

IN THE HIGH COURT OF UGANDA AT MOROTO

CRIMINAL SESSION CASE NO. 117 OF 2013

UGANDA V LOYOOR ZAKARIA

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The accused person in this case is charged with Rape c/s 123 of the Penal Code. It is alleged that the accused person in the night of 4th December 2012 at Kamera village in Loputuk parish, Matheniko sub-county Moroto district had unlawful carnal knowledge of Keem Naale without her consent.

Prosecution was represented by Mr. Amalo Zerald RSA Moroto while accused person was represented by Mr. Ogire.

Assessors were Mr. Abul Paul and Mr. Richard Odeke.

Prosecution had a duty to prove its case beyond reasonable doubt.

Proof of sexual intercourse

Prosecution relied on PF 24 for Keem Naale which is a form for examination of persons accused of sexual assault. This form admitted as Pexh. 1 does not reveal results of examination of a victim of a sexual violence. Nevertheless, the examination done on 4.1.2013, nearly a month after the alleged rape reveals no physical injuries on Keem Naale. Consequently, Pexh. 1 is worthless as far as proof of sexual intercourse is concerned.

The other evidence prosecution sought to rely on is the evidence of PW4 Lokomo Peter who responded to an alarm raised by Naale at about 9 p.m, now deceased according to this witness. On answering the alarm, he was informed by Naale that she woke up to find the accused having sexual intercourse with her. The witness also observed that the accused who was in the same hut was hurt in his private parts as a result of which he advised Naale to take him to hospital. According to this witness, the accused person had been drinking alcohol at Naale's place and Naale told him there had been no agreement to meet.

The evidence that the accused was injured is supported by PExh. 2 a report on the medical examination of the accused person.

The other evidence prosecution relied on was that of a charge and caution statement recorded by PW2 AIP Ataria Samuel admitted in evidence as Pexh. 3 without contest by the defence.

Although the accused admits entering Naale's hut, he denies raping her. He states that he entered the hut and Naale immediately demanded to know who it was. Whereupon she grabbed his sexual organ and bit it, and proceeded to cut him on the shoulder with a panga.

The last evidence relied on by the prosecution is the evidence of PW3 Det. Const. Atwaru Patrick who recorded a statement from Naale. His evidence is admissible under section 30(h) of the Evidence Act as a statement of person who is dead. It is admissible in as much as he interacted with the deceased in his official capacity. The deceased Naale informed the witness that she had been awoken by someone telling her to turn round and that's when she realized it was not her husband.

Whereupon she demanded to know who it was and when he did not respond, she picked a panga and cut him and also bit his sexual organ.

An evaluation of the foregoing evidence reveals that while the accused entered Naale's hut in the night of 4.12.2012, with an intention to have sexual intercourse with her, he did not succeed in doing so. Nowhere in the narrative of PW3 Atwari who interviewed Naale is it revealed she had intercourse with the accused person.

Apart from Lokomo PW1 who stated Naale told him she had had sexual intercourse with the accused, the charge and cautions statement is silent on this vital evidence and so is the evidence of PW3 who recorded her statement. In the absence of medical evidence on examination of a victim of rape, I find that state did not prove beyond reasonable doubt that sexual intercourse took place and therefore the charge of rape cannot stand. I am in agreement with the two assessors that the charge of rape cannot stand.

Participation of the accused

On participation of the accused, there is sufficient evidence that he was at the scene of crime. Both by his own admission in the charge and caution statement, and his sworn statement, the accused person is placed at the scene.

In defence, it was suggested that he was assaulted because he did not have money to pay for the alcohol taken at Naale's place. In other words, he claims he too is a victim of violence. Unfortunately, Naale is now deceased and therefore that matter cannot be pursued.

Having found that the accused person entered Naale's hut at night and Naale injured his sexual organ, the logical inference is that he attempted to have carnal knowledge of her without her consent.

In the premises, I convict the accused person of attempted rape c/s 125 of the penal code.

DATED AT MOROTO THIS 29TH DAY OF SEPTEMBER 2014.

HON.LADY JUSTICE H. WOLAYO