

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT ARUA**  
**CASE NO: HCT-00-CR-SC-0025 OF 2003**

**UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTOR**

**VERSUS**

**OMACH PATRICK :::::::::::::::::::::::::::::::::::::: ACCUSED**

**BEFORE: HON. MR JUSTICE AUGUSTUS KANIA**

**JUDGMENT:-**

Omach Patrick, who shall hereinafter in this judgment be referred to as the accused, is indicted for defilement contrary to section 132 (1) of the Penal Code Act. The particulars of the offence are that the accused on the 7<sup>th</sup> day of October 2001 at Jupangira village in Nebbi District had unlawful sexual intercourse with Giramia Concy a girl under the age of 18 years. The accused denied the offence and pleaded not guilty.

There is a presumption at law that an accused person is innocent until proved guilty. The burden is always on the prosecution to prove the guilt of the accused in criminal cases except in a few statutory offences of which defilement is not one. This burden never shifts onto the accused who has no burden of proving his innocence for the prosecution to secure the conviction of the accused person it must prove the guilt of the accused beyond reasonable doubt. Any doubt as to whether the accused committed the offence or not must be resolved in favour of the accused leading to his acquittal. **See Woolmington Vs DPP [1935] A.C. 462.**

Where the accused has pleaded not guilty he had thereby put in use each and every essential ingredient of the offence with which he is charged and the prosecution has the onus to prove all these ingredients beyond reasonable doubt before it can secure the conviction of the accused person. In the offence of defilement these essential ingredients are the following:-

1. That the complainant was at the time of the offence under the age of 18 years.
2. That there was unlawful carnal knowledge of the complainant.
3. That the accused was responsible for the unlawful carnal knowledge of the complainant.

With regard to the 1<sup>st</sup> ingredient which is that the complainant was at the time of the offence below the age of 18 years the prosecution relied on the evidence of PW6 Ocan Alex Claudius who tendered the medical report of his fellow Clinical Officer Okello Nicholas comprised in Police Form 3 and tendered in as an exhibit and marked P1. in this exhibit duly completed by the said Nicholas Okello the age of the complainant is stated to have been 14 years when she was examined on the 8<sup>th</sup> October 2001. The prosecution also relied on the evidence of the complainant

herself PW1 Giramia Concy who testified on the 19/3/2003 that she was then aged 14 years.

The other prosecution evidence on this point was that of PW3 Isabella Okello Furarwenyo the mother of the complainant, which was to the effect that her daughter was at the time of her testimony, aged 14 years. The defence did not dispute the above evidence that the complainant was under the age of 18 years at the time of the offence. Mr Oyarmoi learned counsel for the accused in fact conceded that this ingredient has been proved beyond reasonable doubt. I also had the opportunity to observe the complainant when testifying in court and by my common sense assessment I found that the complainant was indeed below the age of 18 years. With the undisputed evidence of the prosecution on record and my common sense assessment of the age of the complainant I find that the prosecution has proved beyond reasonable doubt that the complainant in this case was below the age of 18 years at the time of this offence.

This now takes me to the second ingredient that there was sexual intercourse with the complainant. In its endeavor to prove this ingredient the prosecution adduced the evidence of PW1 Giramia Concy which was that as she was on her way to church on that fateful day at 10.00a.m., her assailant lured her to enter into the house of Dr Owonda. Once inside her assailant demanded for sexual favours but when she refused he threatened her, laid down cushions on the floor and then pulled her onto the cushions, removed her clothes and then had sexual intercourse with her. It was also her evidence that as her assailant had sexual intercourse PW2 Opio Charles and one Jacwic Bright came to the window and were peeping. She then protested to her assailant that they were being watched by the above children who would likely report her. At this her assailant got up and chased away the said children.

