

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Richard Buteera DCJ, Christopher Gashirabake and Oscar John Kihika, JJA.)

CRIMINAL APPEAL NO. 0033 OF 2020

MUKISA WAHABU:.....APPELLANT

VERSUS

UGANDA:.....RESPONDENT

(Appeal from the decision of the High Court of Uganda at Kampala delivered by His Lordship Hon. Justice Stephen Mubiru, J delivered on 22nd January, 2020 in Criminal Session Case No. 0412 of 2018.)

JUDGMENT OF THE COURT

INTRODUCTION

The appellant was indicted, tried and convicted of the offence of aggravated defilement contrary to sections 129(3) and 4(a) of the Penal Code Act (Cap 120) by the High Court (Stephen Mubiru J.). He was sentenced on 22nd January, 2020 to 17 years and 10 months' imprisonment.

BACKGROUND

The facts of this case as ascertained from the court record are that S.K and his elder brother P.W.4 Shamran Nsereko were frequent visitors to the home of the appellant where they played computer games at his play station. On the morning of 14th December, 2017 after the morning prayers at the local mosque, the appellant went






back home at around 8:00am with the victim S.K and his elder brother P.W.4 Shamran Nsereko. As P.W.4 Shamran Nsereko played a game on the appellant's computer, the appellant and the victim lay on a mattress in the appellant's room and covered themselves under a blanket. P.W.4 Shamran Nsereko went back home briefly at around midday to run an errand for his mother and on return, found the victim and the appellant still covered under the blanket. He uncovered them and found the two naked. The appellant was lying on his back with the victim's head between the raised legs of the appellant. The victim appeared to be sucking at the penis of the appellant. P.W.4 Shamran Nsereko reported what he had seen to his mother who in turn reported to the victim's father P.W.5 Shamshudiin Kibombo who reported to the police. The appellant was arrested.

The appellant denied having committed the offence. After a full trial, he was convicted as charged and sentenced to 17 years' and 10 months' imprisonment.

Dissatisfied with the decision of the trial court, the appellant appealed to this Court on four grounds namely;

- 1. That the learned trial Judge erred in law and fact when he failed to properly evaluate the evidence on record thus occasioning a miscarriage of justice to the appellant.*
- 2. That the learned trial Judge erred in law and fact when he initially ignored the appellant's defence of Alibi which was plausible.*

3. *The learned trial Judge erred in law and fact when he tried to sentence a juvenile on a wrong charge sheet even after receiving confirmation from the appellant's mother thus occasioning a gross miscarriage of justice to the appellant.*
4. *That the learned trial Judge erred in law and fact when he imposed a sentence deemed harsh and excessive given the appellant's age and remorsefulness leading to a miscarriage of justice.*

The respondent opposed the appeal.

LEGAL REPRESENTATION

At the hearing, Dr. Daniel Walyemera Deogratiou, represented the appellant on State Brief.

Mr. Ssemalemba Simon Peter, Assistant DPP represented the respondent.

The appellant was present in Court.

Counsel for both parties filed written submissions. They prayed to court to have them adopted as their final submissions. The prayer was granted.

SUBMISSIONS

Appellant's submissions

Ground 1:

