

THE REPUBLIC OF UGANDA
IN THE HIGH OF UGANDA AT KAMPALA
CASE NO. 0046 OF 2002

UGANDA ::::::::::::::::::::::::::::::::::::::: PROSECUTOR

VERSUS

MAJIDU BOSSA ::::::::::::::::::::::::::::::::::::::: ACCUSED

BEFORE: HON. MR. J.B.A. KATUTSI:

JUDGMENT:

Accused at the bar was indicted for defilement contrary to section 123 (1) of the Penal Code Act. It is alleged that on the 7th day of May 2001 at Nakabito village – Kiziba Wabusaana sub-country in the Luwero District, had unlawful carnal knowledge of Nambarirwa Yudai a girl under the age of 18 years.

Nambarirwa Yudai testified that on 7/5/2001 at 4.00 p.m. She was returning home from where she had gone to collect fish for her ground mother. On the way home she was by passing the home of the accused. Accused called her to go where he was. She obliged. He then told her that he had her father’s things and led her unto the coffee plantation. There he threw her down, removed her knickers and sexually

abused her. Afterwards he threatened her that if she said anything of what had happened he would kill her. When she reached home she told her friend Jackline of what had befallen her. In turn Jackline told her aunt of what had happened. After one week her mother took her to police.

Fatuma Nambarirwa is the aunt of Nambarwa Yudai. She testified that Jackline told her that Yudai had been sexually abused. She called the mother of Yudai and together confronted Yudai who refused to say anything. She had to be given a beating before she opened her mouth and said Magidu now the accused had sexually abused her.

Later when the father of Yudai came the witness told him of what had happened. The father took Yudai to police.

Aisha Nakakawa Jackline testified that Yudai Nankabirwa told her that Magidu had sexually abused her. She was complaining of stomach pains and bleeding from private parts. She in turn reported to the aunt of Yudai.

In his unsworn statement accused said that on 7/5/2001 he did not see Yudai Nankabirwa at all. He was in Ziropbe to see his sister who had been involved in an accident. He went back home at 8.00 p.m.

On a very careful perusal of the evidence on record I find that the evidence has fallen short of the proof required in criminal cases. First there is the evidence that prosecutrix refused to say anything till she was given a good beating. Prosecution say that this was due to fear because accused had threatened to kill her if she uttered a word about what had happened. This reasoning is defective. There is evidence that she had broken the News to Jackline if at all she did. So it can't be fear that stopped her from talking when asked about the matter by the mother and aunt. It is a natural tendency for small girls to confide in their mothers. It was not so here. Could it be that as they were beating her they suggested names and tired of beating agreed that it was the accused who had defiled her? According to Fatuma, Yudai told them that she had been defiled by the accused on 7/5/2001. She told them on 14/5/2001. That would mean that Juckline told her of what had happened on or about 14/5/2001. This case is shrouded with silence that is not explained. It would be very dangerous to base a conviction on such evidence. I found accused not guilty and acquit him of the charge against him. He is to be released forthwith unless held on other lawful orders.

J.B.A. Katutsi

JUDGE