



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CRIMINAL CASE NO. 0154 OF 2011

UGANDA ::: PROSECUTOR

VERSUS

NDAYABAZE HAKOLIMANA ::: ACCUSED

JUDGMENT

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

The accused Ndayambaze Hakolimana, 33 years old Mufumbira, a resident of Butema Parish, Hoima District is indicted on the charge of aggravated defilement which is an offence contrary to section 129 (3) and (4) of the Penal Code Act. Particulars of the alleged offence are that the accused in the night of 4th May 2011, at Kyamaguzi village, Butema Parish, Hoima District, performed a sexual act with one Nuwagaba Jovana, a girl under the age of 14 years.

Aggravated defilement is an offence comprising the following essential ingredients;

1. that there was sexual intercourse involving the victim
2. age of the victim
3. participation of the accused person in the commission of the offence

It is well established principle of our law that the burden of proof in a criminal charge such as this one before court rests on prosecution which must prove all the 3 ingredients of the offence to the standards laid down in the law. This standard is proved beyond reasonable doubts. See the authorities of;

- i. Woolmington Vs DPP (1935) AC, 463
- ii. Andrea Obonyo & Others Vs Queen (1962) EA, 542
- iii. Henry Illanga Vs. Manyoka (1961) EA, 705

At the preliminary hearing both prosecution and defence agreed to the admission without challenge of the medical examination reports of the victim contained on PF3 and the accused on PF24. These documents were presumed to have been proved beyond reasonable doubt under section 66 of the TIA.

Proof of the ingredients

Age of the victim; On the basis of PF3 medical examination report of the victim, I hold that the age of the girl was proved beyond reasonable doubt. According to that report she was a minor of 10 years of age at the time of commission of the offence.

Sexual intercourse involving the victim of tender age; the victim herself testified to having been defiled by the accused. Medical examination report by Dr. David Timbigamba corroborated the victim's evidence. Dr. Timbigamba found evidence of a recent sexual intercourse not more than 24 hours from the time of his examination. This is proof beyond reasonable doubt that the victim was indeed involved in the sexual intercourse at that material time.

Participation of the accused; the victim testified on this point. She told court she saw the accused by the light of a kerosene lamp hanged in their sitting room wall. PW3, the victim's mother also gave evidence on this ingredient. She told court that she heard the cry of her daughter, she came out of the room and with the aid of the phone flash light, she found the accused hiding in the next room. The accused denied the charge. He told court

he had worked for the victim's mother for 4 months with pay. He went to her to ask for his pay, amounting to 120,000/= for the 4 months. Instead of paying him, her boss developed a grudge and framed him up with this charge. He told court he was beaten by his co-workers and the local people before being brought to police. The beating was at the instigation of the mother of the victim.

I have perused the evidence on record with respect to this ingredient several times over, like my assessor, I have doubts in my mind about the participation of the accused in the commission of the offence. In the circumstances as required by law, the benefit of this doubt is given to the accused person. I accordingly acquit him and order his immediate release.

SIGNED
JUSTICE RALPH W. OCHAN
11TH SEPTEMBER 2013