

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT RUKUNGIRI

HCT-CR-11-CSC-069/2012

CRIMINAL CASE RUK. 00-CR-CSC-18/2011

CRB 1079 /2011

UGANDA ::: PROSECUTOR

VERSUS

BYAMUKAMA JAMES:::ACCUSED

BEFORE HON. MR. JUSTICE J.W KWESIGA

JUDGMENT

The Accused person is charged with Aggravated defilement under Section 129 (1) (3) and (4) (a) of The Penal Code Act. It is alleged that on 21st June, 2011 at Kihengamo Village, Rukungiri District, the Accused person performed a sexual act with Akamutuha Honest a girl under the age of 14 years. The Accused person pleaded not guilty and the Prosecution proceeded to discharge its burden of proving the case against the Accused person. The Prosecution evidence must prove all essential elements of the offence before the state can secure a conviction. The elements of offence to be proved are:-

- (a) That Akamutuha Honest is a girl aged below 14 years.
- (b) That a sexual act was performed with the said girl.
- (c) That the Accused person performed the sexual act.

To prove the victims age, the prosecution relied on medical evidence of Dr. Kashaba PW.5, who presented the medical report made by Dr. Bakashaba on 22nd June, 2011 at Nyakibale Hospital, admitted as PE 1. The victim was found to be 10 years old with a freshly ruptured hymen. He confirmed that there was penetration consistent with force having been applied sexually.

PW 4 Rabika Living a man aged 44 years told court that Honest is his daughter who was born in 1998 about 13 years at the time of the trial. This makes her about ten or eleven years when the offence is said to have been committed. Therefore this evidence of PW 4 and PW 5 proved that Honest Akamutuha was below 14 years at the time of defilement alleged. On the act of sexual intercourse, PW 4 Rabika testified that on 21st June, 2011 when he had gone to work, he was called back that his daughter had be defiled. He returned home at 4:00 p.m and found that the Accused person had been arrested. He took the girl for medical examination. Under cross-examination he agreed that the Accused was a hardsman for Kashazi and that he had no conflict with Kashazi. PW 3 Honest Akamutuha, a child of tender age, though

appeared to be 13 years old was unable to tell her age. She gave unsworn evidence. She said a man got her and had sexual intercourse with her, she did not know him before later on she pointed at the Accused person as the man who defiled after a lot of prompting by the prosecuting Advocate. This was not surprising because she has mental handicap due to a brain not well developed limiting her intelligence.

PW.2 Kyarikora Robina 41 years old told court that she saw the Accused person on top of the girl. She made alarm and together with FIDEL they chased the Accused person as they made alarm and other people came and helped to arrest the Accused person. This witness stated that she knew the victim as Honest, this girl appeared mentally unstable. PW 2 told court she saw the girl's school uniform covered with blood. Under cross-examination this witness stated when she saw the Accused on top of the victim in a sexual act, she rushed to call FIDEL to help her arrest the culprit. Fidel arrived as the culprit was putting on his trousers. She stated she was about five metres from the scene, it was about 5:00 p.m and she was able to see and recognise who was in the sexual act. That she had seen the Accused in the village before. Abaho Fidel (PW 1) corroborated the evidence of Robina (PW 2). He said he joined PW 2 in making alarm and he saw the Accused person getting off the victim. They chased him until he was arrested by the people on the opposite side of the valley where the Accused person was running to.

Under cross-examination he confirmed the Accused used to work for Kashazi and there was no conflict known to exist between Kashazi and the victim's father.

In DEFENCE, Byamukama James denied and stated that on 21st June, 2011 he had been grazing cows in Kihengamo village, (where the offence took place) and he was arrested by young men. They alleged that he had defiled Akatumuha. He did not know the girl and he was arrested because his master's cows, which he grazed, had destroyed crops of the father of the victim. His defence suggests that he was falsely incriminated and he was suffering due to transferred malice based on a grudge between his master and the victim's father.

According to the prosecution evidence the first information does not come from the victim's father whom the Accused person accuses of transferred malice. The Accused was arrested before the complainant returned to the village at 4:00 p.m. He was called back to the village when the offence had taken place. It was not shown how incriminating the Accused person would have affected his employer serve the purpose of settling the alleged grudge. This is an incredible basis for the alleged fabrication of the charges against the Accused person.

This case revolved around the participation of the Accused person. The victim is a child of tender age who pointed out the Accused as her defiler. This is a girl who is mentally retarded. Her evidence was corroborated by PW 1 and PW 4 Abaho Fidel and found the Accused person red-handed in the act of performing sexual intercourse. They made alarm and he was immediately arrested. These two witnesses were independent witness who were not connected with the victim's father or the Accused person's master. Medical examination was done the next day on 22nd June, 2011 and corroborated the eye witnesses on the fact of sexual intercourse.

Dr. Bakashaba found freshly ruptured hymen. The vaginal injuries found on the private parts of the victim were caused within 24 hours (1 day) before the examination. The medical evidence corroborates evidence of the victim and the two eye witnesses. Therefore I am satisfied that the prosecution proved beyond reasonable doubt all elements of the offence. The Accused person's defence has no validity. I have agreed with the joint opinion of the Assessors in this case, that the Accused person is guilty as charged. I accordingly convict him of aggravated defilement contrary to Section 129 (3) (4) (a) of the Penal Code Act.

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J.W. KWESIGA
JUDGE
13/12/2012

PRE-SENTENCING FACTS

STATE: No record of previous record. Offences of defilement in this area is rampant. We pray for a deterrent sentence.

DEFENCE: The convict is a first offender. He has been on remand for 1 year.

COURT: SENTENCE:

Defilement is rampant in this region, this court has a duty to contribute to protection of the girl-child from sexual exploitation being one of the worst abuse of children rights. The victim was a child who was mentally retarded and who deserved protection by every member of society. The Accused person proceeded to exploit her sexually and I find no basis for being lenient to him. I **sentence** him to **(15) fifteen years imprisonment.**

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J.W. KWESIGA
JUDGE
13/12/2012