

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 0572 OF 2014

*(An appeal from the decision of the High Court of Uganda at Nakawa
before Her Lordship Elizabeth Nahamya, J dated 4th June 2014 in Criminal
Session Case No.0242 of 2014)*

WANGWE ROBERT ::: APPELLANT

VERSUS

UGANDA :::RESPONDENT

CORAM: HON. LADY JUSTICE ELIZABETHMUSOKE, JA
HON. LADY JUSTICE HELLEN OBURA, JA
HON. MR. JUSTICE EZEKIEL MUHANGUZI, JA

JUDGMENT OF THE COURT

Introduction

This is an appeal from the decision of the High Court of Uganda at Nakawa in High Court Criminal Session Case No.0242 of 2014 by Nahamya, J delivered on 4th June, 2014, in which the appellant was convicted on his own plea of guilty of the offence of aggravated defilement contrary to Section 129 (1) of the Penal Code Act, (Cap120) and sentenced to 18 years and 10 months imprisonment.

Background to the Case

The facts of this case as accepted by the learned trial Judge were that Nakintu Justine, the victim was the step daughter to Wangwe Robert, the appellant. At the relevant time, the appellant was living with Nyiramugisha Lydia, the victim's mother in Mutungo Central Division.

Sometime around the year 2012, when the victim's mother went to do her casual work at a stone quarry, the appellant ordered the victim to take her other siblings to the neighbor's home.

Following victim's return, the appellant forcefully had sexual intercourse with her. When the victim narrated the ordeal to her mother, she decided to cover it up. Meanwhile the appellant continued to defile the victim several times.

It was not until a friend of the victim's mother who learnt of the defilement through the victim, intervened that the matter was reported to police and the appellant was apprehended and charged with aggravated defilement.

The victim was medically examined, and found to have a ruptured hymen and a discharge from her genitals.

The appellant was subsequently charged and he pleaded guilty to the offence of aggravated defilement. He was convicted and sentenced to 18 years and 10 months imprisonment. Being dissatisfied with the decision of the learned trial Judge, the appellant, with leave of this Court granted under Section 132 (1) (b) of the Trial on Indictment Act, Cap 23 appealed

to this Court against sentence only.

The sole ground of appeal as set out in his memorandum of appeal is as follows:-

1. *The learned trial judge erred in law and fact when she imposed a sentence of 18 years and 10 months imprisonment on the appellant who had pleaded guilty to the offence, which is deemed to be harsh taking into account the circumstances of this case considering the appellants age and other mitigating factors before sentencing.*

Representations

At hearing of this appeal, Mark Bwenje, learned Counsel appeared for the appellant on State Brief, while Ms. Namatovu Annette Ddungu, learned Senior State Attorney, appeared for respondent. The appellant was in Court.

Appellant's Submissions

Counsel for the appellant submitted that the sentence of 18 years and 10 months was harsh and excessive considering that the appellant was a first offender who had pleaded guilty to the offence, and was a young man of 30 years who could reform if given a chance. Further, the parties participated in plea-bargaining whereby the parties agreed upon a sentence of 15 years but the learned trial Judge elevated the sentence to 18 years and 10 months. He prayed that this Court set aside the sentence and impose an appropriate one, which he proposed to be 8 years.

Respondent's Submissions

In reply, counsel for the respondent conceded that sentence passed by the learned trial Judge was excessive. This was in light of the fact that the appellant pleaded guilty and saved court's time and resources. Counsel Submitted further that the learned trial Judge erred in law when she departed from the agreed term of sentence proposed in the plea bargain agreement. Counsel referred Court to Rule 12 of the Judicature (Plea Bargain) Rules of 2016, to support her argument. She prayed Court to reinstate the sentence of 15 years imprisonment as agreed in the plea bargain agreement and deduct the period the appellant had spent on remand.

Resolution of Court

We have carefully considered the submissions of both learned counsel, the record and the law and authorities cited to us.

We are alive to the law that requires us as an appellate court to re-appraise all the evidence and come up with our own inferences of law and fact. ***See Rule 30 (1) of the Rules of this Court, Bogere Moses vs. Uganda, Supreme Court Criminal Appeal No. 001 of 1997.***

The principles upon which an appellate Court may interfere with the sentence imposed by the trial court were considered in ***Kiwalabye Bernard vs. Uganda, Supreme Court Criminal Appeal No. 143 of 2001 (unreported)***, where the court observed that:-

"The appellate court is not to interfere with the sentence imposed by a trial court which has exercised its discretion on sentence unless the exercise of discretion is such that it results in the sentence imposed to be manifestly excessive or so low as to amount to a miscarriage of justice or where a trial court ignores to consider an important matter or circumstances which ought to be considered while passing sentence or where the sentence imposed is wrong in principle."

