

IN THE HIGH COURT OF UGANDA AT SOROTI

CRIMINAL CASE. 90 OF 2011

UGANDA V EBAU GEORGE WILLIAM

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 the 4th day of May 2011 at Kongoto trading centre, Bugondo Sub-county, Serere district, the accused performed a sexual act with Akello Edith Norah a girl aged nine years.

Prosecution was partly led by Mr. Jonathan Okello and partly by Mr. Noah Kunya. Accused person was represented by Mr. Ewatu on state brief.

Prosecution had a duty to prove beyond reasonable doubt that the accused person performed a sexual act with the victim.

Prosecution relied on medical oral evidence to prove defilement. PF3 admitted by consent showed that the victim was examined on 5.5.2011 by a clinical officer. The examining officer found that she was nine years old, the hymen had been broken in the last 48 hours, and there was inflammation and injuries around the private parts. The extent that a sexual act did take place, PF3 admitted as Pexh. 1 positively proves that a sexual act did take place within 48 hours previous to the examination, i.e. on or about 3.5.2011.

To prove participation of the accused person, prosecution relied on the evidence of PW1 Elipu Sam, paternal uncle to the victim, the victim herself and PW2 Arioket the mother of the victim.

On 4th May 2011, PW1 Elimu Sam was on duty at a video hall where the victim's mother operated an eating place. PW3 Akello, the victim, had been left by her mother PW2 Ariokot Stella to sell tea to customers. As the witness walked outside the hall, he flashed a torch into a corridor and sighted the accused with the victim in the act of sexual intercourse. The accused got up and ran away and the witness took the victim into the video hall. Accused was arrested and taken to home of defense secretary.

The fact that the victim was at the video hall on the night of 4.5.2011 was corroborated by PW2 Ariokot mother of the victim. She left her daughter to sell tea and at about 9. P.m, she was informed that her daughter had been defiled. The victim also narrated to her mother how the accused had taken her to a corridor and defiled her. In cross examination, the witness testified she examined her daughter and saw stool and semen in her private parts.

The victim testified that she was helping her mother to sell tea in the eating house on 4.5.2011. The accused asked for tea and then water. As she went out to collect water, he followed her, pulled her into a corridor, removed her pants and as she tried to make an alarm, he covered her mouth and defiled her. As the accused got up, PW1 Elipu Sam flashed a torch at them and accused ran away. She was taken to Serere police the next day and then to hospital for examination.

I believed the testimony of this witness who was still traumatised by the incident. I also believed the testimonies of PW1 Elipu and PW2 Ariokot.

The accused person was positively identified by PW1 and PW3. The sexual act was proved both by medical evidence and by the victim and PW1 Alipu.

The defense tried to suggest that the accused person was framed on account of rivalry with Elipu PW1 over a girl named Apoo Betty. However, i am satisfied that the prosecution proved beyond reasonable doubt that the accused unlawfully performed a sexual act with the Akello, a girl aged 10 years at the time of the act.

I am in agreement with the two assessors that the accused is guilty of the offence charged.

Accused person is convicted as charged.

DATED AT SOROTI THIS 02nd DAY OF APRIL 2014.

HON. LADY JUSTICE H. WOALYO