

UGANDA / JUDGMENT

Uganda v Karambuzi (Criminal Session Case 226 of 1992) [1994] UGHC 97 (20 July 1994) [1994] UGHC 97

COURT

High Court of Uganda

BEFORE

Lugayizi, J

CASE / FILE NUMBER

Criminal Session Case 226 of 1992

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

*\" .. - z. IN THE HIGH COURT OF UGANDA AT KAMPALA

CRIMINAL SESSION HO* 226/1992**AT THE SESSION HOLDEN AT MBARARA**

UGANDA: PROSECUTOR

V E R S U S

GEOFFREY WILSON KARAMBUZI: ACCUSED

BEFORE: The Honourable Mr. Ag. Justice E»S. Lugayizi JUDGMENT

The accused herein i.e. GEOFFREY WILSON KARAMBUZI a 40 year old male of Katesi village, Kyebare in Bushenyi district) was indicted for the offence of defilement contrary to section 125(1) of the Penal Code Act. The particulars of the indictment read as follows,

"PARTICULARS OF OFFENCE

GEOFFREY WILSON KARAMBUZI, on or about the 25rd day of December, 1990, at Kateizi village, in M.utura sub-county, in Bushenyi District, unlawfully had sexual intercourse with Joveret Tusasirwe, a girl under the age of 18 years".

When the said Indictment was read and explained to the accused, he denied having committed the offence in issue.

The prosecution in turn, led evidence from four witnesses in a bid to prove that the accused committed the said offence.

The first witness for the prosecution was No. 248 Sergeant Wilson Muhanga, a Protestant who was attached to Mutura subcounty administration police, Ruhinda county in Bushenyi district in December, 1990.

This witness related in court that on the 25th of December 1990, at around 5.00p.m., he received the report from the subcounty chief of Kyebare who was called Kabaterane.

' .../2..

At the same time, there were three girls who came with the said group. One of them was Tusasirwe (PW2) whom the witness gave a Police Form 3, to take to a doctor for examination.

PW2 took the form (which this witness identified at the hearing) and returned it the following day. This witness then forwarded the accused and all the relevant documents of this case to Bushenyi Police Station.

Finally, this witness also revealed, that at the time of the above events, PW2 had bruises on the neck. Further, the other two girls revealed to this witness that they were defiled by some other persons and not the accused.

The second prosecution witness was a young girl aged 17 years whose name was Jovet Tusasirwe. In her sworn testimony before court, she revealed that she was born on the 4th of June, 1977, and did not know the Accused until the 23rd of December, 1990.

When she lived in Hygkatete village, she eventually came to know that the accused was from Kyebare village which was about three miles away from her village.

On 23rd December, 1990, at around 7.30a.m., this witness went to Hitezi village to collect some grass to use for Christmas decoration. She was accompanied by two other girls namely, Mazij (PW3) and Mueimenta. Both of the said girls were younger than she was.

The witness and the said two girls found the grass they wanted just by the road side near the enclosure which marked off Sempa's farm. They did not enter the said enclosure, but remained outside of it and collected the said grass.

As they were doing so, the accused who came with two boys arrived. He was holding a panga, an axe and a saw. He threatened the said girls, saying that they had encroached upon his land. The girls denied it.

.../3

The accused then ordered them «?ll to lie down with their faces facing the ground* The girls complied.

Eventually, the accused put his panga, axe and suw^down, near the enclosure of the farm and came and took FJ2 by the hand. He also instructed his boys to pick a girl each.

The accused took FJ2 across the road in a bush near Sompa* dip tank, tore off her under clothes, knocked her doxm and forcibly had sexual intercourse with her. She made an alarm, but no one answered it. There were no people nearby.

After the above, the accused then went for Fv/3 whom she grubbed by the neck, whereupon, ^P',73 rebuked the accused in apparent anger.

At this point, PW2 ran to the road and went to call for help. On the way, she found Tumanyirwe, and three others. On of' these others was called Major, while the other two were both called Charles. She related to them what had befallen them.

The above group rushed to the scone of crime and found the accused cutting timber. On seeing the group, the accused ran away* .

The said group gave chase up to Seripu's house where the accused ran through the kitchen and finally took refuge in the house•

Mrs. Sempa advised them to go and report the matter to the authorities. The above group then went off and looked for the sub-county chief called Mr. Kabatereinc.

