

**IN THE HIGH COURT OF UGANDA AT MOROTO**

**CRIMINAL SESSION CASE. NO. 178 OF 2013.**

**UGANDA V LOGIT MARIKO**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**JUDGMENT**

The accused person is charged with rape c/s 123 & 124 of the Penal Code Act. It is alleged that the accused person on 7<sup>th</sup> March 2013 at Lopuu village Napak district had unlawful carnal knowledge of Auda Teddy without her consent.

Prosecution was led by Mr. Amalo Zerald RSA Moroto while Mr. Ogire appeared for the accused person on state brief. Assessors were Adupa Dinah and Arap Daniel.

Prosecution had a duty to prove beyond reasonable doubt the following ingredients of rape.

1. Sexual intercourse
2. Use of force to procure consent
3. Or procuring consent by fraud.

**Proof of carnal knowledge.**

On proof of carnal knowledge, prosecution relied on medical evidence and witness testimonies. Pexh. 1, shows that the complainant had injuries of bite from human teeth and blows from fists. She was examined on 12.3.2013, five days after the alleged rape. I will refer to this piece of medical evidence later on.

Suffice it to say that in view of the scanty medical evidence, prosecution had to rely on witnesses to prove its case.

The evidence of PW1 Auda Teddy shows that on 7.3.2013 at about 1 a.m, the accused person, a village mate, entered her hut, placed the child aside and proceeded to have sexual intercourse with her. During the process, she realized someone was having sexual intercourse with her. It was at this point that she jumped up, whereupon the accused person took off. She followed him while raising an alarm that was answered by an old man. As she followed him, she caught up with him and that is when she identified him. According to the witness, the accused person's hut is some 60 metres from her hut.

In cross examination, the witness revealed that during the day of the night of sexual attack, at about 3 p.m, the accused person bought kwete (local brew) which they shared as they sat under a tree. The two then proceeded to Opara Ogwal's place where they drank waragi. By her own admission, her evidence is that she got drunk as a result. She also admitted that her door did not lock but denied leaving it open deliberately.

The accused person made a sworn statement in which he denied the offence in which he stated he was shot in 2010 and has walked on clutches since then. That accused is disabled and walks on clutches was evident during the proceedings.

From the foregoing narrative, this is a case where prosecution relies on a single identifying witness of a crime that took place at night.

Conditions that favoured correct identification are that accused person lived in the same compound with the witness; she caught up with him after a chase that

night and identified him as Logit. PW2 Lokol Henry, an 84 year old adult heard the alarm raised by the complainant in the night of 7.3.201. He also heard her mention that Logit, the accused person had raped her.

I therefore find that the accused person was placed at the scene of crime by both the complainant and PW2 Lokol.

On whether there was consent, I believe the complainant that she was woke up at night to realize it was the accused having intercourse with her and not her husband who had another wife elsewhere. On realizing it was not her husband, the accused person took off as she made chase and raised an alarm.

It was suggested by the defense case that because the accused was disabled, it was not possible it was him who fled from the scene. However, I find that the accused person was placed at the scene of crime by the complainant who caught up with him as he left her hut.

It was also suggested by the defense that because the complainant had drunk with the accused person during the day, therefore the two had made an appointment to meet at night and hence the unlocked door.

Firstly, that the two had gone out during the day cannot be construed as consent for an act that took place at night. Secondly, that the door was not locked had an innocent explanation. According to the complainant, the door did not have a door lock.

In view of the testimony of the complainant that she never consented to the sexual act, the very real possibility that she was too drunk to know who was

sleeping with her, the fact that she raised an alarm that was answered by PW2 Lokol, I find that the sexual intercourse was without the consent of the complainant.

With regard to the bite mark found on the complainant, no mention was made of it by the complainant in her testimony. In any case, I found the medical evidence scanty and unreliable in as far as the sexual intercourse was concerned and relied on oral testimonies of witnesses.

I am in agreement with the two assessors that the prosecution proved its case beyond reasonable and accused person is convicted of rape c/s 123 of the Penal Code Act.

**DATED AT MOROTO THIS 1ST DAY OF OCTOBER 2014.**

**HON. LADY JUSTICE H. WOLAYO**