The prosecution also relied on the evidence of PW2 Opio Charles who testified not on oath. His evidence was that on Sunday 7/10/2001 when the complainant was going to church, she was called to the house of Dr Owonda by her assailant who was sitting at the verandah of the said house. After some time Jacwic Bright called the witness from where the witness was washing and told him that something was happening in Dr Owonda's house. When he went to the house he saw the assailant laying on the floor of the house three cushions. The assailant then closed the door and started having sexual intercourse with the complainant. It was his evidence that soon after laying the cushions on the floor, the accused grabbed the victim, threw her down, removed her clothes and started having sexual intercourse with her. The witness continued to testify that as the two were having sexual intercourse, the complainant lay on her back while the assailant lay on top of her. The complainant was stack naked but the accused had removed his trousers and the complainant was crying during the act. It was the evidence of PW2 Opio Charles

that he saw all this because he peeped through the window. Then at one stage the assailant of the complainant got up and chased him and Jacwic Bright away from the window. After sometime they went back to the house to find that the sexual intercourse was over, the window was open and the complainant and her assailant were now seated at a table reading.

The last piece of evidence the prosecution used to prove that there was sexual intercourse with the complainant is that of PW6 Ocan Alex Claudius who put in the medical report of Okello Nicholas which exhibit P1. He testified that Okello Nicholas found that the hymen of the complainant had been ruptured a day before Okello Nicholas conducted the examination, that there were signs of penetration and the spermatozoa which are all indicative sexual intercourse having taken place were seen.

Defence conceded that this ingredient has been proved beyond reasonable doubt. Considering the above undisputed evidence

which is overwhelming I find that the prosecution has proved beyond reasonable doubt that somebody had unlawful sexual intercourse with the complainant.

I now lastly turn to the third and most important ingredient as far as the accused is concerned, the evidence of PW1 Giramia Concy in this regard is that her assailant on Sunday the 7/10/2001 is the accused because he used to go to his uncle one Onyer Grace who was a neighbour to her family. Before this offence, according to PW1 Giramia Concy the accused had proposed to become the boyfriend of the complainant, which she rejected. She also knew that the accused was a student of Teacher Training College.

According to PW1 Giramia Concy this incident took place at 9.00a.m. or starting around that time. Considering that the incident is said to have take place during broad day light and the accused was very well known to the complainant I find that the



complainant could not have been mistaken about the identity of the accused. I accordingly find that the accused was correctly identified by the complainant as her assailant who had unlawful sexual intercourse with her.

The other evidence linking the accused with the commission of the offence is that of PW2 Opio Charles, the details of which are contained in the discussion of the second ingredient of the offence. It was his evidence that she identified the assailant of the complainant to be the accused whom he came to know when the accused stayed at the house of Dr Owonda. Though PW2 Opio Charles witnessed the sexual intercourse by peeping through the window, the fact that the incident took place during the day in broad day light and that the accused was well known to the witness eliminates the possibility of the witness having mistaken somebody else for the accused.

It is trite as indeed explained to the assessors that in sexual offences the court always look for the corroboration of the evidence of the complainant. The Judge can only act and convict on the corroborated evidence of the complainant if after warning the assessors and himself/herself the presiding Judge finds the complainant's evidence to be truthful. See **Chila & Another Vs Republic [1967] EA 722.**

In the instant case the complainant's evidence of her being under the age of 18 years is corroborated by the medical evidence put in by PW6 Ocan Alex Claudius comprised in the medical report compiled by Okello Nicholas who put her age at 14, and by the evidence of PW3 Isabella Okello Frarwenyo whose evidence put the age of the complainant below 18 years. The common sense assessment made by me that the complainant is a child under 18 years also corroborates the evidence of the complainant in the respect.

The evidence of the complainant in respect of carnal knowledge of her is corroborated by the medical report, which found carnal knowledge of the complainant to have taken place. Though generally any evidence that requires corroboration cannot corroborate mother's evidence, we have the evidence Charles Opio which was taken not on oath and would ordinarily require corroboration. In it he testified to having witnessed the sexual intercourse between the complainant and the accused. However on the authority of **Patrick Akol Vs Uganda SCCR App. No. 23/92** in which the case of **R Vs Campbell [1956] 2 ALL ER 272** which was cited by Mr Odiit the learned Resident State Attorney is extensively referred to, suggests that the evidence of PW3 Charles Opio may corroborate the sworn evidence of Giramia Concy the complainant provided that after due warning the court is satisfied the evidence was truthful. I find the evidence of PW3 Opio Charles and that of the complainant both to be truthful. I accordingly find that the evidence of PW3 Opio Charles

additionally and corroboration to the evidence of the complainant with regard to the fact of sexual intercourse.

