



1. She was aged nine years.
2. Had signs of penetration.
3. Had an intact hymen.
4. Had injuries of laceration in labia and urethra.
5. The injuries were found to be about 4 hours old.

**PW.1 (Nagudi Catherine)** informed court that she had been sexually molested by accused in the morning of 27<sup>th</sup> November 2011.

In the case of *Uganda v. Bogere (1994-5) HCB 26*, it was held that it was not necessary to prove hymen rapture, as the slightest penetration is enough.

PW.2 the father of PW.1 confirmed that PW.1 was sexually assaulted.

The above evidence is conclusive enough to prove that:

1. Sexual intercourse took place.
2. That the victim was below 14 years at the time.

The two ingredients are therefore proved.

The next ingredient is whether the accused was responsible for the sexual assault.

In defence accused put up the defence of alibi, stating that on the fateful day he left home early and went to carry sugarcane.

However, PW.1 (victim) in her testimony stated that she knew the accused very well as a villagemate. She was able to recognize the accused because it was towards morning, and there was moonlight. She further stated that she called her father in that process and he immediately came. Her father (PW.2) told court that

he left accused sitting on the veranda of his house. In the night he heard the children crying and rushed there. He found accused running out of the house pulling his trousers. He had a torch, chased him and arrested him.

The identifying of this accused by the two witnesses of the prosecution is unchallenged. The conditions for identification were conclusive. There was moonlight according to (PW.1) and PW.2 had a torch. Secondly accused had been seen by PW.2 drinking from within their homestead, and he was arrested from the same place running from the house. The accused was well known to PW.1 and PW.2. Accused himself says PW.2 knows him well, but he has a grudge against him, which led to the concoctions. I do not believe that line of defence. Accused seemed untruthful. His attempt to deny and claim innocence was betrayed by his unsworn testimony which did successfully remove him from the scene of crime.

The evidence of prosecution of identification when considered cautiously remains intact, with no other possible conclusion save the inference that the accused person committed the offence.

This ingredient is therefore proved.

In their joint opinion, both assessors advised this honourable court to find the accused person liable on the charge. I concur with them. Accused is found liable. The prosecution has proved beyond doubt that **Maku Micheal** on 27<sup>th</sup> November 2011 at Butta village performed a sexual act with **Nagudi Catherine** aged 9 (nine) years. He is convicted as charged.

**Henry I. Kawesa**

**JUDGE**  
**22.01.2014**

22.01.2014

Accused present.

Resident State Attorney: **Chekwech** for State.

**Jude Wamimbi** (for **Obedo**).

Resident State Attorney: For judgment.

Court: Judgment read and delivered to parties as above.

**Henry I. Kawesa**  
**JUDGE**  
**22.01.2014**

**Resident State Attorney:**

Convict is a first offender. Maximum is death. The convict was 38 years old. The victim was 9 years of age. The difference was grave but he ought to have given parental protection to the victim. He has spent 2 years on remand. These offences are rampant. Young girls are sexually abused the convict be given a deterrent sentence that will deter him from committing it again and help him rehabilitate.

**Henry I. Kawesa**  
**JUDGE**  
**22.01.2014**

**Jude:**

The convict is a first offender has spent 2 years 1 month on remand. He is capable of reforming. I pray for appropriate sentence.

**Henry I. Kawesa**

**JUDGE**

**22.01.2014**

Accused: I pray that I be set free to go and take care of my family. I am the bread winner.

Sentence: Convict is a first offender. The offence is rampant. On conviction maximum is death- however the mitigations and circumstances will lead to leniency. Accused has spent 2 years 1 month on remand. He shall be sentenced to a custodial period of 10 years. I so order.

**Henry I. Kawesa**

**JUDGE**

**22.01.2014**