A^ter some effort, they found the said chief on his way returning home. They briefed him about what had happened.

Soon after the above, arid arising out of an earlier alarm which the witness had heard, the accused was brought before the said chief. The chief advised that.the accused should be taken to Sempa who was his master.

The group complied, but was again told by Mrs. Sempa to take him to the authorities.

Tho said group now took the accused to tho Gombolola chief who hoard the mutter and eventually gave P?J2 a lottex' to enable her to go to hospital for treatment.

FW2 wont for treatment at Kutone.. Health Centre throe days after the incident in issue, and later or- to Nyachioale hospital.

She finally revealed that as a result of being defiled by the accused, she felt a lot of pain all over the body. She bled through her private parts, but sustained no physical Injuries such as scratches etc. She denied having boon given Police Form 3 by any police officer.

The third witness for the prosecution was Mazirwo ifolly, a young girl aged 16 years who comes from Nyakatete village in Bushenyi district*

She told court that her father liras Byabagombi and H72 and Musimenta wore her sisters. She did not know the accused before the incident in issue.

This witness generally confirmed R72fs evidence relating to the first part of the events which took place on the 23rd of December, 1990 at the scene of crime. She however added, that while PW2 was led away by the accused from the place where the three girls were collecting grass, on her part, she was grabbed /- to by one of the accused's boys who took her to a garden which was behind a bush and had sexual intercourse with her there.

This witness continued that at the time, she did not see what happened to PW2, nor heard anything from the direction where the Accused had taken PW2. She also revealed that P?J2 did not return to them after she was taken away by the accused. However, the accused came back later and found PW3 and Musimenta. He then forcefully had sexual intercourse with R?J3. After that, PW3 and Musimenta, who were now crying went home where they found PW2, their brothers, namely Charles Mizinya, Captain, Tumwine, and some other people whose names she did not know.

The said group went to the scene of crime and found the Accused cutting a tree. They chased him and the accused ran into Sempa's house where Mrs. Sempa denied having him around.

Eventually, R?3 witnessed the arrest of the accused by the chief who sent them all to the Gombolola Headquarters where the accused was detained.

Later⁹ this witness went for medical treatment.

In cross-examination, this witness could not estimate distances well. She also said that her father was Emmanuel Kanana who was sick on the day in issue.

Finally, she revealed to court that she heard P?72 making an alarm after the accused had taken her away from them at the scene of crime; and that later, PW2 came back to where IU3 was, before she finally left them at the said scene.

The fourth prosecution witness was Muzinya Charles, aged 26 years; and comes from Nyakatete village in Bushonyi district.

The said witness related to court that on the 23rd day of December, 1990 while he was at home, his sister PV2 came, back crying. She was Meeding. PW2 then told this witness, that she (and her friends) had been defiled. However, PU2 had left her friends at the scene of crime.

The witness decided to go and rescue PW2's friends. He left PW2 behind. He met the two girls (PV3 and Musimenta) on the way. They were also crying. The three now proceeded to the scene of crime where the said girls showed this witness the accused and the two boys who had defiled them. The accused and his group were gathering firewood.

At this point, PW4 and the said two girls were joined by Ruriana and Tumwine. They tried to arrest the accused and his group, but they ran and hid in Mrs. Sempa's house.

Despite their request to Mrs. Sempa, she refused to surrender the accused and his group to them, and instead wanted to fight them* ...,/6.r•

PW4 and his group then reported the matter to the RCI chairman and the Muluka chief,. Subsequently, accused was arrested by the sub-county chief and detained at the sub-county headquarters .

During cross-examination, PW4 revealed that when he and his group went to the scene of crime, they failed to arrest the accused and the two boys. This was because they * threatened to cut them with a panga and did not run away until more people had gathered. He also disclosed that PW2 did not arrive at the scene of crime, until after the accused and the two boys had threatened to cut this witness and his group.

/it the end of the above evidence, the prosecution closed its case. In turn Mr. Zehurikise (counsel for the accused) submitted that there was no case to answer and that his client should be acquitted.

He was of the view that the contradictions in the prosecution evidence and absence of medical evidence rendered it difficult to believe that PW2 was defiled on the day in issue; and that it was the accused who did it.

