THE RUPLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MOROTO

CRIMINAL CASE NO. 00010 OF 200

UGANDA :: PROSECUTION

-versus-

TABAN JUMA. :: ACCUSED

BEFORE: THE HON. AG. MR. JUSTICE LAMECK. N. MUKASA.

RULING:-

The Accused Taban Juma is indicted with Defilement c/s 123 (1) of the Penal Code Act. The particulars of the offence are that Taban Juma on the 8/4/2000 at Kotido Army School in Kotido District had unlawful sexual intercourse with Auma Florence a girl under the age of 18 years.

The Accused pleaded not guilty and was represented by Mr. Steven Elayu. Mr. Charles Richard Kaamuli, the Resident State Attorney Soroti is Counsel for the Prosecution.

To establish the offence of Defilement under Section 123 (1) of the Penal Code the Prosecution is strictly under a duty to prove beyond reasonable doubt each of the following:

1. That the victim was at the time of the alleged commission of the offence under the age of 18 years.
2. That there was sexual intercourse with victim.
3. That the sexual intercourse was unlawful.
4. That it was the Accused who had the unlawful sexual intercourse with the victim.

See: Uganda v/s Apolo George Anywa [1996] 1 KALR 123.

- Uganda v/s Steven Mulengera [1996] 1 KALR 140.
- Uganda v/s Ikikye Zakaria [1995] 1 KALR [1995] 1 KALR 152.

- Uganda v/s Ocero George [1996] II KALR 96.

In a bid to discharge the burden placed on it by law the Prosecution called the evidence of only one witness, the alleged victim Auma Florence. The substance of her evidence is that she is aged 17 years. On 8th April 2000, while studying at Kotido Army School, at around 11.00 p.m, a School prefect, found the witness while in bed with the Accused inside a house within the barracks. That the prefect made a report to the School authorities which led both the witness and the victim being taken before a meeting of the School master on duty, head master, the father of the witness and the father of the accused. It appears the allegation was that the Accused had been having sex with the witness. The relevant part of the witnesses' evidence is when she stated:

> "I did not have sex with anybody the previous evening before this meeting was held. The boy found us in the house covering ourselves but not playing sex".

That was the end of her testimony and Mr. Elayu Counsel for Accused did not subject the witness to any cross-examination. At this juncture the learned State Attorney, who was visibly taken by surprise by the witness's testimony, closed the Prosecution case without offering further evidence. At this stage Counsel for the Accused, Mr. Elayu, submitted that the prosecution has failed to make out a prima facie case against the Accused so as to warrant him being put on his defence. It is his submission that there is no evidence that there was sexual intercourse in this case. He recited the words of the witness/victim which I have already reproduced above. Further that as sexual intercourse had not been proved it was useless to submit on the other ingredients. He referred Court to the case of R.T Bhatt v/s [1957] E.A. 332 for the definition of a prima facie case and invited Court to acquit the Accused under Section 71(1) of the Trial on Indictment Decree.

The gist of their Lordships statement of the law in the case of Ramanlal Trambalilal Bhatt v/s R [1957] E.A 332 on the definition of a prima facie case is that:

(a) There has been no evidence to prove the essential element in the alleged offence.

(b) The evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

A prima facie case is one in which a reasonable tribunal, properly directing its mind to the law and evidence could convict if no reasonable explanation was forthcoming from the defence. The decision in the Bhatt case has been cited and followed in several subsequent cases, such as:

1. Deo Bakyenga v/s Uganda [1995] 111 KALR 77 where a number of other cases on the legal position were discussed.

2. Uganda v/s Ogwang Alfred H.C. Cr. Sess. Case No. 307 of 1997.

On the first ingredient of the offence the evidence before me concerning the age of the victim is that of the victim herself when she testified that she is 17 years old. I have no reason to doubt the witnesses' evidence on this matter and I hold that the Prosecution has adduced sufficient evidence to prove that the victim, Auma Florence was as on the 8th day of April 200 a girl under the age of 18 years.

The Second ingredient for me to decide is whether on the 8th day of April 2000 there was sexual intercourse with the victim. The evidence on record is that of the victim and in her own testimony she categorically stated that on that day she did not have sexual intercourse with anybody. It is therefore my finding that on the day of April 2000 there was no sexual intercourse with Auma Florence, the alleged victim.

Having so found, I find that it is not necessary for me to make any finding on the remaining ingredients that is whether it was the accused that had the unlawful sexual intercourse with the victim.

It is my holding that the Prosecution has failed to adduce evidence to prove the essential elements in the offence of defilement which the Accused is charged with, that is to say:

(i) That there was sexual intercourse with the victim,

(ii) That the sexual intercourse was unlawful, and

(iii) That it was the Accused who had the unlawful sexual intercourse with the victim.

There is no sufficient evidence that the Accused committed the offence of Defilement with which he is indicted. Therefore I agree with Accused Counsel's submission that no prima facie case has been made out by the Prosecution for the indictment of defilement. I accordingly find the accused not guilty under section 71(1) of the Trial Indictment Decree. The Accused is hereby acquitted of the offence of defilement, and discharged under section 81(6) of the Trial Indictment Decree unless he is lawfully held for another offence or charge.

Lameck N. Mukasa

Ag. Judge

25/03/02