

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT SOROTI**  
**CRIMINAL CASE NO. 27 OF 2011**  
**UGANDAV OSIPIRA EMMA**

**JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO**

The accused person in this case is charged with rape c/s 123 of the penal code Act. It is alleged that the accused person on 10<sup>th</sup> February 2011 at Serere Township had unlawful carnal knowledge of Asekait without her consent.

The ingredients of rape are: unlawful carnal knowledge of a woman without her consent. If the consent is obtained by force or threats to harm her or by intimidation, then there is no consent.

The prosecution had a duty to prove its case and the standard of proof is beyond reasonable doubt.

Mr. Jonathan Okello appeared for the state while the accused was represented by Mr. Isodo on state brief.

Although the state and defence counsel admitted medical evidence by consent, PF3 is not helpful as the clinical officer who examined PW1 Asekait on 12<sup>th</sup> February 2011 found no evidence of penetration. That means the alleged rape had to be proved by oral testimony of the witnesses. The key witness is PW1 Asekait. She testified that on 11.2.11 at about 6 a.m, the accused entered her house, and went for her neck. It is in cross examination that she revealed the accused raped her till dawn and that he broke into her house at 3 a.m and not 6 a.m as earlier stated in examination in chief.

PW1 denied inviting the accused to her home and said she could not fight him off. It is worthy of note PW1 insisted in her testimony that she is aged 80 years old yet in her two police statements she is recorded variously as 50 years and 52 years old. This inconsistency is very good reason to insist on corroboration of her testimony which does not bring out clearly that the carnal knowledge was without her consent.

PW1 Asekait further said she raised an alarm which was answered by PW2 Ajibo who incidentally is her closest neighbour according to PW2. Yet the latter did not respond to an alarm but simply went to the house of PW1 early morning to check on her as usual. This notwithstanding, PW2 said on her arrival, she saw accused run out of the Asekait's house without a shirt, and she noticed that Asekait was weak after the sexual intercourse with accused person. Both PW1 and PW2 were familiar with the accused who was a porter at a construction site for which the two women collected water.

The shirt was recovered by PW4 DWC Aliba and PW1 Asekait said the accused left a red shirt in her house. It was exhibited as Pexh. 3.

In her police statement, Asekait said her neighbour PW2 Ajibo found her crying in the morning after the alleged rape but this was not corroborated by PW2 in her evidence in court. The latter simply said she found Asekait was very weak but did not mention that Asekait was crying. In court, Asekait did not mention that she cried but said she felt pain and was taken for examination.

The other piece of evidence is that of PW 3 Junju who said he came across the accused running at 6 am and he was bare-chested on one morning. He went to the trading centre where he was told the accused had raped an old woman.

Having reviewed the evidence, i find that the key question is whether there was no consent for sexual encounter. While evidence of crying after the rape is good evidence that there was no consent, it is not the only factor to be considered. I therefore discount the absence of evidence that Asekait cried as evidence of consent.

The fact that PW2 saw accused run out of the house without a shirt is evidence of a guilty person fleeing from the scene. This evidence corroborates the lack of consent expressed by Asekait.

With regard to PW2 Ajibo her evidence corroborates PW1 in as much as she found her weak and PW1 Asekait told her of the unwanted sexual encounter with the accused.

With regard to the testimony of Junju PW3, i find his evidence corroborates the guilt of the accused person who was fleeing from the scene of crime.

I agree with the two assessors that the contradictions as to time when accused broke into the victim's house, the fact that PW2 did not hear an alarm raised by PW1 Asekait, as minor and do not affect the credibility of PW1. Neither does the inconsistency with regard to her age affect her credibility given her background as a resident of an IDP camp.

In the result, i find that the prosecution has proved beyond reasonable doubt that the accused had unlawful carnal knowledge of Asekait and he is convicted of rape as charged.

Before i take leave of this case, i want to point out that it was poorly investigated and little effort was made by the investigating officer to capture

with clarity the aspect of lack of consent on the part of the victim. DPP needs to put more effort in guiding investigators of sexual offences.

**DATED AT SOROTI THIS 30<sup>th</sup> DAY OF OCTOBER 2013.**

**HON. LADY JUSTICE H. WOLAYO**