

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
AT THE SESSION HOLDEN AT MUBENDE  
CRIMINAL SESSION CASE NO. 56 OF 2000**

**UGANDA. .... PROSECUTOR**

**VERSUS**

**JOHN SEKYANZI ..... ACCUSED**

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

**JUDGMENT**

JOHN SEKYANZI, the accused, was indicted for the offence of defilement, contrary to section 123(1) of the Penal Code Act.

The prosecution called four witnesses to prove its case. These were: PW1 Nakabo Grace, PW2 Sunday Julius, PW3 Ruth Nantale and P.W.4 Mubiru Nsubuga.

The accused gave an unsworn statement and called no witnesses.

The facts in the prosecution case are briefly as follows. The accused was employed by one Katumba Washington as his herdsman at his home. The complainant is a daughter of the said Katumba Washington and she together with the rest of the family slept in the main house while the accused slept in a separate house within the homestead. On that night of 30<sup>th</sup> September 1998 and 1<sup>st</sup> October 1998 while the complainant and other members of the family slept in the main house, the accused went away in search of alcohol. In the course of the night the complainant was awakened by the pain arising from her vagina. She cried out and her mother who was in another bedroom together with a visitor came to the complainant's bedroom to check what was amiss. There was an electric light in the room and in no time the accused was found squatting hiding behind the door in the bedroom. The accused was seen within the bedroom at that time by PW1, PW2 and PW3. He was drunk and the smell of

alcohol exuded from him. Leaving the accused under guard by a Mrs. Kayongo, PW3 left for the residence of the Chairman L.C.I (PW4) in order to report the incident. She reported the matter to PW4 and the secretary for defence in the locality. Accused was later arrested at his house, having earlier escaped from the main house. He was taken to Police where he was re-arrested and charged. Upon observation of the girl, PW3 found blood flowing from PW1's vagina. Medical evidence also revealed that the complainant had had her hymen freshly torn when she was examined the morning after the incident.

In his defence the accused set up an alibi. He agreed he went out drinking on the night in issue but that on his return he found the light in the main house on and proceeded straight to his house.

The prosecution has to prove three ingredients in order to secure a conviction in a case of defilement. See the case of Uganda vs. Donozio Yiga C.S.C. No. 38 of 1995. These ingredients are:

- (a) that the complainant was a girl under the age of 18 years at the time of the alleged offence;
- (b) that the complainant had sexual intercourse on the occasion in question, the night of 30<sup>th</sup> September 1998 and 1<sup>st</sup> October 1998;
- (c) that it was the accused who committed that offence.

There appears to be no controversy regarding the age of the complainant. She testified she is currently 10 years old and appeared to be of that age in court. In her evidence PW3 the mother of the complainant, also stated the girl's age to be 10 years. Medical evidence found the girl was 8 years in 1998. Even the defence did not contest the fact that the age of the girl at the time of the offence was below 18 years. I find for a fact that the prosecution has proved

that first ingredient beyond reasonable doubt.

As to whether the complainant had sexual intercourse on the night of 30<sup>th</sup> September 1998 and 1<sup>st</sup> October 1998, in her unsworn testimony the complainant stated that she awoke in pain on the night in issue after someone had been lying on her. She stated that blood came from her vagina. P.W.3, complainant's mother, who examined her soon afterwards, corroborates PW1's evidence that blood came from complainant's vagina. The following morning the complainant was examined at Mityana Hospital and medical evidence showed that there was a fresh tear on the right side of the hymen. Fresh injuries and inflammations were also found around the complainant's private parts. According to Archbold, Criminal Pleading Evidence & Practice, 38th edition at paragraph 2872, sexual intercourse is complete when a female's sexual organ is penetrated by a male sexual organ. I am satisfied that the evidence of PW1 is corroborated by that of PW3 and medical evidence which was admitted. The ingredient of whether the complainant had sexual intercourse on the occasion has also been proved by the prosecution.