Mr. Wagona (counsel for the state) differed and was of the view that the prosecution had made out a prima facie case requiring the accused to come to his defence. He argued that evidence even in the absence of medical evidence and corroboration, PW2's / was strong enough.

After considering the above arguments, I ruled that there was a prima facie case which would require the accused to come to his defence; and promised to give my reasons later on.

My only reason for ruling as I did, was simply that going by the authorities such as Bhatt v. R [1957]E. A. 332 and V/ibiro alias Musa vs. R [1960]E,A. 184. I felt that PW2's story in itself (which was to the effect that the accused defiled her) provided strong evidence at the particular point of the case.

Knowing that "a prima facie case" was not the same as "a case proved beyond reasonable doubt". in the face of PW2's evidence, I thought that it was necessary that the accused should come to his defence. After explaining to him his rights under S.71(2) of the T. I. D, the accused opted to make an unsworn statement in which he denied the offence.

The State and the defence then made final submissions which were not very different from their earlier submissions, except that here, the accused's advocate conceded that it was obvious that the complainant was below 18 years of age at the time the offence in issue was committed.

I then summed up to the assessors and told them that this was a case which depended solely on the complainant's evidence. I warned them of the danger of acting on uncorroborated evidence of the complainant and advised them that it was desirable for them to look for some independent evidence which supported the complainant's story before advising court to convict.

I also advised them that in case they failed to find such corroborative evidence, that they could still advise court to convict if they were wholly satisfied that the complainant's evidence was truthful.

I then directed them on the burden of proof that it rested upon the prosecution and never shifted to the accused throughout the case; and that the quantum was proof beyond reasonable doubt.

At the end of my summing up to them, one of the assessors advised me to convict and the other to acquit the Accused.

According to Halsbury's Laws of England (3rd Ed.) Vol. 10 pg. 1124 paragraph 1438, and Archbold, Criminal Pleading, Evidence and Practice (38th Ed.) at pg. 1124 paragraph 2878, carnal knowledge of a woman or a girl or sexual intercourse with a woman or a girl (which is the heart of the offence in issue) is once there is penetration, however slight, of the female sexual organ by the male sexual organ.

\$...\$ / \$...\$

\$7 \cdot \cdot \cdot \$

From the above therefore and S. 123(1) of the Penal Code Act, it would appear that in order to obtain a conviction in this case, the prosecution is supposed to prove the following ingredients beyond reasonable doubt,

- (i) that there was unlawful sexual intercourse experienced by the complainant (PW2) on the day in issue;
- (ii) that the complainant was a girl under the age of 16 years at the time of the offence; and
- (iii) that it was the accused who was responsible for the unlawful sexual intercourse experienced by the complainant.

As regards the first ingredient above, the prosecution case basically rested on PW2's evidence which was to the effect that on the (a) in issue, she was defiled in a bush at Katizo village near Sempa's dip tank. (No one else claims to have seen that harrening of in FW3 who was at the scene of crime did not. To make matters worse there is also no medical evidence to support ITA's claim.

The question therefore, is whether the prosecution can rely on RW2's evidence alone to prove the above ingredient?

According to the case of Chila v R [1967] B. A. 727. it would be dangerous to act upon PW2's story above, in a subject of this nature (i.e. a sexual offence case) unless such story was corroborated by some other independent evidence, or, in the alternative, it was fully confirmed that in every way such a story was true.

Having understood the prerequisites to acting upon FW2's story, the next question is whether it is possible to say in this case that one of those (pre-requisites) was met in PW3's evidence to the effect that she noticed PM2 walking in a strange manner soon after the alleged incident!

\$...19...\$

And in PW4's evidence to the effect that he saw PW2 bleeding soon after the alleged event?

My answer to the foregoing question is that it is in my view not possible to say so in this case. This is so, because I entertain doubts as to whether FW3's, and PW4's evidence above, can be relied upon as corroborative of PW2's testimony that she was defiled on the in issue.

I must say, I found the said two witnesses quite unreliable in their testimony

I will examine PW3's evidence in the above respect first. At one point this witness told court that PW2 and another girl called Musimenta, were her sisters and that their father was ailed Byabagambe* Later on, PW3 changed and said that her father and mother' were different from PW2's and that her father was called Runana.

