

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KUMI
CRIMINAL SESSION 34 OF 2011
UGANDA V INUOT SOLOMON

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The accused person is charged with aggravated defilement c/s 129(3) and (4) (a) of the penal code. It is alleged that the accused person on 14th January 2011 at Kabata village in Kumi district performed sexual act with Acom Rose a girl below 18 years.

Prosecution was led by Ms Alleluya while the accused was represented by Mr. Tiyo in state brief.

In this case, the prosecution had a duty to prove age of the victim, that a sexual act took place and participation by the accused in the crime.

By consent of both counsel, medical evidence was admitted by consent. Pf 3 shows the victim was aged 7 years at the time she was examined on 15th January 2011 . She had some bruises in her private parts and stains of semen on her thighs. Although the hymen was more than a month old and this does not detract from the fact that there were signs of sexual activity on the date of examination.

To prove participation by the accused person, the s prosecution relied on a retracted charge and caution statement.

The statement was recorded by AIP Kedi who died in 2011 hence it was tendered by PW3 Det. IP Omongole rtd who worked with the late Kedi at Kumi and Soroti police station. The identification of the statement by PW3 was accepted under section 66 of the Evidence Act.

A trial within a trial was conducted after the accused alleged it was obtained by duress. In my ruling, I found there was no evidence the accused was assaulted by the police officer hence the statement was subsequently admitted as evidence.

The Supreme Court in Bwire Wycliffe & anor v Uganda, Criminal Appeal 12 of 2003 restated the position that a court may accept a retracted charge and caution and act on it but with caution. Corroboration is not a legal requirement if the court is 'satisfied after considering the all material points and surrounding circumstances that the confession cannot but be true'.

The charge and caution statement gives graphic details of how the accused was herding cattle when the victim came to call him. He held her by the hand and led her to a bush. He laid her down, removed her pants and proceeded to defile her. While in the act, the victim's mother found him and raised an alarm.

The aspect of the mother of the victim finding him in flagrant delicto is corroborated PW1 Corp. Emadi James who testified that Atigo Asarah, mother of the victim made a report to report Kumi Police station on 14.1.2011 that her husband Inuot Solomon had defiled her daughter, Acom Rose and that she had found the accused red-handed.

The fact that the accused person handed himself to police on 14.01.2011 as narrated to Det. AIP Kedi is corroborated by PW2 IP Alupo who testified that as she was receiving a complaint from Atigo Sarah, the accused brought himself to the station.

The act of handing himself to the police further corroborates the charge and caution statement.

In all, the statement a confession by the accused that he defiled the victim.

The accused made a sworn statement in which he denied the defilement but placed himself at the scene.

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

In view of the very graphic details of the steps he took prior to the defilement and the description of what he did, coupled with medical evidence and evidence of police officers who received the complaint from the mother of the victim , I find that the prosecution has proved beyond reasonable doubt the offence charged. He is accordingly convicted as charged.

DATED AT SOROTI THIS 08th DAY OF JANUARY 2014.

HON. LADY JUSTICE H. WOLAYO