

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(CRIMINAL DIVISION)

HCT-00-CR-SC-1327-2016

(ARISING FROM NAK. COURT, CRIMINAL CASE NO. 0082/2016)

UGANDA PROSECUTOR

VERSUS

SEMAMBA DENIS ACCUSED

BEFORE: HON. MR. JUSTICE J. W. KWESIGA

JUDGMENT:

Ssemamba Denis, hereinafter called the Accused person is indicted with Kidnapping or Detaining with Intent to Procure a ransom Contrary to Section 243(1) of the Penal Code Act.

It is alleged that between 15th and 16th February 2016 at Rhino Pub, Ntinda Kigowa, Nakawa Division, Kampala District, the Accused person forcefully took away and detained Kasande Moreen against her will with intent to procure a ransom or benefit o Ug. Shs. 100,000,000/= for liberation of the said Kasande Moreen from the danger of being murdered.

The Accused person pleaded not guilty and in defence he alleged this is a fabricated case by the Complainant or alleged victim. The moment a person charged with any criminal offence pleads not guilty, he or she puts

in issue each and every alleged fact. The prosecution assumes the burden of adducing evidence to prove the case as a whole.

This duty is settled under Article 28(3)(a) of the Constitution of the Republic of Uganda in these terms:-

"(3) Every person who is charged with a criminal offence shall;-

- (a) Be presumed to be innocent until proved guilty or until that person has pleaded guilty".**

On this point, I cannot do better than quote from the decision of **Woolingmington Versus DPP (1935) A.C 262** that *"-----it is not till the end of the evidence that a verdict can properly be found and that at the end of the evidence it is not the prisoner(accused) to establish his guilt. Just as there is evidence on behalf of the prosecution, there may be evidence on behalf of the prisoner (accused), which may cause a doubt as to his guilt. In either case, he is entitled to the benefit of doubt. But while prosecution must prove the guilt of the prisoner (accused), there is no such burden laid on the prisoner (accused) to prove his innocence and it is sufficient for him to raise a doubt as to his guilt, he is not bound to satisfy the Judge on his innocence".*

This summarises fundamental principles of Law that govern a criminal justice under the Common Law system which was declared under Article 28(3)(a) of the Constitution of the Republic of Uganda above reproduced. Also see the case of **Ssekitoleko Versus Uganda (1967)E.A 531.**

Under the instant indictment, the essential elements of the offence are the following:-

- (i) Unlawful taking away of the victim.
- (ii) The taking was by force or deception.
- (iii) The presence of the intention to get a ransom or gain.
- (iv) The participation of the accused person.

The prosecution case set out in the summary of evidence, the basis of the indictment and the trial states the case as follows:-

"That the complainant and the accused person were in an intimate relationship that lasted for 2 years and the relationship was terminated at the instance of the complainant at the end of 2015.

On 15th February 2016 the complainant went for a social evening with her friends and her sister at Rhino Pub in Ntinda up to past midnight on 16th February 2016. The complainant was seated with friends, the accused armed with a metallic bar in his hands told the complainant to follow him or else he would act violent and strike everyone with the metallic bar. The complainant obliged and followed him up to the parking, he immediately pushed her into the motor vehicle and started assaulting her while undressing her. He tore all her clothes including her bra and the knickers and left her nude".

The above quoted statement of the case like the indictment must be proved by the evidence received in the trial as a whole. This court has a

duty to examine the prosecution story (evidence) with the defence evidence before a conclusion is arrived at. The prosecution invited court to believe that this was a crime committed by the accused person following the disintegration of the illegal intimate relationship with the complainant from which he financially benefited, he reacted by kidnapping, assaulting her and demanding a ransom.

The accused, in defence conceded that the complainant was a married woman who hooked him under deception that she was not married. She had spent alot of money on him but he opted out of the illegal affair following a threat from her husband and this became a conflict which followed disagreements between her, himself and other men who assaulted her and she chose to fabricate this case for punitive purposes.

I have set out above the essential ingredients of the offence of Kidnapping. The offence is complete the moment the victim is taken away by use of force of deception.

The intent for which a person is kidnapped would be proved by direct evidence or circumstantial evidence.

The court will examine the circumstances obtaining before, at the time of taking the complainant (victim) and after the taking away. In the instant case, circumstantial evidence will be very important in testing the credibility of the stories of the complainant and the accused, I need to state from the start that circumstantial evidence must be incapable of any other reasonable explanation other than what is alleged and must be such as to produce moral certainty to exclude every reasonable doubt.

including what was left at this scene of beating. The pertinent issues that arise from these two stories of the complainant and the accused are:-

- (i) Was there any forceful or deceptive taking of the complainant by the Accused person from Rhino Pub?
- (ii) Was the proven bodily harm caused by the accused person in furtherance of kidnapping?
- (iii) Was the proven bodily harm have been caused in demanding for ransom or otherwise?

PW1, Kasande Moreen stated in court that he tapped her on the shoulder and she followed him from where he found her drinking with two men and her sister. She followed him to the car where he had parked. That he beat her up and drove to Kigowa. That he tortured her in the car.

According to her evidence she remained under his detention up to the next day when he drove her to several places including medical facilities where he paid bills for her treatment.

The most important aspect of this case to be proved is the prohibited act or conduct of kidnapping or abducting by fraud or by force and intent to procure a ransom.

The intent had to be present at the time the victim was seized and taken away against her/his will. The offence is completed when the victim is seized and carried away against his/her will, it is not a continuing offence.

