

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MOROTO
CRIMINAL SESSIONS CASE No. 0159 OF 2015

UGANDA **PROSECUTOR**

VERSUS

OWILI RICHARD ECEPU **ACCUSED**

Before Hon. Justice Stephen Mubiru

JUDGMENT

The accused is charged with one count of Rape c/s 123 and 124 of the *Penal Code Act*. It is alleged that the accused on the 4th day of December 2014 at Oryetene North village, Atunga Parish Abim Town Council in Abim District, had unlawful carnal knowledge of Emelda Achen, without her consent.

The prosecution case is that hours before the fateful night, the accused had been drinking alcohol, at one point in time, with the complainant. Later at around midnight, the accused gained entry to the house of the complainant, who was a widow living alone in her house. He found the complainant asleep in her bed. He grabbed her by the neck with one hand while the other fondled her private parts. He menacingly demanded for sex while threatening the complainant with death. Fearing for her life, the complainant gave in. The accused had three episodes of sexual intercourse with the accused that ended at around 2.00 am while the complainant screamed for help. A boy that was passing by heard her screams and alerted the complainant's uncle, P.W.3 Okong Patrick, who came to her home and helped her go to the L.C. Chairman that night to report the incident. At day-break following morning P.W.3 Okong Patrick arrested the accused and took him to the L.C. Chairman from where he was forwarded to the police. In his defence, the accused admitted having had sexual intercourse with the complainant but contended it was consensual. He had been drinking together with the complainant in during the day and it is the complainant who invited him to her house.

The prosecution has the burden of proving the case against the accused beyond reasonable doubt. The burden does not shift to the accused person and the accused is only convicted on the strength of the prosecution case and not because of weaknesses in his defence, (See *Ssekitoleko v. Uganda [1967] EA 531*). By his plea of not guilty, the accused put in issue each and every essential ingredient of the offence with which he is charged and the prosecution has the onus to prove the ingredients of the offence beyond reasonable doubt. Proof beyond reasonable doubt though does not mean proof beyond a shadow of doubt. The standard is satisfied once all evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused are innocent, (see *Miller v. Minister of Pensions [1947] 2 ALL ER 372*).

For the accused to be convicted of Aggravated Defilement, the prosecution must prove each of the following essential ingredients beyond reasonable doubt;

1. Carnal knowledge of a woman.
2. Absence of consent of the victim.
3. That it is the accused who had carnal knowledge of the victim.

Regarding the first ingredient, carnal knowledge means penetration of the vagina, however slight, of the victim by a sexual organ where sexual organ means a penis. Proof of penetration is normally established by the victim's evidence, medical evidence and any other cogent evidence. The victim in this case testified as P.W.2 and stated that the accused had sexual intercourse with her three times on the fateful night in an attack that began at around midnight and ended at around 2.00 am. Her testimony is corroborated by the admitted medical evidence of P.W.1 Opyo Charles a Medical Officer at Abim Hospital who examined the victim on 8th December 2014 (four days after the day on which the offence is alleged to have been committed). In his report, exhibit P.Ex.1 (P.F.3A), he certified that he examined the victim who was of the apparent age of 52 years. His findings were that there was a "small lacerated wound on the right lateral aspect" of the genitals measuring approximately 0.12 x 0.1 cm. He opined that the cause of the injury was a male penis. This conclusion was based on other medical findings which included the fact that the victim was; "generally weak, in pain and looked sickly. Mentally disturbed, under stress. Neck swelling seen especially on the left side but no bruise or wound seen approximately 4 x 2 cms and 0.5 x 0.3 cms. Breast painful on palpitation and sore on the left side. Tenderness (pain)

supra-pubic region, no mass palpable” In his defence, the accused admitted having engaged in sexual intercourse with the victim. To constitute a sexual act, it is not necessary to prove that there was deep penetration, the slightest is enough. Therefore in agreement with the opinion of the assessors, I am satisfied that the prosecution has proved beyond reasonable doubt that, there was carnal knowledge of Emelda Achen on 4th December 2014.

Proof of lack of consent is normally established by the victim’s evidence, medical evidence and any other cogent evidence. The accused in his defence stated that it was consensual. They had been drinking together earlier in the evening and the victim invited him to her house. The victim denied having been drinking together with the accused but only that he had seen him earlier in the day drinking, first at the Trading Centre and later under a tree near her home. She testified that he came uninvited to her home and was surprised when deep in the night she realised he had entered her house, was strangling her with one arm while demanding for sex as the other hand fondled her private parts. She pleaded for her life and gave in to his demands under threat of death. She raised an alarm all through the ordeal but no one came to her rescue until a small boy passing by went and alerted her uncle. Her evidence is corroborated by the medical evidence of injuries she sustained. The testimony of her uncle P.W.3 Okong Patrick together with whom they went to the L.C Chairman that night to report the incident and who arrested the accused at day break, her distressed condition as seen by P.W.1 and P.W.3 corroborates her testimony that she did not consent. Although this element was contested by counsel for the accused in his final submissions, however on basis of that evidence and in agreement with the opinion of the assessors, I am satisfied that the prosecution has proved beyond reasonable doubt that, Emelda Achen did not consent to that act sexual intercourse.

Lastly, the prosecution had to prove that it is the accused who committed the unlawful act. This ingredient is satisfied by adducing evidence, direct or circumstantial, placing the accused at the scene of crime not as a mere spectator but as the perpetrator of the offence. The prosecution relies on P.W.2 the victim herself and the accused himself who in his defence admitted having had sexual intercourse with the victim that night. It is only the element of lack of consent that is contested. Therefore in agreement with the joint opinion of the assessors, I find that the

prosecution has proved beyond reasonable doubt that it is the accused who committed the offence.

In the final result, I find that the prosecution has proved all the essential ingredients of the offence beyond reasonable doubt. The accused is therefore found guilty and accordingly convicted of the offence of Rape c/s 123 and 124 of the *Penal Code Act*.

Dated at Moroto this 26th day of September, 2017.

.....
Stephen Mubiru
Judge.
26th September, 2017