

**IN THE HIGH COURT OF UGANDA AT MOROTO**

**CRIMINAL SESSION CASE NO. 110 OF 2013**

**UGANDA V ALEPER GRACE FARIDA**

**BEFORE: HON. LADY JUSTICE H. WOLAYO**

**JUDGMENT**

The accused person in this case is charged with aggravated defilement c/s 129 (3) (4) (a) (b) of the penal code. It is alleged that the accused person on 17<sup>th</sup> October 2012 at Kakolye village in Moroto municipality performed a sexual act with Longole Paul a child aged two years.

Prosecution was represented by Mr. Amalo Zerald RSA Moroto while Mr. Ogire appeared for the accused person. Assessors were Mr. Abul Paul and Mr. Richard Odeke.

In this particular case, the prosecution had a duty to prove beyond reasonable doubt the following ingredients:

The unlawful use of any object or sexual organ by a person on another's sexual organ.

**Proof of sexual act**

Prosecution relied on medical evidence and prosecution witnesses to prove the sexual act. PF 3 admitted as Pexh. 1 is not helpful at all in the circumstances of this case apart from confirming the age of the toddler which the examining officer puts at one year and eleven months. This means that the sexual act had to be proved by oral testimony of witnesses.

The key witness PW4 Maria Akuma testified that the accused person who was drunk and naked, was chanting as children followed her on 17.10.2012. The witness saw the accused lie down, got hold of one of the children and placed the child on her belly. The witness Akuma then told the accused to let the child go and she led the accused to her house.

PW4 Maria is corroborated by PW3 Nyankole Lily who was at the scene of the alleged defilement. She was taking a nap under a tree at Nalwosi on 17.10.2012 at about 3 p.m when Alepere also known as Farida joined her. PW3 Nyankole was then awakened by a shout from one Maria who admonished Farida, the accused person that 'you are going to hurt the child'.

Maria then lifted the naked child from off the belly of the accused person who was naked, and took the child away.

It transpired during cross examination of this witness that the accused person was drunk at the time and she often played with her neighbors' children.

That both the accused person and the toddler were naked is the sole basis for the charge of aggravated defilement. PW2 DIP Omon John who recorded a charge and caution statement, Pexh. 4, that was not contested admitted as much in cross examination. The statement does not allude to performance of the sexual act except that the accused states in that statement that she was told she was naked and she did not recall what happened.

In her sworn statement, the accused denied the charge.

In light of the foregoing analysis, I find that the conduct of the accused person in placing the toddler on her belly while she was naked and drunk is not circumstantial evidence that she was performing a sexual act with the toddler.

As a general principle, drunkenness, a form of intoxication, does not remove criminal responsibility for criminal acts. However, if at the time of the alleged offence, the person did not know what she was doing, then the court may consider this a plea of insanity.

In the instant case, the accused in the charge and caution statement said she did not recall what had happened the previous day.

However, as I have found that performance of a sexual act was not proved, I need not go into the possible defence of intoxication and therefore temporary insanity to the charge of aggravated defilement.

Having found that performance of a sexual act was not proved; I am in agreement with the assessors that the state failed to prove aggravated defilement beyond reasonable doubt.

With regard to the conduct of the accused person who handled the toddler while naked and drunk, I find that the accused person behaved indecently in public c/s 167 (e) of the penal code Act. Walking about naked and exposing nudity to children and the public is a criminal act and accused person is criminally responsible for such act. Her defence that she did not recall what happened is an excuse to escape responsibility in light of the evidence of PW3 Nyankole Lily that the accused often undressed in public whenever she was drunk.

I accordingly convict the accused person of the offence of acting indecently in public c/s 167(e ) of the penal code.

**DATED AT SOROTI THIS 29<sup>th</sup> DAY OF SEPTEMBER 2014.**

**HON. LADY JUSTICE H. WOLAYO**