THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

HCT-00-CR-SC-0120 OF 2013

UGANDA::PROSECUTION

VERSUS

OWORI DOMINIC::ACCUSED

BEFORE: THE HON. MR. JUSTICE WILSON MASALU MUSENE

JUDGMENT:

On the 18th day of October, 2012, at Kasaana Zone Kisasi in the outskirts of Kampala City, one Nambusi Jenipher, while returning from her place of work around 6.30 p.m. and with a child tied on her back, was arrested by the accused Owori Dominic for alleged trespass at a construction site. In the process of alerting police, accused is said to have pushed the victim into his room, forced her to untie the baby from the back and forced the victim into sexual intercourse when the accused was subsequently arrested and indicted with Rape, he pleaded not guilty. By that plea, the accused set in issue all the essential elements of Rape.

In a nutshell, that meant that each and every ingredient of the offence had to be proved beyond reasonable doubt so as to secure a conviction.

It is now settled law that an accused bears no burden to prove his innocence since he is presumed innocent till proved guilty. This principle of the law was laid down long ago in England in the case of **Woolmington Vs. D.P.P [1935] A.C 462**. It has since been followed in East Africa and is enshrined in **Article 28(3)(a) of the Constitution of Uganda.**

The essential elements requiring proof beyond reasonable doubt in the offence of Rape are:-

1. That there was unlawful sexual intercourse with complainant.
2. That the complainant did not consent to that sexual intercourse.
3. That it was accused who had unlawful sexual intercourse with the complainant.

In a bid to discharge the burden of proof placed on it by the law, the prosecution called evidence of five witnesses. Including PW1, Jenipher Nambusi the complainant.

The medical examination Report, Police Form 3B in respect of complainant was admitted in evidenced under **Section.66 of the T.I.A.**

As to whether there was unlawful sexual intercourse with complainant, the prosecution relied on police Form 3B, signed by a Forensic consultation clinic, Bombo road. The medical report revealed bruising at lower part of the vagina.

The complainant Jenipher Nambusi testified as PW1. She stated that on 18.10.2012 at 7.00 p.m., she was passing through a shortcut, through a construction site when accused stopped her. PW1 was carrying a baby on her back. That accused told her he was taking her to his boss but instead took her to one of the rooms where she was told to remove the baby on the back. That accused was holding a batoon with which he hit her all over the body. She added that accused then undresses her and removed her white knickers, pulled her down on the mattress on the floor and forcefully played sexual intercourse on her. PW1's testimony was that the sexual intercourse lasted 6 minutes as the baby was on the ground crying. PW1 then there after reported to her husband and LCI Chairman and then police. PW1 also testified that she identified the accused from among fellow workers. She stated that she was able to identify the accused as he played sexual intercourse while the electricity light was on.

During cross-examination by counsel for accused, PW1 testified that in the process, she got injured in the vagina, and was not having menstruation period. The evidence of PW1 was corroborated by PW2, Othieno John Nicholas the husband of PW1, Nambusi. PW2 waited for PW1 to return home on the fateful day but in vain till around 3.00 a.m. And that upon revealing where the man who raped her was, he reported the matters to police and accused was consequently arrested. PW2 concluded that accused attempted to run away but police acted on him very fast.

In **Basita Hussein Vs. Uganda, Criminal Appeal No. 35 of 1995**, the Supreme Court held that the act of sexual intercourse may be proved by direct or circumstantial evidence and corroborated by medical or other evidence.

In the present case, the evidence of PW1 was very elaborate as summarized herein. This was direct evidence supported by the medical report which was tendered in at the beginning of the trial. The first element of the offence has therefore been proved beyond reasonable doubt.

On second ingredient of no consent, again the evidence of PW1 was that she told accused to take her to police but he was adamant. The relevant position reads:-

"He was holding a baton and he hit me all over the body. The legs, the back and the buttocks. After beating, he undresses me……."

PW1 went on to testify that she resisted but accused over powered her and she could not fight back. So she yielded to the act of forceful sexual intercourse.

In my view, that was clear testimony from the horses' own mouth of no consent to the act of sexual intercourse.

The third ingredient is the identification of accused. Again the evidence of PW1, the complainant was very crucial. The complainant sated that although it was dark, accused played forceful sexual intercourse on her when the lights of the bulb in the room were on.

So she was able to clearly see him. The evidence of PW2's husband to victim and PW3, Assistant Superintendent of Police, Muhereza Charles was clear as to how she identified the accused, and led those witnesses to the room where the act took place.

PW3 testified as follows:-

"Introduced myself to the owner of the site called Michael. I told him one of his workers raped a certain woman. I asked Michael to call all the workers. They were seven. When she entered, I asked her to show us the one who raped her. Out of the seven, she picked accused now in court……."

PW3 drew a sketch place of the scene. PW3 concluded that accused did not say anything when pointed out by the victim.

In my view, the accused has been properly identified as the person who performed sexual intercourse on victim. This is not to forget the testimony of PW4, Detective Sergeant Akurut

Jane the investigating officer. She exhibited the skirt which Nambusi was wearing at the time and it had blood stains. PW4 concluded that the victim never told her she was in her menstruation periods, but started bleeding after the act of forceful sexual intercourse.

Even in his defence accused conceded that complainant identified him at the construction site. He also admitted having known the complainant before as a close friend.

The accused also admitted that on fateful day, he was alone at the site. In my view, the accused was properly identified and is the third element of the offence has been proved beyond reasonable doubt.

Having found and held that the prosecution has proved all the essential ingredients of the offence, and on advice of the Assessors, I do hereby convict Owori Dominic as indicted.

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WILSON MASALU MUSNE

JUDGE

13.4.2016

Accused present

Wanamama for State

Mooli Albert for accused.

Assessors present

Court clerk present.

WILSON MASALU MUSNE

JUDGE

Court: Judgment read out in open court.

WILSON MASALU MUSNE

JUDGE

Mr. Wanamama for State:

I have no previous Criminal records. However, the offence is serious. The maximum penalty is death. The sentencing guidelines put the minimum at 30 years. So I pray for a deterrent sentence of 30 years imprisonment to save the women of the city.

Mr. Mooli Albert in mitigation:

The convict is a first offender. He has been on remand for 4 years. he has two children and a mother as a sole bread winner. He regrets the incidence and prays for 10 years imprisonment.

WILSON MASALU MUSENE

JUDGE

Sentence and Reasons:

The offence of Rape is very serious and crude. It demeans the character of women in society and the perpetrators like convict in this case are gender insensitive. There is need for human decency in affairs of sexual intercourse between men and women as they were created differently from

other animals. A deterrent sentence is in the circumstances called for to serve as a lesson to members of the general public.

However, I have considered the mitigating factors raised, particularly being a first offender who regrets what happened and prays for mercy.

In the premises, I shall not give 30 years as prayed by State, but instead 15 years. I shall then subtract the period of remand of about 4 years and sentence convict to serve 11 years imprisonment.

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WILSON MASALU MUSNE

JUDGE

13.4.2016