

5 THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
HCT-11-CR-SC-0120-2022

10 UGANDA: PROSECUTOR
VERSUS
BANTURAKANGYE JUMA alias BARARERA: ACCUSED

BEFORE: HON. JUSTICE SSEMOGERERE, KAROLI LWANGA
JUDGEMENT

15 Representation:

The learned Director of Public of Prosecutions, was represented by Mr. Isaac Onyango, State Attorney, Kabale. The accused was represented by Mr. Felix Bakanyabonera on state brief.

20 Assessors:

Court was assisted by two assessors, Ms. Mercy Kembabazi and Mr. Livingstone Nyamutunga.

25 Brief Facts:

30 Banturakangye Juma, the accused was charged with the offence of Rape contrary to Sections 110 and 111 of the Penal Code Act, Cap 128. The case for the prosecution was that on January 1st, 2022, at around 8 pm in the midst of New Year festivities, the victim Amumpeire Pretty was on her way home with a group of friends when she was confronted by the accused. The accused confronted her with a panga, beat her, and forcefully had sexual intercourse with her.



5 The case for the prosecution was led by two key witnesses, the victim PW1 and her mother, PW2. In court, the victim testified that the accused had unconsensual sexual intercourse with her. That he held a panga knife that he used to threaten her, went ahead to beat her up. She was able to identify the accused when a moving car, with headlights on, flashed at them, while
10 she lay hostage to him. She ran away but later on; the accused used a flashlight torch to search for her while she hid in a banana plantation. She hid in the banana plantation until morning. The victim testified that she had known the accused for a while since they were neighbors. PW2, Florence Tumwebaze, the mother of the accused testified that when her daughter
15 PW1 told her the following morning that the accused had used her sexually for his pleasure, she examined her, she identified the accused and immediately reported to the LC1 Chairman who sent them to Police who later arrested him on January 2nd, 2022.

20 The medical examination of the victim, on Police Form 3A, conducted at Rugarama Hospital showed that the victim suffered the following injuries; multiple bruises along the neck, swelling of the left jaw and a shaky 1st canine tooth. The examination also revealed tenderness on the abdomen, chest and the back. These injuries were consistent with violent assault. This uncontested evidence was in the memorandum of agreed facts and admitted
25 into evidence as Prosecution Exhibit 2.

No hymen rings were found along the vaginal orifice, and there were multiple bruises on the labia minora, the vaginal walls. These injuries to her genitalia were consistent with penetration with a blunt object. The victim experienced too much pain especially while passing urine, and also had
30 bleeding along the vaginal walls.

The accused was medically examined and results reported on Police Form 24A. No injury to the accused was detected. Police Form 24A was admitted into evidence as Prosecution Exhibit 1. The crime scene was in the memorandum of agreed facts. It was admitted also into evidence. Location
35 of the crime scene was Rutooma Cell, about 100 meters off the Kanyanywanzi-Kitumba Road, off the Kabale-Kisoro Highway.

Accused pleaded not guilty.



In the directions to the assessors, court emphasized the following principles:

1. The burden of proof rests with the prosecution and never shifts.
2. The standard of proof is to a level beyond a reasonable doubt. This is not the same as beyond a shadow of any doubt.
- 10 3. Evaluation of evidence must be done as a whole, carefully balancing or weighing all items of evidence against each other.
4. If there are any defences available to the accused person, they must be availed to the accused person and carefully evaluated.

15 In **Woolmington v DPP (1935) AC 462**, the Burden of Proof in criminal trials is always on the Prosecution. In that regard, the Prosecution always has the duty to prove each of the ingredients of the offence and generally speaking, the burden never shifts onto the accused except where there is a statutory provision to the contrary.

20 The Standard of Proof in criminal trials is proof beyond reasonable doubt and is met when all the essential ingredients of the offence are proved beyond a reasonable doubt. The guiding precedent in Uganda to date is the case of **Miller v Minister of Pensions (1947) 2 All ER 372** wherein Lord Denning stated at Pages 373-374 that,

25 *"The degree of beyond reasonable doubt is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with a sentence: 'of course it is possible but not in the least probable', the case is*
 30 *proved beyond reasonable doubt; but nothing short of that will suffice."*

35 To return a conviction on rape, the elements of the proof required of the prosecution are:

1. That there was sexual intercourse;



- 5 2. Lack of consent of the victim;
3. Use of force, threat to use force or coercion; and
4. The accused person participated in the commission of the offence.

10 In *Kibazo v Uganda*, 1965 EA 507, it was 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. Suffice it to say, this is the most important ingredient, and most difficult to establish. The others are easier to establish, sexual intercourse, is a question of physical examination, similar to the use of force and identification of the accused.

