

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT SOROTI
HCT-09-CR-SC-0021 OF 2013

UGANDA:.....PROSECUTOR

VERSUS

ATELEMONG JOSEPH:.....ACCUSED

BEFORE HIS LORDSHIP HON. MR. JUSTICE BATEMA N.D.A, JUDGE

Judgment

ATELEMONG alias Okau is indicted with one count of Rape C/S 123 and 124 of the Penal Code Act. It is alleged that on the 7th day of December 2012 at Amugei village in Amuria district the accused had unlawful carnal knowledge of Anyadoi Josephine aged 75 years without her consent. He denied the charges.

Ingredients

1. Unlawful Sexual intercourse with a woman.
2. Lack of consent.
3. Participation by the accused in the lawful sexual intercourse.

At the beginning of the trial both the Prosecution and defence agreed that in the night of 7th December, 2012 Anyadoi Josephine was raped by 02 (two) men (without her consent). Medical papers confirming the rape were admitted by consent as exhibit PE1. The accused denied participation.

Anyadoi Josephine testified in Court and told Court that she knew Okau before the incident as her daily customer of Ajono and a village mate at Amugei market place.

She had last seen him that evening drinking Ajono at a neighbour's place.

At around midnight her door was banged open by the accused and his friend. She knew by face. She was asleep and was awakened by the forceful entry by the two men. She had lamp light in her room which enabled her to see two men entering her hut. She flashed torch light at both and recognized both of them. Okau jumped on her and held her by the neck to prevent her from making noise. His friend was the first to rape her then Okau also raped her. They did it forcefully in quick turns as she groaned in pain.

PW2 Opiye Teresa was an immediate neighbour of the victim who heard PW1 groaning in pain. She had earlier heard her door being forced open with a banging sound. She rushed to the scene and found Okau and King Kong his friend leaving. Okau was buttoning up his trouser. She asked them what had happened to the groaning old woman but got no answer. Inside the hut she found Anyadoi Josephine lying on her back with legs spread apart. She had been raped and was groaning with pain. She asked her what had gone wrong and she reported that Okau had raped her. She confirmed to her that she had recognized Okau and King Kong leaving her hut.

The next morning both suspects were arrested. In Court King Kong pleaded guilty and was sentenced to 10 years imprisonment.

This Court agrees with the opinion of the assessors that the accused was properly identified by the two prosecution witnesses. Both witnesses had torches giving them enough light. Moreover there was also lamp light inside the hut of Anyadoi the victim.

The positive identification is further supported by the fact that both perpetrators of the Sexual violence were well known to the victim before the rape. They were daily customers of her Ajono drinks she used to sell to them. Prosecution witnesses had seen the two men drinking in the neighbourhood that very evening. I would reject the accused's defence that he was lawfully sleeping at his home in the night the alleged rape took place. He was properly placed at the scene of crime together with his co-accused King Kong.

The accused's other defence that he was framed up by the complainant because of a land dispute did not raise any doubt in my mind. I find that prosecution has

proved its case beyond reasonable doubt. The accused is convicted of the offence of Rape C/S 123 and 124 of the Penal Code Act.

Judge
18/04/2017