

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KUMI
CRIMINAL SESSION CASE 89 OF 2013
UGANDA V OKONGOR JOHN

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The accused person is charged with aggravated defilement c/s 129(3) (4) (a) of the penal code. It is alleged that on 17th November 2012, the accused being infected with HIV virus performed a sexual act with Among Nusulu Naisanga a girl aged 16 years.

Ms Alleluya appeared for the state while Mr. Isodo represented the accused on state brief. I carefully listened to their submissions and have given the submissions due consideration.

Assessors were Mr. Okiror Joseph and Mr. Oruka James.

The burden of proof in criminal cases is on the prosecution to prove its case beyond reasonable doubt.

The key ingredients of aggravated defilement under sub sections 3 and 4 are that the victim was below 18 years old, that accused was HIV positive, and that a sexual act took place.

Proof of defilement

The prosecution submitted a medical report PExh. 1 as additional evidence of defilement and age of the victim. While the report puts the victim's age as between 15 to 18 years which is acceptable, the report does not state whether there was penetration and the age of the ruptured hymen.

PExh. 2 however confirms that the accused person is HIV positive.

This means the prosecution is left with testimony of the victim and her father to prove the aggravated defilement.

Participation of accused

The evidence of PW3 Naisanga the victim shows she does not know the village she comes from and does not recall when she relocated there after she left her mother's home in Kiyunga. While it is a fact that she knows the accused person whom she interacted with as she was invited there through her sister Akol to collect potatoes and that she slept in his house, the narrative on the alleged defilement is suspect. Her testimony is that as she slept on a bed with two other children, the accused person moved to where she was and defiled her.

Earlier PW2 Muneti Augustine, her father had told court he sent the victim and her sister Akol, to plough a garden with accused person but that while Akol returned home, the victim did not prompt him to go in search for her at the home of the accused person where he found her at about 10 p.m. What is noteworthy is that while PW2 states that Naisanga told him she was defiled by the accused person, Naisanga states she did not reveal to her father the defilement and only told the police.

A close scrutiny of the evidence that the victim was defiled on a bed shared with two other children leaves room for doubt especially when the medical evidence is not helpful and the victim appears to be disoriented in time and place. I say this because she could not tell name of her village and neither does she know when she relocated there.

I am in agreement with the two assessors that the prosecution has not proved beyond reasonable doubt that the accused defiled the victim and he is acquitted of the offence charged. Accused person is released from custody unless lawfully held in connection with some other charges.

DATED AT SOROTI THIS 12th DAY OF DECEMBER 2013.

HON. LADY JUSTICE H. WOLAYO