15 I will turn to the evidence led by the prosecution for each of these ingredients.

Proof of sexual intercourse:

20 At trial, PW1, the victim testified that she was used sexually by the accused and reported to her mother, PW2. Medical Form P3A the medical form of a victim of sexual assault confirmed that the fact of sex had happened. The victim's hymen was ruptured. The victim had multiple bruises on the labia minora consistent with penetration by a blunt object. PW2 corroborated PW1's testimony by stating that her daughter told her in the morning of January 2nd, she had been used and was in a state of visible distress.

25 Lack of consent.

30 At trial, the victim, PW1, testified how she was confronted by the accused, while she was in a group of girls. Further that the rest of the group of 3 other girls, including her sister run away, but she couldn't run as fast. She testified that the accused person beat her, using fists and slaps and forcefully removed her knicker, threatening to take her life before he had sex with her. The testimony of PW1 was direct, credible and truthful. She made an alarm but she was in an isolated place.



5 Use of Force.

At trial, PW1, testified she was slapped, beaten with fists and threatened with a weapon; a panga. The beatings caused tenderness on her neck, the right side of her ribs, her chest area, a swollen left jaw with a shaky tooth, the 1st canine, and elaborate injuries to her private parts, i.e. the vaginal walls. This information is contained in the report of the medical exam. PW2, the mother also checked her daughter's private parts and confirmed her daughter had been used.

Participation of the accused in the crime:

PW1 ably identified the accused in court. The acts were performed at night but she had 2 distinct opportunities in her testimony to identify the accused. First was the passing motor vehicle with its head lamps on, that shone brightly on the accused. Second, was when the accused in hot pursuit, came looking for her, holding a flashlight torch, while she hid in a banana plantation after running away from him. This evidence is corroborated by the fact, that when PW2 called the accused, when they reached his house, he answered.

Defences available to the accused:

The accused gave a defence of an alibi. He stated he was at his house, the night of the crime until he was woken up by PW2 in the morning, who came with the Police. The accused gave unsworn testimony and could not be cross examined. This defence was an alibi. Accused stated he was at home and fell asleep on January 1st, and did not commit the crime.

30 Evaluation of the evidence:

The evidence discloses commission of the offence from the ingredients above. There was ample and correct identification of the accused, on more than 2 occasions, the most important being, by the motor car headlamp and the accused person's use of a flashlight torch supported by familiarity of the victim and her mother with the accused. The evidence of PW2 corroborates



5 that of PW1, especially in identifying the accused person, and confirming that sexual acts had taken place. The memorandum of agreed facts, Police Form 3A state in detail, the injuries the victim suffered.

The circumstances for correct identification were present;

10 The circumstances required for correct identification are well settled and typically involve the following:

(i) The length of time of observation by the witness;

(ii) The distance between the witness and the person identified;

15 Any impediments against correct identification such as time of day and persons or objects obstructing the field of view were mitigated by these two factors above. See **Bogere Moses v Uganda Supreme Court Criminal Appeal No. 1 of 1997.**

20 The optimal identification by the victim put the accused at the scene of crime. Her testimony was cogent, direct and believable. The prosecution evidence was able to put the accused at the scene of crime negating the the defence of alibi, the accused gave on unsworn testimony.

25 I find therefore that the Prosecution proved beyond a reasonable doubt that there was a non-consensual sexual encounter between the Accused person and the victim PW1. The testimony of PW1 and PW2 were consistent and established beyond a reasonable doubt the lack of consent. I am satisfied by PW1 and PW2s testimony that the Accused had sex with PW1.

30 I agree with the assessors, that the ingredients of the offence have been proved, and their evaluation of the accused's testimony to the effect that the accused's testimony did nothing much to prove his innocence. The accused's defence even viewed in the most positive light did not impeach the direct evidence led by the victim. See **Abdu Ngobi v Uganda Criminal Appeal No 030 of 2015.**



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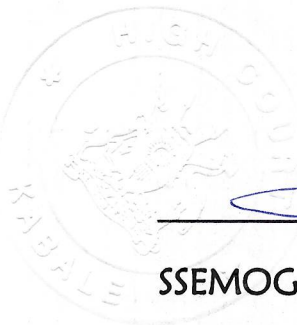
5 I also, agree with the assessors, that the Prosecution has proved the indictment of rape contrary to Sections 110 and 111 of the Penal Code Act, Cap 128.

I therefore find the Accused person guilty of the offence of rape.

I SO ORDER.

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DATED AT KABALE THIS 17TH DAY OF AUGUST 2025.



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SSEMOGERERE, KAROLI LWANGA

JUDGE



Judgement delivered in the presence of Ms. Noerine Naggayi for the Prosecution, and Mr. Felix Bakanyebonera for the Accused. Parties to return
20 to court on August 19th, 2025. Right of appeal, after the passing of sentence.