

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CR-SC-0230-2002

UGANDA.....PROSECUTOR

VS

BIZIMANA FRANCIS.....ACCUSED

**BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA**

**JUDGMENT**

Bizimana Francis is indicted for defilement, contrary to section 129(1) of the Penal Code Act. The two witnesses called by the prosecution to prove its case are the victim herself as PW1 and her mother, Faith Busingye, as PW2, Evidence of medical examination was agreed under section 66 of the Trial on Indictments Act.

The prosecution case in brief is that during the afternoon 27<sup>th</sup> November 2001 accused, who used to reside at the same home as the prosecutrix pulled the prosecutrix into a nearby banana plantation where he had carnal knowledge of her. Afterwards the prosecutrix informed her parents and accused was arrested and charged in consequence.

In his defence statement made on oath accused denied involvement in the offence. He denied he ever lived in the same home as the prosecutrix. He said he had been framed because the father of the prosecutrix had taken his money and was reluctant to pay it back to him.

The prosecution has a duty to prove the case against an accused person beyond reasonable doubt. See *Sekitoleko vs Uganda* [1967] EA 531. Where the charge is that of defilement the prosecution ought to prove all the following ingredients of the offence.

- i. That the prosecutrix was below 18 years of age,
- ii. That the prosecutrix had sexual intercourse on the alleged occasion and
- iii. That accused participated in the offence alleged.

No birth certificate was produced in evidence. However PW2, mother of the prosecutrix testified that at the time she gave evidence in court the girl was 9 years old but that at the time of the alleged incident the girl had been 6 years old. Agreed medical evidence contained in exhibit P.1 shows the girl was 6 years old in the year 2001, material to this case. The girl testified in court as PW1 and doubtless she was below 18 years. I am satisfied the prosecution has proved this ingredient beyond reasonable doubt.

Regarding whether there was sexual intercourse, the girl's evidence was that she had sexual intercourse on the occasion in question. She testified that the man who molested her had put his penis in her vagina. It was her evidence the man had passed his penis on the side of her knickers, which had remained in place. The evidence of PW1 is evidence if court is to convict on it. The evidence of PW2 was that she had examined the prosecutrix immediately the girl complained to her. She stated further that she had observed blood in the girl's private parts. Agreed medical evidence shows the girl was examined on 8<sup>th</sup> December 2001, molestation having allegedly taken place days earlier on 27<sup>th</sup> November 2001. According to the report the girl's hymen was intact. The report stated further that injuries such as bruising which were found on the girl were less than one week old. From all that evidence I find nothing to corroborate the evidence of PW1 that she had sexual intercourse on the occasion. In the event I do not find this ingredient proved beyond reasonable doubt.

Finally the prosecution has to prove that accused participated in the offence. The only witness who stated that accused committed the offence was PW1. Her evidence is that of a child of tender years which cannot be convicted upon without corroboration. As I find no such corroboration, the prosecution has failed to prove this ingredient also beyond reasonable doubt. In the circumstances it would be moot to consider the defence of accused which is total denial.

The gentlemen assessors in their joint opinion advised me to find accused guilty of the charge as there was no evidence he participated in the crime. For the reasons I have given in this judgment I will agree with that opinion. I find accused not guilty and accordingly acquit him.

P. K. Mugamba

Judge

25<sup>th</sup> April 2005