THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT ARUA

CRIMINAL APPEAL NO. 156 OF 2011 VUNDRU PATRICK::APPELLANT

VS

UGANDA:::::::::::::::::::::::::::::::::::::: ::::::::::::::::::::::::RESPONDENT

(Appeal from the decision of the High Court of Uganda at Adjumani before his Lordship Hon. Justice Nyanzi Yasin dated 17th/06/2011)

Coram: Hon. Justice Remmy Kasule, JA
Hon. Lady Justice Hellen Obura, JA Hon. Justice SimonByabakama Mugenyi, JA

JUDGEMENT OF THE COURT

This is an appeal against conviction arising from the decision of His Lordship Hon. Justice Nyanzi Yasin delivered on 17thJune,2011 whereby he convicted the appellant of aggravated defilement contrary to section 129(3) and (4) (a)of the Penal Code Act and sentenced him to 15 years imprisonment.

The facts as found by the trial Judge were that on 17th October, 2009, the victim Mazampwe Beatrice, a girl below the age of 14 years was left at home by her parents. The father went to school for a meeting and her mother went for a brief visit. At around 4.00pm the victim went to the stream to collect water. She collected the water and carried it on her head. It was at that time that the appellant came on the scene. He got the water container the victim was carrying on her head and put it down. He took the victim from there to the bush claiming that he was going to give her advice. He instead threw the victim down and had sexual intercourse with her. She felt pain and cried. She went home and told her young sister and the mother. Her father was also informed resulting into the arrest of the appellant.

The appellant was charged, tried and convicted of the offence of aggravated defilement. He was

sentenced to 15 years imprisonment; hence this appeal which is based on three grounds, namely;

1. ***The learned trial Judge erred both in law and fact when he convicted the appellant for the offence of aggravated defilement based on evidence that did not satisfy the standard of corroboration in sexual offences.***
2. ***The learned trial Judge erred in law and fact when he convicted the appellant for the offence of aggravated defilement when the essential ingredient of the act of sexual intercourse on the victim was not proved beyond reasonable doubt.***
3. ***The learned trial Judge erred in law and fact when he convicted the appellant for the offence of aggravated defilement when the essential ingredient of participation of the appellant was not proved beyond reasonable doubt.***

At the hearing of this appeal, Mr. Paul Manzi appeared for the appellant on State brief while Mr. Sam Oola, Senior Principal State Attorney, appeared for the respondent.

Counsel for the appellant argued grounds 1 and 3 together. He abandoned ground 2 He submitted that there was no corroborative evidence to convict the appellant of aggravated defilement. He argued that the evidence of PW4 needed corroboration in order to link the appellant to the act of sexual intercourse with her since PW2 testified that she did not witness the alleged defilement as she was away. This left PW4 as the single identifying witness. Further, that the evidence of PW2 which is to the effect that PW4 reported to her the incident could only corroborate the evidence of sexual intercourse but not the evidence as to the identity of the appellant. He cited the case of **Mugoya Wilson vs Uganda; SCCA No. 8 of 1999** where the Supreme Court succinctly stated the need for corroboration in sexual offences. Court observed that corroboration is needed not only to prove the act of sexual intercourse but also that it is the appellant who committed the offence.

Counsel also submitted that the evidence of the appellant should not be brushed aside because the trial court only relied on the evidence of the victim and her mother. He requested this Court to look at the evidence of the appellant against the evidence of PW2.

He prayed that this Court allows the appeal, quashes the conviction and sets aside the sentence.

Counsel for the respondent opposed the appeal. He supported both the conviction and sentence. He submitted, on ground 1, that there was overwhelming evidence on record to support the conviction of the appellant. The evidence of PW2 indicated that the victim came back home crying and

reported that the appellant had sexual intercourse with her. PW2 also testified that the victim was walking with difficulty.

On ground 3, counsel submitted that the victim's evidence did not need corroboration. He argued that although the victim was a child of tender years, a voire dire was conducted and the trial Judge found she understood the nature of an oath and the duty to speak the truth. Further, that the appellant was well known to the victim since he was a relative and he lived near the well. He urged this Court to disregard the appellant's defence of alibi and the alleged existence of a grudge between him and the victim's parents because this case did not originate from the victim's parents but from the victim herself who reported the sexual assault by the appellant.

The duty of this Court as a first appellate court is to re-evaluate the evidence on record and come up with its own conclusion. See: **Kifamunte Henry** vs **Uganda; SCCA No. 10 of 1997** where the Supreme Court held that the first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial Judge. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it.

It is also trite that an accused person is convicted on the strength of the prosecution case, and not on the weakness of the defence as was held in the case of **Akol Patrick & Others** vs. **Uganda; Court of Appeal Criminal Appeal No. 60 of2002.**

We have carefully studied the court record and the submissions of both counsels. We shall now proceed to re-evaluate the evidence on record.

It is not contested that the victim was subjected to unlawful sexual intercourse. What is contested is participation of the appellant. The two grounds of this appeal are on corroboration of the victim's evidence and identification of the appellant. Counsel for the appellant submitted that the trial Judge convicted the appellant of aggravated defilement based on the evidence that did not satisfy the standard of corroboration in sexual offences. He further submitted that the essential ingredient of participation of the appellant was not proved beyond reasonable doubt by the prosecution.

