

Uganda v Buchanayandi Godfrey and Others (Criminal Session No. 0057 of 2023) [2025] UGHC 334 (19 February 2025)
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On Count 2, Duhimbaze Gilbert is indicted for offence of **Attempted Rape**

35 Contrary to Section 125 of the Penal Code Act.

5 The particulars giving rise to the indictment are that Duhimbaze Gilbert on the 22/02/2023 at Kamisengo village in Kisoro District attempted to have unlawful carnal knowledge of a woman IJ without her consent.

On the 3rd Count all Accused are indicted for the offence of **Simple Robbery Contrary to Section 285 and 286(1) (a) of the Penal Code Act.**

- 10 The particulars of the offence giving rise to the indictment are that Buchanayandi Godfrey, Duhimbaze Gilbert, Bizimana Derrick Davis, Muhozi Alex Joshua and Manishimwe Gilbert on 22/02/2023 at Kamisago village in Kisoro District robbed one IJ of a mobile phone valued at UgX 50,000/= and at or immediately before or immediately after the said robbery used actual violence on the said IJ.
- 15 All five Accused persons pleaded not guilty to the respective accounts. The Victim in this case will be referred to as "IJ"

Representation:

20 Mr. Ainomugisha Christopher (Senior State Attorney) appeared for the Prosecution while Mr. Kibulirani Nicholas and Mr. Nabaasa Rodgers represented the Accused persons on state brief.

The Assessors for this session were Mr. Tumushime Emmanuel and Ms. Mugenga Idah.

Burden and Standard of proof.

This being a criminal trial it is one whose proof lies squarely on the Prosecution and the Accused persons have got no duty to prove their innocence.

It is also proof beyond reasonable doubt. Any doubtS must be resolved in favour of

30 the Accused persons and the Accused persons must only be convicted on the strength of the Prosecution case and not on the weakness of the defence case.

5 See **Ssekitoleko versus Uganda (1961) EA 531. Ingredient of the offence on Count 1.**

The Prosecution must prove each of the following essential ingredients beyond

- 10 reasonable doubt for the Accused persons to be convicted of rape.
- 1) **There was sexual intercourse/carnal knowledge of the Victim.**
- 2) **Lack of Consent to the Sexual Intercourse.**
- 3) **Participation of the Accused in the Sexual intercourse.**
- 15 **Section 110 of the Penal Code Act defines rape as follows:**

"*Any person who has unlawful carnal knowledge of a woman or girl without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm or by means of false representation as to the nature of the act, or in the case of a married woman, by* 20 *personating her husband, commits the felony termed rape"*

a) **Sexual intercourse.**

In **Bassita Hussein versus Uganda SCCA No. 0035 of 1995** the Court held that: "*The act of sexual intercourse or penetration maybe proved by direct or*

25 *circumstantial evidence or other evidence. Though desirable it is not a hard and fast rule that the Victim's evidence must always be adduced in every case... Whatever the prosecution may wish to adduce to prove its case, such evidence must be such that it is sufficient to prove the case beyond reasonable doubt"*

30 The Victim in this case IJ (pw1) testified that on the date in issue of the 22/03/2023 at around 2:00PM while walking behind Tour Land Cottages within Kisoro Municipality she came across six men five of whom are the Accused persons in the

- 5 dock. It is her evidence that one of them slapped her from behind on her left cheek and she felt dizzy and fell against a tree and raised an alarm. That they carried her into a beans garden where Davis (A3) removed her knickers, A2 and A3 pulled up her dress and Godfrey (A1) lowered his trousers up to the knee got on top of her and began to have sexual intercourse with her. According to IJ they covered her
- 10 face with a dress and she could feel all the men struggling to get on top of her and that when Godfrey (A1) got off another man took his place on top of her and she was during this ordeal saved by Besigye Sabiiti (PW2) who responded to her alarm. Her evidence is corroborated by that of Besigye Sabiiti (PW2) who testified that on
- 15 the date in issue while at home he responded to an alarm being made below the eucalyptus trees in a bean's garden and that when he got there he found a group of youth about six of them in number surrounding a girl and one of them was on top of her having sexual intercourse with her.
- Corroborative medical evidence was presented by Kato Daniel (PW5) a medical 20 Clinical Practitioner who examined IJ (PW1) on Police Form 3A on the 22/03/2023 and found her to be in her menstrual cycle and his examination revealed that her hymen had been ruptured and the possible cause of this was penetrative sexual intercourse. The report was admitted as Exhibit P1.

