

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA, AT MBARARA

CRIMINAL SESSION CASE NO.24 OF 1999

UGANDA..... PROSECUTION

VS

RWANGUTANE JOHN..... ACCUSED

BEFORE: THE HON. JUSTICE V. F. MUSOKE-KIBUUKA

JUDGMENT

The accused person, Rwangutane John, was indicted for the offence of rape contrary to sections 117 and 118 of the Penal Code. He pleaded not guilty.

The prosecution led evidence from four witnesses. In summary, the prosecution's case was that the accused and the complainant lived at Iterero village, Bwongyera sub-county in Ntungamo District. The accused was a young man of about 27 years of age. The two were neighbours. The complainant, Dina Bakaihura, was an elderly widow aged about 55 years at the time. She was the widow of the accused's elder brother who had died earlier.

On 13th January, 1999, at about mid-night, the complainant, PW2, was sleeping in her house. The only other person in the house was a young grand child. At about mid-night, the complainant was awakened by some scratching noise on her bedroom window. She thought

that it was her goats, which were making that noise. She woke up to check on the goats. As the complainant reached out for a box of matches to light a candle, she discovered that the front of her house had been pushed open. Someone called her by name stating that he was Rwangutane and that he had come to have sex with her. The intruder then grabbed the complainant. After some struggle, he overpowered her and had sexual intercourse with her.

After the first round of sexual intercourse, the grand child who probably was awakened by the unusual commotion in the house, was crying. The intruder asked the complainant to go and attend to the child and come back for more sexual intercourse. The complainant took (lie opportunity to pass through a back door and escape from the house. She ran to the home of her son, called Matsiko where she spent the rest of' the night after reporting the incident to the LC1 chairperson called Bamaraho.

The following morning, the accused was arrested by LC I chairperson who forwarded him to Bwongyera sub-county headquarters and handed him over to PW3, Nkwasiwe Apollo, who escorted him to Rwashamaire Police post, where he was forwarded to Ntungamo Police Station.

On 19th January, 1997, in a charge mid caution statement recorded by PW2, IP Kemigisha, at Ntungamo Police Station, the accused stated that after the death of his elder brother, the family had asked him to take over (the complainant as widow of his elder brother. 11 was then that lie had started having sex with the complainant on various occasions. On 13th January, 1999, he went to the complaint's home to have sex as usual. It was at about mid-night and he had been drinking. The complainant refused to open for him and he had gone to sleep at his parent's home.

PW1, Dr. Kworora, examined the complainant at Itojo hospital on 14 January, 1997 against Police Form 3, Exhibit P1. He found her with scratch marks on the neck and human bites on the inside of her right thigh. Those injuries were consistent with putting up some force.

For his answer to the charge against him, the accused made an unsworn statement. 1-Ic said that the complainant was his sister-in-law and neighbour. He totally denied having sexually assaulted the complainant. He put up an alibi stating that he spent the entire night of 13th January, 1997, at his home sleeping and never went to the home of the complainant.

The accused claimed that the complainant framed up the case against him because in 1991, he had caused the arrest of her son called Mwebembezi for having stolen some property belonging to same relative

. In all criminal trials, the burden to prove the guilt of the accused person beyond reasonable doubt rests upon the prosecution. Johnson (1961) 3 A1IE. R. 969.

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In the instant case, the prosecution had to prove three essential ingredients of the offence of rape contrary to sections 117 and 118 of the Penal Code.

- a) act of sexual intercourse;
- b) lack of consent on the part of the complainant
- c) participation of the accused.

The defence did not contest essential ingredients one and two set out above. Counsel for the accused explicitly stated that the defence had no intention to contest the two ingredients of the offence of rape.

On the first ingredient, this court accepts the evidence of the complainant. She was very impressively truthful in her testimony. She was an elderly person who knew and had had credible experience in sexual matters. This court cannot doubt that what she experienced during the night of 13th January, 1997, was penetrative sexual intercourse as she described it to this court. The evidence of PW1, Dr. Kworora, and Exhibit P 1, render adequate corroboration to the claim of the complainant that she was sexually assaulted as she claims. For it is not possible that even if (lie complainant had desired to frame up this case against the accused, she could have succeeded to inflict human bite marks on herself and on the inside part of her right thigh. The human physiology is not normally so flexible and certainly not that of a woman of 55 years of age.

Besides, the accused, in his charge and caution statement before PW2, acknowledged his presence at (lie scene of crime at the material time. He also, acknowledges that lie was there

for the purpose of having sexual intercourse with (lie complainant. The charge and caution statement was not challenged in court.

