

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CASE NO: HCT-OO-CR-SC-0133 OF 2003

UGANDA ::: PROSECUTOR

VERSUS

BILAL FAISSOL ::: ACCUSED

BEFORE: HON. MR. HON. MR. JUSTICE J.B.A. KATUTSI:

JUDGMENT:

The accused is indicted for defilement under section 123 (1) now 129 (1) of the Penal Code Act. It is alleged that he on the 12th day of April 2003 at Naguru Go-down in Kampala District did unlawfully and carnally know NASSOZI HADIJA a girl under the age of 18 years.

Prosecutrix a young girl of 11 years gave her evidence after a voire dire and testified that the accused is a close relative. One day while her aunt with whom she stays was away, accused asked her to accompany him to the garden. Once there accused put his penis into her vagina. After sexually ravishing her he told her never to mention it to any one. He again sexually ravished her this time at the

home of her grand mother and again when her aunt sent her to collect medicine from his place. She confided to a friend who told her aunt and accused was arrested.

On 14/4/2003 Dr. Nsereko Mukasa a consultant Pathologist and police surgeon examined prosecutrix. He found the following.

1. Prosecutrix was at the time of the apparent age of 10 years.
2. She had no external body injuries.
3. Specific examination of her private parts revealed a previously ruptured hymen.
4. There were no injuries in the private parts.
5. She was capable of putting on minimum resistance.

DAWA Bint NOAH testified that prosecutrix is her sister while accused is her first cousin. In the month of April 2003 prosecutrix confided in her that accused was in the habit of sexually abusing her. She in turn told Zaituni with whom prosecutrix was staying. Zaituni in turn had accused arrested.

Accused gave evidence on oath and denied the offence. On 14/4/2003 he was arrested from his place of work on the allegation that he had defiled a young girl he said.

For the accused Mr. Rwankole who appeared on state brief conceded that prosecution had proved that prosecutrix was a girl under the age of 18 years and that she had been sexually abused. What prosecution had failed to prove, submitted counsel was the identity of the ravisher. He contended that there was no evidence to connect the accused with the alleged offence.

Kagezi Ivan for the state contended that the evidence on record showed that it was the accused and no other person that had sexually ravished the prosecutrix. Both assessors agreed with her and advised me to find accused guilty as charged.

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In this case it is conceded by the defence that prosecutrix was under 18 years of age. It is conceded that she was sexually ravished. The only issue to resolve is who sexually abused this young child? Prosecutrix is a young girl of an apparent age of 11 years. Despite her tender years I found her to be a girl of exceptional intelligence and permitted her to give evidence on oath she understood the scantily of an oath. She was a straight forward witness who gave her evidence without any

slightest prevarication. I have no faintest doubt in the truthfulness of her evidence. DAWA Bint NOAH testified that prosecutrix confided in her what had been befalling her. She said accused is her first cousin i.e. the son of her paternal uncle. When prosecutrix confided in her she in turn told Zaituni with whom prosecutrix was staying. A family meeting was convened at which it was resolved that accused be apprehended and handed over to the authorities.

There is no early reason why such monstrous allegation could be heaped on a close family member unless the matter was grave and true. None was proposed or suggested. Indeed on being arrested accused was told the reasons for his arrest.

While in practice courts look for corroboration in offences of this nature, I was left in no faintest doubt that prosecutrix was a truthful witness. I am in complete agreement with both assessors that prosecution did prove beyond

reasonable doubt the guilty of the accused. I find him guilty as charged and convict him.

J.B.A. Katutsi

JUDGE

07/02/2004

Court as before.

Judgment read.

J.B.A. Katutsi

JUDGE

9/2/2004

Kagezi:

No record of the convict. However he abused the modesty of the young girl.

By having un protected sex he exposed her to HIV risks. The victim is traumatized. Pray for harsh punishment.

J.B.A. Katutsi

JUDGE

Rwankole:

Accused is first offender. He is now 25 years. He is married and with children.

He has been around for one year.

