

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA SITTING AT GULU
Criminal Appeal No. 575 of 2015

Coram: Kakuru, Tuhaise, JJA, Kasule, Ag. JA

Amone Denis **Appellant**

Versus

Uganda **Respondent**

[Appeal from the judgment of the High Court of Uganda at Kitgum in Criminal Case No. 15 of 2012, delivered by John Eudes Keitirima J, on 24th June 2014]

Judgment of the Court

The appellant, Amone Denis, was indicted for aggravated defilement contrary to sections 129 (3) & (4) (a) of the Penal Code Act, Cap 120. He was tried, convicted and sentenced to 35 years imprisonment. He was dissatisfied with the court's decision hence this appeal.

The appellant, was granted leave by this Court to have his Notice of Appeal, which had been filed in this Court out of time, regularised. He was also granted leave by this Court to appeal against sentence alone under section 132(1) (b) of the Trial on Indictments Act. His sole ground of appeal was that:-

1. The learned trial judge erred in law and fact when he imposed a manifestly harsh and excessive sentence of 35 years in prison against the appellant.

Background



The particulars of the offence were that the appellant on the 8th day of April 2012 at Lapele Ward, Pajule Sub County in Pader District performed a sexual act with Ajamo Paska a girl below the age of 14 years.

On the 8th of April 2012, the parents of Ajamo Paska, a 6 year old girl, left her at home and told her to fetch water. As she returned from fetching the water, she was grabbed by the appellant who took her into her parents' house and defiled her. He held her neck and closed her mouth and she was unable to make an alarm. Alino Christine, who knew the appellant, found him lying on top of the victim. The appellant was locked in the house while the victim was taken to the Police. When Acaya Margaret, the victim's mother, returned home, she was told of what had happened. She physically confronted the appellant who was locked in her house, but he managed to escape. As he escaped, the door cut him. He went into hiding and was arrested two weeks later. He was eventually charged with the offence of aggravated defilement, tried and convicted.

Representation

Ms. Amolo Shamim, learned Counsel, appeared for the appellant on state brief, while Ms. Nakafeero Fatina, learned Senior State Attorney, appeared for the respondent.

Submissions for the Appellant

Ms. Amollo submitted that the sentence imposed by the learned trial Judge was harsh, given the fact that the appellant was aged 25 years at the time of committing the offence, and he was also a first offender. According to Counsel, the sentence of 35 years imprisonment imposed by the learned trial Judge against the

appellant was manifestly harsh and excessive. She relied on the authority of **Ayebare Bangye Moses V Uganda, Court of Appeal Criminal Appeal No. 217 of 2011** to support her submissions. She also submitted that in cases of similar nature, courts have been lenient. She prayed that the appellant is treated the same way. She prayed that this Court considers the mitigating factors and sentences the appellant to 9 years imprisonment.

Submissions for the Respondent

Ms. Nakafeero Fatina opposed the appeal and supported the sentence imposed against the appellant by the learned trial Judge. She submitted that she was mindful of the recent trend of sentencing ranges. She however argued that the sentence of 35 years imprisonment imposed against the appellant by the learned trial Judge is appropriate, considering that the maximum penalty for the offence of aggravated defilement, which the appellant was convicted of, is death. She cited the case of **Bukenya Joseph, Supreme Court Criminal Appeal No. 17 of 2010** and submitted that 20 years imprisonment would be on a lower side. She submitted that 30 years imprisonment would be appropriate, considering that the appellant in the instant appeal had been sentenced to 35 years imprisonment by the learned trial Judge.

Resolution of the appeal

This Court, as a first appellate court, has a duty to re-evaluate the evidence and come to its own conclusion as required under rule 30 (1) of the Judicature (Court of Appeal Rules) Directions. However this Court should take into account the fact that, unlike the trial court, it had no opportunity to observe the demeanour of the witnesses as they testified. See: **Pandya V R [1957] EA 336;**



Ruwala V R [1957] EA 570; Bogere Moses V Uganda, Supreme Court Criminal Appeal No. 1 of 1997, Okethi Okale V Republic [1965] EA 555.

