

UGANDA / JUDGMENT

Uganda v Asiimwe Christopher
(HCT-00-CR-SC-0119 of 2001)
(HCT-00-CR-SC-0119 of 2001)
[2003] UGHC 6 (22 January 2003)
[2003] UGHC 6

COURT

High Court of Uganda

CASE / FILE NUMBER

HCT-00-CR-SC-0119 of 2001

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COURT OF UGANDA AT KAMPALA

\par CASE NO. HCT-00-CR-SC-0119 OF 2001

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UGANDA :::::::::::::::::::::::::::::::::: PROSECUTOR

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..... ACCUSED

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HON. MR. JUSTICE J. B. A. KATUTSI:

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\par JUDGMENT:

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\par }{\fs28\insrsid9967147 The accused at the bar is indicted for rape contrary to section 117 and punishable under section 118 of the Penal code Act.

\par

\par It is alleged that on the first day of July, 2000 at Bwaise III Kawala Road in Kampala District had sexual intercourse with Nansamba Harriet without her consent.

\par

\par Nansamba Harriet is a spinster of 25 years of age. She testified that on 1/7/2000 at about 2 a.m. as she returned home from work \endash she is a bar attendant \endash a man came from behind, grabbed her arm and pulle

d her towards the charcoal stalls. He then proceeded to undress her after which he sexually ravished her. She struggled with the man while raising an alarm and in the process bit one of his fingers as he tried to gag her. On hearing people approaching

he released her and fled the scene. Some L. D. U. Personnel found her at the scene and she told them of what had befallen her. The LDU\rqoute

s followed the rapist. The following day when she reported to police she found a man with a bitten finger under arrest she recognized her ravisher as the accused at the bar.

\par

\par Kisule Tony is an LDU operative. On 1/7/2000 while on patrol duty he heard an alarm. He followed the source of the alarm and found a woman who said she had been raped. He then saw someone trying to f

lee away. He together with a fellow LDU chased this man, over took him and arrested him. He recognized the accused at the bar as the man he arrested. They found accused with a bitten finger still dripping in blood. Some of the blood had stained his shirt.

They took the accused to Kawempe Police Station.

\par

\par Dr. Martin Wagoba Karyemenya doubles as a police surgeon. On 2/7/2000 he examined a woman called Nansamba Harriet. He was of the apparent age of 23 years. She had soft tissue injuries on her pelvic

region. He also examined a man called Asiimwe on 11/7/2000. He was of apparent age of 25 years. He had a human bite wound on his thumb and scratches over his right hand. He could not recall how old the wound was when he examined Asiimwe. In his defence

the accused denied the charge against him.

\par

\par Prosecution must prove carnal knowledge. For this purpose it is not necessary to prove that the hymen was ruptured or that there was an emission of semen. The slightest penetration of the vagina by the male organ

will be sufficient. In this case prosecutrix was of the apparent age of 23 years and a barmaid. It would be a miracle to find her hymen intact. Be that as it may the medical report shows that there was penetration.

\par

\par I examined the demeanor of this woman and found her a truthful witness. I accept as a fact that she was sexually ravished.

\par

\par On a charge of rape absence of consent is very important and prosecution must prove that the accused had carnal knowledge of the prosecutrix without her consent. Consent

not obtained by force or by means of threats or intimidation or fear of harm is no consent.

Evidence of some struggle or resistance by prosecutrix may be the best proof of lack of consent although this may not always be necessary.

\par

\par In this case there is the

presence of a bitten finger. Let me hasten to say that I accept the evidence of Harriet that she bit the finger of her ravisher. This cannot be a result of sexual ecstasy, as learned counsel for defence seemed to imply. Lack of consent has been proved.

d without an iota of doubt.

\par

\par As I have said I accept the evidence of Harriet that she bit the finger of the rapist. I accept unhesitatingly the evidence of the LDU officer that he saw a person fleeing the scene of the offence and chased him. I accept with

out any reservation that the person chased and arrested is now the accused at the bar. I accept the evidence of the LDU man that he found the accused with a bitten finger with blood oozing out of the wound.

\par

\par The doctor who later examined the accused found

him with a human bite on the thumb. With this evidence is there any need to look for corroboration? Corroboration is right here. The alibi put forward by the accused has crumbled down like a house of cards. I am in complete agreement with the opinion

given by the assessors that this man is guilty of the offence charged. He is accordingly convicted as charged.

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\par J. B. A. Katutsi

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\par }{\fs28\insrsid9967147 Court as before.

\par Judgment delivered.

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\par J. B. A. Katutsi

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the past history of the accused. We take him to be the

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\par first offender. This is a serious offence with maximum sentence of death. I call for a
determinant sentence.

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offence is a very serious one. But i

t is also a fact that accused is a young man with a wife. He has three children. He has been in
custody for 2\bd years.

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\fs28\lang1033\langfe1033\cgrid\langnp1033\langfenp1033 {\insrsid9967147 In spite of this he
appears repentant. We call for mercy.

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for the same.

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\par It is true accused is a young man below the age of 30 years. He has been on remand for about
2\bd

years. However the offence he committed is a very serious one. He abused a lady and robbed her
of her dignity. It does not matter that the complainant might be a woman of

loose morals. She has a right to dish her goods to a man of her choice. Accused exposed her to
unprotected sex. Judging from his character he might not be safe. If that is so then he has
condemned the woman to untold suffering. Courts have a duty to

pretest the modesty of women. This is a young man whose libido seems to be great. There is need
to protect woman folk from him by keeping him away for some time. May be after that his libido
will be reduced.

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\par I deem a sentence of 10 (ten) years not to be a minute longer. He is accordingly sentenced.

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\par J. B. A. Katutsi

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\par Court: }}\fs28\insrsid9967147

\par I certify a fee of shs. 400,000= (four hundred thousand) to counsel for state brief.

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\par J. B. A. Katutsi

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Prepared on 13 October 2026 · Esheria