

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

**HCT-05-CR-CO-0066-2001**

**UGANDA .....PROSECUTION**

**-VS-**

**BAGAMBE JUSTUS .....ACCUSED**

**BEFORE: THE HON. JUSTICE P. K. MUGAMBA**

**JUDGMENT**

The accused is indicted for defilement contrary to section 123(1) of the Penal Code. It is the state case that on 25th February 2001 at Nyabushenyi village, Kikagate sub-county, Mbarara District, the accused conveyed Sharon Katushabe, a girl whose age was below 18 years, to his house and there went on to have carnal knowledge of her. The victim was later found in the house where accused had locked her. She was taken for medical examination, which showed her hymen had been ruptured within the last four days. Accused was later arrested and indicted for defilement.

In his defence accused made a sworn statement wherein he denied ever having had sexual intercourse with the complainant. He totally denied the allegations made in the state case.

This being a criminal case the burden of proving the accused guilty lies on the prosecution. Proof must be beyond reasonable doubt.

See Woolmington - vs- DPP [1935] A.C. 462 and

Ssekitoleko - vs- Uganda [1967] E.A. 531.

An accused will not be convicted on the weakness of his defence but rather on the strength of the prosecution case.

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

Before the prosecution can secure a conviction in a case of defilement it must prove the following three ingredients beyond reasonable doubt:

- (a) that the complainant was a girl under the age of 18 years at the time in question;

- (b) that the complainant experienced sexual intercourse at the time in question;
- (c) that it was the accused who had sexual intercourse with the complainant.

Concerning the first of the ingredients, the best evidence of the age of a person is a birth certificate. Very often however birth certificates are not available and courts have accepted the testimony of those persons who are acquainted with the age of an individual. See Uganda - vs- Enoch Babumpabura, Criminal Session Case No. 135/92 (unreported). In the instant case no birth certificate was produced by the prosecution in support of the complainant's age. However PW2, Kyomuhendo Davina, who is the mother of the complainant, testified that the complainant was born in February 1986. She could have been only 15 years on the occasion alleged. There was also admitted medical evidence contained in exhibit P.1. which showed the complainant to be 14 years old on the occasion sexual intercourse is alleged to have taken place. The complainant testified in court as PW 1 and clearly she was of the apparent age of less than 18 years, even so long after the event of the case alleged. I find that the prosecution has proved beyond reasonable doubt that the complainant was a girl under the age of 18 years on 25th February 2001.

With regard to the second ingredient, the law is that sexual intercourse is complete when the female sexual organ is penetrated by the male sexual organ. It does not matter how slight the penetration is.

See: Archbold, Criminal Pleading Evidence and Practice, 38th Edition a page 2873, paragraph 2878.

It is the evidence of PW1, the complainant, that on the night of 25<sup>th</sup> February 2001 she had sexual intercourse. The medical report which was admitted in evidence as exhibit P.1 shows sexual intercourse had taken place within four days prior to 27<sup>th</sup> February 2001 when there was medical examination of the complainant. The report showed that the hymen had been ruptured even. Also admitted in evidence was the charge and caution statement the accused made in Runyankore/Rukiga admitted as exhibit PIIA which was translated into English and admitted as exhibit PIIB. The charge and caution statement admits to the accused having had sexual intercourse with the complainant on the night of 25<sup>th</sup> February 2001 and this doubtless

corroborates the testimony of the complainant and the medical evidence. I am satisfied that the prosecution has proved beyond reasonable doubt that the complainant did have sexual intercourse on the occasion alleged.

Accused's involvement is the other ingredient the prosecution must prove. The complainant testified that the accused was the person who had sexual intercourse with her on the occasion alleged. She testified that she had opportunity to observe him clearly especially on the morning following the sexual act. Exhibits PIIA and PIIB which are the charge and caution statement of the accused in Runyankore/Rukiga and English respectively corroborate the complainant's testimony that it was the accused who had sexual intercourse with the complainant. In the circumstances court is of the opinion that the prosecution has proved beyond reasonable doubt that the accused was the perpetrator of the crime in question.

In his sworn defence accused made a total denial of the case alleged against him. In the course of his testimony he stated that he did not know the complainant before. That was in his examination in chief. Later during cross-examination the same accused admitted that he knew the complainant before as a resident of Nyabushenyi. I find that points to the unreliability of the evidence of the accused in court. On that score and in light of the charge and caution statement I find the evidence worthless and I reject it.

The two assessors have given me their opinion which was joint. They advise me to convict. I agree with that opinion. For the reasons given in the course of this judgment I find prosecution has proved the case beyond reasonable doubt. I convict the accused as indicted.

P.K. Mugamba

Judge

14<sup>th</sup> June 2002

12.40 p.m.

Mr. Okwanga State Attorney

Mr. Magoba for accused person

Accused in court

Both assessors in court

Ms Tushemereirwe Court clerk/interpreter

Court: Judgment read in open court.

P.K. Mugamba

Judge

**Allocutus**

State Attorney:

Accused is convicted of defilement, the maximum sentence is death. Accused is a first offender. The offence of defilement of young girls is rampant in this district especially when there is Aids and young innocent children have their future jeopardized. Court should protect such children from people such as the accused. Let the sentence here go out as a warning to deter others. I pray for a stiff sentence.

Mr. Magoba:

Accused has been convicted of defilement of a girl aged 15 years. At the time of defilement accused was about 20 years. There isn't much difference between their ages. I pray for a lenient sentence for accused person. Accused is young and he is capable of reforming. The sentence should bear in mind his future prospects.

Accused has been on remand since 13th March 2001 which is 1 year and 3 months. He is remorseful.

Accused: I pray for a lenient sentence.

**Sentence:**

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I have heard the submissions of the two counsels regarding what sentence should be suitable for you in the circumstances. I have also heard your appeal for lenience. The act of taking a young girl in the manner you did, locking her up in your house and having carnal knowledge of her was to say the least beastly and calls for punishment. Before arriving at a suitable sentence I have

taken into account your age, the fact that you are remorseful and the period of 1 year and 3 months you have so far spent on remand. You will be sentenced to 14 years' imprisonment.

P.K. Mugamba

Judge

14<sup>th</sup> June 2002

Court: You have a right to appeal against this judgment.

P.K. Mugamba

Judge

14<sup>th</sup> June 2002