

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**CRIMINAL APPEAL NO. 066 OF 2014**  
(Arising from Jinja Criminal case No. 661/2013)

**KAMANYIRO DAVID:.....APPELLANT**

**VERSUS**

**UGANDA:.....PROSECUTOR**

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

**JUDGMENT**

This is an appeal against the Judgment of the Chief Magistrate sitting at Jinja, Her Worship Susan Kanyange wherein she convicted the appellant for Defilement c/s 129 (1) of the Penal Code Act.

The Appellant was sentenced to serve five years imprisonment. On top the appellant was ordered to compensate the victim.

Three grounds of appeal were filed namely;

- 1) The trial court erred in law and fact when it relied on the unreliable evidence of prosecution witnesses which was riddled with lies and as a result, occasioned a miscarriage of justice.
- 2) The trial court erred in law and fact when it wrongly recorded and evaluated the evidence of the prosecution and by so doing occasioned a miscarriage of justice.

3) The trial court erred in law and fact when it disregarded the appellant's defence of an existing grudge and by so doing occasioned a miscarriage of justice.

The Appellant prosecuted his appeal while the prosecution was represented by the Resident State Attorney, Jinja.

The brief summary of this matter from a perusal of the lower court record is that the victim aged 17 left home to go to Hospital on 10/9/2013. She went back home late and when asked where she had been, she told her father that the accused/appellant had taken her to his house and defiled her.

The matter was reported to the police, the girl was examined and the appellant was tried and convicted.

The appellant in his submissions has challenged the evaluation of evidence by the trial court. He claims he had no house at the Hospital and if he had defiled the girl. She should have made an alarm. He submitted that the Doctor stated the girl's age as being 16, the victim said she was 14, the father said she was 17 while the magistrate said she was 18.

The Resident State Attorney submitted that the ingredients of the offence were proved.

First that the girl was below 18, there was sexual intercourse and that it is the accused who performed the sexual act. She stated the girl's age was proved by the baptism card as well as the report by Dr. Katende.

The sexual act was proved by the doctor's report that indicated that her hymen had been ruptured by a penis. The magistrate also relied on the evidence of the victim herself.

Regarding the participation of the accused, it was submitted that the appellant knew the victim and that he lured the girl to his house when she went to Hospital on the pretext that he was going to give her the drugs.

This coupled with the evidence of the Doctor convinced the trial magistrate that the appellant had been placed at the scene of crime.

The Appellant rejoined by submitting that there was no witness to place him at the scene of crime. Further that his home is miles away from the Health Centre. Thirdly that the Health facility is a Health Centre III always busy and the appellant's action would have been observed.

The court as first appellate court is mandated to re-evaluate the evidence before the lower court and make its own conclusions. Unfortunately it has to rely solely on the record as there was no opportunity to observe the witnesses or their demeanour. **Ref: Pandya Vrs. R.**

A look at the record reveals that the trial magistrate correctly set out the ingredients of the offence of defilement and went ahead to evaluate the evidence in respect of each ingredient.

In respect of the age of the victim, this was clearly established by the baptism card as well as the Doctor's report.

The evidence in respect of the sexual act however was solely dependent on the evidence of the Doctor's report and the testimony of the victim.

While she claimed she was defiled, there was no other supporting evidence apart from the PF.3 and her own claims.

A look at the PF.3 filled by Dr. Katende only reveals that the victim had **an old ruptured hymen.** There were no other signs of defilement for example the presence of scratches, fresh sperms or any signs of recent sexual activity.

The old ruptured hymen demonstrate when the same could have been ruptured or that the victim had experienced any recent sexual activity.

As regards participation, the evidence of the victim is that the accused lured her to his house to give her the medicine that the Health Centre did not have.

This evidence is not corroborated. There is no evidence that there was no medicine in the Health Centre to be sourced from somewhere else.

The defence explained that the Appellant has no residence at the health Centre where he could have taken the girl. If it is true he took her to his home, the said home according to the accused/appellant is several miles away and there is no way the appellant could have gone with the girl with no single person seeing them.

In short it is the girl's word against that of the Appellant.

In the absence of any other evidence like recent sexual activity or other witnesses as to the participation of the accused/appellant, it was very dangerous to convict the accused on the scanty evidence for such a serious crime.

In criminal cases, the prosecution must prove the case beyond reasonable doubt. The evidence adduced in the instant case falls short of pointing to

the Appellant as the one responsible for defiling the victim if at all she was defiled on the day alleged.

I find that the charges against the appellant should have been dismissed and the accused acquitted.

Accordingly set aside the conviction, sentence and compensation order against the accused/appellant.

I substitute the same with a finding of not guilty and acquit the Appellant/accused accordingly.

The Appellant is to be set free forth with.

**Godfrey Namundi**

**JUDGE**

**31/7/2015**

31/07/2015:

Appellant present

Resident State Attorney - Shamim Nalule

Court: Ruling delivered.

**Godfrey Namundi**

**JUDGE**

**31/7/2015**