

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

**HCT-04-CR-SC-0003-2011**

**UGANDA.....PROSECUTOR  
VERSUS  
KAMUDAN JUMA.....ACCUSED**

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

**JUDGMENT**

**Kamudan Juma** hereafter called the accused stands indicted for aggravated defilement contrary to sections 129 (3) and 4(a) of the Penal Code Act.

Prosecution alleges that the accused during the month of May 2010 at Muvule Mukaga Zone, Pallisa District performed an unlawful sexual Act with **Namaja Zaina** a girl aged 11 years at the time.

The accused denied the indictment thus casting the burden of proving all the ingredients of the offence charged against the accused person onto the prosecution.

In an indictment for aggravated defilement prosecution has to prove the following:-

- (1) That the victim was a girl below the age of 14 years.
- (2) That a sexual Act was performed on her.
- (3) That the accused is the culprit.

In its bid to discharge its burden, prosecution called four witnesses.

I will deal with each ingredient separately:

- 1. Whether the victim was aged below 14 years of age.**

To prove the age of the victim, prosecution relied on the evidence of **PW.1, Dr. Angiro** who testified that he examined the victim on 30.5.2010 and found her to be aged 11 years. (See Exhibit PE.I). This corroborates the testimony by the mother **Kawala Hadija (PW.4)** who told court that she produced the victim in 1999. This meant that by 2010 the victim was 11 years old.

**Mr. Okiror** learned defence counsel did not dispute the age of the victim.

I will therefore hold that prosecution has proved beyond any reasonable doubt that **Namaja Zaina** was below 14 years of age at the time of offence. She was 11 years.

## **2. Whether a sexual act was performed on the victim**

According to S.129 (7) of the Penal Code Act a sexual act is defined as:

- (i) Penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ.
- (ii) The unlawful use of any object or organ by a person on another person's sexual organ.

And a sexual organ is defined as:

*“..... a vagina or penis.”*

To try and prove this ingredient prosecution relied on the evidence of **PW.1 Dr. Angiro John** who examined the victim and filled the Police Appendix to form 3 Exhibit P.2 and Exhibit P.1.

According to the doctor, he found signs of penetration of the victim's private parts leading to the breaking of her hymen. That the hymen was broken a week before examination. The medical evidence is supported by the victim's testimony that on the day in question, the accused took her to an unfinished house and defiled her by

putting his penis into her vagina. The victim described what happened to her in a firm manner which impressed me as a truthful story.

**Mr. Okiror** learned defence counsel tried to dispute the evidence of penetration saying the doctor found no substance in the victim's vagina and/or injuries on the thighs or legs of the victim. I do not agree with the submission by learned counsel. The doctor found that penetration and breaking of the victim's hymen was one week earlier. Possibility of finding any substances in the vagina was remote. On failure to find injuries or bruises on the thighs and legs is not enough to rule out sexual intercourse.

I am likewise satisfied that prosecution has proved that a sexual act was performed on the victim.

### **3. Participation of the accused**

On the issue of participation, prosecution relied on the evidence of the victim PW.2 and her sister PW.3. PW.2 firmly told court that on the day in question, the accused called her in the presence of PW.3 who confirmed this. PW.3 said she saw the accused at close range, about 7 metres away across the road. She was assisted by moonlight.

Both PW.2 and PW.3 knew the accused before this, ruling out any possibility of any mistaken identity. After sometime, the victim came back home and PW.3 saw blood on her legs.

In her own testimony PW.2 said she bled after the accused had sex with her.

The testimony by both PW.2 and PW.3 is consistent with what they told their mother PW.4 that it was the accused person who defiled the victim.

This strong evidence watered down the defence denial of the offence. The accused's attempt to impute a grudge with the complainant could not hold. It was an afterthought and unbelievable. I found no reason for PW.4 to hate the accused because of a failed attempt by the accused to befriend her. In any case PW.4 denied there was any attempt by the accused to befriend her.

Learned defence counsel suggested that the accused was not identified by the victim since it was at 8:00p.m and in darkness. I do not agree because the victim and her sister PW.3 knew the accused before and had interacted a lot. There was moonlight which helped them identify the accused. They also communicated verbally with the accused person.

True there were contradictions about the way the accused was dressed. PW.3 stated the accused had a stripped shirt and a pair of shorts yet PW.2 said the accused wore a black trousers and a white shirt. I did not find these contradictions as pointing to deliberate untruthfulness aimed at deceiving. Given the age of the witnesses and time lag since the offence was committed it could have led to memory lapse who could lead to forgetting small details.

I am satisfied that the strong prosecution evidence has placed the accused at the scene of crime. Participation of the accused has been proved beyond any reasonable doubt.

The gentlemen assessors were of the opinion that prosecution had proved the offence against the accused beyond any reasonable doubt. They advised me to find the accused guilty and convict him accordingly.

I agree with the unanimous opinion of the gentlemen assessors.

I will consequently find **Kamudan Juma** guilty and convict him for aggravated defilement contrary to sections 129 (3) and (4) (d) of the Penal Code Act.

**Stephen Musota**

**JUDGE**

**22.3.2012**

22.3.2012

Accused in court.

**Walugembe** Resident State Attorney.

**Okiror** on State brief.

**Kyuka** for Lugwere.

**Resident State Attorney:** case for judgment.

**Court:** Judgment delivered.

**Stephen Musota**

**JUDGE**

**22.3.2012**

**Resident State Attorney:**

We have no record in respect of the convict. He is a first offender. The convict has been on remand for 1 year and 9 months. He has been convicted of a serious offence punishable by death. We pray court considers he defiled an innocent girl fit to be a daughter. This act could have potentially traumatized her for life. It is the duty of court to protect young innocent girls from the likes of the convict. We invite court to consider offences of defilement are rampant. The convict drugged court through a long expensive trial. There is no remorse on his part. We pray for a deterrent sentence.

**Okiror:**

This court has a wide discretion as to sentencing of the convict. It is true he is a first offender. The convict is in his youthful age. He has a wife and 3 young children. He has been a sole bread earner. The convict is remorseful. He is also repentant. He has spent about 2 years on remand. I submit that this court avails a lenient sentence to the convict.

**Sentence and reasons**

While sentencing the convict I will consider that he is a first offender. Not much is known of his sero status. However he committed a serious offence of ravaging a very young girl of only 11 years. He traumatized her and exploited her innocence and ignorance. This court has a duty to protect the girl child from marauding men who exploit them. I note that the convict has spent barely two years on remand and will take into account the submissions of learned counsel on both sides and hand down a deterrent sentence in the circumstances. The convict will serve 14 years imprisonment.

Right of appeal explained.

**Stephen Musota**  
**JUDGE**  
**22.3.2012**