

UGANDA / JUDGMENT

Uganda Vs. Candia Charles (Crim. Sess. Case No. 35 Of 2008) (Crim. Sess. Case No. 35 of 2008) [2008] UGHC 145 (16 October 2008)

[2008] UGHC 145

COURT

High Court of Uganda

CASE / FILE NUMBER

Crim. Sess. Case No. 35 of 2008

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{\b\ul\insrsid7221088\charrsid10698465 THE REPUBLIC OF UGANDA

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\par IN THE HIGH COURT OF UGANDA AT ARUA HOLDEN AT ARUA

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\par CANDIA CHARLES {\b\insrsid6044646 {\b\insrsid7221088\charrsid10698465 }
{\b\insrsid6044646 {\b\insrsid7221088\charrsid10698465 ACCUSED

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\par {\b\insrsid7221088\charrsid10698465 (Before Justice J. W. Kwesiga)

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The accused person, CANDIA CHARLES, is indicted with rape under sections 123 and 124 of the penal code Act. It is alleged that on 3{\super\insrsid7221088\charrsid10698465 rd}
{\insrsid7221088\charrsid10698465

October, 2007 at Ejupala market in Arua District the accused person had unlawful carnal knowledge of DRIWARU LUIJA without her consent.

\par

\par The brief facts of the case are that on 3{\super\insrsid7221088\charrsid10698465 rd}
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October 2007, the accused person and the complainant spent time drinking KASESE, a local crude waragi up to about 7.00 or 8.00 pm when the complainant left the drinking place known as AJIA YAKOBO\quote

S BAR. On her way home the complainant was attacked from behind and the attacker had sexual intercourse with her.}{\insrsid7221088

\par {\insrsid6044646\charrsid10698465

\par {\insrsid7221088\charrsid10698465 In prosecution of Rape case the following essential elements of the offence must be proved:-

\par {\insrsid6044646 1\tab {\insrsid7221088\charrsid10698465 That there was sexual intercourse with the complainant.

\par {\insrsid6044646 2\tab {\insrsid7221088\charrsid10698465 That there was no consent of the complainant to the sexual intercourse.

\par {\insrsid6044646 3\tab {\insrsid7221088\charrsid10698465 That the accused person is the culprit.}{\insrsid7221088

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\par {\insrsid7221088\charrsid10698465 Section 123 of the penal code clearly }
{\insrsid4135730\charrsid10698465 defines rape and the above ingredients are well embedded in
the section.}{\insrsid7221088\charrsid10698465

\par {\insrsid4135730\charrsid10698465 In }{\b\ul\insrsid4135730\charrsid10698465 Uganda Vs
Odiong Dennis and Olanya Dickson [1992-93] HCB 71.}{\insrsid4135730\charrsid10698465

It was held that in rape cases the prosecution must prove penetration of the male reproductive
organ into the female reproductive organ.}{\insrsid4135730

\par {\insrsid6044646\charrsid10698465

\par {\insrsid4135730\charrsid10698465 On the second ingredient, in }
{\b\ul\insrsid4135730\charrsid10698465 Kibazo Vs Uganda [1965] EA 507}{\b\ul\insrsid6044646 ,}
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the court of Appeal for East Africa held that in a charge of rape the onus is on the prosecution to
prove that sexual intercourse took place without the consent of the complainant and this must be
proved}{\insrsid6044646 beyond}{

\insrsid4135730\charrsid10698465 reasonable doubt.}{\insrsid4135730

\par {\insrsid6044646\charrsid10698465

\par {\insrsid11607705\charrsid10698465 Regarding the first element of the offence, the fact of
sexual intercourse the following is the prosecut}{\insrsid6044646 ion evidence. First and fore mo}
{\insrsid11607705\charrsid10698465 st}{\insrsid6044646 ,}{

\insrsid11607705\charrsid10698465 the charge and caution statement of the accused clearly
admits that the accused had sexual intercourse with the complainant. }{\insrsid6044646

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\par {\insrsid11607705\charrsid10698465 He }{\insrsid6044646\charrsid10698465 stated}
{\insrsid6044646 }{\insrsid6044646\charrsid10698465 \93}{\insrsid11607705\charrsid10698465
D}{\insrsid10698465 RIWARU came and started taking K}{\insrsid6044646

asese. }{\insrsid11607705\charrsid10698465 She took 3 glasses and started d}{\insrsid10698465
ancing in the bar. Reaching 8:}{\insrsid11607705\charrsid10698465 30 pm she left for home. I
followed her up to Adumini stream, I caught the }{

\insrsid6044646 woman}{\insrsid14843499\charrsid10698465 from behind threw her near the road
side, I removed my clothes and had sexual intercourse for around}{\insrsid10698465 \85}
{\insrsid6044646\charrsid10698465 \94}{

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\par

\par This evidence corroborates the evidence of the complainant PW.2 DRIWARU LUIJA, that she met the accused in the bar/shop of Ajia Yakobo, she was attacked at Adumini River and raped by the accused person and

she ran home while crying.