The remaining ingredient is of whether it was the accused responsible for the offence. The accused set upon an alibi, he has no duty to prove the alibi. See the case of Sekitoleko vs. Uganda [1967] E.A. 531. It is the duty of the prosecution to destroy the alibi, set up by the accused. PW1, PW2 and PW3 state that they saw accused hiding within the room behind the door. The conditions were propitious for identification as accused was very well known to them, being their herdsmen. Furthermore, there was light emitted by an electric bulb within the room. The evidence of either witness is corroborated on this issue by that of others. Nor should it be in dispute that there was no light coming from an electricity source. Accused in his defence states that there was such a light. It is the prosecution case that accused went to his house upon escaping from the main house when PW3 had gone to the residence of PW4. As stated earlier, accused denies having gone to the main house at the time in question. If this were so, it is strange why it was that when PW4 later in the night introduced himself outside accused's house and requested that accused open the door to his house, accused was reluctant to do so. It is most likely he did not want to open the door because he was aware of his role and did not want to be arrested. Being in the same homestead as the main house accused should have been eager to know what was going on. That he didn't is indicative of conduct

other than that of innocence. In Terikabi vs. Uganda [1975] HCB 63, it was held that such suspect conduct on the part of the accused after an offence had been committed was inconsistent with the fact of innocence.

I am satisfied that the prosecution succeeded in placing the accused at the scene of crime at the time of the offence. The alibi is negated by the overwhelming evidence that he was seen in the main house at the time in issue. What is more, it was not the place where he was expected to be, let alone at night. The alibi was pack of lies. The third ingredient has also been proved by the prosecution.

There were contradictions here and there in the prosecution case, especially with regard to the evidence of PW1 and PW2 concerning whether the electric light continued to be consistently on. It is also not clear whether there was a woman visitor in the sitting room on the night in question or how PW3 came to know of the problem in PW1's bedroom. It is my view that given the entire body of evidence adduced for the prosecution the contradictions bear no significant consequence and can be overlooked. Refer to the case of Uganda vs. Dusmani Sabuni (1981) HCB 1. They are no doubt a result of the passage of time given the tender age of PW1 and PW2. On the whole they were consistent and truthful witnesses.

All in all I am satisfied that the prosecution has proved its case beyond reasonable doubt. I have heard the opinion of the gentlemen assessors where they jointly advise me to convict. Needless to say, I am of the same persuasion.

I accordingly find the accused guilty of the offence of defilement and convict him accordingly.

**Paul K. Mugamba**

**AG. JUDGE**

28/03/2000

## **ALLOCUTUS**

### **Ms Nandaula:**

The convict is a first offender. He has been convicted of a serious offence carrying a maximum sentence of death. Accused was a member of the household. As such he should protect the young in the home against any danger. He abused the trust which family members had in him when he defiled a child of 8. That was reckless conduct on the part of the accused. He is a danger to society. This court has a duty to protect the likes of the victim against such as accused. Accused never cared that there would be trauma on the girl. In this era of Aids such people deserve a deterrent sentence.

### **Ms Bugembe:**

Accused is a first offender. He is still a young man who has time to reform and become a useful citizen. Accused was intoxicated when he committed this offence, not in full control of his mind and acts. His period on remand should also be considered. I pray for a lenient sentence.

### **Accused:**

I pray for a lenient sentence.

## **SENTENCE**

I have heard the views of both counsel and the accused person himself concerning sentence. Accused took advantage of an eight years old girl who lived in the same homestead as he himself. Cases of defilement are abundant in this country today and they arise mostly from people who have some relationship with the victims. I shall give the convict a sentence that is not harsh but which must be deterrent. I sentence him to 10 years imprisonment. His period on remand shall be taken into account.

**Paul K. Mugamba**

**AG. JUDGE.**

28/03/2000

Accused has a right of appeal within 14 days of today.

**Paul K.Mugamba**

**AG. JUDGE**

28/03/2000