

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CR-SC-0056-2002

UGANDAPROSECUTION

VS

KAMUHANDA SILIVERINOACCUSED

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

JUDGMENT

Kamuhanda Siliverino was indicted for defilement contrary to S. 123(1) of the Penal Code Act. His trial followed after he had denied the indictment. In the course of the prosecution the state led evidence from three witnesses, namely Grace Abenaitwe (PW1), Katarikawe Gerevasio (PW2) and Det. Inspector Suleiman Kabuye (PW3) in support of its case. In his defence the accused made a sworn statement and did not call any witness.

Briefly the prosecution case is that on the 13th September 1999 at Mirambi village, Ibanda County, Mbarara District accused had unlawful carnal knowledge of Abenaitwe Grace, a girl whose age was below 18 years. On that date at about 8.00 p.m. the complainant had left home for somewhere in the neighbourhood to collect her books. She took a side path and there met accused. She knew accused before and accused requested her to accompany him to his house where he would have sexual intercourse with her. When the complainant declined, accused pulled her into a nearby bush where he had carnal knowledge of her. Afterwards she became pregnant. She did not tell anybody concerning the act of sexual intercourse until when her pregnancy was advanced and her father inquired concerning it. She mentioned accused as the one responsible for the pregnancy. Soon after she delivered a baby girl. Accused was later arrested and indicted for defilement.

In his defence accused denied defiling the complainant. He said he did not know her before although he knew the complainant's father (PW2) who had sought to buy his piece of land earlier on. Accused testified that the charge against him was a frame up because he had not sold the piece of land to PW2.

The prosecution bears the burden of proving the charge against the accused beyond reasonable doubt.

See *Woolmington - vs- DPP [1935] AC 462* and *Ssekitoleko - vs- Uganda [1967] E.A. 531.*

Consequently an accused person will not be convicted on the weakness of his defence but on the strength of the prosecution case.

See *Ntura - vs- Uganda [1977] HCB 103.*

The prosecution will therefore have to prove the following ingredients beyond reasonable doubt:

- (a) That the complainant Grace Abenaitwe was below 18 years at the time the alleged offence took place.
- (b) That the complainant experienced sexual intercourse at the time in question.
- (c) That the accused was the perpetrator of that crime.

With regard to the first ingredient a birth certificate was admitted in evidence as exhibit P11 and it shows that the complainant was born on 5th December 1982. At the time of the offence she was below 18 years of age. Her father, PW2, who produced the birth certificate agreed with that evidence of age. The defence did not contest evidence of age as presented by the prosecution. I find that the prosecution has proved this ingredient beyond reasonable doubt.

The second ingredient concerns whether the complainant had sexual intercourse at the time alleged. PW1 testified that she had sexual intercourse on 13th September 1999 and that she did not have sexual intercourse again until she had delivered. The date of delivery was 7th June 2000. On 12th July 2000 the complainant was examined at Uganda Martyrs Hospital, Ibanda. The report is exhibit P1 and it showed that the complainant's hymen was ruptured. From the

evidence of successful delivery of the child and the medical report, exhibit P1, I find evidence of sexual intercourse but not evidence of the date the complainant had sexual intercourse. However, since the defence does not contest this ingredient and since the date of delivery is within the period of gestation I find this ingredient too proved beyond reasonable doubt.

The last ingredient concerns accused's involvement in the crime alleged against him. The sole evidence incriminating accused is that of PW1, the complainant. I have had to warn myself just like I did the assessors of the danger of convicting on the uncorroborated evidence of a single witness. It is possible to convict on such evidence admittedly but court must be satisfied that the complainant is a truthful witness.

See *Chila - vs- Republic [1967] E.A. 722*

I find that the complainant mentioned accused as the perpetrator of the crime after her father PW2 saw her gaining in weight and failing to go to school. That was in her fifth month of pregnancy. I find such evidence of accused's involvement shaky and unreliable. As sexual intercourse took place at night it is possible the complainant did not recognise her defiler. It would be dangerous to convict on her evidence alone. The defence of the accused person might sound unlikely especially where it relates to sale of a kibanja but then the onus is on the prosecution to prove its case, not on the accused.

See *Uganda - vs- Kahitira [1988-1990] HCB 30.*

This ingredient remains not proved therefore.

The two assessors in their joint opinion advise me to acquit the accused. For the reasons I have given elsewhere in the course of this judgment I agree with the verdict. I find the accused not guilty of the offence of defilement and I acquit him accordingly. He will be released forthwith unless he is being held for any other lawful cause.

P.K. Mugamba

Judge

15th July 2002