

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT THE SESSION HOLDEN AT MUBENDE
CRIMINAL SESSION CASE NO. 51 OF 2000**

UGANDA:..... PROSECUTOR

VERSUS

KATEREGA. C.:..... ACCUSED

BEFORE: **THE HONOURABLE MR. AG. JUSTICE PAUL K. MUGAMBA**

JUDGMENT:

The accused, Katerega Charles, was indicted for the offence of defilement, contrary to section 123 (1) of the Penal Code.

In support of its case the prosecution called four witnesses. P.W.1 was Kalali Godfrey, P.W.2 was Jane Musabe (the complainant), P.W.3 was Wasswa Joseph, and P.W.4 was Emmanuel Habyara (father of the complainant). Medical evidence was admitted.

The accused gave unsworn evidence and did not call any witness.

In summary the prosecution case was as follows. On 10th June 1998 PW2 a girl aged 12 years at the time was proceeding to her grandparent's house at about 3 p.m when she met the accused on the road next to his home. Accused caught her and held her mouth. He then took her into a bush and later to his house where he conveyed her into his bedroom and lay her on his bed. Having secured the door accused tore PW2's knickers and removed them. Accused then removed his trousers and lay on PW2. He proceeded to put the legs of PW2 apart and inserted his penis in her vagina. Sexual intercourse continued for a long time and she was able to leave accused's house at 4 p.m. The act of sexual intercourse caused PW2 much pain in the vagina and she cried. Accused threatened to cut PW2 with a panga, which he tried to sharpen on the ground, if she cried. Afterwards accused told PW2 to go away before PW2 could be found at his house. He promised to give PW2 money. Upon leaving accused's house PW2 went and reported what had taken place to PW3, who advised that the matter be brought

to the attention of PW1 who was on the executive.

Afterwards PW1, PW3 and one Galiwango, leaving PW2 at the home of PW1, went to the house of accused and arrested him. PW2 identified accused as the person who had defiled her. Accused was later taken to PW4 and afterwards to the L.C.1 chairman and to Police at Bukuya Police Post. In the end he was taken to Mityana Police Station and was charged in court with the present offence.

The accused's defence was an alibi. He told court that on 10th June 1998 in the afternoon he was not at the scene of crime. He had left his house early that morning with his two children for the house of PW1 where he was being employed by PW1. He did not return to his house until about 5:00 p.m that evening. As soon as he returned home he started preparing a meal for his children and himself. He denied he had anything to do with PW2.

The prosecution must prove three ingredients in order to secure a conviction in an offence of defilement. The ingredients are:

- (i) that the complainant was a girl under the age of 18 years at the time of the alleged offence;
- (ii) that the complainant had sexual intercourse on the day in question, to wit 10th June 1998, and
- (iii) that it was the accused who committed that offence. Reference is made to s.123 (1) of the Penal Code and to the case of Uganda vs. Donozio Yiga, Criminal Session case No. 38 of 1995.

The first ingredient relates to the age of the girl. She testified in court that she is currently 13 years old. Upon examination in 1998 the Medical Officer who examined her found her age to

be 12 years. When she appeared before court she was clearly of tender age and certainly below 18 years. It was for that reason that her evidence was received unsworn. In any case the defence did not dispute her age as being below 18. I find that the prosecution proved the first ingredient beyond reasonable doubt.

The second ingredient is whether the complainant had sexual intercourse on the occasion alleged. The prosecution must prove that there was penetration of the penis into the vagina, however slight. According to Archbold, Criminal Pleading Evidence and Practice, 38th Edition, paragraph 2872, sexual intercourse is complete when a female sexual organ is penetrated by a male sexual organ. In the instant case the prosecution relied on the evidence of PW2 which was not on oath owing to her tender age. She told court that on 10th June 1998 the accused took her to his house by force and took her to his bedroom and closed the door. She further testified that accused tore off her knickers and inserted his penis in her vagina after he had removed his trousers. She felt pain and cried, she further testified. As stated earlier, the evidence of PW2 was not given on oath and as such requires corroboration. I warned both the assessors and myself of the need for corroboration of PW2's evidence. However, I find corroborating evidence of the defendant's claim in the medical evidence. Medical evidence reveals that on 11th June 2000 PW2 was examined. Her hymen was found ruptured about 2 days before and there were signs of injuries around the private parts. Signs of venereal disease were evident and vaginal smear showed sperms, the report concluded.

In the event I find that prosecution has succeeded in proving that the complainant had sexual intercourse on the occasion alleged.

Finally, the prosecution has to prove that it was the accused who had sexual intercourse with PW2. The accused has denied on all occasions that he had sexual intercourse with PW2. The prosecution advanced the evidence of PW2 who alleged that accused had had sexual intercourse with her. A part from her evidence requiring corroboration being, as it is, unsworn, it needs corroboration since it is unsafe to convict on the uncorroborated evidence of a complainant in a sexual offence. I warned the assessors just as I warn myself of the likely, danger. See the case of Chila and Another vs. Republic [1967] EA 722. Only the complainant states that accused had carnal knowledge of her. PW1 told court he had been

with accused the whole day and wondered how accused could have had sexual intercourse with complainant between the time accused had left his place of work and the time he received report of accused's alleged involvement. If anything PW1's evidence supports accused's alibi. I find that the prosecution has not succeeded in putting the accused at the scene of crime and proving beyond reasonable doubt that he was the one who had sexual intercourse with the complainant.

The assessors have given me their opinion. One advises me to convict while another advises me to acquit.

As the prosecution has failed to prove a vital ingredient beyond reasonable doubt the other two cannot stand isolation. The indictment against the accused founders and I hereby acquit him of the offence. He should be set at liberty unless he is being held on any other charge.

Paul K.Mugamba

AG.JUDGE

04/04/2000.