

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU
CRIMINAL SESSION NO. 0009 OF 2014

UGANDA :::PROSECUTOR

VERSUS

KIDYEL HENRY KOMAKECH:::ACCUSED

BEFORE: THE HON. LADY JUSTICE MARGARET MUTONYI

JUDGMENT

The juvenile offender Kidyel Henry Komakech alias Boy was indicted for aggravated defilement c/s 129(3) and 4 (a) of the Penal Code Act Laws of Uganda. The particulars of the offence state that the accused on the 25th day of October 2013 at Acodo Okungedi village in Amuru District performed a sexual act with Aketowanga Vicky a girl aged 4 years.

At the beginning of the trial both the prosecution and defence agreed on the medical evidence contained in PF 3A and PF 24A which forms were admitted in evidence and marked as Prosecution Exhibit 1 and 2 respectively.

Thereafter the prosecution called three witnesses to give oral testimony. There were Aryemo Grace PW1, Aketowanga Vicky PW2 and Latoo Angelo PW3.

The accused gave evidence on oath but did not call any witness. Both the prosecution and defence submitted in support of their cases. The essential ingredients of the offence of aggravated defilement are the following:-

1. That the victim is a child under the age of 14 years.
2. That a sexual act was performed on the child.
3. That it is the accused that performed the sexual act.

Once the accused pleads not guilty he puts all the essential ingredients in issue and the prosecution has to prove them beyond reasonable doubt.

In the case before me, the 1st and second ingredients were not contentious. The medical report on PF3A indicated that the victim was a female who was still a child and estimated to be 4 years old.

Examination of her genitals by Lakot Monica an enrolled mid wife revealed some bruises on the genitalia caused by forceful penetration in the vagina. The admitted medical evidence proved beyond reasonable doubt that the four year girl was sexually abused by penetration of her vagina.

PW1 Alanyo Grace and PW3 Lato Angelo further informed court that during medical examination, whitish slippery substances were removed from the girl's genitals. This evidence pointed to a sexual act by a male person who forcefully penetrated the vagina of the female child.

This takes me to the 3rd ingredient..... the issue of whether it was the accused who defiled the child.

PW1 the mother of the victim informed court that on that fateful day, she left the child under the custody of the accused and went for a meeting. That on return, she was informed by the victim that the accused had played sex with her.

On checking the child, she saw an open vagina with bruises. She informed the husband, the father of the child who also checked and confirmed the sexual assault on the child.

The victim, a child of tender age, gave her unsworn statement and court indeed was alive to the fact that such evidence should be received with a lot of caution as provided under S. 40(3) of the Trial on Indictment Act and corroborated with some other evidence. The victim informed court that the accused took her near an ant hill and defiled her after he had asked her to go with him to look for wild fruits. She felt pain and reported to her mother as soon as the mother returned. She informed court that

she knew the accused as boy, and that he was in prison because he had played sex with her woman-meaning her vagina.

This witness answered the questions asked by the State Attorney with easy and consistency. The medical evidence corroborated her evidence that someone played sex with her.

On the issue of identity of the defiler, both the prosecution and defence evidence revealed that the accused was not strange to the child. The mother left the victim with him. They live in the same homestead. The child who could speak knew him not only by appearance but by the name he is called at home Aboy.

According to the evidence of the victim, defilement happened during the day. She therefore properly identified her defiler much as she is of tender age.

The accused in his defence claimed the child remained in the kitchen and he remained in the house throughout their stay together while the mother was away. I have found it difficult to believe him because the child who was not sleeping and who walks could have not remained sitted in one place.

The state cited the case of **Omurani Vs Uganda** reported in EA Law Reports 2002 at page 531 in his submission but the facts in

this case differ in that in the Omuroni case, the victim did not testify in that ...

In this case, the victim testified. And her evidence was properly corroborated with that of her parents who live in the same homestead with the accused and the sexual act was reported to the mother at the earliest opportunity. Given the tender age of the victim, this court is not convinced that she has been used to fabricate a case against the accused who claimed the family does not like him for fear that he would take their land.

I do agree with the learned State Attorney's submission that the accusation in this case was made contemporaneously with the offence and therefore was part of res gestate.

The girl reported to her mother PW1 immediately on return complaining of pain in the pelvic area and abdomen. In courts view the witnesses for the prosecution were truthful and no evidence of malicious prosecution is apparent in their testimony. They were consistent including the four year old girl.

I warned myself and the assessors about the evidence of the minor who was the single identifying witness and the need for corroboration of her evidence. Besides the evidence of the parents and medical evidence, the circumstances of the case point a finger to the accused. He was properly put at the scene of

the crime because the child did not go away from home to any other place where she could have met her defiler. There is no evidence that there was some other relatively older male child who could have inflicted injury to her genitalia. There is also no evidence that the injuries in her vagina could have been caused by some other act other than sexual penetration by a male organ.

The circumstantial evidence point to the accused as the person who assaulted the victim sexually.

Both gentlemen assessors observed that the accused was very well known to the victim that there could not have been the possibility of mistaken identity. Their opinion was that an offence of aggravated defilement was proved against the accused. I do not have any reasons to disagree with them.

In view of the above, I find that the prosecution proved all the essential ingredient of the offence of aggravated defilement against the juvenile offender beyond reasonable doubt and reject his defence as it did not raise any doubt as to his guilt.

.....

Margaret Mutonyi

Judge

22/08/2014