

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CR-SC-109-2008

UGANDA.....PROSECUTOR

VERSUS

WAIRAGALA YAKOBO alias NGAMBA.....ACCUSED

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

RULING

63 year old Wairagala Yakobo is indicted for aggravated defilement contrary to sections 129 (4) (a) & (c) of the [Penal Code Act](#). He is alleged to have defiled a 12 year old Namugema Teddy of Nawoja Cell, Budaka District.

In an attempt to prove the indictment against the accused person, prosecution led by Alpha Ogwang the learned Resident State Attorney Mbale adduced the evidence of three witnesses and closed its case.

At the closure of the prosecution evidence, it is incumbent upon court to determine whether prosecution has adduced sufficient evidence to found a *prima facie* case sufficient to require the accused make a defence. Neither the learned Resident State Attorney nor Mr. Wagira learned defence counsel on State brief made a submission at this stage.

They left the task to this court to make a finding.

PW.I was juvenile Namugema Teddy the victim. She testified that on 14.6.2008 the accused whom she referred to as a grandfather caught her. That he persuaded her and did “bad manners” to her. That the accused had sex with her promising that he would give her 5,000/= in return. The accused did not give the money. That she told her sister Nankoma Zainabu about the encounter. PW.1 further testified that when her grandmother Nanzala Lovinsa came back home the next day, she told her about what happened. The grandmother reported to Tom, the Chairman LC.I, who took the accused to Budaka Police. This was after 2 days of the incident. That the accused had sex with her on an earlier occasion. PW.I was taken to a Doctor who examined her. PW.I further testified that in the night in question, she slept together with her sister Zainabu. Zainabu is older than her and they shared a mattress. PW.I slept next to the wall.

When cross-examined, PW.I testified that she had never had sex with any person before this incident. That she felt pain cried and told Zainabu the next day. When Zainabu confronted the accused, the latter ran away.

PW.2 was 13 year old Zainabu Nankoma. She testified that on 14.6.2008, the accused whom she referred to as uncle came to their home with alcohol. PW.I and PW.2 drunk the waragi. PW.2 got tired and went to sleep. The next morning PW.I told her that the accused caught her. She in turn told the grandfather. The mother reported to the LC.I Chairman, Tom. Later the mother and LC.I came home and collected the accused.

PW.3 was No.28490 DC Olupot John Robert of Budaka Police Station. He re-arrested the accused and detained him pending further investigations. PW.3 sent the victim for medical examination and the accused for examination on PF.24. The accused was later charged.

This was the sum total of the evidence adduced by the prosecution.

Substantially, the only evidence worth consideration is that of PW.I. PW.2 did not witness the accused defile PW.1. She was asleep and was told by PW.1 that the accused had sex with her. PW.3 the police officer re-arrested the accused and had him charged. He referred both the victim and the accused for medical examination.

However, prosecution did not adduce medical evidence to confirm that PW.1 was indeed defiled. Being a child witness who testified not on oath, PW.1’s evidence needed corroboration before court could safely rely on it to found a *prima facie* case against the accused person. This evidence is lacking in this trial.

With only the discredited evidence of PW.1 on record, it will be unsafe to require the accused to be put on defence.

It is my considered view therefore that prosecution has failed to make out a *prima facie* case upon which the accused can be put on his defence.

A *prima facie* case is a case where a reasonable court basing itself on the law and evidence adduced could convict if no explanation is given by an accused person. This is lacking in this case. PW.1 does not know what having sex means. She alleges she was defiled in her sleep. She contradicts herself that the accused grabbed her and did bad manners to her. Although they were two in the house her sibling PW.2 did not know about it. She (PW.1) told PW.2 the next morning about the offence.

For lack of sufficient evidence to found a *prima facie* case against the accused, I will find that he has no case to answer. None of the ingredients of aggravated defilement have come out in evidence at this stage.

The accused is acquitted and indictment against him is dismissed. The accused is set free unless lawfully held.

Musota Stephen

JUDGE

21.3.2011

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Accused produced.

Alpha Ogwang Resident State Attorney.

Mudangha on State brief and brief for Wagira.

Assessor Kutosi present alone.

Kyabire Interpreter.

Resident State Attorney: Case for ruling.

Court: Ruling delivered.

Musota Stephen

JUDGE

21.3.2011