

In this regard I will consider the facts of the case as presented by the prosecution and evidence on record.

The brief facts of the case are that on the 7th of October, 2009 at about 1 pm the appellant in the company of 2 other men went to **PW1's** house when **PW2** (complainant) was in the company of a lady whose hair she was plaiting. The other 2 men picked their fishing ware but left the appellant who stayed behind. The lady companion also left to go and prepare lunch leaving behind the complainant and the appellant. The appellant asked for water and when the complainant went into the house to fetch water, he followed her, he hit the cup of water, held the complainant, struggled with her, tore her panty and raped her, he thereafter left.

PW2 the complainant **M.A.** stated in her evidence that 3 boys went to **PW1's** house whereshe was, 2 left and the appellant was left behind. The lady companion also left. The appellant asked for water to drink, she went into the house but he followed her. He hit the cup, he held her by the neck and pushed her on her aunty's bed. He tore her panty, removed her skirt, his short and penetrated her. He then left. She further testified that he did so without her consent.

PW1 R.A. stated that her neighbours daughter **PW1** was left in the house to cook and prepare **PW1's** child for School. Later she learnt from **PW2** that the appellant had raped her in the said house. When **PW1** went to the house she found things scattered and water spilled. **PW1** confronted the appellant who told her that **PW2** was his girl friend. Later that evening when she met the appellant he threatened to rape her. She said that the appellant was like her son.

PW3 P. C. Kibet Koech of Luanda Kotiende Police Post stated that on 7th October, 2009 **PW2** reported that she had been raped. He escorted her to hospital where she was examined by a **Dr. Abuya** later **PW2** and another officer **P. C. Sioma** visited the scene and managed to arrest the appellant.

PW4 Dr. Calvin Abuya, stated that heworked at Madiany District Hospital as a medical superintendent at the material time. That he examined the complainant following an alleged rape. He found that she had her monthly period. She also had bruises and tenderness around the chest. He examined her private parts and made an impression of defilement. He produced the P3 form as an exhibit.

The appellant was put on his defence. This is what he said; that on 2nd October, 2009 he went to his father's land. He met **PW1** and they had an exchange. On 5th of October, 2009 they again met at the lake and **PW2** abused her. He was later arrested, taken to Aram and charged initially with the offence of defilement and later rape.

The issue for consideration is whether or not the complainant **PW2** was raped and if so whether indeed the assailant was the appellant herein.

PW2 in her testimony maintained that the appellant grabbed her and had sexual intercourse with her against her will. There were no eye witnesses as is normal in most cases of sexual offences. I take note that there is always a danger in relying on the evidence of a single witness. However I also take note of the following; one the medical report of such a witness may corroborate the evidence; and

Secondly the trial court observed the demeanor of the witness, in his judgment the trial magistrate made the following observation:-

“ --- she stated that the accused tore her panty, removed her skirt and raped her. Though the panty wasn't produce in court, her evidence appears truthful. She struck me as honest and credible witness and I have no reason to doubt her.”

From the record, the medical card of the complainant shows that she was attended to at Madiany at 5.30 pm on the 7th of October, 2009 with a history of assault and rape by a person known to her. She had pain on the genetalia but no visible bruises.

On 8th October the medical card had the following observation; facial bruising and tenderness around the cheeks. On the physical state of area of the injuries to the genetalia, the doctor made the following observation:-

“Normal external genetalia. No tears or bruises.

There were no additional remarks or opinion made by the doctor on whether the victim had been raped or not.

In circumstances such as the one prevailing where there is the evidence of a single witness the medical report would corroborate the evidence of the witness as observed earlier.

In this case the P3 form does not corroborate penetration or indeed rape. The genetalia looked normal nor bruises or tear. No specimen was obtained from the complainant or the appellant. In my view there was nothing in the medical report to support the allegations or even link the alleged offence to the appellant. Indeed from the treatment card it is not obvious that the complainant was sexually assaulted. Although **PW2** appeared credible and honest to the trial court, in the absence of corroboration I find it unsafe to base the conviction solely on her testimony. I do not find that there was sufficient investigation by the police of the allegation and adequate evidence gathered to sustain a charge of rape.

It is the duty of the prosecution to prove its case beyond any reasonable doubt. Any doubt in the court's mind must go to the appellant.

Having found that the charge of rape was not proved to the required standard, I have inevitably to accord the benefit to the appellant. In the circumstances I will quash the conviction and set aside the sentence.

The appellant is hereby set free unless otherwise lawfully held.

DATED AND DELIVERED THIS 27TH DAY OF OCTOBER, 2011.

**ALI-ARONI
JUDGE**

In the presence of:

..... **for State**

..... **Appellant present in person.**