\par

\par The above proves that sexual intercourse with PW 2, took place. The complainant testified that she went home while crying.

She reported the matter to her husband, then to LC 1 chairman who referred her to Vurra County Headquarters and to police at Omugo.

\par

\par Under cross-examination she said she said she recognized him by the voice, when, immediately after rape he said he did not care about what he had done and that his father would

pay for what he had done. She stated the accused ran away with her underwear which he tore during the rape.

\par

\par PW 3 Ejua Yakobo, confirmed that the accused and PW 2 drank at his bar. The accused left following or after the complainant.

\par

\par PW 4 OVUA WILSON testified that his wife PW 2 reported to him that the

accused had sexual intercourse with her near Adumini river and that the accused admitted when he was called before LC 1 chairman, in the presence of his uncle ATIRIYO.

The accused person in his defence accepted all the events of the material day but denied ever having sexual intercourse with the complainant.

\par

\par The complainant

is a married woman aged 36 years when she testified that she was involved in sexual intercourse, there is no doubt that she knows what she is taking about. In any case, the accus

ed admitted having had sexual intercourse with her in his detailed charge and caution statement.

\par PW 4 Ovua }\insrsid1204322\charrsid10698465 Wilson testified that the accused admitted the fact that he had sexual intercourse with the complainant when he appeared before the chairman LC 1.

\par I am }\insrsid8915489\charrsid10698465 satisfied}\insrsid1204322\charrsid10698465 that the accused person was properly identified by the prosecution evidence above referred to when considered together.

\par

\par }\insrsid8915489\charrsid10698465 The presence}\insrsid1204322\charrsid10698465 of none-consent of the complainant was also proved beyond reasonable doubt. She testified that she made an

alarm and that is why the accused ran away after brief sexual intercourse. The fact that she went away crying and reported to her husband on the first opportunity and her pursuit of the case to all level of authority until she testified was consistent

with her not consenting to the fact of sex by the accused.}\insrsid8281510\charrsid10698465

\par }\insrsid1204322\charrsid10698465 The two Assessors were of the opinion that the prosecution proved its case beyond reasonable doubt and advised me to convict the accused person.

\par I agree with the Assessors, the prosecution proved all the essential ingredients of the offence of rape. The accused person is hereby found guilty of rape contrary to sections 123 and 124 of the penal and he is accordingly convicted.

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\pararsid10698465 }\insrsid1204322\charrsid10698465 Signed

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\par }\b\ul\insrsid10700055\charrsid10698465 Read}\b\ul\insrsid1204322\charrsid10698465 in presence of:

\par }{\insrsid8915489\charrsid10698465 Mr.}{\insrsid1204322\charrsid10698465 Anguzu Lino

\par }{\insrsid8915489\charrsid10698465 Mr.}{\insrsid1204322\charrsid10698465 Madira Jimmy for accused

\par }{\insrsid10700055\charrsid10698465

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No previous criminal record. Remand for 1 year today. Rape is a serious offence attracting death sentence, a danger to the family}{\insrsid6044646 ,}{\insrsid10700055\charrsid10698465 embarrassed victim, husband and children

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\par }{\insrsid8915489\charrsid10698465 Convict}{\insrsid10700055\charrsid10698465 first offender. Remand for 1 year, aged 32 years. He has five children.

\par }{\b\ul\insrsid10700055\charrsid10698465 Court:

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The offence of rape is a very humiliating, immoral offence that threatens the institution of a family. This forceful and unprotected sexual intercourse is a menace which is partly contributing to the spread of de

adly sexually transmitted diseases. The law was intended to protect women who are helpless in course of forceful sexual intercourse. The maximum sentence prescribed serves a purpose of punishment and sending a warning to the others, in view of the abo

ve, I will discount the accused sentence from the possible death sentence to imprisonment for 10 years. He is accordingly sentenced.}{\insrsid8915489\charrsid10698465

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\par }{\b\insrsid10700055\charrsid10698465 J. W. KWESIGA

\par JUDGE

\par 16/10/2008}{\b\insrsid15024847\charrsid10698465

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Prepared on 13 October 2026 · Esheria