

Hon. Mr. Justice

J.W.N. Tsekobu

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT SOROTI.

CRIMINAL SESSION CASE NO. 235 OF 1993.

UGANDA PROSECUTOR

VERSUS

IBRAHIM ETIDU ACCUSED

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU.

*Rapel
8 year*

J U D G M E N T:

The accused is indicted for rape, contrary to sections 117 and 118 of the Penal Code Act. The allegation is that on 6.9.92 at Akamuria village in Soroti district, Ibrahim Etidu now the accused had unlawful carnal knowledge of Esta Apolot without her consent.

The victim, Esta Apolot, PW1 testified that in the night of 6.9.92 she was in the house together with her mother and three small children when the accused kicked their door open. The accused entered the house and by force drove them all outside. He was armed with a stick with which he embarked on assaulting her. He concentrated his beatings on the back and chest, especially on the left side. He did so while demanding that the victim should go with him. Agiripina Akwaso, the mother of the victim tried to intervene but she ended also being beaten by the accused. However, Agiripina was not called to testify to that effect.

The alleged ordeal took about 30 minutes on the compound of PW1 and there was a bright moonlight at the material time. The victim knew the accused very well before the incident as a villagemate. She raised an alarm but was not answered because those days the area was infested with insecurity. In fact Agiripina and the children were forced to flee and hide in the bush.

The accused thereafter dragged PW1 to Akamuria Primary School. She resisted but was overpowered. Inside a newly completed house for a teacher but not yet occupied, the accused threw the victim down while holding one leg. He ordered her to lie down properly and there and then started having sexual intercourse with her until about midnight. Thereafter the accused escorted her but stopped short of reaching her home. He strongly warned her not to reveal what had happened or else he would kill her.

Before reaching home, she met her mother looking for her and immediately told the mother everything. Both of them then slept in the house but the children spent the night in the bush. The following morning many villagers including the R.C. official of the area, one Amos Orat PW2 came to find out what the alarm was all about. She informed them that it was Ibrahim Etidu now the accused who had assaulted her before raping her in a teacher's house in Akamuria Primary School.

The team went to the said house and according to Amos Orat, PW2, they saw some banana leaves apparently used as beddings. The banana leaves were previously used for cooking food for the priest who had visited the area. In addition PW2 recognised the footmarks of the accused by the missing right toe which he identified in court. It is said the ground was wet as it had rained in the village.

Earlier that morning of 7.9.92 both Agiripina and Secretary for defence had reported to PW2 that the accused had attacked the home of PW1 and assaulted her before raping her. The Secretary for defence tried to arrest the accused but failed. However, the R.C 3 Chairman of the area later arrested him in Ogilo market where the accused had gone to sell his millet.

As the victim was two months pregnant at the material time, she was volatile to the rough treatment of the accused which made her feel much pain especially on the lower abdomen. The immediate reaction of the R.C officials was that the accused should have the victim treated which he refused to do. The doctor, PW3 who examined the victim nine days later, on 15.9.92, found that she was in fact three months pregnant. She also had some linear abrasions on the left chest wall of 1 inch x ¼ inch; 3 inches x ¼ inch and ½ inch x ¼ inch each all close together which looked like scratch marks of recent appearance. In fact PW2 who also saw the victim in the morning of 7.9.92 said he saw injuries on the back and chest similar to those described by the doctor.

In addition, laboratory tests revealed that the victim had contracted gonorrhoea. When the very doctor also examined the accused 22 days later, i.e. 28.9.92, laboratory test also revealed that he had gonorrhoea and had an abrasion around the wrist.

In his defence, the accused puts the blame on the allegation of rape due to a break down in his relationship with the victim. He said from March, 1991 - December, 1991, the complainant was his girlfriend a fact well known in the village, but the victim denied ever being a girlfriend of the accused before the incident.

Further, the accused raised a defence of an alibi in that on the night in question, he was in his house together with his wife and the family. He said he never went out that night to the home of PW1 and also denied assaulting or raping her. He admits being arrested for the alleged offence but refused to have the victim treated because investigations revealed that the allegation of rape was false. He also admits that medical examination revealed that he was infected with gonorrhoea but says his infection was there for a very long time before the alleged incident and it was not him who infected the complainant but a mere coincidence only.

In their submissions, both counsel agreed that the essential ingredients of rape include the following:

That the accused had unlawful carnal knowledge of the victim without her consent; or that if consent is obtained by force or by means of threat or intimidation of any kind or by fear of bodily harm or by means of false representation of the act or in the case of a married woman by personating her husband.

