

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA SITTING AT LUWERO**

**CRIMINAL SESSIONS CASE No. 0146 OF 2015**

**UGANDA .....**

**PROSECUTOR**

**VERSUS**

**KIBUUKA JONATHAN ..... ACCUSED**

**Before Hon. Justice Stephen Mubiru**

**SENTENCE AND REASONS FOR SENTENCE**

When this case came up on 3<sup>rd</sup> January, 2018, for plea, the accused was indicted with the offence of Aggravated Robbery c/s 285 and 286 of The *Penal Code Act*. He pleaded not guilty and the case was fixed for commencement of hearing on 16<sup>th</sup> January, 2018. Today, there are four prosecution witnesses in attendance ready to testify but the accused has chosen to change his plea and the indictment has been read to him afresh. It is alleged that on 23<sup>rd</sup> August, 2014 at Namasujju village in Nakaseke District, the accused robbed a one Nakanwagi Sarah of her Nokia Mobile Phone valued at shs. 60,000/= and immediately before, during or after the said robbery, used personal violence on the victim by attempting to strangle her. The accused pleaded guilty to the indictment.

The learned State Attorney, Mr. Nataro Nasur has narrated the following facts of the case; the accused person was a security guard at a nearby school. He had on several occasions demanded for sex from the victim but she had rebuffed his advances. On that day he entered her house and demanded for sex. She denied him and she made noise and he grabbed her by the neck. He panicked when the victim's grandsons responded, he grabbed the phone and fled. He had been identified. The victim was examined and was found to have some tenderness in the neck. The accused too was later arrested and was medically examined. He was found to be of the apparent age of 43 years. He had some cuts around the chest and neck and was found to be mentally

normal. The respective police forms P.F. 3A and P.F 24 A have been submitted to court as part of the facts.

Upon ascertaining from the accused that the facts as stated are correct, he has been convicted on his own plea of guilty for the offence of Aggravated Robbery c/s 285 and 286 of *The Penal Code Act*. In justification of the sentence of fifteen (15) years' imprisonment the learned State Attorney submitted that although he has no previous record of the accused, and he has been three years and two months on remand, and has saved court's time by pleading guilty, it is a serious offence that attracts a maximum sentence of death. The convict betrayed the victim's trust as a neighbour and it is the duty of the court to remove such people from society.

In response, the learned defence counsel Mr. Kamugisha Augustine has prayed for a lenient custodial sentence on grounds that; no weapon was used and the convict has pleaded guilty, he is capable of reforming and has spent three years and eight months in prison. He has proposed two years' imprisonment. In his *allocutus*, the convict has prayed for lenience on grounds that; he has been in prison for a long time, he has had chest pains since childhood and is incapable of engaging in hard labour. He was diagnosed with a heart problem and cannot carry heavy loads. He left behind his children who are not going to school and his wife is sick. He is now repentant and cannot commit such crimes again.

According to section 286 (2) of the *Penal Code Act*, the maximum penalty for the offence of Aggravated Robbery is death. However, this punishment is by sentencing convention reserved for the most extreme circumstances of perpetration of such an offence such as where it has lethal or other extremely grave consequences. Examples of such circumstances relevant to this case are provided by Regulation 20 of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* to include; the use and nature of weapon used, the degree of meticulous pre-meditation or planning, and the gratuitous degradation of the victim like multiple incidents of harm or injury or sexual abuse.

In *Ninsiima v. Uganda Crim. Appeal No. 180 of 2010*, the Court of appeal opined that these guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial. I have in that regard considered the decision in

*Kusemererwa and Another v. Uganda, C.A. Criminal Appeal No. 83 of 2010*, where a sentence of 20 years' imprisonment was upheld in respect of convicts who had used guns during the commission of the offence, but had not hurt the victims. In *Naturinda Tamson v. Uganda C.A. Criminal Appeal No. 13 of 2011*, a sentence of 16 years imprisonment was imposed on a 29 year old convict for a similar offence.

In the instant case, I have considered the fact that no deadly weapon was used, the offence did not involve pre-meditation or planning since the motive appears to have been sexual in nature. There however was some gratuitous degradation of the victim which involved attempted strangulation. This was a grave and life threatening aggravating factor, in the sense that death was a very likely consequence of the convict's actions. That notwithstanding, I have discounted the death sentence because the circumstances, although serious, are not in the category of the most extreme manner of perpetration of offences of this type.

When imposing a custodial sentence upon a person convicted of the offence of Aggravated Robbery c/s 285 and 286 (2) of the *Penal Code Act*, the *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* stipulate under Item 4 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule, that the starting point should be 35 years' imprisonment, which can then be increased on basis of the aggravating factors of reduced on account of the relevant mitigating factors. I have considered the key aggravating factor mentioned above which I find sufficiently grave to warrant a deterrent custodial sentence. It is for those reasons that I have considered a starting point of ten years and four months' imprisonment.

However, that sentence is mitigated by the fact that he has pleaded guilty and a convict is entitled to a discount for having pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory

right to a discount which, for all intents and purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon* [1996] 2 Cr. App. R (S) 25 CA). In this case therefore I have taken into account the fact that the convict has pleaded guilty, as one of the factors mitigating his sentence, alongside the fact that he is a first offender, he has family responsibilities, and he is now 36 years old, he has expressed deep remorse for what he did and has a considerable capacity to reform. The severity of the sentence he deserves has been tempered by those mitigating factors and is reduced from the period of ten years and ten months' imprisonment, proposed after taking into account the aggravating factors, now to a term of imprisonment of seven years and four months' imprisonment.

It is mandatory under Article 23 (8) of the *Constitution of the Republic of Uganda, 1995* to take into account the period spent on remand while sentencing a convict. Regulation 15 (2) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, is to the effect that the court should “deduct” the period spent on remand from the sentence considered appropriate, after all factors have been taken into account. This approach requires a mathematical deduction by way of set-off. From the earlier proposed term of seven years and eight months' imprisonment, arrived at after consideration of the mitigating factors in favour of the convict, the convict having been charged on 5<sup>th</sup> September, 2014 and kept in custody since then, I hereby take into account and set off three years and four months as the period the convict have already spent on remand. I therefore sentence the convict to a term of imprisonment of four years' imprisonment to be served starting today.

It is mandatory under section 286 (4) of *The Penal Code Act*, where a person is convicted of Aggravated Robbery c/s 285 and 286 (2), unless the offender is sentenced to death, for the court to order the person convicted to pay such sum by way of compensation to any person to the prejudice of whom the robbery was committed, as in the opinion of the court is just having regard to the injury or loss suffered by such person. The convict has admitted having robbed the victim of her phone valued at Shs. 60,000/= and I do not have any reason to doubt this value. The victim, Nakanwagi Sarah is therefore entitled to compensation of shs. 60,000/= as the value of

the hone that was robbed from her and it is so ordered. The convict is to compensate the victim in that sum in addition to serving the custodial sentence.

Having been convicted on his own plea of guilty, the convict is advised that he has a right of appeal against the severity and legality of the sentence, within a period of fourteen days.

Dated at Luwero this 16<sup>th</sup> day of January, 2018.

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Stephen Mubiru

Judge.

16<sup>th</sup> January, 2018