On whether the complainant gave her consent for the act of sexual intercourse or not, again her evidence is credible that she died not. The scratches and human bites inflicted upon her, which PW1 recorded in exhibit

P1 clearly shows that she put a physical struggle but was eventually overpowered. She ran out of the house and slept at the home of her son, Matsiko. She also reported the incident to the LC I chairperson immediately during that very night. All this evidence was not challenged by the defence and is regarded as accepted as truthful. James Sawoabiri And Fred Musisi v Uganda Supreme Court Criminal Appeal No. 5/1990. (Unreported).

I am, therefore, duly satisfied that the two first essential ingredients of the offence of rape have been proved beyond reasonable doubt.

To prove that the accused participated in the commission of this offence, the prosecution produced the evidence of the complainant. She knew the accused very well. She was the widow of the accused's own elder brother. The two were neighbours. The accused introduced himself to the complainant when he asked her who he was and what he wanted. He told her that he was Rwangutane and he had come to have sexual intercourse. The evidence of PW2, IP Kemigisha, exhibit P2, is that the accused acknowledged that he went to the home of the complainant during the alleged night and at the relevant time and for the purpose of having sexual intercourse with the complainant. That evidence, as I have noted above, was not challenged in court.

The accused's total denial put forward in his defence, can therefore, not stand. He denies ever leaving his home during that night or ever seeing the complainant during the same night. As Sir Udo Udoma C.J., very pertinently stated in M Kabenge vs. James K. Mpalanyi Civil Appeal No. B56 of 1962 (reported in HCMB 84/644), it is indeed, "**a well known principle of law and practice that a man who swears the contrary of that which he stated on a previous occasion is not worthy of belief.**"

As for the accused's alibi, the accused had no duty to prove it. *Uganda vs Kakooza (1984) HCB 1*. The prosecution had the burden of destroying it and placing the accused person at the scene of crime. I am satisfied that the evidence of the complainant, PW4, and that of PW2 and Exhibit P2, places the accused person at scene of crime. Consequently, the accused's alibi is false and must be rejected.

As for the grudge alleged by the accused to have existed between himself and the complainant, it appears to me to be a mere afterthought. If the grudge was real and the accused seriously believed it to have given rise to his troubles then he could not have forgotten to mention it to the counsel for the defence so that he puts it to the complainant in cross-examination. That did not happen in this case. The accused thought of the grudge while he gave his unsworn statement for his own defence. I did not believe that such a grudge had existed between him and the complainant.

But even if any grudge had existed it would most likely not sparked off the allegations constituting this offence since the event allegedly giving rise to the grudge had taken place a long time beyond. It had allegedly happened way back in 1991, some six years before. If the complainant had wished to revenge the alleged arrest of her son upon the accused, she would have done it earlier and most likely through some lesser humiliating means than the facts constituting this offence. This I also dismiss the defence of the case having been framed up by the complainant against the accused as a mere desperate afterthought.

I fully agree with the unanimous opinion of the lady and gentlemen assessors, in this case, that the prosecution has proved its case against the accused beyond reasonable doubt and he must be convicted as charged.

I accordingly convict him of the offence of rape contrary to sections 117 and 118 of the Penal Code Act.

V. F. Musoke-Kibuika

Judge

11/06/2001

11/06/2001 Accused in court.

Court as before:

Mr. Bazare holding brief for Mr. Kasirivu

Court: Case is for judgment. Judgment is read and signed.

Mr. Waninda:

I have no record of previous offence. The convict may be regarded as a first offender. The offence is serious. The victim was a very old woman. The accused persons wasted court's time. He is not repentant at all. At least he does not show it. I pray for a severe punishment.

Mr. Bazare:

The convict was arrested on 14th January, 1997. He has been on remand. He has been on remand for 4 years.

Before he was arrested he had a wife who subsequently died in 1998. She left a child of 2 years. He has to care for the child.

V. F. Musoke-Kibuuka

Judge

10/6/2001

Accused:

I have skin sickness. My wife died. I pray for mercy. My grand mother also died.

V. F. Musoke-Kibuuka

Judge

Court: Sentence And Reasons:

The offence of rape is a very serious offence. It carries death as a maximum punishment. I fail to understand why a young man with a wife would rape an old woman twice fit to be his mother.

In this case, the convict did not only rape but he broke into the house during the wee hours of the night and also inflicted dangerous harm upon his victim. He needs to be punished very severely especially during this era of' the scourge of HIV/AIDS.

I have considered him as a first offender. I have also considered his relatively young age. But widows and helpless women throughout the villages must be protected by the law against the likes of this convict. If he had not spent 4 years and 5 months on remand I would sentence him to 12 years imprisonment. I reduce that period to 7 years and 7 months imprisonment. I hope he will come out a reformed person.

V.F.Musoke-Kibuuka

Jud g e

11/06/2001

Court: Right of Appeal explained.

V. F. Musoke-Kibuuka

Judge

11/06/2001