THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MUBENDE

CRIMINAL SESSION CASE NO. 0141 OF 2002

UGANDA :: PROSECUTOR

VERSUS

KAGORO GODFREY ::::::::::::::::::::::::::::: ACCUSED

BEFORE: HON. JUSTICE AUGUSTUS KANIA

JUDGMENT

The accused Kagoro Godfrey is indicted for defilement contrary to C/S 123(1) of the Penal Code Act. The particulars of the offence are that the accused on the 8th day of July 2000 at Nabulimba village Kamuli Kasanda in Mubende District had unlawful, carnal knowledge of Nantanda Aireda, a girl under the age of 18 years.

The case for the prosecution in brief is that on the fateful day in the evening, as the victim was going to attend funeral rites she met the accused. The accused grabbed her, threw her down and forcibly had sexual intercourse with her. After the accused had had sexual intercourse with the victim, the latter convinced him to escort her to the venue of the funeral rites. On arrival at the scene, the victim made a report of the incident to her relatives where upon the accused was arrested and eventually charged with defilement.

The accused denied the offence and pleaded not guilty.

In our Criminal Justice system an accused person is presumed to be innocent until his guilt has been proved. The burden to prove the guilt of the accused person is on the prosecution and remains with the prosecution throughout the trial and at no stage of the trial does it shift into the accused who has no burden to prove his innocence. The prosecution can only secure the

conviction of the accused person if it proves his guilt beyond reasonable doubt. Any doubt about the guilt of the accused person must be resolved in his favour leading to his acquittal. See **Woolmington Vs DPP [1935] AC 462**.

In order to prove the guilt of the accused beyond reasonable doubt the prosecution must also prove beyond reasonable doubt each and every essential ingredient of the offence of defilement are the following:-

1. That the complainant was under the age of 18 years at the time of the offence.
2. That there was unlawful sexual intercourse with the complainant.
3. That it was the accused responsible for such unlawful sexual intercourse.

With regard to the first ingredient the complainant at the time she testified on the 13th December 2002 gave her age as 15 years meaning she was 13 years old when the offence was committed in 2000. There was no other evidence proving the age of the complainant. Mr. Seguya, learned Counsel for the accused submitted that the fact of the complainant being under 18 years had not been proved since no birth certificate was produced in proof of her birth. He argued that in the absence of a birth certificate a parent of the victim should have testified to her age and that not having done so the victim has not been proved beyond reasonable doubt to have been under the age of 18 years.

It is true the most conclusive way of proving the age of a child is by the production of his/her birth certificate and possibly followed by the testimony of the parents. It has however been held that other ways of proving the age of a child can be equally conclusive and of these is the observation of the child, by and the common sense assessment of the age of the child See **R vs Recorder of premisby Ex-parte Bursar [1957] 2 ALL ER. 889 –** In the instant case, the victim was before Court when she testified and I had the opportunity to observe her. My own common sense assessment of her put her age far below 18 at the time she gave her evidence consequently she must have been far below the age of 18 years when the offence was committed. In the premises the prosecution has proved beyond reasonable doubt that the complainant was under the age of 18 years at the time of the offence.

With regard to the second ingredient which is that, there was sexual intercourse with the complainant, the prosecution relies on the evidence first of all of PW1 Nantanda Aireda the complainant. She testified that on the fateful day at around 6.00p.m, as she was going to the funeral rites of her grandmother, she met her assailant in the valley – She fled from him but her assailant pursued her and caught up with her because she fell down. Her assailant lay on top of her, inserted his penis into her vagina and had sexual intercourse with her for one and half hours. Her evidence was that as her assailant had sexual intercourse with her she felt a lot of pain and she bled from her vagina and as a result of this her clothes became blood stained. It was also the complainant's evidence that her assailant had sexual intercourse with her three times in the 1½ hours they were together.

