

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

**CRIMINAL SESSION CASE NO. 114 OF 2013**

**UGANDA V LORAPO ABRAHAM**

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

**RULING**

The accused person in this case is charged with Rape c/s 123 & 124 of the Penal code Act. It is alleged that the accused person on the 6<sup>th</sup> day of June 2013 at Matany trading centre had unlawful carnal knowledge of Akol Anna without her consent or the consent was obtained by fraud.

Prosecution was led by Mr. Amalo Zerald RSA Morot. Mr. Ogire appeared for the accused person on state brief. Assessors were Abul Paul and Richard Odeke.

At the close of the prosecution case, court has a duty to pronounce itself on whether the accused person has a case to answer. An accused person is said to have a case to answer when a prima facie case is made out by the prosecution.

In **Bhatt v R 1957 1 EA 332** , a prima facie case is defined as one on which a reasonable tribunal , properly directing its mind to the law and evidence could convict if no reasonable explanation is offered by the defense. In this case, prosecution had a duty to prove the following ingredients of rape.

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

Prosecution relied on medical evidence and victim's testimony to prove all ingredients. With regard to medical evidence, Pexh.1 , there is no evidence to suggest sexual intercourse did take place yet the examination was done on 7.3.2013, a day after the alleged sexual attack. This means the prosecution had to rely on the testimony of the complainant to prove that sexual intercourse took place and that it was without her consent.

I listened carefully to the complainant PW1 Akol Anna. Her evidence is that on 6.3.2013 she went to collect tomatoes. On her way, she met the accused person near a tree some 20 metres from her house. That the accused, after asking for her daughter, raised his rosary stating he is a son of God, and pulled her to a bush where he had carnal knowledge of her. The witness suggested that she consented to the act as she feared for her life after accused pulled out a knife. She suggested that she accepted the sexual act after accused person promised her cooking oil. After the sexual act, she followed him to a drinking place where she raised an alarm but he fled and was arrested the next day.

In cross examination, the witness testified that it was dark when she met the accused person whom she had not known before. At the time, she did not identify him but identified him when she followed him. The witness suggested that the accused person followed her to her home where she identified him with the help of a bulb and then she followed him.

With regard to whether sexual intercourse took place, its only the complainant's evidence on record. Without medical evidence, the complainant's testimony had to be credible. She makes two contradictory allegations. That force was used to

procure her consent and that she was promised cooking oil. For an act that allegedly took place in a built up area near one Logote's place, it is difficult to believe that a criminal act took place in full view without attracting attention. The inference is either it was consensual or no sexual act took place that night.

With regard to participation of accused person, there is considerable doubt in light of the complainant's own admission that she did not identify him before and during the act and only indentified him after she followed him or after he followed her to her home where there was a bulb.

That PW2 PC Hafashiman Lawrence picked the accused person from the LC I chairman on 7.3.2013 after a report from some identified youth is of little evidential value in light of the inconsistencies in the complainant's evidence.

The inconsistencies in the prosecution case in the absence of medical evidence mean that a prima facie case has not been made out.

Under these circumstances, I find that a prima facie case has not been made out and accused person is acquitted of the offence charged. He is released from custody unless lawfully held in connection with some other offence.

**DATED AT MOROTO THIS 1<sup>ST</sup> DAY OF OCTOBER 2014.**

**HON. LADY JUSTICE H. WOLAYO**