

IN THE HIGH COURT OF UGANDA AT SOROTI

CRIMINAL CASE 82 OF 2011

UGANDA V EERU RICHARD

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 1st day of February 2011 at Kigandani cell, Kengere ward Soroti district, the accused person performed a sexual act with Aryonget Immaculate, a girl aged six years.

Prosecution was led Mr. Jonathan Okello while Mr. Tiyo represented the accused on state brief. Assessors were Mr. Operemo Eugene and Ms. Amoding Florence.

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

Prosecution relied on medical evidence, and testimonies of four witnesses including the alleged victim.

Proof of sexual act

Pf 3, Medical evidence admitted by consent showed that the victim was seven years, and there was no penetration, no injuries and no inflammation. The report is silent on whether the hymen was broken. The examination was carried out by Dr. Erunait John on 7.2.2011 yet the alleged sexual act took place on 1.2.2011. This is a factor to be taken into account when evaluating the evidence as a whole.

The key witness is PW4 Aryonget Immaculate who testified that on the fateful day, her mother Akurut Sara left her at home with Okiror and the accused person. The latter then sent Okiror away and asked the witness to massage him. At this point he grabbed the witness, squeezed her against the wall or floor and defiled her. She shared with her mother the ordeal and the matter

was reported to police. The witness was not certain whether the defilement took place on the floor, bed, or mat.

The witness insisted that she bled from her private parts yet the medical report found no injuries.

The evidence of PW1 Akurut Sara is even more incredible. While it is acceptable that she examined her daughter and found blood in her private parts on 1.2.2011, the fact that she called male neighbours to examine her daughter is unbelievable. Indeed PW2 Odeke William testified that he heard Akurut Sarah crying and on reaching her house, Akurut Sarah made Aryonget lie on her back and he saw blood from her private parts.

The fact that the witnesses emphasize the bleeding from the private parts contrary to medical evidence that no injuries and no signs of penetration were found, casts major doubt on the prosecution case.

Moreover, PW4, the victim, was not certain whether the sexual act took place on the floor, bed or wall.

The accused person remained silent when put on his defense.

I am in disagreement with the two assessors that accused person is guilty for the reasons given above. I find that the prosecution has not proved beyond reasonable doubt that accused person performed sexual act with the victim. He is acquitted of the offence charged and released from custody unless lawfully held in connection with some other offence.

DATED AT SOROTI THIS 14th DAY OF MARCH 2014.

HON. LADY JUSTICE H. WOLAYO