This appeal is against sentence alone. In **Kiwalabye Bernard V Uganda, Supreme Court Criminal Appeal No. 143 of 2001**, the Supreme Court held that an 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 the 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 circumstance which ought to be considered while passing the sentence, or where the sentence imposed is wrong in principle.

In this appeal, the learned trial Judge gave reasons for the sentence he imposed against the appellant as follows:-

"I have considered the mitigating and aggravating factors. I have also considered the period the accused has spent on remand. However the act of defiling a 6 year old girl is heinous to say the least. The girl child needs to be protected from the likes of the accused who seem bent to spoil their innocence. This trauma remains with the victim throughout her lifetime. Society needs to be protected and a deterrent sentence is necessary to deter other would be offenders. The accused was never remorseful and that is why he defended this case to the last. I will therefore sentence him to 35 years (thirty five years) in prison."

The record shows that the appellant is a first time offender. He was aged 25 years at the time of committing the offence. He has been on



remand for 2 years. The learned trial Judge took all the said factors into consideration while sentencing the appellant.

We note however, that, though the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions set out the starting point for sentencing in aggravated defilement cases to be 35 years imprisonment, and while the maximum sentence for aggravated defilement is death, there is a necessity of courts of law to maintain consistency and uniformity in sentencing.

During the hearing of this appeal, the appellant's counsel proposed a sentence of 9 years imprisonment. The respondent's counsel maintained that, after deducting the period spent on remand, a sentence of 30 years imprisonment would be appropriate in the circumstances of the case.

We have addressed our minds to the sentences meted out by law courts in cases with similar circumstances as those in the instant appeal.

In the case of **Ayebare Bangyege Moses V Uganda, Court of Appeal Criminal Appeal No. 217 of 2011**, the appellant was indicted for aggravated defilement of a 16 years old girl who was mentally retarded. He was tried, convicted and sentenced to 14 years imprisonment. He was dissatisfied with the trial Judge's decision and appealed to the Court of Appeal which sentenced him to 12 years imprisonment. In addition, the period of 3 years spent in pre-trial detention by the appellant was deducted, leaving him to serve a sentence of 9 years imprisonment from the date of his conviction.



In **Bukenya Joseph V Uganda, Supreme Court Criminal Appeal No. 17 of 2010**, the appellant defiled a 6 year old girl. The Supreme Court set aside the sentence of life imprisonment imposed by the trial Judge and confirmed by the Court of Appeal, and sentenced the appellant to 20 years imprisonment.

From the foregoing authorities, mindful of the circumstances of this case and the need to maintain uniformity in sentencing, we are of the considered opinion that, though this was a serious crime, and though the learned trial Judge took into account the mitigating factors, the aggravating factors as well as the period the appellant spent on remand, the appellant deserved more lenience since he was a first time offender and relatively young.

We accordingly set aside the sentence of 35 years imprisonment imposed against the appellant on the ground that it was manifestly harsh and excessive, in the circumstances of the case. We, in exercise of our powers under section 11 of the Judicature Act, and taking into account all the factors in the instant appeal as stated above, including the circumstances of the case, the sentencing ranges regarding cases of similar circumstances, substitute the sentence of 35 years imprisonment with a sentence of 20 years imprisonment. However considering that the appellant spent 2 years on remand prior to his conviction, this period of 2 years shall be deducted from the 20 years imprisonment pursuant to Article 23 (8) of the Constitution of Uganda.

In the result, this appeal is allowed. The appellant is to serve a sentence of 18 years imprisonment starting from the date of his conviction, which is 24th June 2014.



We so order.

Dated at Gulu this ...15th... day of ...Jan...2020.



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Kenneth Kakuru
Justice of Appeal



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Percy Night Tuhaise
Justice of Appeal



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Remmy Kasule
Ag. Justice of Appeal

