

UGANDA / JUDGMENT

Rex v Omungi (Criminal Case No. 158 of 1939) [1940] EACA 36 (1 January 1940)

[1940] EACA 36**COURT**

East African Court of Appeal

BEFORE

Thacker J

CASE / FILE NUMBER

Criminal Case No. 158 of 1939

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ORIGINAL CRIMINAL**BEFORE THACKER, J.****REX, Prosecutor** **$\mathbf{v}$** **KASEMAS OGEDA S/O OMUNGI, Accused****Criminal Case No. 158 of 1939****Criminal Law—Rape--Corroboration-Gonorrhea as corroboration.**

The facts appear from the judgment.

Remarks upon the circumstances in which gonorrheal discharges may be admitted as corroborative evidence of rape.

Stacey for the Crown.

Accused in person.

JUDGMENT.—Each of the three assessors returns an opinion of not guilty and I suspect that their opinions are based not upon the evidence they have heard but upon inter-tribal prejudice. They are Jaluos, the accused is a Jaluo, and the complainant child is a Kikuyu. I deplore their opinions which are the result of either stupidity or perverseness.

The evidence of the child who is a slight and shy little girl of eight years was given in a straightforward if timid way and was unsworn. She did not know the nature of an oath and I quite appreciate that such a statement must be corroborated substantially and that it is very dangerous to convict in this type of case except upon such material corroboration. There is ample corroboration. In the first place, the accused was suffering from gonorrhea at the time of the offence; secondly the child was found to have contracted gonorrhea and this on the seventh day following the alleged rape; thirdly there is evidence both from Dr. Chaudri and the grandmother that she had not previously suffered from gonorrhea. I quote from Taylor's Medical Jurisprudence, 8th Edition, Vol. 2, page 123:

"As a summary of these remarks on purulent and muco-purulent discharges, we may observe that they should not be admitted as furnishing corroborative evidence of rape, except, first, when the accused party is labouring under gonorrheal discharge; second, when the date of its appearance in a child is from the third to the eighth day after the alleged intercourse; and third, when it has been satisfactorily established that the child had not suffered from any such discharge previously to the assault."

All these conditions are present in this case.

Fourthly, medical evidence showed that her genitals bore evidence of having been very recently raped and the date of the raping is given by the doctor as about that on which the girl says she was raped.

Fifthly, the day it happened the accused was not working and was at the girl's house, and did it while the child's grandmother, who normally had charge of her, was away from the house. The accused therefore had the opportunity to do what he is alleged and proved to have done.

Sixthly, I believe the grandmother's and Asha's evidence that the accused gave the grandmother Sh. 20 to hush the matter up and promised Sh. 50 in all. The grandmother immediately took the Sh. 20 note to the Police.

Seventhly, Asha also testified to the admission by the accused that he had interfered with the child and had offered money to hush it up.

All the material witnesses for the prosecution, the grandmother, the girl and Asha gave evidence in an honest and straightforward manner and they are corroborated in full by Dr. Chaudri. The accused gave his evidence in a rambling and garrulous fashion and suggested that some one else must have given her gonorrhea. He attempted to prove a partial alibi and his story is as thin as it could possibly be, and he produces no witnesses whatever in support of his alibi. His evidence was quite unconvincing. The accused's denial that he knew he had gonorrhea is sufficient to stamp him as a liar.

If the accused's story were true, it would mean that a conspiracy has been planned in which the child was a party. There is no reason whatever why these people should hatch this conspiracy. The accused was a new lodger and is a poor man.

It is true that the child did not complain to the grandmother when the latter returned home but when one looks at the child and then at the accused that is not surprising. She says that he threatened to beat her if she told her grandmother and I can well believe not only that he did say so but that the child was too frightened to say anything.

The contraction by the child of gonorrhea together with the attempt to have the matter hushed up by paying money is sufficient corroboration in my judgment to convict the accused. I therefore convict the accused on the first count of rape.

The accused has committed a horrible and detestable offence on a small. slip of a child. Not only has he had forcible connexion with her against her will-she is obviously much too small and young ever to consent to connexion with such an evil-looking person as the accused-but as the result of this rape the child has been infected with gonorrhea.

The accused has in no way sought to ameliorate his crime. He has pleaded not guilty and put up an entirely unconvincing defence against evidence which is overwhelming. Had he shown the slightest desire to be honest and truthful at this stage I should have given him the full benefit of it. Instead of that he has lied in the witness box.

A severe sentence is necessary. The sentence of the Court is that the accused be imprisoned with hard labour for a period of five years and that in addition he receives twenty strokes of the whip.

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Prepared on 12 October 2026 · Esheria