



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIMINAL CASE NO. 0058 OF 2011**

UGANDA ::: PROSECUTOR

VERSUS

KASORO EDWARD ::: ACCUSED

JUDGMENT

BEFORE HON. JUSTICE MR. RALPH W. OCHAN – RESIDENT JUDGE

The accused Kasoro Edward stand indicted on the offence of aggravated defilement contrary to section 129 (3) & (4) (a) of the Penal Code Act. The brief facts of the offence are that on 21st September 2010 at Busisi LCI, Busisi Sub-county, Hoima District performed a sexual act with one Lillian Suzana Kisembo, his daughter aged below 14 years.

The ingredients of the offence of aggravated defilement are the following;

age of the victim

sexual intercourse involving the victim

participation of the accused person in the commission of the offence

Burden of prove

It is trite law that the burden of prove in a criminal trial rests and remains on the shoulders of the prosecution throughout the trial. All the ingredients of the offence have to be proved to the standards laid down in the law, namely, proof beyond reasonable doubt.

Proof of ingredients

Age of the victim; the victim was examined on PF3 by Dr. Amanda Andrew at Hoima Referral Hospital. He found her to be approximately to be about 8 years. The medical examination report was admitted in Court uncontested under section 66 of TIA. I therefore find and hold that this ingredient of the offence has been proved beyond reasonable doubt.

Sexual intercourse involving the victim; The medical examination report made by Dr. Amanda Gift Andrew found evidence of sexual intercourse involving the victim. That report however found that the hymen had been ruptured “fairly long time ago”. The evidence of sexual intercourse was corroborated by the victim’s testimony taken in chambers, after a voire dire inquiry. On the evidence on record, I find that the victim was at some point involved in a sexual act. This ingredient is thus proved beyond reasonable doubt.

Participation of the accused person; To prove this ingredient, prosecution adduced evidence from one Tamale Kaijamurubi, a grandmother of the victim. In her evidence in chief the witness told court when her granddaughter came back from school that fateful

evening, she was walking badly. She inquired what the problem was. She told her that she had been defiled. The witness then told this Court that she asked her maid called Tibulihwa to examine her. The witness told court Tibulihwa reported finding semens in the girl's private parts. In the course of her subsequent testimony, the witness told court that it was the girl who told her that it was her father who defiled her. However in cross examination, the witness told court that it was her maid, Tibulihwa who relayed to her the information from the victim that it was her father who defiled her.

At this point I must place on record the caution that both the assessors and court must exercise in handling the unsworn testimony of the witness of tender age. Such evidence must be corroborated by independent sworn evidence. The evidence of participation is from a witness of a tender age. It was given unsworn. The evidence of the grandmother which should have corroborated the unsworn evidence of the witness of tender age, is itself riddled with contradictions. Moreover from her own mouth, the evidence was relayed to her by the maid which was not called to testify as one to whom the defilement was first reported and who examined the victim and talked to the victim in the first place. This leaves a big gap in identification and placing the accused at the crime scene as a participant in the commission of the offence. Subsequently doubts have been created in my mind about the participation of the accused person in the commission of the offence. The law of the land is clear, any iota of doubt in my mind, the benefit of doubt thereof must be given to the accused person. In this case I give the benefits of doubt to the accused and accordingly acquit him of the charge of aggravated defilement and order his immediate release.

SIGNED

JUSTICE RALPH W. OCHAN

11TH SEPTEMBER 2013