

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

HCT-05-CR-SC-0057-2001

UGANDA..... PROSECUTION

-VS-

SERUGAVE MOHAMMEDACCUSED

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

JUDGMENT

Serugave Mohammed alias Musinguzi, the accused, is indicted for defilement contrary to section 123 (1) of the Penal Code Act. The prosecution called four witnesses in support of its case. These were Kiiza Topista Amoti (PW1), Mwendwa Grace (PW2), Detective Inspector Gumisiriza Karinkiza (PW3) and Nsereko Siraji (PW4). Medical evidence was admitted under S.64 TID as exhibit P1. Also admitted was the extra judicial statement of the accused person in Runyankore/Rukiga as exhibit PII and its English translation as exhibit PIII. Accused gave a statement on oath in his defence where he denied responsibility for the offence.

Briefly the prosecution case is that during June 1999 accused had sexual intercourse with the complainant (PW 1), then aged about 16 years, as a result of which PW 1 conceived. On learning of her pregnancy accused took PW1, then a schoolgirl, to Katooma in Kashari to live with his mother. In March 2000 PW1 delivered a child which died in August 2000. Meanwhile PW2 who was maternal aunt to PW1 reported the matter to authorities. Accused was arrested and charged.

The prosecution has a duty to prove all the ingredients of the offence beyond reasonable doubt. Any doubt in the prosecution case must be resolved in favour of the accused.

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

The three ingredients the prosecution must prove 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 at the time in question; and

c. that it was the accused who committed the offence.

I proceed to relate the above ingredients to the evidence on record.

Concerning the first ingredient, there was no birth certificate produced by the prosecution. However courts have allowed evidence in proof of age from persons acquainted with the complainant. PW2 is aunt to the complainant. She told court that the complainant was born in June 1983. Medical evidence which was admitted in evidence as exhibit P1 shows that in October 2000 the complainant was 16 years old. I am satisfied that the prosecution has proved beyond reasonable doubt that in 1999 the complainant was below 18 years of age.

The complainant testified that she had sexual intercourse, that she conceived and also delivered a child, I have warned myself like I did the assessors about the danger of convicting on the evidence of a single witness. This can be done however if court is satisfied that the witness is truthful.

See *Chila & Another - vs- R [1967] EA 722.*

However I find corroboration of this evidence in the extra judicial statement of the accused, exhibits P11 and P12 where accused admits to having had sexual intercourse with the complainant and where he admits that a child was born to the union. I am satisfied that the prosecution has proved this ingredient beyond reasonable doubt.

Regarding the final ingredient, PW1 in her testimony told court that it was accused who had sexual intercourse with her. The aunt to PW1, who was PW2, also told court that she had learnt that PW1 was living with accused. In his extra judicial statement already referred to accused admits to having cohabited with PW1 and to have had sexual intercourse with her. Although in his defence accused denies knowledge of the offence alleged against him I find the prosecution evidence overwhelming against him. The prosecution has proved this ingredient too beyond reasonable doubt.

The two assessors in their joint opinion advise me to find accused guilty of the offence and convict him. For the reasons I have given in the course of this judgment I agree with that opinion. I find the accused guilty and convict him accordingly.

P.K. Mugamba

Judge

21 August 2002

21st August 2002

Mr. Murumba State Attorney

Mr. Dhabangi holding brief for Mr. Tibamanya for accused person.

Accused in court

Ms Tushemereirwe court clerk/interpreter

Court:

Judgment read in open court.

P.K. Mugamba

Judge

Allocutus:

State Attorney:

The convict is a first offender. He has been on remand since October 2000. The offence carries a maximum sentence of death. I pray for a stiff sentence.

Mr. Dhabangi:

The convict wishes to make his own allocutus.

Convict:

I pray for court to consider the period I have spent on remand. That is all.

Sentence:

When you took a schoolgirl from the care of her parents and led her down the garden path you were destroying her future for ever while you gratified your selfish desires. You neglected her

besides defiling her. Such activity should be discouraged and you should be put away for some time to protect society and to give you chance to reflect on what you did, This offence carries an ultimate penalty of death but I sentence you to 10 years' imprisonment taking the period you have spent on remand into account in the process.

P.K. Mugamba
Judge

Court:

Right of Appeal explained.

P.K. Mugamba
Judge