

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT RUKUNGIRI
HCT-05-CR-SC-0037-2003

UGANDA ::::::::::::::::::::::::::::::::::::::: PROSECUTOR

VERSUS

KARABARIRE DEZIDERIO ::::::::::::::::::::::::::::::: ACCUSED

BEFORE: HON. MR. JUSTICE P.K. MUGAMBA:

JUDGEMENT:

The accused, Karabarire Deziderio, is charged with the offence of defilement contrary to section, 29 (1) of the Penal Code Act. Four witnesses were called by the prosecution to prove its case. Turinawe Sylwa, the mother of the victim, was PW1, Sylvia Kerugirwa the grand mother of the victim was PW2, the village secretary for defence then Nuwagaba Lovis was PW3 while the victim herself was PW4. Under S. 66 of the Trial on indictments act the material examination report was

agreed upon and admitted in evidence. It is exhibit P.1. Accused's defence was in a sworn statement made by him. He called no witnesses.

The prosecution case is that immediately prior to the incident leading to this case accused had been an employee of the grand father of the victim for over 3 months. The victim lived in the same homestead as her grand parents. On the evening of the 11th December 2001 the victim went missing. After making enquiries PW1 went out looking for the victim who she eventually found about ½ a mile away in a bush. Accused was lying on top of the victim having carnal knowledge of her. Accused escaped soon after leaving the victim, then aged 4 years, crying. There was blood and semen in the girl's private parts and medical evidence later revealed that her hymen had recently been ruptured and that there were injuries and inflammations in her private parts. Accused was later arrested and charged with the present offence.

In his defence accused denied involvement in the offence. He stated that he was framed because the grand father of the victim owed him money which he did not want to pay to him.

The prosecution has a duty to prove the case against the accused person beyond reasonable doubt. Any doubt or gap in the prosecution case should be resolved in favour of the accused who bears no responsibility in this case to prove his innocence. See WOOLMINGTON VS. DPP (1935) AC 462. The prosecution must prove the following ingredients in the case of defilement:

- (i) That the victim was below 18 years at the time in issue.
- (ii) That the victim did have sexual intercourse at the time in issue.
- (iii) That accused committed the offence.

Regarding the first ingredient, the best evidence of age would be a birth certificate. In the absence of a birth certificate court will accept evidence of age from a person acquainted with the facts of birth of an

individual such as a parent, medical examination evidence and observation of the particular individual. In this case the mother of the victim testified that the victim was born on the 11th January 1997. The grand mother of the victim was not so clear in her evidence. She first told court that at the time she testified the girl was 6 years old. In cross examination she said that at the time of the incident the victim was 6 years old. Then later the same witness said the victim was 2 years old. In re-examination the witness stated that she did not know when the victim was born. The victim was here in court. Clearly she was below 18 years. Medical examination report of the victim done on 13th December 2001 shows that the victim's age then was 5 years. The defence does not contest the fact that the girl at that time was below the age of 18 years. I am satisfied that the prosecution has proved this ingredient beyond reasonable doubt.

The second ingredient is whether the victim had sexual intercourse on the occasion. The evidence of the victim was received unsworn as she was a child of tender years. She told court that she had had sexual

intercourse on the occasion. Nevertheless evidence received as hers was, unsworn, requires corroboration. It was the evidence of PW1 that from a distance of 5 metres she saw a man on top of the victim having sexual intercourse with her as she lay on the ground. Soon after the same PW1 examined the private parts of the victim and saw blood and semen there. PW2 and PW3 in their respective testimonies stated that they too had seen blood and semen in the victim's private parts. When PW1 came across the victim in the bush the victim was crying. The defence does not dispute evidence of the victim having had sexual intercourse. From all the above I am satisfied that the prosecution has proved this ingredient also beyond reasonable doubt.

Finally the prosecution ought to prove that accused participated in the offence. It was the evidence of the victim that she knew accused well because he had worked for her family. She pointed him out in court as the person who had had sexual intercourse with

her. She said he had promised to give her what she called ‘-t-Maria’ before he persuaded her to go with him. She said accused was the person who had sexual intercourse with her. I have already indicated that the girl’s evidence requires corroboration by some other independent evidence. PW1 testified that she found accused, whom she knew well before as a family employee and who she pointed out in court as the person she referred to, at a bush ½ a mile from her house. She said she had come to as close as 5 metres from where he lay on top of the victim and was able to observe and identify him for about 1 minute. She said the time then was about 6 p.m.

In his defence to accused person raises an alibi. He states that he did not visit the victim’s home on 11th December 2001 as alleged but rather visited it a day earlier on 10th December 2001. He was emphatic on this. He added that it was on 11th December 2001 he had been arrested by PW3 at the home of the L.C.III Chairman. When an accused person sets up an alibi as his defence, it is not his responsibility to prove that alibi. The prosecution bears the duty to disprove and destroy that alibi. The

prosecution bears the duty to disprove and destroy that alibi by adducing evidence which places the accused squarely at the scene of crime. See Watete alias Wakhoka and 3 others vs. Uganda (1998 – 2000) HCB 7. PW3 who arrested accused told court that he effected the arrest on 12th December 2001 and not on 11th December 2001 as the accused claimed. In that case on 11th December 2001 accused was still at large. When there is the evidence of PW1 and the victim herself who testified that on 11th December 2001 accused was at large and committed the offence then. This is also the evidence of PW2. Consequently I find that prosecution evidence as assembled disproves the alibi set up by the accused. I find the alibi an after thought seeking to excuse accused from responsibility.

The accused also said in his defence that he had been framed because there was a grudge between him and the victim's family. He contended that the grand father of the victim owed him money in wages which the latter did not want to pay. At the same time it was his evidence that on the last occasion he visited the victim's home the victim's grand mother

had given her some shs.4,000/=. That grand mother is the wife of the person the accused says bore him a grudge. It is highly unlikely accused would have gone to the house of a person who bore him a grudge and got paid some money by a member of the family. Again I find such an idea on the part of accused speculative to say the least.

All in all I find the prosecution has proved the third ingredient of the offence also.

In their opinion which was joint the assessors advised me to find accused guilty and convict. For the reasons I have given in the

course of this judgment I agree with that opinion. I find accused guilty and convict him as charged.

P.K. Mugamba

JUDGE

23/6/2004