Refer to:-

- (i) Ibrahim Bilal Versus Uganda – Criminal Appeal No. 5 of 1983 (Supreme Court).
- (ii) Jackson Kyalikunda Versus Uganda – Criminal Appeal No. 21 of 1987 (U.C.A).
- (iii) Uganda Versus Matovu & Another (1983) HCB 27.
- (iv) Kimeze & Another Versus Uganda (1983) HCB 9, and in
- (v) Rvs Reid (1972) W.L.R 395 WHERE THE England court of Appeal held that ***"the offences of Kidnapping is complete when the victim is seized and carried away against her/his will"***.

It is settled by the evidence that the alleged victim in this case had been in telephone communication with the Accused earlier in the day on whether they would meet. Between 10:00 p.m and 12:00 mid-night, accused person found her in a bar seated with other people. He tapped her on the shoulder and walked out and she followed him to the car park. This is in both the prosecution and defence evidence. The element of unlawful ***"Seizure and taking away"*** must be examined against the following circumstantial evidence:-

- (1) The Accused and PW1 were in an intimate relationship for a period of two years.

- (2) The two had driven to several places together. They had enjoyed secret trips to China and Dubai financed by the Complainant, PW1 who had financial supremacy over the Accused.
- (3) The Complainant had prevailed over the Accused, for her possessiveness to leave his previous employment and she financed him to start a pub at Namugongo area.
- (4) The Accused was well known to the Complainants' sisters or Cousin as the type of her friend that used to move with her.

Therefore, it was not out of the ordinary when he tapped on her shoulders and she followed him and eventually he drove her and another person away from the Rhino Pub park. The second person called **Bazi** was left out of this case either as a witness or as an accused person, why?

PW1's explanation is that she followed because she thought he would cause violence. In my assessment, she moved from her drinking company, followed him in the ordinary manner that the two in their extramarital association they used to do. I am unable to find that the injuries she suffered were caused by her lover either in furtherance of seizure and taking away or detaining her against her will or demanding a ransom.

The Accused person drove her apparently throughout the night, they went to Bank Access Point to withdraw money and the images shown in the CCTV prints/images shows both the Accused and PW1 moving amicably. This conduct is also followed and supported by the following:-

The Accused drove her to two different medical facilities to get treatment for her injuries sustained at the beating she got that night. The Accused finally found a clinic at Bukoto where she was admitted, treated and he paid the bills. While looking for medical centres, she directed him to which place to drive and while under medical attention he left her under the care of her sister, he left to look for the money, returned, paid the medical bills. This uncontested evidence totally negates the allegation that she was under detention for purposes of procuring a ransom of Ug. Shs. 100,000,000/=. If he had the intention to murder her, why would he be concerned with her medical treatment? If she was under the fear of being murdered, why did she not make alarm? From the time she was seized, moved with the Accused person to several places such as Petrol Stations, Banks and Clinics, she had chances to make alarm or escape which she did not do.

Finally, when she was at the Clinic at Bukoto, he left for considerable time, returned and handed her to her sister who later drove her home. Why did she not call police or any person to arrest the person she wants judged as the culprit?

The standard of proof in criminal cases is proof beyond reasonable doubt. Reasonable doubt in a criminal trial may exist on proof of a single fact, on proof of an element of the offence or on proof of the whole case. In evaluation of the evidence, the prosecution and defence evidence is considered together before a Judge finds whether any reasonable doubt has been created by the story as a whole. The two Assessors' opinion is that there was no credible evidence of forceful taking away, there was no

proof of ransom demand or taking. There was evidence of withdrawal of a total of about Ug. Shs. 10,000,000/= which could have been for payment of the lover's pub rent, workers wagers or hospital bills and NOT ransom of alleged Ug. Shs. 100,000,000/=. She had opportunity to report, to free herself by escaping which she did not do.

My examination of the evidence as a whole agrees with the opinion of the Assessors. The prosecution has failed to prove the case as a whole beyond reasonable doubt. The Accused person is found not guilty and acquitted.

Dated at Kampala this **21st** day of **May 2019**.



J. W. Kwesiga

Judge

21/05/2019

In the presence of:-

1. The Accused.
2. Ms. Sharot Kwikiriza - S/State Attorney for prosecution.
3. Mr. Steven Ssali Ssenkezi for Defence.
4. Mr. Irumba Atwooki – Court Clerk.

That the accused person is guilty, because other co-existing circumstances would weaken or destroy the inference of the above elements of the offence as proved. I have benefitted from guidance in the cases of:-

- (i) Simon Musoke Versus R. (1958) E.A 715.
- (ii) Ssekitoleko Versus Uganda (1967) E. A. 531.
- (iii) Mwangi Versus Rep. (1983) KLR. 329.
- (iv) Sharma Kaky Versus Uganda (2002)2 E.A 589.

There are/were uncontested facts as emerged from both the prosecution and the Defence. PW1, Kasande Moreen, the complainant was a married woman who got involved with the accused person for two years in an inappropriate extra marital relationship which culminated in violent events where she was assaulted and her face was left swollen (See photograph – Prosecution Exhibit PE1). Medical evidence PE7 dated 17th February 2016 shows that she suffered Harm caused by a blunt object or force. This evidence of Kasande having been assaulted on or about 15th February 2016 is not contested. What is contested is whether it was the accused person or somebody else.

PW1 told court that she had terminated their love affair because he had become violent. The defence version according to the accused person is that is is him who terminated the relationship because he discovered that she was married and she was in relationship with other men including people she was drinking with at Rhino Pub on the fateful day. He further testified that it is these men that followed him with her, caught up in the compound of his rented residence and beat her up, tore her clothes