

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA CENTRAL CIRCUIT
HOLDEN AT MUBENDE
CR CASE NO MME AA 00090/2006
CRB 881/2006
UGANDA.....PROSECUTION
VERSUS
MATOVU EMMANUEL ALIAS SANDE.....ACCUSED
BEFORE HON. LADY JUSTICE FAITH MWONDHA
JUDGMENT

The accused Matovu Emmanuel was indicted on a charge of defilement C/S 129 (i) 4(a) of the Penal Code Act. It was alleged in the particulars that Matovu Emmanuel alias Sande on the 11th day of November 2006 at Gwanika village in Mubende District unlawfully and carnally had sexual intercourse with Bangi Christine a girl under the age of 14 years.

The prosecution like in all Criminal cases has the burden to prove the case beyond reasonable doubt in order to bring the guilt of the accused person home. The burden doesn't shift to the accused person and the accused is only convicted on the strength of the prosecution case but because of the weakness in the defence case. See *Ssekitoleko v. Uganda [1967] EA 531* where it was further held that the accused has no obligation to prove his innocence. See also *Justin Nankya v. Uganda Sc Cr Appeal No 24/1995 unreported citing with approval Okoth Okale v. R [1955] EA 555*.

The offence of aggravated defilement has the following ingredients/essential elements to be proved beyond reasonable doubt;

1. that the victim was under 14 years of age
2. that she experienced unlawful sexual intercourse
3. that the accused participated in the unlawful act

The prosecution produced and led evidence of three witnesses to discharge its burden. There was the admitted medical evidence which was narrated by the state in addition to the evidence of the three witnesses. This was contained in PF3 and its appendix. It

was in respect of examination of the victim Bangi Christine, the complainant of defilement in this case. The medical evidence revealed that she was between 5-6 years of age. That there was penetration and the hymen had ruptured though long ago. No injuries were found and there were no bruises on the elbow or thighs. That the victim was not strong enough to put up resistance. The PF3 and its appendix were tendered and marked EXP1. Then the second piece of admitted was contained in PF24 where the accused was examined. He was found to be 25 years of age and he was mentally normal.

As far as the first ingredient was concerned, there was the evidence of PW1, the victim herself. She was still of tender age of 12 years so this court carried out a *voire dire*. I found that she possessed enough intelligence to understand the nature of oath. She therefore gave a sworn statement. She stated that she used to stay with her grandmother Nabutono Kevina. Her uncle the accused was there also and she was sleeping in the same room with him. That when her grandmother sent her with the accused to get firewood, the accused got her and put her down. That he removed her knickers and had sexual intercourse with her. That she raised alarms but her grandmother was very far she did not answer the alarm. That she cried and went home where she reported to her grandmother. That the accused beat her because he did not want her to tell anyone. That her grandmother reported the matter to the chairman LCI. That the chairman came and collected the accused and then she was taken to Mubende Hospital for medical examination. That that was the second time the accused was having sexual intercourse with her. The first time she reported to her grandmother but she did not do anything. She insisted that she was defiled twice. PW3 was the father of the victim. He stated that the victim was his daughter. That she was born in 1998 on the 5th of October. The first ingredient was proved because of the evidence of PW1 herself, the father PW3 and the admitted medical evidence. She was under 14 years of age.

As far as second ingredient was concerned, there was still the admitted medical evidence as narrated above, then the evidence of PW1 who narrated her ordeal and the fact the hymen had ruptured, there is the evidence of PW2 the grandmother she was staying with. She confirmed what PW1 testified to and further confirmed that the first time the victim reported she did not bother. That this time she reported the matter to LCI chairman as he was even bad mannered and he wanted him to be disciplined.

That the accused was her own son. That she is the one who took the victim to Mubende Hospital for examination. That she called the father of the victim PW2 and took her to his home. That she was the mother of both PW2 and the accused but that the accused refused to go to school and PW2 did. She said she had no grudge with the accused. After the close of the prosecution case the accused opted to keep quiet after court had found a case to answer.

The prosecution submitted that it had made out its case and prayed that the accused be found guilty and be convicted accordingly. While the defence argued that the prosecution had not proved its case. This was an offence of aggravated defilement.

There was evidence produced which established a prima facie case. A prima facie case was described as a case which a reasonable tribunal properly directing its mind on the law and evidence can convict is no reasonable explanation is offered by the defence see *Ramlal T. Bhatt v. R [1957] EA 332*.

There was strong evidence as stated above already to prove all the essential ingredients and was undiscredited and or unchallenged during cross examination. The evidence was very reliable that there is no way this court could fail or decline to convict the accused who decided to keep quiet when he was given the option to defend himself.

The assessors in their opinion advised me to convict the accused and find him guilty since there was overwhelming evidence against him by the prosecution. I agreed with them for reasons already stated above.

Accordingly I find that the prosecution proved its case beyond reasonable doubt and I find the accused guilty and he is convicted as charged.

Faith Mwondha

Judge

29/06/2010