

IN THE HIGH COURT OF UGANDA AT MOROTO

CRIMINAL SESSION CASE NO. 179 OF 2013.

UGANDA V LOPEYOK MARK TEKO

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The accused person in this case is charged with aggravated defilement c/s 129 (3) (4) (a) of the Penal Code Act. It is alleged that the accused person in the month of February 2012 at Nakapiripit district performed a sexual act with Nabwire Maureen a girl below the age of 14 years.

Prosecution was led by Mr. Amalo Zerald RSA Moroto while the accused person was represented by Mr. Ogire on state brief.

Assessors were Mr. Lomilo Joseph and Ms. Amina Mashaka.

The prosecution had a duty to prove beyond reasonable doubt performance of a sexual act, that the victim was below 18 years, and that it is the accused person who performed the sexual act.

Proof of sexual act

For proof of sexual act, prosecution relied on medical evidence and oral testimony of witnesses. With regard to medical evidence, PF3 that was admitted as PExh. 2 was tendered by PW4 Atai Margret Jane. This medical report is not helpful to the prosecution because the examination was done on 15.1.2013 more than one year after the date of the alleged defilement. Such an examination will not reveal

whether there was penetration or indeed link any penetration to the accused person unless DNA evidence is produced.

Apart from the time lag between date of alleged defilement and the medical examination, the report is stamped but not signed. PW4 Atai who informed the court that she is a Senior Nursing Officer claims it was an oversight on her part to sign the report and insisted she actually carried out the examination. The omission to sign the report alone is sufficient basis for disregarding the report as unauthentic in spite of the fact that the alleged examining officer gave sworn evidence.

Coupled with the fact that the examination was done one year after the date of the alleged defilement, I find that the medical evidence adduced by the prosecution is worthless and will be disregarded as proof of defilement.

With regard to age of the victim, Pexh. 1 a baptism certificate from St. Xavier's

Catholic parish was produced to show that she was born on 24th May 2000. The victim Nabwire testified as PW3 and she gave her age as 15 years. What is material is that the victim was below 18 years at the time of the alleged defilement.

The key witness for the prosecution is PW3 Maureen Nabwire the victim. At the age of 15 years, she gave sworn evidence. Her evidence shows that in February 2012, she went to the bar to collect plates and on her return home at about 8 p.m, the accused person whom she knew very well as her mother's customer in the bar, followed her , grabbed her and forcefully defiled her in Nambozo's structure, after tearing her pants. She informed her sister Acom PW2 who

advised her to throw the torn pants away. It was in March 2013 that she revealed the defilement to her mother PW1 Amodoi after the latter had administered two

Strokes of the cane. According to this witness, she was defiled a second time by the same accused person on her return from school.

The time lag between the time of alleged defilement and the report to PW1 Amodoi her guardian raises doubts about the credibility of this witness. While testimony of a defilement victim alone is sufficient to prove the sexual act, it must be reported immediately or soon thereafter to parents or guardians. In **Baguma v U Supreme Court Criminal Appeal No. 7 of 2004**, the trial judge did not rely on medical evidence which was found wanting but relied on the testimony of the complainant to prove a sexual act. On appeal, the Supreme Court, while agreeing that the trial judge was correct to disregard medical evidence, found that there were inconsistencies in the prosecution case and acquitted the appellant.

In the instant case, the absence of medical evidence and time lag between the defilement and reporting means the prosecution had to lead other evidence to prove the sexual act.

Other evidence relied on the prosecution to prove the sexual act are the testimonies of witnesses. The evidence of PW1 Amodoi Grace, paternal aunt to Nabwire is that in the first term of 2012, she observed that the victim was limping but declined to be examined. The witness then left for the village and on her

return, she found that Nabwire's breasts had enlarged that is when Nabwire told her that the accused person had defiled her on two occasions. In cross examination, the witness revealed that she operated a bar and she was unhappy with the accused person for luring her customers to a bar operated by his wife. It also transpired during cross examination that a report was made to the police by her husband on 14.1.2013 .

From the testimony of PW1 Amodoi , it s clear that she could not pinpoint the date let alone the month of the alleged defilement when she made a general reference to first school term. Her suspicions were raised when she observed that the girl's breasts had enlarged. Therefore, the evidence of PW1 Amodoi does not corroborate that of PW3 in as far as the month of defilement is not known. Secondly, that she was unhappy with the accused for luring away her customers is a matter that cannot be taken lightly as it shows she had a grudge with the accused person. Thirdly, that PW3 Nabwire revealed to her the defilement in March 2013 is worthless evidence in light of Nabwire's admission that Amodoi administered two strokes of the cane before the revelation.

The other prosecution witness relied on is PW2 Achom Petwa whose evidence is unhelpful because although she received a report from her sister Nabwire on an unknown date, that she had been defiled by the accused , she did not reveal this information to anyone in spite of the fact that Nabwire was crying.

Consequently, I find that the prosecution case was weak in as far as proof of a sexual act was concerned. I found that Nabwire was not a credible witness because she reported the defilement more than a year later to her guardian PW1

Amodoi. With regard to the fact that she reported to PW2 Acom her sister, the later maintained silence and did not pass on the information to PW3. I consider PW2 an accomplice and therefore will treat her evidence with caution.

The fact that PW1 Amodoi had business rivalry with the accused person is further reason to treat her evidence with caution.

The accused made a sworn statement in which he denied the charge.

Having disregarded the medical report on examination of a victim of a sexual crime, having found the key witness not credible, having found the other witnesses unreliable, I am in agreement with the lady assessor Mashaka that the prosecution failed to prove its case beyond reasonable doubt and I acquit the accused of the offence charged.

DATED AT MOROTO THIS 30TH DAY OF SEPTEMBER 2014.

HON. LADY JUSTICE H. WOLAYO