Having found that PW3 Opio Charles's evidence corroborates the evidence of the complainant on the second ingredient of the offence of defilement, it equally corroborates the evidence of the complainant in respect of the participation of the accused in the commission of the offence.

The accused denied the offence though he admits that he was at Jupangira and at the house of Dr Owonda from 10.35 when he arrived from Paidha T.T.C. By inference he is pleading that he was not at the house when the complainant was defiled by her own version at 9.00a.m. This in effect amounts to a plea of alibi. It is trite that once an accused person sets up a plea of alibi, he does not assume the burden of proving that his alibi is true. Once pleaded the prosecution assumes the burden to prove by evidence that the alibi is false and to displace it and place the

accused squarely at the scene. See **Susman Sabuni Vs Uganda [1981] HCB 1 and Uganda Vs Sebyala [1969] EA 204.**

It is also trite that if the accused has been positively identified to have been at the scene by prosecution witnesses the defence of alibi will not stand. In the evidence of PW1 Girmia Concy and PW3 Opio Charles the accused was positively identified and squarely placed at the scene as that man who had sexual intercourse with the complainant. The accused's alibi cannot be put false. His alibi therefore collapses.

In the result, the prosecution having proved every essential ingredient of the offence of defilement including the participation of the accused beyond reasonable doubt, in agreement with the opinion of the gentlemen assessors, I find Omach Patrick guilty of the defilement of Girmia Concy contrary to section 123 (1) of the Penal Code Act and convict him accordingly.

Right of Appeal explained.

**AUGUSTUS KANIA**

**JUDGE**

**4/04/2003.**

In the presence of:

Mr Odiit – Resident State Attorney.

Mr Oyarmoi for the accused.

Mr Boyi Court/Clerk.

**Mr Odiit:-**

The convict is aged about 23 years; he is a first offender who had been on remand since the 2/11/2001. At the time of the arrest he was a student teacher of Paidha Teacher's College. Defilement is a serious offence and it is rampant to the prejudice of the girl child. The duty of the court is to help society fight this evil. The victim is not about 15 years but she was 13 years at the time and a pupil of Jupangira Primary School. The victim who must have

been traumatized is not in Senior One in Pakwach. Being a teacher in the making he should have been an example and protector of the victim. He instead turned up to be her tormentor and molester. I pray for a deterrent sentence so that the teacher may learn to uphold their ethics.

**Mr Oyarmoi:-**

It is true the convict is a first offender. He was a first ear student of Paidha T.T.C. The convict is an orphan. He has been on remand since 2/11/2001 a period of one year 5 months 4 days. It is not true the convict is not repentant - - the period of remand has taught him. I pray you be lenient to him so that he can go to complete his studies. I pray you to give such sentence as to enable him pursue his ambitions.

**Court:-**

Sentence & Reasons for the same:-

The accused is a first offender and Youngman who when reformed could positively contribute to nation building. These are antecedents in his favour which merit some degree of leniency. Besides he has been on remand for one year five months four days, which the constitution enjoins me to take into account when passing sentence.

However defilement is a grave offence, which has the death penalty as its minimum sentence. It is an offence to the prejudice of the girl child who is the most vulnerable member of our society with no protection of her own against the indignity humiliation and the risks to physical and psychological health which are all natural consequences of this offence. Besides this offence is now rampant. The courts can only contribute by passing such sentences that will isolate the lines of the accused from the girl child for long periods. As already pointed out by the learned Resident State Attorney this instant offence is aggravated by the fact that contrary to the expectation of society that as a student



teacher the accused would have played a protective role to advance the educational prospects of the victim attempted instead to run them. I also reject the plea that the accused is repentant. I consider him not so because if he was he would not have take all the parties into such a protracted trial.

Considering all the antecedents of the accused and taking into account the fact he has already spent one year 5 months and four days on remand, and doing the best, I sentence the accused to eight (8) years imprisonment.

**AUGUSTUS KANIA**

**JUDGE**

**14/04/2003.**