

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

**HCT-04-CR-SC-137-2008**

**UGANDA.....PROSECUTOR**

**VERSUS**

**MASERA SULAI.....ACCUSED**

**BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN**

**JUDGMENT**

Masera Sulai hereinafter called the accused is indicted for defilement c/s 129 (1) of the Penal Code Act.

Particulars of the indictment allege that the accused on 10<sup>th</sup> day of July 2006 at Busano village in Sironko District had unlawful sexual intercourse with Muyama Prossy a girl under the age of 18 years.

The accused pleaded not guilty.

To prove the offence against the accused person, prosecution called in evidence three witnesses.

PW.1 was Oliva Justine Nasiyo mother to the victim.

She testified that on 10.7.2006 in the morning, she went to the well leaving his brother-in-law the accused with the victim. When she came back, she found the child crying. She called the victim inside the house and asked what was wrong. The victim told her

that her uncle took her inside the house, removed her panty and did bad manners to her which according to PW.1 meant having sexual intercourse with her. PW.1 checked the victim's private parts and confirmed what the child told her. She was bleeding in the private parts and she saw sperms. She sent the elder son called Brandon Kevin Wolimbwa to go and call the father who at the time was not at home. The father came and together with PW.1, they went to the LC.I Secretary.

By the time PW.1 came back from the well, she found while the accused was lying on the verandah. The LC Secretary Muhamad Mugoya gave them a letter forwarding them to Buyaga Police Post. The accused was arrested by Kakubya Yusuf the Defence Secretary. The Defence Secretary was assisted by other people.

PW.1 went on to testify that she made a statement at police and a police woman escorted the victim to Hospital. Before the alleged offence, the accused was a regular visitor in PW.1's home and they used to have meals together. The accused even produced a child with PW.1's younger sister. When PW.1 asked the accused about the allegation he insisted that he had done nothing. That the victim was taken to Hospital after two days.

PW.2 was the victim Esther Muyama. After a *voire dire* she testified not on oath. She told court that she knew the accused. That nothing wrong has ever happened to her while the accused was at home. However, the accused did bad manners to her and gave her money to buy bans.

PW.3 was Namwokoyi Sam the father to the victim. He was called by Brandon Wolimbwa at 10:00A.M on 10.7.2006. Wolimbwa told him that Sulai, the accused had

had sex with his daughter called Muyama Prossy(the victim). When he went home he found the victim crying. When he asked the victim why she was crying she told him that the accused called her to get money to go and buy bans but he instead “slept on her.” That he had sex with her. PW.3 ordered the arrest of the accused and took him to Buyaga Police Post. PW.3 never checked the girl because she is a biological daughter.

Before reaching the police post the accused attempted to run away and said “Eh, I have caused myself seven years imprisonment.”

In his defence the accused reiterated his denial of the offence. He said that he is being framed because he had promised to give PW.3’s wife money. She happens to be his sister-in-law. That he suspects he is implicated because he bore a child with the sister to PW.1.

In all criminal trials, before court can proceed to convict an accused person prosecution must have adduced enough evidence to prove all the ingredients of the offence charged beyond any reasonable doubt. This burden and standard of proof lies onto the prosecution throughout the trial.

In an indictment for defilement prosecution has to prove that:-

- a) The victim was a child aged below 18 years.
- b) A sexual act was performed on her.
- c) By the accused person.

From the evidence of PW.1 and the fact that this court conducted a *voire dire* I am satisfied beyond doubt that the victim was below 18 years of age. She was 9 years old at the time she gave evidence in court.

Regarding whether a sexual Act was performed on her prosecution relied on the evidence of PW.1, PW.2 and PW.3. PW.1 left the girl at home to go to the well. When she came back she found her crying. When she asked her what was wrong she revealed that the accused did bad manners to her. This is a reference given to sexual intercourse. PW.1 sent for her husband PW.3. When he came home he also found the girl crying. When he asked her what was wrong she repeated the accusation that the accused lay on her and had sexual intercourse with her. The fact that PW.2 was consistent in revealing that bad manners were done to her and she was crying continuously and yet when her mother checked her private parts she found her bleeding. I remained with no doubt that indeed PW.2 was defiled. Even if no medical evidence was adduced the description of what happened by PW.2 is enough to confirm that she was defiled.

Regarding the participation of the accused, the accused denied defiling PW.2. He imputed a grudge that he could have been framed because he either tried to give money to PW.3's wife or because he produced a child with PW.1's sister. I did not believe this story. It was so weak to create any doubt in my mind. The accused is well known to the prosecution witnesses. He is the only man who was left at home with the victim when the parents had gone away. When PW.1 returned from the well she found her daughter crying. When the mother asked what was wrong, PW.2 said the accused had sex with her. The accused was at home lying on the verandah. When he was being taken to Buyaga police post he tried to run away exclaiming that he has caused himself seven years imprisonment.

I believed the prosecution evidence as truthful. It was so strong that it disproved the disjointed defence of alibi. The accused was successfully put at the scene of crime. I am satisfied beyond any reasonable doubt that it is the accused who defiled PW.2.

The lady and gentleman assessors have unanimously advised me to convict the accused and I absolutely agree with that opinion.

Consequently, Masera Sulai is found guilty and convicted of defilement contrary to section 129 (1) of the Penal Code Act.

**Musota Stephen**

**JUDGE**

**21.4.2011**

21.4.2011

Accused produced.

Alpha Ogwang for State.

Mudangha on State brief.

Kimono Interpreter.

Assessors in Court.

**Court:** Judgment delivered.

**Musota Stephen**

**JUDGE**

**21.4.2011**

**Resident State Attorney:**

The convict is a first offender. The convict was related to the victim and a guest in the home. He took advantage of the child and killed the innocence of the child. Defilement is rampant. I pray for a deterrent sentence.

**Musota Stephen**

**JUDGE**

**21.4.2011**

**Mudangha:**

My instruction is to pray for leniency. The convict is a first offender. He is remorseful. He said he had caused himself 7 years, shows he regretted what happened. He is a young man. He was only 20 years when he was committed. He is now 26 years. He can contribute to the development of this country given the opportunity. He has been on remand since 17.7.2006 a period enough to have caused his reform.

I therefore pray that court finds the period adequate and caution the convict.

**Musota Stephen**

**JUDGE**

**21.4.2011**

## **Sentence and Reasons**

While sentencing the convict, I will consider the respective submissions by both counsel. I will however reject the request for a caution by Mr. Mudangha for the offence of defilement is serious and rampant. The convict defiled a relative and betrayed the trust the mother and victim put in him. I will consider the time spent on remand and the fact that defilement is punishable by death.

Considering the circumstances of this case, I will sentence the convict to 7 years imprisonment.

Right of appeal explained.

**Musota Stephen**

**JUDGE**

**21.4.2011**