

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO.0269 OF 2015

CORAM: HON. MR. JUSTICE EGONDA NTENDE JA
HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE JA
HON. MR. JUSTICE CHRISTOPHER MADRAMA JA

MOSES BARIGYE APPELLANT

VERSUS

UGANDA.....RESPONDENT

*(An appeal from the decision of Elizabeth Jane Alividza J holden at Nakawa sitting
at Entebbe dated 24th July 2015)*

JUDGMENT OF THE COURT

The Appellant, Moses Barigye, was charged with Aggravated Defilement contrary to section 129(3) and (4) of the Penal Code Act and sentenced to 24 years imprisonment.

Background

The Prosecution's case was that the Appellant, in the month of June 2012 at Katabui Sub-county in Wakiso District, unlawfully had sexual intercourse with Nakiwala Carolyn, a girl under the age of 14 years.

The Appellant was the victim's neighbour, and on the night in question, the Appellant called her to his house because he wanted to send her to a nearby shop. When the victim entered the house, he closed the door, pushed her on his bed, and defiled her.

She slept on his bed only to be awakened by someone touching her at midnight. She made an alarm and was chased by the Appellant from his house. At her door, her guardian, who was just coming back home, asked why she made an alarm. She lied that she made an alarm under a
5 misguided belief that there was a thief.

Days later, when the foul smell in her private parts could not be hidden any longer, she told her guardian the whole story as relayed above. On learning the ordeal the minor had been through, her auntie immediately reported the matter to the police. The Appellant was arrested and charged
10 with the offence of Aggravated Defilement contrary to section 129(3) and (4) of the Penal Code Act, indicted and committed to the High Court for hearing.

At the trial, The Appellant was found guilty and convicted of Aggravated Defilement. He was sentenced to 24 years imprisonment. In her sentence,
15 the Trial Judge noted as follows:

*The offence is serious. The convict was a neighbour and supposed to provide safety to the victim, but he took advantage of her. However, since he has shown remorsefulness and willingness to change, I reduce the years to 27 years. I deduct the time spent on
20 remand that is three years. Thus the convict to serve 24 years.*

Dissatisfied, the Appellant appealed against the sentence on one ground:

That the Learned Trial Judge erred in law and fact when she imposed a manifestly harsh sentence on the Appellant.

Representation

25 During the hearing of the Appeal, Counsel for the Appellant never appeared but had filed, with leave of this Court, written submissions. Chief State Attorney Anna Kiiza represented the Respondent.

Submissions

In his submissions, Counsel for the Appellant submitted that this appeal was only against sentence. His submission was that the sentence of 24
5 years imprisonment was harsh and excessive. Counsel prayed that this sentence be reduced to 13 years. Counsel relied on the Appellant's plea in mitigation when he stated that he had three children, took care of his siblings, and had since reformed.

Counsel invited this court to find that the age of the Appellant is a
10 determining factor in sentencing. He argued that since he was only 20 years at the commission of the offence, he deserves a more lenient sentence.

In reply, Counsel for the Respondent contested the Appeal and submitted that the sentence was neither harsh nor excessive. Her
15 submission was that in arriving at the sentence of 4-year imprisonment, the Court considered the serious nature of the offense coupled with the fact that the Appellant was a neighbour of the victim who was supposed to take care of her instead of defiling her justified the sentence.

Review of Sentence

20 As a first appellate Court, have perused the Judgment, the record of proceedings of the lower Court, the submissions of Counsel together with their authorities. The only ground of Appeal is the harshness of the sentence of 27 years imprisonment imposed on the Appellant by the Trial Judge.

25 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 circumstances which ought to be considered when passing sentence or
5 where the sentence imposed is wrong in principle. (See Kyalimpa Edward v Uganda SC Cr. App. No. 10 of 1995 and Kyewalabye Bernard v. Uganda Court of Appeal Criminal Appeal No. 143 of 2001).

When imposing a custodial sentence on a person convicted of the offence of Aggravated Defilement contrary to section 129 (3) and (4) (a) of the
10 Penal Code Act, **The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013** stipulate under Item 3 of Part I (under Sentencing range in capital offences) of the Third Schedule that the starting point should be 35 years' imprisonment, which can then be increased based on the aggravating factors or reduced on account of the
15 relevant mitigating factors.

This Court has time and again reduced sentences that have come close to the starting point of 35 years' imprisonment suggested by the sentencing guidelines as being harsh and excessive.

In **Babua v Uganda, Court of Appeal Criminal Appeal No. 303 of 2010**,
20 for instance, a teacher and a husband of the victim's aunt appealed a sentence of life imprisonment. On Appeal, this Court found that the Trial Judge failed to consider 13 months the Appellant had spent on remand. It thus substituted a sentence of life imprisonment with that of 18 years' imprisonment.

Similarly, in Birungi Moses v Uganda Court of Appeal Criminal Appeal No. 177 of 2014, when a 35-year-old defiled an 8-year-old, this Court reduced a sentence of 30 years imprisonment to 12 years' imprisonment.

Lastly, in Ninsiima Gilbert v Uganda, Court of Appeal Criminal Appeal No. 180 of 2010, this Court set aside a sentence of 30 years' imprisonment. It substituted it with a sentence of 15 years imprisonment for a 29-year-old Appellant convicted of defiling an 8-year-old girl.

The Appellant was 20 years old at the time he was sentenced for the commission of this offence while the victim was only 12 years old. He was her auntie's neighbour and known to the victim. The minor answered his beckoning calls trusting him as a neighbour. Unfortunately the neighbour broke the trust and good neighbourliness and instead exposed the minor to painful intercourse so much so that her genitals were smelling weeks after the defilement.

We are, however, considerate of the fact that the Appellant was a first offender, a young capable of reform. In the spirit of consistency while sentencing; we find that a sentence of 24 years imprisonment was harsh and excessive. The sentence of 24 years is therefore set aside.


We invoke Section 11 of the Judicature Act to determine the appropriate sentence. Taking into account all mitigating and aggravating factors, we find that the sentence of 24 years was harsh and excessive. We therefore sentence him to 14 years' imprisonment.

As mandated by Article 23 (8) of the Constitution of the Republic of Uganda, 1995 and Regulation 15 (2) of The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013, we hereby set off three years as the period the Appellant spent on remand.


Having set aside the sentence of 24 years and set off the time the he spent on remand we now sentence the Appellant to a term of imprisonment of 11 years with effect from 23rd July 2015.

This Appeal therefore succeeds in part.

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Signed this 26th day of August 2021 ~~2020~~ 

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Hon. Mr. Justice Fredrick Egonda-Ntende,
Justice of Appeal

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Hon. Justice Catherine Bamugemereire,
Justice of Appeal

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Hon. Justice Christopher Madrama,
25 Justice of Appeal