



5 Mitala Maria village in Mpigi district performed a sexual act with NS  
a girl aged 4 years (below the age of 14 years).

3] The facts of the case as discerned from the record of court are that on  
29/7/2019 Nakayemba Lydia left home and went to the market. She  
10 left the appellant home with other children namely, Namuyomba,  
Nabukeera, Sarah, Brian Kasozi, Baseke Fred and NS. The appellant  
carried NS as usual and nobody took particular notice. That when  
Nakayemba Lydia came back at 7:00am (could have been 7pm) she  
found Nabukeera and Namuyomba very annoyed and informed her  
15 that the appellant had used NS. Nakayemba Lydia checked NS's  
private parts and the child was feeling pain. NS then informed  
Nakayemba Lydia that he had "used" her three different times, and  
that on each occasion he would remove her knicker and also undress.  
Nakayemba Lydia and her husband reported the matter to Buwama  
20 police station resulting into the arrest of the appellant at a salon. NS  
was examined by a doctor at Buwama Health Centre who reported  
that although the child's hymen was intact, there were soft tissue  
injuries around her vagina, the child was injured. The appellant was  
tried, convicted and sentenced to 20 years' imprisonment.

25 4] The appellant being aggrieved with the decision of the High Court  
lodged an appeal to this court. The appeal is premised on two grounds  
set out in the Memorandum of Appeal as follows;

30 i. That the learned trial Judge erred in law and fact when he  
disregarded the appellant's alibi which was credible.



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

### Representation

10       5] At the hearing of the appeal, the appellant was represented by Mr.  
          Henry Kunya on State brief, while the respondent was represented by  
          Sherifah Nalwanga, a Chief State Attorney. Both Counsel filed  
          written submissions as directed by Court. We have considered those  
          submissions and in addition authorities provided by counsel and those  
          sourced by Court.

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### Ground one

#### Appellant's submission

20       6] Mr. Kunya submitted that whereas PW1 Nakayemba Lydia the  
          mother to NS testified that her child was defiled by the appellant for  
          the third time on 29/7/2017, the appellant on his part testified that  
          during the said period, he was on remand for charges of being idle and  
          disorderly and that evidence was never challenged during cross  
          examination. Mr. Kunya referred us to page 9 line 24, page 10 lines 1-  
          3 of the record of appeal and page 14 lines 7 -18 of the record of appeal.  
25       Mr. Kunya then submitted that the appellant by that evidence raised  
          an alibi, but which the trial Judge failed to correctly apply.

30       7] Counsel further submitted that the settled position of law is that the  
          burden of proof does not shift from the prosecution even where the  
          defence of an alibi is raised. He referred us to **Sekitoleko versus**  
          **Uganda (1967) E.A 531 at 533** for guidance. He then concluded that