The evidence of the Victim IJ that she was engaged in sexual intercourse as

25 corroborated by Besigye Sabiiti (PW1) and the examination of Kato Daniel (PW5) has not been rebutted by the defence evidence. I find the evidence presented by the Prosecution to be credible.

It is my finding that the Prosecution has proved beyond reasonable doubt that the Victim IJ was engaged in sexual intercourse.

5 b) Lack of consent to the sexual intercourse.

It is the evidence of IJ (PW1) that when she met the 6 men they blocked her path saying that she would not pass without greeting them and that she decided to fist bump each of them (bonga) and that Davis (A3) asked her if she was ready to have sexual intercourse with them to which she replied no. It is her evidence that after

- 10 she had been slapped on the cheek Davis (A3) held her mouth as she raised an alarm and all the six men began to assault her with punches to her ribs and all over the body and while doing so they carried her to the bean's garden where Godfrey (A1) stepped on her legs and said that he was going to forcefully have sex with her whether she wanted it or not. A2, A3, A4 and A5 then held her hands and
- 15 legs. Her legs were held apart while her hands were stretched over her head and that Godfrey (A1) then proceeded to have sexual intercourse with her as the others were also struggling for an opportunity to do so.

Besigye Sabiiti (PW2) corroborates her testimony that he heard the Victim IJ's 20 alarm to which he responded and found her surrounded by 6 youth with one of them on top of her engaging in sexual intercourse. He described seeing IJ's torn knickers on the ground.

The evidence of the Victim IJ that her assailants demanded for sex and she refused

- 25 is well corroborated by Besigye who heard the alarm that she made in protest. The assaults that she suffered were intended to weaken and subdue her. The torn knickers on the ground is proof that they were forcefully removed from her body. I am persuaded by the evidence on record that the Victim IJ did not consent to the sexual intercourse.
- 30 This has been proved beyond reasonable doubt by the Prosecution.

c) Participation of the Accused persons.

It is the evidence of the Victim IJ that she fist bumped (bonga) each of the five Accused persons when they insisted that she greets them and that Godfrey (A1)

10 was the last to be fist bumped and he refused to release her hand but remained holding on to it and that A1 and Davis (A3) then asked her if she was ready to have sexual intercourse with them to which she replied no.

It is her testimony that all the five Accused persons including the sixth still at large

15 replied that she should stop playing with them because she does not know them and they asked her how long she thinks it would take to kill her.

It is her evidence that they then proceeded to assault her with fists to her ribs and other parts of her body and that Davis (A3), Godfrey (A1) and Gilbert Duhimbaze

- 20 (A2) carried her to a beans garden nearby where they placed her down and Godfrey(A1) told her that he was going to have sexual intercourse with her forcefully whether she wanted it or not. That Davis (A3) removed her kickers and together with Gilbert Duhimbaze (A2) pulled her dress. She states that Gilbert Duhimbaze (A2), Davis (A3), Muhozi (A4) and Manishimwe (A5) held her hands
- 25 and legs.

Her legs were held apart while her hands were stretched over her head. That Godfrey (A1) then lowered his trouser up to the knees and got on top of her and started having sexual intercourse with her while the others Davis (A3) and Duhimbaze (A2) were struggling to also get on top of her and were trying to force

30 Godfrey (A1) off. It is her testimony that all through this she was raising an alarm

5 and they decided to cover her face using her dress but that she heard Davis (A3) saying that he cannot leave without having sexual intercourse with her. That she felt Godfrey (A1) come off her and she felt another person take his place on top of her before Besigye Sabiiti (PW2) came to her rescue.