J.B.A. Katutsi

JUDGE

Sentence:

Accused is said to be a first offender. Has been on remand for one year now. I am told he is a married man with children. Despite that he found it necessary to traumatize a young kid of only 10 years and a near relative. He has nothing good to be said in his favour. He is sentenced to 10 years.

J.B.A. Katutsi

JUDGE

9/2/2004

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RECORD OF PROCEEDINGS:

15/01/2004

Accused before court.

Rwankole for him on state brief.

Kagezi go on for state.

Tamale clerk.

Indictment:

Read and explained.

Accused:

Not guilty P.N.G.

S.64:

Nil.

Assessors:

1. Namuli Dorothy.
2. Lubega Robert.

Accused:

No objection.

J.B.A. Katutsi

JUDGE

Court:

Hearing adjourned to 20/01/2004.

J.B.A. Katutsi

JUDGE

20/01/2004

Accused before court.

Rwankole for him on state brief.

Kagezi for state.

Tamale clerk.

Assessors Sworn:

Rwankole:

Recording to summary of case the first defilement was committed sometime in February 2003. No date is given. Subsequent offence is alleged to have taken place on 11/4/2003 and the third offence on 12/4/2003. I am seeking guidance as I am feeling the indictment is amended to create 3 counts.

J.B.A. Katutsi

JUDGE

Kagezi:

The count is clean. It is on 12/4/2003.

J.B.A. Katutsi

JUDGE

Court:

There is nothing wrong with the indictment.

J.B.A. Katutsi

JUDGE

PW1:

Dr. Nsereko Mukasa, aged 48 resident of Kawempe Division Kampala s/s.

I am stationed at Mengo hospital. I work as a consultant pathologist/police surgeon. I examine persons who are either complainants or accused in various cases of crime. I.e. assaults, accidents, sexual offences e.t.c.

I recognize my signatures on these two documents. I did prepare the reports. The first is police form 3 with its appendix. This is in respect of sexual offences. It was issued by Kira Road Police Station. On 13/4/2003. Complainant was Hadija Nasozi in a case of defilement. I examined Nasozi on 14/4/2003. I found the following:-

1. She was aged about 10 years.
2. Had no injuries on her body.
3. Specific examination of her private parts revealed that the hymen had previously been ruptured.
4. No injuries on private parts.
5. No injuries on thigh, elbows or back.

He could offer very little resistance I signed the report. Report marked exhibit P.1.

J.B.A. Katutsi

JUDGE

Cross examination by Rwankole:

The hymen had been ruptured for some time longer than 7 days.

J.B.A. Katutsi

JUDGE

Kagezi:

Seek an adjournment. The witnesses had gone to the village in Tororo.

Court:

Hearing adjourned to 28/01/2004.

J.B.A. Katutsi

JUDGE

28/01/2004

Accused before court.

Rwengkole for him.

Kagezi Ivan for state.

Tamale court clerk.

PW2:

Voire dire:

I am 11 years old. I am at school. I go to New Age Primary School. This is in Naguru. I am going to P.5 this year. I came out 30th, I don't remember. I

am a Moslem. Telling lies is bad. It is better to tell the truth. The Koran is the word of God. One is punished to who swears and tells lies.

J.B.A. Katutsi

JUDGE

PW2- Sworn:

I am Nasozi Hadija. I am now aged 11 years. I attend New Age Primary School. I live at Naguru Road. I live with my maternal aunt called Zeituni Kiiza. I know the accused. He is called Faussol Birali. He is my clan brother. We were staying in the same village. Today is 28/1/2004. I am here. I am here to testify in a case. One time my aunt was away. Accused asked me to follow him to the garden. When we reached there he undressed me. He then had sex with me by putting his penis in my vagina. After that he told me not to tell anyone. He did it again when I met him at the home of my grand mother. He was a neighbour to my grand mother. He did it again when my mother sent me to get medicine from his home. My aunt came to knew about it. I and my friend told my aunt. My friend is called Annet. I had told Annet what had happened. Accused was called home to asked about the matter but he denied. He was then taken to police. I told my aunt when he had sex with me for the last time.

