

Initially, she stayed in her paternal grandmother's house but the accused began seducing her with threats that he would kill her if she declined his advances. The threats were also directed to her grandmother. PW1 gave in and she conceived. After her grandmother's death, accused relocated her to his house where she lived until his arrest. Evidence of conception is corroborated by Pexh. 1 which shows she was pregnant at the time of examination in January 2012.

PW1 is supported in her evidence by PW2 Anyong David who is paternal uncle to accused person. In December 2011, he learnt from accused 's mother Abeja Elizabeth, that accused had turned his daughter into a wife. PW2 and his kinsmen then arranged and went to the home of the accused in the middle of the night on 30.11.2011 and found the accused and his daughter PW1 in the same house. PW2 confirmed the two shared one bed when accused came out of the hut. Accused person was arrested the next day on 31.12.2011 by PW4 Corp. Charles Emoru.

The evidence of PW2 is corroborated by PW3 Agetu Moses, clan leader who was in the group that went to the home of the accused after midnight in December 2011 and found the accused and his daughter Abeja Susan alone in the house with one bed.

The accused made an unsworn statement in which he denied the incest . i find that the prosecution has proved beyond reasonable doubt that the accused person had sexual intercourse with his daughter and he is convicted of incest c/s 149(1) of the penal code.

With regard to rape,i believed PW1 that she was intimidated, and coerced into sexual union with her father who threatened to kill her or assign someone to

kill her if she declined . She was intimidated into not revealing to anyone what was happening to her and when she revealed to her grandmother Abeja Elizabeth, he assaulted both her and the grandmother. In cross examination, the victim said he was first sexually assaulted when she took him water on his request, whereupon, he threw her on the bed and had sex with her. Further evidence of coercion and intimidation is that she was not allowed to speak to anyone or even greet visitors who came home.

I am in agreement with the assessors that the state has proved beyond reasonable doubt that the accused person procured the consent of the victim by threats and intimidation and he is convicted of rape /s 123 of the penal code.

DATED AT SOROTI THIS 19th DAY OF DECEMBER 2013.

HON. LADY JUSTICE H. WOLAYO