Though PW1 Aireda Nantanda testified that she was examined by a doctor after her ordeal with her assailant, the prosecution did not adduce in evidence the result of such examination. This leaves only the evidence of the complainant with regard to the fact of sexual intercourse. It is trite that as a rule of practice, the uncorroborated evidence of a complainant should not be acted upon in the absence of corroboration. It may however be acted on in the absence of corroboration if after warning the Assessors of the danger of such evidence and the Judge adverting to such danger the Judge finds the evidence of the complainant to be truthful See **Chila & Anor Vs. Republic [1967] EA 722.** I administered the necessary warning about the danger of such uncorroborated evidence if the complainant in sexual offences and at the end of it, all I found the complainant was being truthful when she testified that on the 8th day of July 2000 in the evening her assailant had unlawful carnal knowledge of her. I accordingly find that the prosecution has proved beyond reasonable doubt somebody had unlawful sexual intercourse with the complainant on the 8th day of July, 2000 at Nabulimba village, Kamuli, Kasanda in Mubende District.

In an attempt to prove that the accused is the one who had unlawful sexual intercourse with the complainant.

PW1 Aireda Nantanda testified that she had not known her assailant before but that after he had had sexual intercourse with her, she asked her assailant to escort her to her destination which was

the funeral rites for her grandmother. Her assailant obliged and accompanied her to the venue of the funeral rites and it was when the two of them arrived there that the complainant informed her grandfather that she had been defiled by the accused and the accused was arrested there and then.

There is no evidence any where on record that there were more people than the complainant and her assailant at the scene of crime. If the complainant asked her assailant to accompany her to the venue of the last funeral rites, which I believe to be the case since the complainant's evidence in that regard is not contested. Then that person arrested on the complainant accused him of having had sexual intercourse was indeed her assailant. And from her evidence this assailant was the accused. It is irrelevant if the conditions of identifying her assailant at the scene were not conducive to positive identification. What is important is that she had her assailant escort her to the venue where the funeral rites were being conducted and it was here that she presented out the person who had had sexual intercourse with her as her assailant. This same person was forwarded to the LCI Chairman and eventually to police and the Court where he was charged with defilement. There is no evidence that the complainant came to the funeral rites with a person other than her assailant. Equally there is no evidence that the accused is any different from the person who was arrested at the funeral rites as the person who had had unlawful sexual intercourse with the complainant.

Though there is no corroboration about the identity of the accused as being that person who had unlawful sexual intercourse with the complainant after due warning to the Assessors and adverting my mind to the danger of acting on the uncorroborated evidence of the complainant, I found that the complainant was being truthful when she testified that the person who unlawful sexual intercourse with her as stated in the indictment was the accused. In the premises I found the prosecution has proved beyond reasonable doubt that it was the accused who had unlawful sexual intercourse with the complainant. In agreement with the unanimous opinion of the Assessors, I find the accused guilty of the defilement of Aireda Nantanda C/S 123 (1) of the Penal Code Act and I convict him accordingly.

Augustus Kania

Judge
28/4/2003

Judgment read in the presence of:-
Mr. Kakooza – Resident State Attorney
Mr. Suubi – Court Clerk
The accused.

Augustus Kania
Judge
28/4/2003
The accused may be taken as a first offender. The accused did a detestable act by defiling a girl of 13 years. He should be given a deterrent.

The accused – I am 29 years old, I am unmarried, I take care of my late brother's children – I was remanded – I pray for leniency. I am a first offender and deaf.

Court: defilement is a serious offence of a capital nature. The severity of sentence was intended to protect the girl child who is a most vulnerable member of our society. This can be done by passing deterrent sentence.

Though defilement is a grave offence in our Statute books in passing sentence I must take into account the antecedents of the accused and all mitigating factors. The accused is a first offender who is a relatively young man, who if reformed can still be useful in nation building. He is stated to be responsible for the orphans of his brother. He ahs also been on remand 2 years 9 months and 12 days a period I am constitutionally bound to take into account when passing sentence.

Considering the mitigation he made and taking into account the fact that he has been on remand for 2 years, 9 months and 12 days I sentence the accused to a term of imprisonment of (6) six years.

Augustus Kania

Judge

28/4/2003