

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT ARUA

CRIMINAL APPEAL NO. 0182 OF 2009

Arising from Criminal Session Case No. 026/009 / Before his Lordship

Hon. Justice J. W. Kwesiga

OGARM IDDI ::::::::::: ::::::::::: :: :: :: ;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;; APPELLANT

VS

UGANDA ::::::::::: ;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;; RESPONDENT

Coram : Hon. Justice Remmy Kasule, JA

Hon. Lady Justice Hellen Obura, JA Hon. Justice Simon Byabakama

Mugenyi, JA

JUDGMENT OF THE COURT.

This appeal is only against sentence of the High Court of Uganda at Arua before Hon. Justice J.W. Kwesiga on 3-9-2009.

The appellant was convicted of aggravated defilement contrary to Section 129(3) and 4(a) of the Penal Code Act and sentenced to 15 years imprisonment.

The facts as proved before the trial Judge were that on the 17-4-2008, at about 10pm, Wiajik Jenet, aged 13 years, was on her way home from watching a video when she met the appellant who grabbed and pulled her to a banana plantation. He forcefully had sexual intercourse with her for about one hour resulting in bleeding from her private parts.

There was bright moonlight and the appellant is a neighbour at her parent's home. She reported the incident to her mother after she returned home. The victim was medically examined and found to have been subjected to sexual intercourse.

The appellant was subsequently arrested, charged, and prosecuted. He was convicted and sentenced to 15 years imprisonment, hence this appeal. The appellant contends the sentence was harsh and seeks that the same be reduced.

Court granted leave to the appellant to proceed with the appeal based on a single ground against sentence.

The appellant was represented by Mr. Ikilai Ben while Ms. Tumuheise Rosemary, Principal State Attorney, appeared for the respondent.

Learned counsel for the appellant submitted that the learned trial Judge did not consider other mitigating factors, specifically the fact that the appellant was a first offender. As a result, Counsel argued, the trial Judge imposed a harsh sentence. He implored this court to reduce the sentence.

In reply, counsel for the respondent submitted that the court is not legally required to take into consideration the fact that the convict is a first offender. The issue is whether the sentence was illegal, harsh, or excessive to warrant the court's interference.

In her view, it was neither of the above. Counsel opined the trial court considered all the relevant factors and came to an appropriate sentence. She prayed for the appeal to be dismissed.

We have listened carefully to the submissions of both counsel and we have also perused the court record. While passing sentence, the learned trial judge stated as follows:

“I have considered the period of one year and 4 months the accused has spent on remand the criminal rate of defilement in this country is so alarming and threatens destruction of decent upbringing of the girl child, the so mother of tomorrow for this country who must be protected by the law. The best way to do it is to keep each proven defiler out of circulation under institutional reforms long enough before return to society

There is also need to punish the defilers sufficiently for this grave crime and considering the above I find 15 (fifteen) years) imprisonment adequate for this purpose and he is accordingly sentenced It is clear that, other than the remand period, the learned trial Judge did not consider other mitigating factors such as; the appellant was a first offender and, at 30 years, he was still relatively young and therefore capable of reforming.

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It is trite, an appellate court can only interfere with the sentence of the trial court if the sentence is illegal, being based upon a wrong principle, or the court has

overlooked a material factor, or the sentence is harsh or manifestly excessive. See Ogalo S/o Owora Vs R (1954) 24 E.A.C.A 270; Jackson Zita Vs Uganda Cr. App. NO.19 of 1995; Kizito Senkula Vs Uganda Cr. Appeal NO. 24 of 2001 (SC); Kiwalabye Bernard Vs Uganda Cr. App. NO. 143 of 2003 and Nalongo Naziwa Josephine Vs Uganda Cr. App. NO. 088 of 2009 (CA).

In our view, the fact of a convict being a first offender is a material factor to be considered during sentencing.

In the instant case, we note that the victim was aged 13 years while the appellant was 29 years at the time of the commission of the offence.

He pounced on her as she innocently walked home and used force to sexually assault her. We agree with the learned trial Judge that such conduct threatens the upbringing and well being of the girl child and as the law must be invoked to protect her.

We also note the maximum sentence prescribed under the law for this type of offence is the death penalty.

In the **Kizito Senkula case (Supra)**, the appellant, an adult male, defiled a victim of 11 years. The Supreme Court found the sentence of 15 years imprisonment appropriate, but had to reduce the same to 13 years because the trial Judge had been vague in his sentence, as to whether or not the 2 years remand period had been included or **excluded** from the said sentence. The Court resolved the doubt in favour of the appellant with the stated reduction in sentence.

In Ninsiima Gilbert Vs Uganda, Cr. Appeal NO. 0180/2010 (COA),

the appellant aged 29 years, was sentenced to 30 years imprisonment for defilement of an 8 year old girl. He had spent 3 years and 4 months on remand. On appeal, this court reduced the sentence and substituted it with 15 years' imprisonment, noting that the sentence was in line with sentences passed by courts in previous cases having a resemblance to the said case.

Considering the circumstances of this particular case, we are satisfied the sentence of 15 years imprisonment was appropriate and we cannot interfere with the same.

This appeal accordingly fails. We uphold the sentence of 15 years imprisonment imposed upon the appellant.

We so order.

DATED AT ARUA THIS 6TH DAY OF June 2016

Hon.Justice Remmy Kasule

Justice of Appeal

Hon.Lady Justice Hellen Obura

Justice of Appeal

Hon. Justice Byabakama Mugenyi

Justice of Appeal