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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO.0193 OF 2020

(Arising from High Court Criminal Case No.1144 of 2016)

MABALA PATRICK:.....APPELLANT

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VERSUS

UGANDA:.....RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kampala before Jane Frances Abodo, J dated 20th December, 2018 in High Court Criminal Session Case No.1144 of 2016)

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CORAM: HON. MR. JUSTICE CHEBORION BARISHAKI, JA

HON. LADY JUSTICE HELLEN OBURA, JA

HON. LADY JUSTICE EVA. K. LUSWATA, JA

JUDGMENT OF THE COURT

20 This is an appeal from the decision of Jane Frances Abodo, J in High Court Criminal Session Case No.1144 of 2016 delivered on 20th December, 2018 in which the appellant was convicted of the offence of aggravated defilement contrary to sections 129 (3) and (4) (a) of the Penal Code Act, CAP 120 and sentenced to 24 years, 4 months and 9 days' imprisonment.

5 **Brief facts**

The facts as accepted by the learned trial Judge were that the victim one Sarah aged ten years was with her young brother living with their Auntie PW2. They were sharing the house with the appellant. It was a one-bedroom house containing a sitting room and a bedroom. On the 27th day of March, 2016, the
10 victim was left alone with the brother as PW2 and the appellant had gone for a party in the neighbourhood during the Easter festive season. The victim testified that it was at night while she was watching television and her young brother had gone to sleep when the appellant arrived and immediately switched off the television and asked the victim to join him on the mat. The victim
15 refused and the appellant forcefully pulled her, undressed her, got his penis and inserted it into her vagina.

The victim felt so much pain but could not cry out because the appellant threatened her not to. After the sexual intercourse, the appellant then released the victim to go to bed and warned her not to tell anyone lest he would cut off
20 her head. After some days, PW2 noticed that the victim was walking in an awkward way and she asked her why she was walking in that manner. The victim did not tell her anything. PW2 then got a piece of toilet paper and inserted it in her vagina and on getting it out, it had pus and blood. The victim informed her auntie PW2 that the appellant had defiled her some four days
25 back. The victim requested PW2 not to let the appellant know that she had reported him as he had promised to cut off her head if she reported him. The

5 matter was reported to police and both the victim and the appellant were
examined on PF3A and PF24A respectively. The appellant was charged, tried
and convicted of aggravated defilement contrary to sections 129 (3) and (4) (a)
of the Penal Code Act, CAP 120, and sentenced to 24 years, 4 months and 9
10 days' imprisonment. The appellant now appeals against the sentence only
having obtained leave of this Court to do so. The ground of appeal states as
follows;

*That the learned trial Judge erred in law and fact when she meted out a
manifestly harsh and excessive sentence against the appellant.*

Representation

15 At the hearing of the appeal, the appellant was represented by Mr. Henry
Kunya while Ms. Sherifah Nalwanga, Chief State Attorney appeared for the
respondent.

Appellant's submissions

Counsel for the appellant submitted that it was settled law that this Court
20 could not interfere with the sentence imposed by the trial Court unless the
exercise of the discretion was such that the trial Court ignored to consider an
important matter or circumstances which ought to have been considered while
passing the sentence. He further submitted that the appellant was a first
offender of a relatively youthful age (42 years) and hence capable of being re-
25 integrated in society as a reformed person. That he also had family
responsibilities of looking after close to 10 children. Counsel invited Court to