

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT TORORO  
CR SC NO.016 OF 2022**

**UGANDA ::::::::::::::::::::::::::::::::::::::PROSECUTOR**

**VERSUS**

**KADERE JONATHAN::::::::::::::::::::::::::::::::::::ACCUSED**

**JUDGEMENT**

**BEFORE: HON. DR. HENRY I KAWESA**

The accused person is indicted of **Aggravated Defilement c/s129(3)(4)(a) of the Penal Code Act.**

The particulars are that Kadere Jonathan, on the 3<sup>rd</sup> day of May 2022 at Pereje village, Apokor Town Council in the Tororo District performed a sexual act with SAFARI LYDIA a girl aged 12 years.

The accused denied the charge thereby placing all ingredients of this offence in issue.

The prosecution bears the burden to prove each of the ingredients beyond all reasonable doubt.

The ingredients to be provided are:

- 1. That the victim was below 14 years.*
- 2. That the sexual act was performed on the victim.*
- 3. That accused had authority over the victim or was HIV positive and infected the victim of the virus*

4. *That accused person committed the sexual act on the victim.*

1. Whether the victim was below 14 years.

In the submissions, the defence did not contest the age of the victim. The defence conceded that the evidence by PWI and DWI is enough to prove this ingredient.

I find that it is proved.

2. Whether a sexual act was performed on the victim

**Under section 129(7) of the Penal Code Act**, a sexual act is defined to connote:

(a) Penetration of the virgina mouth or anus, however slight of any person by sexual organ.

b) The unlawful use of any object or organ by a person on another person's sexual organ.

In sexual offences, it has been held by superior Courts that the testimony of the victim is very vital.

In the case of **Mutable William versus Uganda; Criminal Appeal No. 42 of 2002**, the *Court of Appeal* held that:

*"In sexual offences the evidence of the victim of the offence is always very essential. She is the one who experiences the act constituting the offence and is the one most suited to describe to Court the nature of the experience"*

In this case, I have, in this case looked at the evidence of the victim who testified as PW4. She was very elaborative in her evidence that; she was sexually assaulted. She described how she felt, when the accused grabbed her, removed her nicker and performed sexual intercourse on her. That she felt a lot of pain. She tried to fight and the accused told her not to tell anyone or he kills her. This evidence was corroborated by PW2. Dr. Kiptrokol who conducted a medical examination on PW4, and found her genital area was reddish with flesh tears and bruises, caused by a blunt object.

I do not find any merit in the defence submission on the failure by the doctor to tell Court what the “*blunt*” object was since the victim herself positively pointed out that it was the accused’s penis that caused the injuries. The ingredient is proved.

3. Whether the culprit had authority over the victim.

This ingredient is informed by **Section 129(4)(c) of the Penal Code Act** which provides that “*where the offender is a parent or a guardian or a person in authority over the person against whom the offence is committed*”

Evidence from PW1 and PW4 shows that the accused was a worker in the house where the victim resided with her mother. The evidence from the accused himself is that the mother of the victim was his boss. He confirmed that he worked for Lydia (*mother of the victim as a house keeper*). This meant that, he, being an adult serving the mother of the victim, was indirectly in a caretaker relationship to the victim whom he acknowledged lived with her boss and was a minor.

I do give the definition of “*person in authority over the person against whom offence committed to include the above described relationship*”. This ingredient is therefore proved.

4. Participation of accused/whether accused is the culprit that performed a sexual act on the victim.

The evidence assembled through PW4 (*the victim*) corroborated by PW1 who upon noting the stressful condition of the victim interrogated her and she told her the ordeal detailing how the accused sexually assaulted her.

The stressful nature of the victim adds credence to the velocity of this evidence. I do not doubt that victim was telling the truth.

I observed her testimony and she impressed me as very composed, reliable and truthful.

I also found further corroborated in PW2 and PEX4 which report the victim's first information to PW3 and findings that she had fresh tears on the labia.

The defence is a mere denial. The accused first feigned ignorance of the victim, then he changed to say that he knew her only as the daughter of her boss. The rest of his claims that there is a herdsman who feeds cows and the presence of such other structures he alludes to, was destroyed by the evidence of PW3; Dt AP Namukobe Rose's evidence as the investigating officer who interrogated the victim and accused, wrote their statements and even visited the scene of crime. She testified that and concluded that an offence took place judging

from the fact that the place is isolated, she saw the chicken place just as the victim narrated, and she observed the environment. This witness' evidence totally counter's the accused's allegations that there is no chicken in the compound.

The accused's version of the herdsman is also a fanciful lie as the evidence of PW3; the investigation officer who visited the scene did not see any herdsman or cows thereat.

The evidence from prosecution on its own sufficiently proves that the accused committed this act. The assessors also found him liable.

I therefore, on the strength of the prosecution evidence find the accused liable and guilty as charged.

I do find him guilty as such and do convict him therefore.

I so find.

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Hon. Dr. Henry I Kawesa

**JUDGE**

19/July/2023

19/July/2023

James Mwawule for State.

Accused present.

Jackie for accused present.

Court:

Judgment delivered

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Hon. Dr. Henry I Kawesa

**JUDGE**

19/July/2023

19/July/2023:

Allocuts

State:

The convict is a first time The offence is punishable by death. The victim was 12; convict; 31 years. The act was brutal and traumatizing and the victim lost innocence. She risks trauma for life. He is not remorseful. it deserves a second chance to life.

We pray for at least 40 years; taking in consideration the period of 1 year and 2 months and 7 days.

Allocuts by accused:

I pray for leniency. I have a family. I have a dead mother. My wife is sick and remained with my children. My parents are disabled. I am still sick.

Prison:

He has spent 1 year, 2 months and 7 days on remand.

Sentence and reasons:

The offence is capital the maximum penalty is death. The aggravating factors and mitigating factors above having been considered, this Court finds that the accused deserves a deterrent and rehabilitation sentence. The accused has spent 1 year, 2 months and 7 days on remand.

The Court sentences him to a custodial sentence of 12 years from which I deduct 1 year, 2 months and 7 days on remand. He shall serve a custodial sentence of 10 years, 9 months and 23 days in prison.

I so order.

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Hon. Dr. Justice Henry I Kawesa

**JUDGE**

19/July/2023