The Court in *Abdalla Bin Wendo versus R* (1953) 20 EACA 166 laid the following 10 conditions as necessary for correct identification.

- 1) **Familiarity of the Accused to the witness at the time of the offence.**
- 2) **Conditions of lighting.**
- 3) **Proximity of the Accused to the witness at the scene of the crime.**
- 4) **The length of time the Accused came under the observation of the 15 witness.**

The Victim IJ (PW1) admitted that she met the Accused persons for the very first time on the day of the incident but that she got a good look at all five of them. The offence was committed at about 2:00PM in broad day light. The Victim spoke to the Accused persons for a while as they demanded for her greeting and later for 20 sex. The Victim fist bumped (bonga) each of the five Accused persons and Godfrey (A1) was the last and remained holding her hand. She even proceeds to describe Godfrey as wearing a T-shirt with black trousers. He actually got on top of her and proceeded to have sexual intercourse with her even before her face was covered with a dress. She therefore had ample time to look at not only him but all her 25 assailants.

According to the Victim IJ she spent about 30 minutes with the Accused persons of which 15 minutes was before they raped her. This is quite a lot of time sufficient for a Victim to master the faces of her assailants who were not even attempting to hide their faces.

- 5 In regard to Bizimana Derrick Davis (A3) IJ testified that he was the one who removed her knickers and together with Duhimbaze (A2) and Godfrey (A1) carried her to the beans garden. Davis (A3) also with Duhimbaze (A2) pulled up her dress to cover her face and she distinctly heard Davis say that he cannot leave without having sexual intercourse with her. The Victim IJ testified that upon Godfrey (A1)
- 10 getting off her she felt another man replace him on top of her. She also testified that when Besigye Sabiiti (PW2) came to her rescue the Accused person all fled but he managed to arrest Duhimbaze (A2) and that when the crowd gathered and exerted pressure on Duhimbaze (A2) he revealed that he was with Godfrey (A1), Muhozi (A4), Davis (A3) Manishimwe (A5) and Izabayo who is still at large.
- 15 It is a matter of practice that the Courts in cases involving sexual offences the Courts will always look for corroboration.

See Bukenya Joseph versus Uganda SCCA No. 0017 of 2017; Chila and another versus Republic Criminal Appeal No. 0080 of 1967.

The evidence of the Victim IJ is corroborated by that of Besigye Sabiiti (PW2) who responded to the Victim's alarm and found one of the boys still having sexual intercourse with the Victim and they fled on seeing him. He testified to arresting Duhimbaze (A2) at the scene and that Duhimbaze (A2) mentioned the names of

25 the other 5 men in his presence.

The Prosecution also presented DC Kato Joseph (PW4) who testified to effecting the arrest of the Accused persons.

The conditions under which the Victim IJ identified Godfrey (A1) and Davis (A3) was very favourable and I entirely rule out any error in their identification.

30 Godfrey (A1) in his unsworn defence raised the defence of alibi that he was at work

5 on the 22/03/2023 and Davis (A3) claimed that he was also at work on the said date in his unsworn statement. I do not believe this defence to be true. The evidence of IJ was very compelling.

She was very consistent and candid in her testimony. She was emphatic about the participation of the Accused persons in her rape. While she admits that her face

10 was covered after Godfrey (A1) began to rape her she heard Davis (A3) say he will not leave without having Sexual intercourse with her but she did not actually see him get on top of her even though she felt one of the men replace Godfrey (A1) on top her.

This in itself does not exonerate Davis (A3). **Section 20 of the Penal Code Act**

15 provides as follows:

"When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the Prosecution of that purpose an offence is committed of such a nature that its commission was a probable consequence of the Prosecution of that purpose, each of them is deemed to have

committed the offence"

It is clear from the facts of this case that the intention of the Accused persons was to rape IJ from the very beginning. The Accused persons acted in unison and Davis (A3) was at the forefront removing the knickers of the victim and carrying her to the scene where she was raped as he helped subdue her by holding her down as he

waited for his turn.