The Supreme Court again echoed these principles in ***Kyalimpa Edward vs. Uganda, Criminal Appeal No. 10 of 1995*** when they held and agreed with earlier precedents that:-

"..... an appropriate sentence is a matter for the discretion of the sentencing judge; each case presents its own facts upon which a judge exercises his discretion. It is the practice that as an appellate court, this court will not normally interfere with the discretion of the sentencing judge unless the sentence is illegal or unless the court is satisfied that the sentence imposed by the trial judge was manifestly excessive as to amount to an injustice: Ogalo s/o Owoura v R (1954) 21 EACA 270 and R v Mohamedali Jamal (1948) E.A.C.A. 126."

Counsel for the appellant contended that the sentence of 18 years and 10 months imprisonment was harsh and excessive considering that the learned trial Judge had sentenced the appellant outside the plea bargain agreement.

While sentencing the appellant, the learned trial Judge stated as follows:-

"I have noted mitigating factors as explained in PBA. You are a first offender, a family man but the difference in age is great. The other factor, I will consider is lack of true remorsefulness. I see no remorsefulness in stating that the girl was a sister-in-law and not a step daughter. In my view, you need to be put away for long, you repeatedly defiled this girl. I will not accept the sentence in the PBA of 15 years. Rather, I would sentence you to 20 years imprisonment. The period of one year two months spent on remand is hereby deducted. You will serve a term of imprisonment of 18 years 10 months".

It is evident from the above that, the learned trial Judge rejected the sentence agreed to under bargain agreement between the appellant and the prosecution and instead imposed a higher sentence. Her justification for rejecting the agreed sentence was that the appellant repeatedly defiled his step-daughter who was aged 13 years.

We note that ***Rule 13 of the Judicature (Plea Bargain) Rules, 2016*** states that:-

- (1) The court may reject a plea bargain agreement where it is satisfied that the agreement may occasion a miscarriage of justice.***
- (2) Where the court rejects a plea bargain agreement-***
 - (a) It shall record the reasons for the rejection and inform the parties;***
 - (b) The agreement shall become void and shall be inadmissible***

in subsequent trial proceedings or in any trial relating to the same facts; and

(c) The matter shall be referred for trial, subject to sub rule 8(3).

The Rule gives court power to reject a plea bargain agreement where it is satisfied that the agreement may occasion a miscarriage of justice.

We note that the Judge's sentence in this case was imposed on 4th June, 2014, long before the Plea Bargaining Rules became effected. However, even before the Rules came into force, the same principles applied, to wit, that where a judge rejects the Plea Bargaining agreement, she/he will record the reasons and refer back the file for full trial. There were guidelines to that effect.

With due respect, we find that the learned trial Judge erred when she sentenced the appellant outside the plea-bargain agreement, to his prejudice. According to the court record, the parties had participated in plea bargain agreement whereby they agreed upon a sentence of 15 years imprisonment but the learned trial Judge enhanced the sentence to 18 years and 10 months. Having done so, we find the learned trial Judge imposed an illegal sentence on the appellant. The sentence is, therefore, hereby set aside.

Having held as we have, we now invoke Section 11 of the Judicature Act, Cap 13 which grants this Court, while hearing an appeal, the same power as that of the trial court to impose a sentence we consider appropriate in the circumstances of this appeal. That Section provides as follows:-

"For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated."

We take note of the Plea Bargaining Agreement signed by the parties on 31st May, 2014 and the terms thereof. The parties had agreed to 15 years imprisonment.

We further note the aggravating factors that the offence of aggravated defilement carries a maximum sentence of death. Further, that the appellant violated the trust entrusted upon him when he repeatedly defiled his own step daughter of 13 years old. We also take into account the fact that the victim had sustained serious injuries that may have long lasting effects on her anatomy.

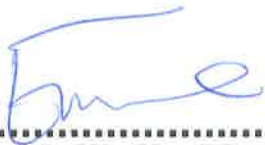
In mitigation we note that the appellant pleaded guilty, an indication that he was remorseful and had come to realize the folly of his conduct. He was a first offender with a family to look after. He was relatively young man, aged 30 years at the time of committing the offence, and was capable of reform. He had spent 1 year and two months on remand.

In light of the above, we find that the agreed sentence of 15 years was appropriate under the circumstances.

We accordingly, allow this appeal and substitute the sentence imposed by the learned trial Judge with a sentence of 15 years. We deduct from the 15 years, 1 year and two months the appellant spent on pre-trial detention. We sentence him to a term of 13 years' and 10 months imprisonment to be served from 4th June, 2014, the date of his conviction.

We so order.

Dated at Kampala this 25th day of June 2019.



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Elizabeth Musoke
JUSTICE OF APPEAL



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Hellen Obura
JUSTICE OF APPEAL



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Ezekiel Muhanguzi
JUSTICE OF APPEAL