At another point, PW3 told court that she did not know what happened to PW2 when PW2 was forcefully taken away from the scene where the girls had been collecting grass, PW3 continued that she did not see PW2 again nor did she hear anything from the direction where PW2 was taken. Later, PW3 changed her story here and said that she heard PW2 making an alarm after she was taken away; and that later on PW2 returned to the spot where PW3 and Musimenta were before she finally went home.

PW4 also contradicted himself a lot concerning the number of people from his village who went to the scene of crime. At the beginning he gave the number as 3 (apart from the girls). Later¹ he changed to 4 and subsequently was admitting every name that was being suggested to him by the defence counsel.

Tha ^{above} apart[&]; both FWJ and FW4 contradicted themselves in respect of a number of things in their evidence. **Forexample**, while PW3 told court that after the alleged crime, she and Musimenta found PW4 and others at home. FW4 contradicted this ^j by saying that he found the said girls near the scene of crime when he went to rescue them*

Further, FW3 told court that on returning to the scene of crime they found the accused alone cutting a tree. PW4 contradicted this by saying that the accused was with two boys and were collecting firewood.

: :i.o :

Again these two witnesses differed on what took place at the scene of crime and at Sempa's home. While PW3 did not talk of any confrontation between their groups and the accused's group at the scene of crime. PW4, painted the picture of a battle in which the accused and his group resisted arrest and wanted to cut those in the other group with a panga.

Finally, at Sempa's home, while PW3 told court that the accused went through Mrs. Sempa's house, PW4 revealed that the accused ran into the kitchen and remained there and krs Sempa whc wanted to beat the group refused to release him to them.

With the above inconsistencies and contradictions in their evidence, I find it difficult to say that PW3 and PW4 were reliable witnesses whose evidence (as pointed out earlier) could ccre-}bor ate • ^s lone sway.

As pointed out at-ovo, in the case of Chila v R (supra}*. the fact that FV72's story is stall uncorroborated at this point, does n\t shut out the other alternative of acting upon it (after warning myself of the canger of so doing) if I am satisfied that in every rmist be the truth?

The question to be asked now,, is whether I am so satisfied; ..nd ry short answer is that f am not.

I am compelled to answer in the negative because of three reasons.» First of all, there is an unexplained contradiction between Twl's and FW2's evidence. PW1 told court that on the day in issue rc gave PW2 a Police Form 3 :o take uo a doctor. PW2 took the sain form and ¹ stunned it filled up by the d&ctor the / that next day. However, PW2 contradicted this and said she has never been given a " 3 by any police officer,

T' ice this was an important area of the prosecution case, ;ec v.o .-ore left in total confusion as to which of the said two

\$11\$

\$\ddot{}\$

witnesses was telling the truth here!

Secondly, according to FW2, she was hurting all over the / alleged crime, yet this witness was able to walk more than five miles up and down after the event, as they chased around the accused and finally ended up at the Gombolola Headquarters. And sick as she was, she did not go to hospital until 3 days after the alleged event? Was such conduct typical of a small (i. girl who was in pain all over the body after being semually assaulted? I really doubt.

With all the above in mind, I cannot say that I am fully satiffied that the complainant's story that she was sexually assaulted on the day in issue, is true in every sense.

I therefore cannot act upon it without corroboration.

In the circumstances, the first element of the offence identified above, has not been proved by the prosecution.

If that is the case, then the whole of the prosecution case collapses at this juncture. It would not be useful for me to go on to discuss the rest of the elements pointed cut above.

I accordingly agree with Mr. Rwabambari (the first Assessor) that the prosecution has failed to prove its case against the accused beyond reasonable doubt.

As a result, I have no choice but acquit the accused of the offence of defilement and order his immediate release unless he is being held on some other lawful charges.

E. S. Lugavizi O'C

Ag. JUDGE \$20/7/1994.\$

Read before:

Accused present.
Mr. Zehukirize for the accused
Mr. Wagona for the State The 2
Assessors
Mr. Katunda Court/Clerk.

$\lambda_{\mathcal{E}}$. J U D G E \$20 - 10 - 10\$

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/1994/97/eng@1994-07-20>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/uganda-v-karambuzi-criminal-session-case-226-of-1992-1994-ughc-97-20-july-1994-unknown-topic-unknown-court-1994>

Prepared on 14 October 2026 · Esheria