In **Queen versus Harder (1956) CSR 489** the Respondent had been convicted for assisting others to rape the complainant by subduing her. His conviction had been quashed in the first appeal on the ground that he had not carried out the actual rape but reinstated in the second appeal on the ground that he was an accomplice as he had aided and abetted the rapists.

I find the above decision to be applicable to the set of facts in this case.

Furthermore, **Section 19(1) (b)** of the **Penal Code Act** provides;

- *a)* "When an offence is committed each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence and may be charged with actually committing it:*
- *b) Every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence"
- 15 It therefore follows that while the Victim IJ did not actually see Davis (A3) get on top of her and engage in sexual intercourse with her like Godfrey (A1) his actions in enabling and aiding of her rape makes him just as guilty as Godfrey (A1).

After considering the evidence adduced by the Prosecution and the defence

20 together and in agreement with the assessors I find Buchanayandi Godfrey (A1) and Bizimana Derrick Davis (A3) guilty of the offence of Rape Contrary to **Section 123 and 124** of the **Penal Code Act** and convict them of the same.

On the second Count of **Attempted Rape** the Prosecution must prove the following

- 25 ingredients beyond reasonable doubt.
- 1) **That the Accused intended to have carnal knowledge/sexual intercourse with the Victim.**
- 2) **That the Accused performed an overt act in order to have carnal knowledge of the Victim.**

- 30 3) **That the Accused participated in trying to obtain carnal knowledge of the Victim.**
- 5 Attempted is defined under **Section 359(1)** of the **Penal Code Act** as follows: **"Where a person intending to commit an offence begins to put his or her intention into execution by means adapted to its execution by means adapted to its fulfilment and manifests his or her intention by some overt act, but does not fulfil his or her intention to such an extent as to commit the offence to commit the offence"**
- 10 It is the evidence of the Victim IJ that Duhimbaze (A2) together with A1 and A3 carried her to the beans garden where Duhimbaze (A2) and A3 pulled up her dress and that thereafter Duhimbaze (A2), A3, A4 and A5 held her hands and legs. The legs were held apart and her hands stretched over her head after which A1 began to have sexual intercourse with her. It is her evidence that Duhimbaze (A2) and A3
- 15 were also struggling to have sexual intercourse with her and forcing A1 off her. All through this ordeal she was raising an alarm that Besigye Sabiiti (PW2) responded to and managed to arrest Duhimbaze (A2) who she stated had already opened his belt and so could not run properly.
- 20 This evidence is corroborated by Besigye Sabiiti (PW2) who responded to the Victim IJ's alarm and testified to finding a group of youth surrounding a girl six of them in number and that one of them was having sexual intercourse with her. It is the evidence of Besigye that he saw Duhimbaze (A2) he had lowered his trouser which had a belt and he was about to get on top of the girl and that he
- 25 scared them by asking what they were doing. According to Besigye (PW2) the youth ran but Duhimbaze (A2) who had lowered his trousers failed to run and he managed to arrest him and that he raised an alarm that people responded to. Further corroboration was given by DC Kato Joseph (PW4) who testified that upon receiving a call at 2:00PM about the incident he moved to the scene where he found

5 that Duhimbaze (A2) had been arrested and he re-arrested him and took him to Kisoro Police Station.

I accept the evidence of the Victim IJ that Duhimbaze (A2) was among the men she came across on the day in issue and that he was an active participant in aiding Godfrey (A1) and another to rape her. Her evidence that he had lowered his trouser

10 waiting his chance to also rape her was well corroborated by Besigye Sabiiti (PW2). This clearly constitutes an overt act on the part of Duhimbaze (A2). Duhimbaze (A2) in his unsworn defence raised the defence of alibi that he spent the entire day of the 22/03/2023 at home.

I do not accept this defence.

15 Duhimbaze (A2) was arrested at the scene of crime and his defence of alibi is a work of fiction coined by him and it has been completely discredited by the Prosecution evidence.