Mr. Elayu for the accused submitted that the present case stands or falls when the court believes either the complainant or the accused: R v. Cherop Arap Kinei & Anor. (1936) 3 EACA 124. In his humble submission the learned Counsel invited court not to believe the complainant on the reason that she claims to have been beaten on the back, chest and left side before the alleged rape, but medical evidence is that she only sustained some abrasions on the chest which appeared marks of scratch and not beatings. Similarly her story that she was beaten unconscious and that after recovery the accused dragged her for ½ km to Akamuria Primary School where she was raped should not be believed. However, the learned Counsel did not give reason for that latter trend of argument.

It is the submissions of the learned Counsel for the State which the court finds more convincing. The complainant narrated how the accused attacked them first in the house and also on the compound. She was assaulted on the back and the chest. PW2 also saw marks of torture on her when he visited her the following morning. Medical evidence supports that she sustained bruises on the left chest wall. The examination took place almost after nine days of the assault.

The victim said she was very much in fear such that her mother and the children ran away. She raised an alarm which was not answered because of the bad security situation in the area at the material time. However, the following morning her village people including PW2 who was an R.C. official responded. In fact PW2 received a report from the mother of the victim that it was the accused who had attacked them. Even the complainant confirmed this report to PW2. The witness also identified the footmarks of the accused by the missing toe on the right foot and it was shown to court which the court considered a special mark for identification in the circumstances. All that puts the accused to the scene of crime and rebuts the defence of an alibi.

The complainant also said that she was pregnant at that time and was very volatile to assault which she narrated in court which made her faint. When dragged to the school, the accused threw her down and had sexual intercourse with her without her consent ordering her to lie down properly otherwise he would kill her. All that threat with an earlier memory of what the accused did to her and by the fact that she was already weak, she could not resist the force used by the accused.


In sexual offences corroboration is normally required unless the court warns itself of the danger that evidence of the victim is the truth. Defence argument is that medical evidence that both the accused and the victim had gonorrhoea but that could be a mere coincidence as gonorrhoea is a common disease in the country not necessarily that the two had sexual intercourse. Moreover the doctor, PW3 could not tell how recent that gonorrhoea was but put it about one month and below and thereby distinguishing this case from Eria Ngobi v. R (1953) 20 EACA 154.

In the instant case, there is corroboration and even if there ^{was} ~~none~~ I would still convict the accused on the ground ~~that her story~~ of the case is true. The victim clearly identified the accused through bright moonlight as she knew him before the incident. She had ample time with the accused before, during and after the incident. PW2 received a report that the victim and her mother were attacked by the accused and that report was confirmed by the complainant herself. PW2 visited the scene of crime and found banana leaves which appeared to have been used as beddings. Also the footmarks of the accused were identified by PW2 especially as the accused has a missing toe on the right foot. Even after the incident the accused talked to the complainant and warned her not to reveal the incident. Medical evidence revealed the injuries complained of by the victim inflicted on her by the accused and the complainant had gonorrhoea-infection of about one month and below. It is hard to believe that the infection was a mere coincidence in the circumstances. I find medical evidence corroborative of the evidence adduced by the complainant and the same is with the evidence of PW2.

The defence that the victim pinned him with the allegation of rape because of a break down in his relationship with the complainant does not hold water. It only amounts to an afterthought as that relationship was not put to the complainant during cross-examination. Even if the complainant was before the incident a girl-friend of the accused, but the relationship broke down as alleged, to have sexual intercourse with her thereafter by force would still amount to rape if proved as in the instant case.

Similarly, the defence of an alibi is sufficiently rebutted by the prosecution. There is an overwhelming evidence to that effect as stated elsewhere in this judgment.

In the end result, the accused is guilty of rape as charged and he is accordingly hereof convicted.


STEVEN GEORGE ENGWAU
JUDGE

20.4.94.

28.4.94: Accused before court.
Mr. Kakombo for accused.
Ms Nandawula for the State.
Judgment delivered in open court.


STEVEN GEORGE ENGWAU
JUDGE

28.4.94.

S E N T E N C E:

Accused is convicted under sections 117 and 118 of the Penal Code Act. Maximum sentence carries death penalty. The circumstances under which this offence were committed prompted me to opt for a custodial sentence only.

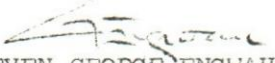
The accused is first offender and a young man of about 29 years old. He is married with 2 children. In my view his sexual lust would have been met by his wife sufficiently. Now that AIDS is rampant in the country, the society must be protected against the likes of the accused. In fact he infected the victim with gonorrhoe.

A deterrent sentence suffices here and the accused is hereof sentenced to 8 years' imprisonment.


STEVEN GEORGE ENGWAU
JUDGE

28.4.94.

Court: R/A against conviction and sentence explained.


STEVEN GEORGE ENGWAU
JUDGE

28.4.94.