

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT SOROTI
CRIMINAL CASE NO. 44 OF 2011
UGANDA V ESIA SIMON

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The accused person is charged with aggravated defilement c/s 129(3) and (4) of the penal code. It is alleged that the accused person on 28th July 2010 at Lubiri cell Nakatunya in Soroti district performed a sexual act with Arayo Grace a girl aged 7 years.

Prosecution was led by Mr. Jonathan Okello State Attorney and accused was represented by Mr. Ogire on state brief.

The prosecution has a duty to prove its case and the standard of proof should be beyond reasonable doubt. At no time does the duty shift to the accused person.

Ingredients of the offence are that the child is below 14 years, that a sexual act took place and that it was the accused who carried out that sexual act.

Both counsel conceded that the victim was aged seven years at the time of the sexual act and that in fact a sexual act took place in view of the medical evidence.

What is in issue is who carried out the sexual act on the girl.

Although PW2 Akello mother of the victim said she found the accused in the room with the girl and his trousers were down, while the pants of the girl lowered to the level of her knees, her credibility was put to the test when she said if she had power she would have chased the accused away from her home which meant she did not have a good relationship with the accused prior to the alleged defilement. There is also the evidence that Akello at one time caused arrest of accused person for participation in alleged robbery. There is therefore evidence that PW2 Akello had a bad relationship with the accused person, a factor that cannot be ignored in a criminal trial.

Further Akello's conduct after allegedly finding accused with her daughter is suspect. Rather than alert nearest neighbours, she chose to go the home of the accused person's mother, a distance away.

PW3 Arayo gave unsworn testimony as she did not understand the importance of taking the oath. She said on 28th July 2010, accused called her into the house with a promise of a

sweet. He ordered her to remove her pants under threats he would slaughter her and that he proceeded to defile her. Her sister Akurut came into the room and called her mother PW2 Akello, whereupon PW3 run and was stopped by neighbours.

Because PW3's testimony was given not on oath, corroboration is imperative. While PW2 Akello would have provided corroboration, the fact that she had a grudge with the accused raises reasonable doubts as to her truthfulness.

However, the medical evidence on PF3 shows there was penetration when the victim was examined on 30th July, 2010 when the sexual act allegedly took place on 28th July, 2010. This still brings me back to the question of who defiled the young girl. As mentioned earlier, her testimony requires corroboration. Medical evidence corroborates the sexual act but not the defilement by the accused.

Accused person gave sworn evidence in which he denied the charge and said he had gone to buy drugs at the time the defilement allegedly took place.

In the absence of other credible evidence to corroborate testimony of PW3, and given that reasonable doubt was cast on PW2's credibility given her bad relations with the accused, i am inclined to find that the prosecution has not proved its case beyond reasonable doubt.

I am supported in my finding by the two assessors – Operemo and Amaso who advised that accused person is not guilty.

In the premises, accused person is acquitted of the offence charged and is released from custody forthwith unless lawfully held in connection with some other charges.

DATED AT SOROTI THIS 24th DAY OF OCTOBER 2013.

HON. LADY JUSTICE H. WOLAYO