

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT LUWERO

CRIMINAL SESSIONS CASE No. 0341 OF 2014

UGANDA **PROSECUTOR**

5 **VERSUS**

SEGAWA LAWRENCE SUNDAY **ACCUSED**

Before Hon. Justice Stephen Mubiru.

10 **SENTENCE AND REASONS FOR SENTENCE**

When this case came up on 3rd January, 2018, for plea, the accused was indicted with the offence of Rape c/s 123 and 124 of *The Penal Code Act*. He pleaded not guilty and the case was fixed for commencement of hearing on 2nd February, 2018. On that day, there were two prosecution
15 witnesses in attendance ready to testify but the accused chose instead to change his plea. It was alleged that on 10th March, 2014 at Kigege village in Nakaseke District, the accused had unlawful carnal knowledge of Nandegeya Eva, without her consent. When the indictment was read to him once more, the accused pleaded guilty.

20 The learned Resident State Attorney, Ms. Beatrice Odongo has narrated the following facts of the case; the accused was residing in Nakaseke District in Kigege L.C.1. On 10th March, 2015 the victim had gone to the bar for booze and in the night on her way home the accused waylaid her when she was opening the door to her house, overpowered her and had sexual intercourse with her outside the door to her home. She attempted to raise an alarm but the accused held her mouth
25 and after the act the accused stole shs. 260,000/= from her and he escaped from the scene. The victim reported to her son that very night who then reported the matter to the police. A serious search was mounted by the residents. He was arrested from Kasambya village and handed over to the police where he was charged with rape. The victim to was examined o P.F3 on 12th March, 2014 at Nakaaeke Hospital by Dr. Mubeezi and she was found with an inflammation around the

genitals and tenderness around that regions and her age was found to be over 75 years. He signed and stamped the form. The accused was also examined on P.F 24 on 17th March, 2014 at the same hospital by Dr. Mubeezi. He was found to be 27 years and his mental status was normal. He signed and stamped the report. The respective police forms were submitted to court as part of the facts.

Upon ascertaining from the accused that the facts as stated were correct, he was convicted on his own plea of guilty for the offence of Rape c/s 123 and 124 of the *Penal Code Act*. In justification of the sentence of twenty (20) years' imprisonment, the learned State Attorney submitted that; although the accused had no previous record, the maximum penalty for the offence is death. She opted not to seek the death penalty but argued that the age of the victim viz-aviz that of the convict should be taken into account. She was well over 75 years while the accused was 27. She was fit to be a grandmother of the convict. He disrespected her and raped her in a brutal manner. This caused her injury and humiliation in society before her children and grandchildren and thus deserves a deterrent sentence.

In his submissions in mitigation of sentence, the learned defence counsel Mr. Asaph Tumubwine submitted that; the convict pleaded guilty and saved court's time. He is a first offender with no previous criminal record. He has been on remand since he was arrested on 12th March, 2014. His time on remand should be considered. He is aged 31 years. He is a bread winner who was looking after his mother and he had gone to work to look for money to support his family. He had a wife and three children at the time of his arrest. Although the state asked for 20 years, but the four years he has spent on remand have already taught him a lesson and he may reform. It is not long sentences that can reform or deter but even short sentences can suffice. He proposed for 5 years' imprisonment.

In his *allocutus*, the convict stated that; he had never smoked bhang before but on that day he was made to smoke it by his two friends who had visited. He was under the influence of marijuana. It was only the following morning that he was told that he had raped. The home of the victim was on the way to his home. After the act, he did not go home by the road but through the bush and he managed to find his way home. In the morning he went to Kasambya where he was

found and arrested. At first he denied having committed the offence but considering the time he has spent in prison, he has learnt a lesson and he will never commit the offence again. He is a born again Christian for three years now. He also suffers from heart problems especially when he engages in hard labour he coughs and has bloody sputum. He prayed for lenience since when
5 he smoked the marijuana he did not realise what he was smoking and it is when this friends found him in prison after they themselves had committed offences that they told him they knew he would behave in a funny manner. He fends for his other younger siblings. In his victim impact statement, one of the sons of the victim stated that; the convict humiliated his mother before her children, grandchildren and the in-laws. The victim has never forgiven him and he deserves the
10 twenty years' imprisonment suggested by the State Attorney.

