

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MUKONO**

**HCT-03-CR-SC-NO. 74 OF 2010**

**THE REPUBLIC OF UGANDA :::::::::::::::::::::::::::::: PROSECUTOR  
VERSUS  
NGIRA CHARLES :::::::::::::::::::::::::::::: ACCUSED**

**BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO**

**JUDGMENT**

**Introduction:**

The accused, **NGIRA CHARLES** was indicted for rape contrary to **Section 123 and 124 of the Penal Code Act**. The particulars of the offence alleged that the accused on the 19<sup>th</sup> day of February, 2007, at around 2.30 hours at Nsanja village in Mukono District, had unlawful carnal knowledge with Nafuna Robinah without her consent.

The accused was arraigned in Court but denied the charge. Upon that plea of not guilty, the accused set in issue all the essential ingredients of the offence of rape which the prosecution has to prove beyond reasonable doubt in order to sustain a meaningful conviction on the charge.

It is the duty of the prosecution to prove all the essential ingredients of the offence beyond reasonable doubt. That duty does not shift to the accused even

where he relies on the defence of alibi. The accused is presumed innocent until proved guilty. As such, any conviction of the accused should only be based on the strength of the prosecution evidence and not on the weakness of the defence case: See **R v Israili Epuku S/O Achietis [1934] I EACA 166**.

The above principle is further supported by the fact that under our law the accused is not obligated to put up any defence. He may decide to reserve his silence: See **Section 73 (2) of the trial on Indictment Act and BASOGA Patrick v Uganda, Court of Appeal, Criminal Appeal No. 42 of 2002**.

In order to comply with the above principles, the trial Court has a cardinal duty to examine and weigh the prosecution evidence against the defence before taking the final decision, bearing in mind that the burden of proof rests upon the prosecution. See **John Katuramu & Others v Uganda; Supreme Court Criminal Appeal No. 35 of 2002 (unreported)**.

### **Essential ingredients of RAPE**

Under **section 123 and 124 of the Penal Code Act**, the following are ingredients of the offence of rape:

- (1) That the victim experienced unlawful sexual intercourse.
  
- (2) That the unlawful sexual intercourse, was without the consent of the victim or with consent if the consent was obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm or by means of false representations as to the nature of the act, or in case of a married woman by personating her husband.

(3) That the accused participated in the unlawful sexual intercourse: See **Kayondo Robert v Uganda; Court of Appeal Criminal appeal No. 18 of 1996. (Unreported).**

In an effort to prove the above ingredients the prosecution relied on the following evidence:

(a) Medical examination of the victim and the accused which were admitted during the preliminary hearing under **Section 60 of the Trial on indictment Act**. The victim was examined on 20/2/2007 from Ntenjeru Dispensary. She was found to have pain in her vagina and lower abdomen. Secondary to forceful sexual intercourse.

The accused was examined on 18/2/2007 from Mukono town Council Health Centre by a senior Clinical Officer who found his mental status to be normal.

(b) Nafuna Robinah Pw<sub>1</sub>, the victim who testified inter alia, that on the material night she had a domestic dispute with her husband and which resulted into a fight. As a result she was forced to run away from her matrimonial home. In the process met the accused who was their neighbour, and explained to him what had taken place at her home. The accused offered to accommodate her for the night but she declined on the ground that she could not share accommodation with a man without a wife. The accused continued to persuade her to go to his place which she refused. He told her that he had seen her husband with a panga and was crying. Thereafter the accused pulled her in an attempt to drag her into his house which she resisted. The accused threw her down on his compound and forcefully had sexual intercourse with her while holding her mouth and threatening to kill her. After the sexual intercourse she ran to the home of Mrs. Senkali and reported

the incident to her. The following morning she reported the incident to the Local authorities which in turn took her to the Police.

(c) Nanyonga Irene Pw<sub>2</sub> (Mrs. Senkali) confirmed that the victim reported to her at night that she had been assaulted of domestic dispute. As she was running away she met the accused who forced her into sexual intercourse. She allowed the victim to sleep at her home and she left in the morning.

The accused made a sworn defence of total denial. He admitted that during the material night the victim went to his home and requested him to take her to the home of the LC Chairman to report that she had poured cooking oil on her husband. That he refused to take the victim to the home of the LC. The following day the Police came and arrested him without any reasons. He concluded that he was arrested because the whole village did not want him to stay in that village.

### **Analysis of evidence and ingredients:**

As far as sexual intercourse is concerned the law is that it is proved by evidence of penetration however slight it may be. The act of sexual intercourse may be proved by direct or circumstantial evidence and may be corroborated by medical evidence or other cogent evidence.

The requirement of corroboration is not a mandatory aspect of sexual offences as it tends to discriminate against women. As such it offends the 1995 constitution.

In her testimony Nafuna Robinah Pw<sub>1</sub> testified that she met the accused as she was running away from her husband because of a domestic the accused offered

to give her accommodation for the night at his home but she rejected because could not sleep in the house of a man without a wife. Later the accused tried to pull her to his house but she resisted. The accused then threw her down and forcefully had sexual intercourse with her. That the accused held her mouth and threatened to kill her. She reported the incident to Mrs. Senkali. Pw<sub>3</sub> Nanyonga Irene alias Mrs. Senkali Pw<sub>2</sub> did confirm that the victim reported to her that the accused forced her into sexual intercourse.