After considering the evidence adduced by the Prosecution and defence together

- 20 and in full agreement with the assessors it is my finding that the Prosecution has successfully proved its case against Duhimbaze Gilbert (A2) and I find him guilty of the offence of **Attempted Rape** contrary to **Section 125** of the **Penal Code Act** and accordingly convict him of the same.
- On the 3rd 25 Count of simple robbery the Prosecution must prove the following beyond reasonable doubt.
- 1) **That there was theft of something capable of being stolen.**
- 2) **Use of actual violence at, before or after the theft.**
- 3) **That the Accused persons participated in the theft.**

a) Theft.

5 **Section 237(1)** of the **Penal Code Act** provides that theft occurs when a person fraudulently and without claim of right and with intent to permanently deprive the owner of a thing capable of being stolen takes that thing from the owner without a claim of right.

It is the evidence IJ that on the date in issue of the 22/03/2023 behind Tour Land

10 Cottages she met the Accused persons who took her black Tecno Mobile Phone that she had purchased from Senior Point in Kisoro Town at UgX 50,000/= and that the phone has never been recovered.

The defence did not contest the fact that the Victim IJ had a phone with her on the date in issue and that the same was stolen. I accept the evidence of IJ in this regard.

15 It is my finding that the prosecution has successfully proved theft.

b) Use of actual violence.

It is the evidence of the Victim that the road had been blocked by her assailants who refused to let her go through and asked her to give them whatever she has or

20 else they will kill her.

The Victim was also assaulted thereafter with fists to her ribs and other parts of her body before being raped.

The evidence of the Victim IJ that she suffered violence at the hands of her assailants has not been rebutted by the defence evidence. It is my finding that the

25 Prosecution has proved beyond reasonable doubt that actual violence was occasioned to the Victim during the theft.

c) Participation of the Accused persons.

It is the evidence of the Victim IJ that she got to know all five Accused persons on 30 the date in issue and she proceeded to name each of the five by name.

5 It is her testimony that she met them at 2:00PM and they blocked her way and refused to let her go until she greets them. She then fists bumped (bonga) each of the five Accused persons.

It is her evidence that when they demanded for everything that she had she gave her phone to Godfrey (A1) and the same has never been recovered.

I am persuaded that the Victim IJ had sufficient time to master the faces of her assailants. She puts it at 30 minutes with 15 minutes being face to face interactions. The evidence on record clearly points to the fact that Duhimbaze (A2) supplied to the Police the names of his accomplices after he was arrested at the scene and they

- 15 were all arrested one after the other by DC Kato Joseph (PW4). The factors in place favoured proper identification of the Accused persons. I therefore rule out possibility of any error in their identification. All five Accused persons raised the defence of alibi. A4 in his unsworn statement testified that on the date in issue he was at work while A5 testified to being arrested
- 20 on 01/04/2023 over a crime that he knew nothing about. According to DC Kato Joseph (PW4) A5 actually on seeing them ran away and they had to chase after him and managed to arrest him after a distance of 150 metres. The **East African Court of Appeal in Rex versus Tubere s/o Ochen (1945) 12 EACA 63** held that the conduct of Accused before or after the offence in question
- 25 might sometimes give an insight into whether he or she participated in the crime. The conduct of A5 in fleeing when he saw the security personnel points irresistibly at his guilt.

5 I am not persuaded that any of the 5 Accused persons is innocent of the indictment of simple robbery. The defence of alibi that they raised were mere afterthoughts and I reject it.

While it is Godfery (A1) who received IJ's phone all the Accused persons are bound by the doctrine of common intention under **Section 20** of the **Penal Code Act**, none

10 of them disassociated themselves from the actions of the other. They were all active participants in the commission of the offence.

The Assessors have prayed that A4 and A5 are acquitted because there isn't sufficient evidence against them but for the reasons that I have advanced I have disagreed with their opinion as regards A4 and A5 but fully agree with them in

15 regard to A1, A2 and A3.

After considering the evidence adduced by the Prosecution and defence together it is my finding that the Prosecution has proved its case beyond reasonable doubt against all five Accused persons and I find them guilty of the offence of Simple Robbery contrary to **Section 285 and 286(1)** of the **Panel Code Act** and 20 accordingly convict them of the same.

Before me,

..... **Samuel Emokor 25 Judge 19/02/2025.**

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