

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CR-SC- 00270-2013

**UGANDA.....PROSECUTOR
VERSUS
MUSOBO MICHAEL alias SEBAKAKA.....ACCUSED**

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

Accused is charged of aggravated defilement. It is alleged that **Musobo Michael alias Sabakaka** on the 5th day of November, 2009 at Kapchekwech village in Bukwo District had unlawful sexual intercourse with **Chekwemoi Rebecca** aged 5 years.

Accused denied the charge.

Prosecution has the burden to prove the charge beyond all reasonable doubt. The standard was stated in the case of **Woolmington v. DPP** as that; “beyond all reasonable doubt.”

The ingredients are:

- (1) There was sexual intercourse.
- (2) The girl was below 14 years.
- (3) The accused committed the offence.

RESOLUTION

1. Whether there was sexual intercourse.

PW.1 victim testified that she was sexually assaulted by an assailant, she names as the accused. The medical examination form (PF.3), shows that the victim suffers bruises on her labia majoria. There was sign of slight penetration with injuries consistent with force having been used sexually. PW.2 confirms that she saw PW.1's private parts very red, and on questioning her she revealed that she had been sexually assaulted. This ingredient is therefore proved.

2. Whether the girl was below 14 years.

The victim (PW.1) testified and court noted that she was indeed young aged 10 years at time of giving her evidence. The medical form PE.1 shows her age as 5 years at time of crime. The girl was below 14 years. The ingredient is proved.

3. Whether accused participated in the crime.

PW.1 the victim (**Chekwomoi**) stated that she was with friend. They were going to the well to pick greens. Accused chased them. He caught her, and forcefully had sex with her. He then left her there, and she went back. She informed her mother who then caused the arrest of the accused.

PW.2 Jackline stated that, at 1p.m on 5/Nov/2009, while her daughter was near the fire place she noticed that her private parts were very red. She checked her and asked her what happened she revealed that accused had assaulted her sexually from the well.

In defence, accused put up the defence of alibi.

In the case of ***Abdalla Bin Wendo and Another v. R***; it was held that evidence of a single identifying witness should be taken with caution. It was advised that if circumstances for identification were not favourable other evidence be looked for to corroborate.

The evidence of PW.1 Victim was unsworn and needed corroboration.

PW.2 (mother's) evidence which could corroborate was hearsay evidence. The evidence of the victim's friend Olive was never called in evidence yet her evidence was very vital in corroboration.

In the case of ***Abdalla Mukasa v. Uganda (Cr. Appeal 34/91)***, C.J. Wambuzi as he then was, states in holding that though admissible as affirmed evidence when he testified nevertheless, the court should look for corroboration of what he saw as a boy of 12 years of age. It can only be found in Swaibu's evidence.

In our case, the evidence of PW.1 needs corroboration by same independent evidence. PW.2 however offers evidence which is hearsay as regards accused's participation. There is therefore unsatisfactory evidence on record to firmly place the accused at the scene of crime. This ingredient is therefore not proved.

I had warned the assessors to look for corroboration regarding PW.1's evidence; and to assess the evidence on record as a whole. In their joint opinion, assessors found that accused was culpable. However for lack for corroboration, it is my view that it would be dangerous to convict the accused. I will therefore differ from

the assessor's opinion and hold that prosecution has failed to discharge the burden of proof regarding the participation of the accused. I find this ingredient not proved.

In the result I find that the accused person is not guilty of the charge of aggravated defilement. I do acquit him of the charges.

Henry I. Kawesa

JUDGE

14.01.2014