J.B.A. Katutsi

JUDGE

Rwankole:

No useful question to put. She is a truthful witness.

J.B.A. Katutsi

JUDGE

PW3:

Daawa Bint NOAH, aged 24 years, student resident of Naguru s/s.

I know the accused. He is my cousin – son of my uncle. He was staying in Naguru. It is a family area. Hadija Nasozi is my sister. Zaitubi is the aunt of Hadija. In the month of April Hadija confided in me that accused had had sex with her. She had been trying to confide in me before I had been shunning her that day I decided to listen. She told me that accused used to take her to the garden put oil in

her private parts before having sex with her. I then told my mother what I had heard. The matter was reported to the family and later referred to police.

J.B.A. Katutsi

JUDGE

Cross Examination by Rwankole:

I did not witness the incident myself. After the family sat to discuss the matter in his presence he said he only asked the girl to squeeze his penis. He

was picked from work at Bugolobi and taken to police – Kiira Police Station. I made a police statement.

J.B.A. Katutsi

JUDGE

Kagezi:

That is the close of prosecution.

J.B.A. Katutsi

JUDGE

Court:

There is a prima facie case sufficiently made out to require accused to take his stand. Indictment read and explained again. Procedure explained.

Accused:

I will give sworn testimony.

Accused:

BILAL FAISAL, aged 25, resident of Naguru Kampala s/s.

I was a shamba boy at Bugolobi street plot 8. My employer was Abdul Kadil Dirish. He worked for UNHCR. I had been there for 2 years. During the month of April 2003 nothing happened to me.

On 14/4/2003 a Monday while at work a vehicle came to the gate. I opened the gate. It was special hire. One of the men in the vehicle who was with Zaituni arrested me, and handcuffed me. When my employee asked why I was being arrested he was told I had defiled a child. I was taken to police. After one week I was taken to court and then remanded to Luzira.

J.B.A. Katutsi

JUDGE

Cross Examination by Kagezi:

I was working at Bugolobi. I was living in Naguru. Zaituni is the wife of my uncle. I don't know the father of Nasozi. I grew up with grand mother. I think Zaituni was told falsely that I had defiled Nasozi. May be Nasozi was coached to tell lies against me.

J.B.A. Katutsi

JUDGE

Re: Examination:

Nil.

J.B.A. Katutsi

JUDGE

Rwankole:

That is the close of the defence.

Submission:

There are three ingredients of the offence:

1. Below 18 years.
2. Sexual intercourse
3. By the accused

As to age the prosecution was 11 years at the time. In 2003 she was 10 years. See medical report. She was before court and was clearly seen.

As to sexual intercourse. The evidence of the victim on record. Medical examination revealed rapture hymen. Sexual intercourse has been proved.

As to the third ingredient we have the evidence of the victim. We have the evidence of Dawa Bint Noah who was told by prosecutrix. Prosecution has proved all the ingredients of the offence beyond reasonable doubt.

J.B.A. Katutsi

JUDGE

Rwankole:

The first two ingredients of offence conceded. However no evidence to pin down the accused that he did sexually abuse the girl. Accused should be acquitted.

J.B.A. Katutsi

JUDGE

Summing up notes:

Three ingredients:-

1. Age – This must be strictly proved. However it is conceded.
2. That there was penetration of a female organ by a male organ. This two is conceded.
3. Who did it. Prosecution to prove that it was the accused and or other person who ravished prosecutrix.

Corroboration:

It satisfied that the girl to us the truth not necessary.

4. Do you believe the evidence of the girl beyond reasonable doubt?

Namuli:

Prosecution has proved the case beyond reasonable doubt.

J.B.A. Katutsi

JUDGE

Lubega:

I am of the same opinion.

J.B.A. Katutsi

JUDGE

Court:

Judgment on 2/2/2004.

J.B.A. Katutsi

JUDGE