

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

Criminal Session Case No. 039 of 2011

UGANDA ::::::::::::::: PROSECUTION

VERSUS

KIWANUKA KIGGUNDU JACKSON :::: ::::: ACCUSED

BEFORE: HON JUSTICE V.F. MUSOKE-KIBUUKA

JUDGEMENT

The accused person was indicted for the offence of Rape contrary to sections 123 and 124, of the Penal Code Act.

The accused person pleaded not guilty. The prosecution set out to discharge the burden imposed upon it by law to prove the case against the accused person beyond any reasonable doubt **Wooligton Vs. DPP (1935) AC 462 and Sserugo Vs. Uganda. (1978) HCB1.**

The prosecution led evidence from four witnesses. The summary of the case presented from those witnesses was that the 16th day of November, 2010, was Iddi day. It was, therefore, a public holiday. PW1, Nanyonjo Alice, the complainant in this case, went, at about 9.30 p.m., for a dance at Ambiance Discotique at Mateete Town council.

In the dance hall, PW1 met the accused person whom she knew very well because he used to transport her on his boda boda motor cycle whenever she would be going to her village outside Mateete town council to visit her parents. The accused person, at about 1030 p.m. convinced PW1 to go with him to his home to see where it was located so that whenever she needed his boda boda services in future, she would know where to find him.

Upon reaching the accused person's house he opened the door and pulled PW1 inside. He tore her clothes and knickers and performed a sexual act upon her. The accused person held PW1's neck tightly and he performed sexual acts more than once.

At one point, PW1 lied to the accused person that she wanted to ease herself. The accused person led her outside to the toilet while holding her by the neck. When she stayed long in the toilet he ordered her out and led her back into his house and had more forced sexual intercourse with her.

PW2, Edward Kimbowa, also called Kawaawa, was a resident of the neighbouring musigo to that of the accused person. So was PW3, Anifa Kayondo. PW2 came out of his room upon hearing an alarm and someone calling his name, he saw the accused person holding PW1 by the neck. In PW2's presence, the accused person slapped the victim so hard that she let urine flow out of her uncontrollably. The accused person scared off PW2, from intervening threatening to cut him with a panga if he did so.

PW3 also stood outside her room. She saw the accused person holding PW1 by the neck. PW1 then held unto the antenna pole and the accused person slapped her so hard causing her to pass out urine and letting loose the antenna pole. She saw the accused drag PW1 back into the house where PW3 heard her making loud cries and the accused telling PW1 that he was going to fuck her forcefully and if she did not respond favourably he would beat her up seriously.

PW4, Dr. Muhumuza Elly, of BAM hospital at Mateete, examined PW1 against Police Form 3 (exhibit P1). He did so on 17th November, 2010, just a few hours after the alleged incident. He found bruises and scratches on the victim's neck. There was a bruise on her sheen. There were also abrasions on the victim's vaginal posterior walls. The injuries were consistent with possible sexual assault. He also observed that the injuries were consistent with the possibility that the victim had struggled with her assailant.

For his defence, the accused person opted for silence. He offered no defence.

In a case of rape contrary to sections of 123 and 124 of the Penal Code Act the prosecution had to prove three essential ingredients of the offence:-

- performance of a sexual act
- lack of consent by the victim
- participation of the accused person

On the sexual act, the evidence of PW1, the victim of this offence, was very elaborate and truthful in court's view. It leaves no doubt in court's mind that she was the

victim of sexual forcefully intercourse during the night of 16th November, 2010, at the home of the accused person. The evidence of PW4, Dr. Muhumunza and his report of the medical examination he carried out on her duly and fully corroborates PW1's claim in that regard.

Regarding lack of consent, PW1 was very specific in her evidence that she only agreed to go to the accused person's house to see where it was located and that she never agreed to go there for sexual intercourse with the accused person. Court believes her evidence in that regard.

Besides, there is the evidence of both PW2 and PW3, narrating the extreme mistreatment and violence to which PW1 was subjected by the accused person. They were neighbours to the accused person. They stood outside their respective rooms in bewilderment as they watched the accused forcefully drag PW1 into his room. They heard the accused person swearing to have forceful sexual intercourse with her and ordering her to lick his penis and also respond naturally to the sexual; intercourse.

Court rejects the defence submission that by willingly going with the accused person to his house, the victim had given constructive consent to the subsequent sexual intercourse. If this had been the case, there would have been no need for the violence which included pulling her into the house, tearing the victim's party dress and her knickers and dragging her and slapping her in such an inhuman manner as described by PW2 and PW3.

Lastly, the participation of the accused person is not in any doubt in this case. PW1 knew him well enough having been his occasional boda boda passenger for well over one year. Both PW2 and PW3 saw the accused person assaulting PW1. They heard threats and cries inside the accused's house after he had dragged his victim back into the house.

From the evidence on record, court finds that the prosecution has proved the case against the accused person beyond any reasonable doubt.

Court agreed fully with the unanimous opinion, returned by the two gentleman assessors, that the accused person be convicted as charged.

The accused person is convicted of the offence of rape contrary to sections 123 and 124 of the Penal Code Act.

V.F. Musoke-Kibuuka

(JUDGE)

17.02.14