The evidence of the above witnesses were corroborated by medical examination report where the victim was examined from Ntenjeru Dispensary on 20/2/2007, where it was established that the victim had pain in her vagina and lower abdomen after forceful sexual intercourse. Accordingly there was overwhelming evidence that the sexual act had been performed on Nafuna Robinah.

**The next ingredient is whether the sexual act was performed without consent of the victim.**

It is trite law that even if it is established that there was sexual intercourse, the prosecution has to prove further that sexual intercourse was done without the consent of the victim.

In the instant case Nafuna Robinah testified that after declining request by the accused to spend a night at his home the accused first tried to pull her to his house which she resisted. Later the accused threw her down on his compound and forcefully had sexual intercourse with her. The accused held her mouth and threatened to kill her. She rushed to the home of Mrs. Senkali Pw<sub>2</sub> to whom she reported the incident. If the sexual intercourse had been consensual I do not think the victim would have reported the incident to Mrs. Senkali. Mrs. Senkali

testified that the victim came while crying and narrated to her what the accused had done to her.

From the above forces of evidence it is my conclusion that there was overwhelming evidence to prove that the victim was forced into sexual intercourse without her consent.

Proof of participation of the accused first is very vital before a meaningful conclusion can be secured. It is instructive to observe that in rape the law places very high evidential requirement in order to check the damages of false accusation by the victims: See **Kayondo Robert vs Uganda, Court of Appeal, Criminal Appeal No. 18 of 1996** (Unreported).

In the instant case it was the evidence of Robinah Nafuna Pw<sub>1</sub> that during the material night she had a small misunderstanding with her husband which forced her to run away from the matrimonial home. It was at night. She met the accused as she was running away. She told the accused what was happening at her home. The accused offered to accommodate her for that night but she declined because she could not share a house with a man who had no wife. The accused later told her that he had seen her husband somewhere holding a pang and was crying. From there the accused tried to pull her into his house but she resisted. Immediately later the accused threw her down on his compound and forcefully had sexual intercourse with her while holding her mouth and threatening to kill her. After satisfying himself the accused left her and she rushed to the home of Irene Nanyonga Pw<sub>2</sub> to whom she narrated the story between her husband and what the accused had done to her. Nanyonga Irene alias Mrs. Senkali Pw<sub>2</sub> testified that the victim came to her while crying and narrated to her, her ordeal with the accused person.

The accused made a sworn defence of total denial. He stated that during the material night the victim went to his place and requested him to take her to the home of LC I Chairman because she had had allegedly assaulted her husband badly. He however turned down her request. He stated that the victim went to his home because they used to be lovers. Surprisingly the following day he saw the Police coming to arrest him. He concluded that the whole village hated him because they do not want him to stay in the village.

After looking at both the prosecution and defence evidence I am satisfied beyond doubt that the accused was the one who had sexual intercourse with the victim. The victim personally identified him. She knew the accused very well. The whole transaction was not a mere snap transaction. The victim first narrated to the accused problems which led to her running away from their home. From there the accused requested the victim to take refuge at his home which request she turned down because she could not spend the night in a house with a man without a wife. The accused tried to pull her into his house but she resisted until he decided to throw her down on the compound. The accused was not a ghost. He was a real Ngira Charles. The accused in his defence admitted meeting the victim that very night. He also admitted that the victim had some domestic problems with her husband except that he stated that the victim requested him to take her to the home of the LC to report a case of assault on her husband. If that was true it could be that the accused decided to exploit the problems of the victim and the trust she had bestowed on him in demanding sexual gratification which the victim found unacceptable. There was therefore no mistaken identity of the accused by the victim. His evidence was further buttressed by the defence of the accused that they used to be lovers, meaning that the victim knew him well.

Furthermore it is trite law that in sexual offences information made by the victim as to the identity of her assailant to a third party is relevant.

In this case after being raped by the accused, Nafuna Robinah immediately reported the incident to Nanyonga Irene Pw<sub>2</sub> and she did so while crying. She informed her that the accused had forced her into sexual intercourse. Both assessors opined that the prosecution had not proved all the ingredients to the required standard. This could have been because they did not follow my summing up properly.

There was evidence proving all the ingredients of the offence of rape beyond reasonable doubt. I therefore find the accused guilty as charged and he is convicted accordingly.

**HON. MR. JUSTICE RUBBY AWERI OPIO**

**JUDGE**

**8/11/2010**

**9/11/2010**

Accused present.

Masende for the state.

Sekyanzi for the accused.

**Judgment read in Court.**

**Masende:** I pray for a deterrent sentence. The accused behaved in a bad way. He disrespected her. Let him get a deterrent sentence to teach others.



**Mr. Sekyanzi:** In mitigation we submit that the convict is remorseful. He was overtaken by the wife for sex. So he was tempted. He has no previous conviction. He has a family. He has three (3) children without a mother. His wife died. The kids are in the hands of ground parents who are poor. He used to be lover to the victim. We pray for a shorter sentence which can reform him. So I pray.

**Allocolus:** I have children. I pray that the period spent on remand be considered. My mother cannot dig.

**SENTENCE:**

This offence entails maximum of death sentence. The accused behaved in a bad manner by raping. He put the couple at risk of contracting HIV. This Court will therefore take a serious view of this offence. However, Court will consider that he is 1<sup>st</sup> offender. He has spent about 3 years in custody. That period was to be put into consideration. Accordingly he is sentenced to eight years imprisonment.

Right of Appeal explained.

**HON. MR. JUSTICE RUBBY AWERI OPIO****JUDGE****9/11/2010**