Corroboration evidence is defined in Osborne's Concise Law Dictionary 5th Edition page 90 as,

" independent evidence which implicates a person accused of a crime by connecting him with it; evidence which confirms in some material particular not only that the crime has been committed but also that the accused committed it. "

The law on corroboration in sexual offences was well settled by the Court of Appeal for East Africa in the case of **Chila and anor** vs **Republic Criminal appeal No. 80 of1967** in the following terms;

> ***"The judge should warn the assessors and himself of the danger of acting on the uncorroborated testimony of the complainant, but having done so he may convict in the absence of corroboration if he is satisfied that her evidence is truthful. If no such warning is given, then the conviction will normally be set aside unless the appellate court is satisfied that there has been no failure of justice. "***

In the case of **Livingstone Sewanyana vs. Uganda; Criminal Appeal No. 19 of 2006,** the Supreme Court had this to say in regard to corroboration of the victim's evidence in sexual offences;

> ***"We accept the submissions of the learned Senior principal State Attorney that the reports which PW1 made to her teacher Ireta Mary Rose, PW3, and Fred Watente, PW4, corroborated her evidence that the appellant routinely had sexually abused her.....***
> ***That not-withstanding we are of the considered view that even if such corroboration was not there, as the Court of Appeal held, it is the quality and not the quantity of evidence that matters and the learned trial judge was aware of that. The learned trial judge found that PW1 was a truthful witness and believed her... "***

It is clear from the above authorities that a conviction can be entered in sexual offences even if there is no corroboration so long as the court has cautioned the assessors and itself, of the danger of convicting without corroboration.

On the issue of identification by a single identifying witness, the leading authority in East Africa is the decision of the former Court of Appeal in **Abudala Bin Wendo and Another v. R. (1953), 20 EACA 166** cited with approval in the case of **Abdulah Nabulere & 2 Others** vs **Uganda; Court of Appeal Criminal Appeal No 9 of 1978** where the following rules of practice were laid down in

order to minimize the danger of convicting innocent people wrongly;

a. *The testimony of a single witness regarding identification must be tested with the greatest care.*
b. *The need for caution is even greater when it is known that the conditions favoring a correct identification were difficult.*
c. *Where the conditions were difficult, what is needed before convicting is other evidence pointing to the guilt.*
d. *Otherwise, subject to certain well known exceptions, it is lawful to convict on the identification of a single witness so long as the judge warns him or herself of the danger of basing a conviction on such evidence alone.*

The trial Judge, in the instant case, found that there were favorable conditions for correct identification and held that the appellant was correctly identified. We have ourselves re-evaluated the evidence of PW4 concerning identification of the appellant, alongside the other evidence on court record.

It was the testimony of PW4 that it was about 4.00pm when she met the appellant on her way from the stream. We find that by 4:00 pm, in tropical Uganda, there was still sufficient light to facilitate proper identification. PW4 further stated that she knew the appellant since he is her paternal uncle and they stayed in the same house. This evidence was corroborated by PW1, PW2 and PW3 who all testified that the appellant is a paternal uncle of the victim. We therefore find that the victim was familiar with the appellant and was in a position to identify him on that fateful day. The possibility of mistaken identification by PW4 was therefore remote.

PW4 further testified that she met the appellant who told her that he was going to give her advice in the bush but he instead threw her down and had sexual intercourse with her. An act of sexual intercourse entails body to body contact by the participants. It follows that by the appellant having sexual intercourse with the victim he had body contact with her. In the premises, we find that there was close proximity between the victim and the appellant which offered favorable conditions for PW4 to correctly identify him.

PW2 also testified that the victim went home crying and when she asked her what had happened,

PW4 told her that the appellant had had sexual intercourse with her. PW3 testified that he found PW4 at home with PW2 in a distressed condition and she revealed to him that the appellant had sexual intercourse with her. She narrated to him that the appellant had pulled her to the bush and "laid with her" which he (PW3) understood to mean having sexual intercourse with her.

We thus, find that PW4'simmediate report of the incident to both PW2 and PW3together with her distressed condition and the fact that she was able to name her defiler offered the required corroboration that was necessary to prove proper identification of the appellant as the defiler.

On the other hand, in his defence, the appellant denied the allegations and raised the defence of alibi. He also alleged that there was a conflict between him and the victim's parents arising from an incident where he (appellant) punished the victim's brother. The appellant also alleged that these charges were just maliciously framed against him.

We are mindful of the fact that the burden of proof remains with the prosecution, the alibi presented notwithstanding. In this case, we agree with the trial Judge that the alibi presented by the defence was disproved by the credible and cogent identification evidence of PW4 which placed the appellant at the scene of crime. The evidence of PW4which we find truthful was also sufficiently corroborated by the testimonies of PW2 and PW3.

On the whole, considering the evidence on record of both prosecution and defence, we find that the prosecution evidence was amply corroborated and it proved beyond reasonable doubt the ingredient of participation of the appellant. We are not convinced by the appellant's defence of alibi and the alleged family conflict. We agree with the trial Judge's finding that a small conflict over a rope and maize could not involve the whole family, to the extent of offering its daughter to claims of defilement.

In the circumstances, it is our considered view that the learned trial Judge properly evaluated the evidence before him and correctly arrived at the conclusion that it was the appellant who defiled the victim. We therefore find no reason to interfere with the learned trial Judge's decision. Grounds 1 and 3 therefore fail.

In the result, we find no merit in this appeal and we accordingly dismiss it. We confirm both the conviction and sentence.

We so order.

Dated at **Arua** this 6th day of. 2016.

Hon.Justice Remmy Kasule

JUSTICE OF APPEAL

Hon. Lady Justice Hellen Obura

JUSTICE OF APPEAL

Hon. Justice Simon Byabakama Mugenyi

JUSTICE OF APPEAL