According to section 124 of The Penal Code Act, the maximum penalty for the offence of Rape is death. However, this punishment is by sentencing convention reserved for the most egregious forms of perpetration of the offence such as where it has lethal or other extremely grave
15 consequences. Since in this case death was not a very likely or probable consequence of the act, I have discounted the death sentence.

Where the death penalty is not imposed, the next option in terms of gravity of sentence is that of life imprisonment. None of the aggravating factors prescribed by Regulation 22 of the
20 Sentencing Guidelines, which would justify the imposition of a sentence of life imprisonment, is applicable to this case. For that reason that I do not consider the sentence of life imprisonment to be appropriate in this case.

When imposing a custodial sentence on a person convicted of the offence of Aggravated Rape
25 *c/s* 123 and 124 of the *Penal Code Act*, the *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* stipulate under Item 2 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 or reduced on account of the relevant mitigating factors. However I am mindful of the decision of the Court
30 of Appeal in *Ninsiima v. Uganda Crim. Appeal No. 180 of 2010*, where the Court of appeal

opined that the sentencing 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 consequently reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Kalibobo Jackson v. Uganda C.A. Cr. Appeal No. 45 of 2001* where the court of appeal in its judgment of 5th December 2001 considered a sentence of 17 years' imprisonment manifestly excessive in respect of a 25 year old convict found guilty of raping a 70 year old widow and reduced the sentence from 17 years to 7 years' imprisonment. In the case of *Mubogi Twairu Siraj v. Uganda C.A. Cr. Appeal No.20 of 2006*, in its judgment of 3rd December 2014, the court of appeal imposed a 17 year term of imprisonment for a 27 year old convict for the offence of rape, who was a first offender and had spent one year on remand. In another case, *Naturinda Tamson v. Uganda C.A. Cr. Appeal No. 13 of 2011*, in its judgment of 3rd February 2015, the Court of Appeal upheld a sentence of 18 years' imprisonment for a 29 year old appellant who was convicted of the offence rape committed during the course of a robbery. In *Otema v. Uganda, C.A. Cr. Appeal No. 155 of 2008* where the court of appeal in its judgment of 15th June 2015, set aside a sentence of 13 years' imprisonment and imposed one of 7 years' imprisonment for a 36 year old convict of the offence of rape who had spent seven years on remand. Lastly, *Uganda v. Olupot Francis H.C. Cr. S.C. No. 066 of 2008* where in a judgment of 21st April 2011, a sentence of 2 years' imprisonment was imposed in respect of a convict for the offence of rape, who was a first offender and had been on remand for six years. Considering the aggravating factors in this case, especially the age of the victim and the fact that she was attacked in her own home by a man fit to be her grandmother to her humiliation, I have adopted a starting point of twenty one (21) years' imprisonment.

I have noted the fact that in none of the decisions had the accused pleaded guilty. The sentences were imposed following a conviction after a full trial. A plea of guilty offered readily before commencement of trial usually results in a discount of anywhere up to a third of the sentence that would otherwise be imposed after a full trial. 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 but because it has come on a day fixed for hearing and not at the earliest opportunity, I will not grant the convict the traditional discount of one third (seven years) but only a quarter (five years), hence reduce it to sixteen years.

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I have considered further the submissions made in mitigation of sentence and in his *allocutus* and thereby reduce the period to fourteen years imprisonment. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, 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, I note that the convict has been in custody since 18th March, 2014. I therefore hereby take into account and set off a period of a period of three years and ten months as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of ten (10) years and two (2) months, to be served starting today.

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

25 Dated at Luwero this 5th day of February, 2018

Stephen Mubiru

Judge,

5th February, 2018