

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

CRIMINAL SESSION CASE NO. 111 OF 1995

UGANDA ..... PROSECUTOR

VERSUS

LOMERI MICHAEL ..... ACCUSED

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

J U D G M E N T

In the 1st Count, the accused Lomeri Michael is indicted for rape, contrary to sections 117 and 118 of the Penal Code Act.

It is alleged that on the 20th day of February, 1994 at Nakapelimen village in the Moroto District, the accused had unlawful carnal knowledge of one Rose Alungat without her consent.

In her testimony the complainant said that on the material day at around 7.30 p.m., she was in the company of her sister PW2 when the accused came and held her by the blouse. He claimed that the complainant was his wife. In the course of a struggle the accused slapped the victim once on the cheek and that prompted PW2 to report the matter to the R.C. officials of that area.

When PW2 returned to the scene with R.C. 4 - PW3 they found that the complainant and the accused had left the place. In pursuit both PW2 and PW3 found the complainant and the accused locked in the house. It was the house of the accused. Both witnesses could hear the bed squeaking seriously indicative of a couple engaged in sexual intercourse. At the same time the complainant was raising alarm and sounds of beatings could be heard from outside.

There were very many people outside the house laughing apparently being entertained in the alleged sexual scandal inside the house. Later, however, PW3 managed to get the accused outside. In a brutal mood both PW2 and PW3 saw the accused kick the victim on the buttocks apparently in despair of the public response.

The following morning 21.2.94 the matter was reported to R.C. 1 Court presided over by PW4. It was decided that the matter be reported to the Police as the R.C. Court was devoid of jurisdiction. The Police officer who investigated the case - PW5 stated that the accused denied the offence. He said the accused said he had sexual intercourse with the complainant with her consent. Medical report revealed that the victim was involved in sexual intercourse.

The defence does not deny having sexual intercourse with the complainant on the material day. He said the complainant had consented to sexual intercourse with him. So he had sexual intercourse with her in his own house. The prosecution did not cross-examine the accused on this testimony at all.

In their submissions, the learned defence Counsel argued that since the accused's credibility was not challenged in cross-examination, his evidence be treated as the truth of what actually happened. The prosecution therefore has failed to prove beyond reasonable doubt that the accused had sexual intercourse with the victim without her consent.

On the other hand, however, the prosecution argues that since the defence has conceded that the accused had sexual intercourse with the complainant that admission alone proves the element of penetration. The other element of no consent is proved by the evidence of the victim herself as supported by the evidence of PW2, PW3 and the medical report Exbt P1 presented by PW6.

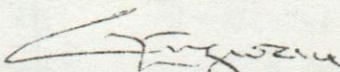
In a rape case, the prosecution must prove beyond reasonable doubt that there was penetration and that the accused now before court had sexual intercourse with the victim without her consent.

In the present case before the court it is not disputed that the accused had sexual intercourse with the complainant on the material day. In that respect the element of penetration is proved beyond reasonable doubt.

As regards the ingredient of having sexual intercourse with the victim without her consent the defence story is that the complainant had consented to the act and that was why the accused took and had sexual intercourse with her in his house.

The prosecution did not cross-examine the accused on his testimony which he gave on oath. In the absence of discredibility in the evidence of the accused, it is difficult to assume that his evidence is not worthy of truth and belief. Accordingly, it is more probably than not that the accused had sexual intercourse with the complainant with her consent. In case of doubt on that issue the benefit goes to the accused.

As advised by the gentleman assessor to find the accused not guilty of the offence charged, I do concede without hesitation for the reasons stated above. In the premises accused is hereof acquitted on the charge of rape and set free forthwith under section 71 (1) of the Trial on Indictment Decree unless he is being lawfully held for some other crime.

  
STEVEN GEORGE ENGWAU

J U D G E

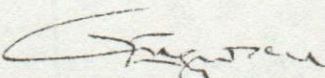
9.5.95

Court: Accused before the Court.

Mr. Kakembo for accused on State brief.

Mr. Ejoku Opolot for the State present.

Judgment delivered in open Court.

  
STEVEN GEORGE ENGWAU


J U D G E

9.5.95.

As advised by the defendant's lawyer to find the accused not  
guilty of the offense charged, I do concede without hesitation for the  
reasons stated above, in the proceedings in which I have acted as  
the charge of rape and the defendant under section 71 (2) of the Penal  
Code. I have no objection to the defendant being held for some other  
offense.

  
STEVEN GEORGE NEWMAN  
JUDGE

At this trial, the Court  
has heard the evidence  
and the defendant is  
found guilty of the  
offense charged.

  
STEVEN GEORGE NEWMAN  
JUDGE