

We heard the appeal in this case and dismissed it on 14/3/2000 and intimated that we would give our reasons later. We now do so.

This was an appeal from the decision of the Court of Appeal dated the 29<sup>th</sup> July, 1999, in which the learned justices of that court upheld the decision of the High Court dated the 1<sup>st</sup> December, 1997 in which the appellant was convicted and sentenced to ten years imprisonment for rape, contrary to sections 117 and 118 of the Penal Code Act.

**REASONS FOR THE JUDGMENT OF THE COURT**

*(Appeal against the decision of the Court of Appeal (Manyindo D.C.J., Engwa and Twinomujuni, J.J.A) in Criminal Appeal No. 58 of 1997 dated 29/7/1999 confirming the conviction and sentence of the High Court (Mukanza, J) dated 1/12/97)*

UGANDA:.....:RESPONDENT

A N D

KATUMBA JAMES :.....:APPELLANT

BETWEEN

CRIMINAL APPEAL NO. 45/ 1999

*(CORAM: WAMBUI, C.J. ODER, TSEKOKO, KANYEIHAMBA AND MUKASA-KIKONYOGO J.J.S.C)*

**AT MENGO**

**IN THE SUPREME COURT OF UGANDA**

**THE REPUBLIC OF UGANDA**

*Final copy for delivery 19/04/2002*

The facts of the case were that on 8<sup>th</sup> March, 1997, at about 3 p.m., the complainant Tereza (PW1) was walking a long a village path through a forest when she noticed that the appellant was also walking behind and deliberately following her. He called and asked her to stop but she refused. He then ran after her, caught up with her and demanded to have sex. When she refused he grabbed her and threw her down. After overpowering her in this manner, the appellant dragged her to a spot in the forest of about three metres from the path and raped her. During the rape, the complainant Tereza continuously resisted and raised an alarm. The commission of the rape took about 15 minutes. A witness, John Turakira (PW2) and one Cotts Semakade who did not testify at the trial, heard and answered the alarm raised by the complainant, Tereza (PW1).

When John Turakira and according to him, his friend Semakade, reached the place where the alarm was coming from, they saw the appellant on top of and in the open legs of the complainant. When the appellant saw Turakira (PW2), he ran away from the scene but not before Turakira saw and recognised him. Turakira escorted the complainant home and later the matter was reported to local authorities and to the police who arrested and charged the appellant with rape. The complainant was taken to Entebbe hospital for medical examination. The examining doctor did not give evidence at the trial.

Police Constable Owony (No. 29474), (PW3), visited the scene of the crime and interviewed several witnesses. In his defence, the appellant denied the

There is one ground of appeal framed as follows :-

1 - *The learned justices of the Court of Appeal erred in law and fact when they failed to re-evaluate the evidence on record and came to a wrong conclusion*

Mr. Kugumikiriza, counsel for the appellant, made submissions on one essential ingredient of the offence of rape. He contended, quite rightly in our opinion, that there are three elements in the offence of rape which the prosecution must prove. These are, that there had been penetration of the victim's vagina, that the sexual act which resulted in the penetration was without the consent of the victim and lastly, that it was the accused who in fact committed the offence. Counsel contended further that it was not enough simply to show that the three elements of rape enumerated above were proved because in sexual offences, it is essential that there must be corroboration of the victim's allegations of the offence. Counsel submitted that in this particular case, the prosecution had failed to present evidence of corroboration of the fact that the appellant had succeeded in penetrating the complainant (PW1). It was counsel's contention that only the complainant had stated that she had been penetrated by the appellant and none of the

offence and pleaded an alibi in his defence. The defence called no other witnesses. One of the two assessors advised conviction while the other advised acquittal.

The judge, agreed with the first assessor, rejected the opinion of the second assessor, convicted the appellant for rape contrary to sections 117 and 118 of the Penal Code and sentenced him to 10 years imprisonment. The appellant appealed to the Court of Appeal which dismissed the appeal - hence this appeal.

other prosecution's witnesses had said that they witnessed this very important ingredient of rape, namely, penetration.

Mr. Kugumikiriza conceded that not every ingredient of rape need be corroborated but strangely contended that in the case of penetration, it must be corroborated. Counsel cited no authorities and he clearly could find none for this novel proposition. For the Respondent, Ms. Khisa, Principal State Attorney, supported the decision of the two courts below. She submitted that the evidence of Turyakira corroborated that of Tereza.

From the record of proceedings, it is quite clear that both the Court of Appeal and the High Court considered corroboration as an essential part of the evidence on rape. In our opinion, both courts properly considered and applied the law on corroboration and correctly evaluated and reevaluated the evidence. Corroboration is additional independent evidence which connects the accused with the crime, confirming in some material particulars not only the evidence that the crime has been committed, but also that the accused has committed it. Corroboration is therefore in relation to the offence of rape as a whole. The learned justices of the Court of Appeal agreed with and confirmed the findings of the learned trial judge on corroboration when he said in his judgment that:

"It is true that a court is not prevented from convicting a person of sexual offence, on the evidence of the complainant (prosecution) alone if she is believed by the court to be a truthful witness. But the practice in such a case consistently and rightly has been that the complainant's evidence be corroborated. It is generally considered unsafe to base a conviction only on the evidence of a complainant (prosecution) in sexual offences. (see George Bangirana v. Uganda, 1975 H.C.B. p 361. In the present instant case there is sufficient corroboration of PW1's testimony that she was sexually intercoursed (sic.) by the testimony of PW2."

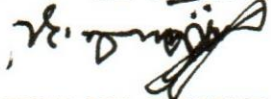
We are satisfied that these findings were correct and evidence of corroboration of the offence of rape was underscored by the evidence of Turyakira PW2 who found the appellant in the act of raping Tereza. The struggle and the raising of the alarm by PW1 at the scene of the crime and the flight from the scene by the appellant when he was discovered in the act of rape, all corroborate the evidence of Tereza.

It is for these reasons that we found no merit in this appeal and dismissed it on 14<sup>th</sup> March, 2000.


DATED AT MENGO, THIS 9<sup>th</sup> DAY OF May ..... 2000

CHIEF JUSTICE

S.W.W. Wambuzi



A.H.O. Oder



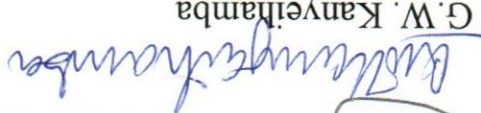
JUSTICE OF THE SUPREME COURT

J.W.N. Tsekoko



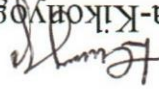
JUSTICE OF THE SUPREME COURT

G.W. Kanyeihamba



JUSTICE OF THE SUPREME COURT

L.E.M. Mukasa-Kikonyogo



JUSTICE OF THE SUPREME COURT