

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT ARUA HOLDEN AT ARUA**

**CRIM. SESS. CASE 0035/2008**

**UGANDA**

.....

**PROSECUTOR**

**=VERSUS =**

**CANDIA CHARLES**

.....

**ACCUSED**

**JUDGMENT**

**(Before Justice J.W. Kwesiga)**

The accused person, CANDIA CHARLES, is indicted with rape under sections 123 and 124 of the penal code Act. It is alleged that on 3<sup>rd</sup> October, 2007 at Ejupala market in Arua District the accused person had unlawful carnal knowledge of DRIWARU LUIJA without her consent.

The brief facts of the case are that on 3<sup>rd</sup> October 2007, the accused person and the complainant spent time drinking KASESE, a local crude waragi up to about 7.00 or 8.00 pm when the complainant left the drinking place known as AJIA YAKOBO'S BAR. On her way home the complainant was attacked from behind and the attacker had sexual intercourse with her.

In prosecution of Rape case the following essential elements of the offence must be proved:-

- 1 That there was sexual intercourse with the complainant.
- 2 That there was no consent of the complainant to the sexual intercourse.
- 3 That the accused person is the culprit.

Section 123 of the penal code clearly defines rape and the above ingredients are well embedded in the section.

In **Uganda Vs Odwong Dennis and Olanya Dickson [1992-93] HCB 71.** It was held that in rape cases the prosecution must prove penetration of the male reproductive organ into the female reproductive organ.

On the second ingredient, in **Kibazo Vs Uganda [1965] EA 507,** the court of Appeal for East Africa held that in a charge of rape the onus is on the prosecution to prove that sexual intercourse took place without the consent of the complainant and this must be proved beyond reasonable doubt.

Regarding the first element of the offence, the fact of sexual intercourse the following is the prosecution evidence. First and foremost, the charge and caution statement of the accused clearly admits that the accused had sexual intercourse with the complainant.

He stated “..... DRIWARU came and started taking Kasese. She took 3 glasses and started dancing in the bar. Reaching 8:30 pm she left for home. I followed her up to Adumini stream, I caught the woman from behind threw her near the road side, I removed my clothes and had sexual intercourse for around...”

This evidence corroborates the evidence of the complainant PW.2 DRIWARU LUIJA, that she met the accused in the bar/shop of Ajia Yakobo, she was attacked at Adumini River and raped by the accused person and she ran home while crying.

The above proves that sexual intercourse with PW 2, took place. The complainant testified that she went home while crying. She reported the matter to her husband, then to LC 1 chairman who referred her to Vurra County Headquarters and to police at Omugo.

Under cross-examination she said she said she recognized him by the voice, when, immediately after rape he said he did not care about what he had done and that his father would pay for what he had done. She stated the accused ran away with her underwear which he tore during the rape.

PW 3 Ejua Yakobo, confirmed that the accused and PW 2 drank at his bar. The accused left following or after the complainant.

PW 4 OVUA WILSON testified that his wife PW 2 reported to him that the accused had sexual intercourse with her near Adumini river and that the accused admitted when he was called before LC 1 chairman, in the presence of his uncle ATIRIYO. The accused person in his defence accepted all the events of the material day but denied ever having sexual intercourse with the complainant.

The complainant is a married woman aged 36 years when she testified that she was involved in sexual intercourse, there is no doubt that she knows what she is taking about. In any case, the accused admitted having had sexual intercourse with her in his detailed charge and caution statement.

PW 4 Ovua Wilson testified that the accused admitted the fact that he had sexual intercourse with the complainant when he appeared before the chairman LC 1.

I am satisfied that the accused person was properly identified by the prosecution evidence above referred to when considered together.

The presence of none-consent of the complainant was also proved beyond reasonable doubt. She testified that she made an alarm and that is why the accused ran away after brief sexual intercourse. The fact that she went away crying and reported to her husband on the first opportunity and her pursuit of the case to all level of authority until she testified was consistent with her not consenting to the fact of sex by the accused.

The two Assessors were of the opinion that the prosecution proved its case beyond reasonable doubt and advised me to convict the accused person.

I agree with the Assessors, the prosecution proved all the essential ingredients of the offence of rape. The accused person is hereby found guilty of rape contrary to sections 123 and 124 of the penal and he is accordingly convicted.

Signed

15/10/2008

**Read in presence of:**

Mr. Anguzu Lino

Mr. Madira Jimmy for accused

**State:** No previous criminal record. Remand for 1 year today. Rape is a serious offence attracting death sentence, a danger to the family, embarrassed victim, husband and children

**Defence:**

Convict first offender. Remand for 1 year, aged 32 years. He has five children.

**Court:**

The offence of rape is a very humiliating, immoral offence that threatens the institution of a family. This forceful and unprotected sexual intercourse is a menace which is partly contributing to the spread of deadly sexually transmitted diseases. The law was intended to protect women who are helpless in course of forceful sexual intercourse. The maximum sentence prescribed serves a purpose of punishment and sending a warning to the others, in view of the above, I will discount the accused sentence from the possible death sentence to imprisonment for 10 years. He is accordingly sentenced.

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**J.W. KWESIGA**

**JUDGE**

**16/10/2008**