

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

CRIMINAL SESSION CASE NO. 0405 OF 2013

UGANDA:.....PROSECUTION

VERSUS

MUHAMMED

JJUKO

KATEREGA:.....ACCUSED

BEFORE: THE HON. JUSTICE WILSON MASALU MUSENE

This Judgment arises in a case whereby the accused, Mohammed Juuko Katerega was indicted with the offence of Aggravated Defilement C/S 129(3) and 4(c) of the Penal Code Act.

The particulars were that the accused during the year 2012 at Mengo, Rubaga Division in Kampala District performed a sexual Act with his biological daughter, Najjuko Hamida a girl aged 15 years. When the accused was arraigned in court, he pleaded not guilty.

The prosecution relied on PF3, a Medical examination of the victim, Hamida Najjuko which was done on 22.3.2013. The same was admitted in evidence under **S. 66** of the **T.I.A.**

The prosecution also called three witnesses, PW1, Geoffrey Onen, a Principal government analyst, PW2, Patience Bahirike, a social worker and PW3, Najjuko Hamida, the victim. The accused on the other hand gave sworn evidence and did not call any witness. He denied the charge. It is trite law that an accused does not bear the burden to prove his/her innocence. This is because under Article 28(3) (a) of the Constitution, an accused person is presumed innocent till proved guilty or till he/she pleads guilty.

Secondly, an accused person should not be convicted on the weakness of the defence but rather on the strength of the prosecution in case **(see Uganda vs. Dick Ojok, {1992 -1993} HCB 541.**

In a case of Aggravated Defilement such as the present one, the burden is on the prosecution to prove the following ingredients:-

1. That the victim was below 18 years and was the daughter of the accused.
2. That the victim was subjected to sexual intercourse.
3. That it was accused who was responsible for the act of sexual intercourse.

As far as the age of the victim was concerned the medical report, police Form 3A was tendered in evidence U/S 66 of T.I.A. Dr. Barungi put the age at 15 years. The same PF 3A also stated that the victim was defiled by the father. Furthermore, the evidence of PW1, Geoffrey Onen, the Principal Government Analyst who carried out biological experiments from the blood samples of the victim, Najjuko Hamida and the accused, and mother swaps from the two twins produced by the victim was very crucial. PW1's evidence was that after thorough examination of the four D.N.A profiles, the results were that the accused was the father of Babirye the first twin, as well as Nakato, the second twin. It was further confirmed by PW1 that the accused was also the biological father of the victim, Hamida Najjuko.

The prosecution has therefore proved the 1st ingredient of the offence beyond reasonable doubt.

In my view, the same evidence proves the second ingredient that the victim was subjected to sexual intercourse, hence producing identical twins.

As far as the third ingredient is concerned, not only is the evidence of PW1 sufficient, but the same is corroborated by PW2, Patience Bahirirwe. She testified that in 2013 while she was working as an administrative Assistant in Wakisa Ministries, an N.G.O, the victim Najjuko Hamida was taken to her when she was 5 months pregnant. They looked after her (that is the organization), till she delivered the twins and revealed that it was the father who was responsible. PW2's evidence was that she reported the accused to police and he was arrested and charged.

To crown it all, PW3 was Najjuko Hamida, the victim. She confirmed that accused; Muhamed Juuko is her biological father with whom they were living in 2012. PW3, amidst tears and cries told this court that accused used to play sexual intercourse with her every night and that if she refused, he would threaten to cut her with a panga.

PW3 narrated to court how she asked accused why he was playing sex with her yet he was the father. She said accused could get annoyed and refer to her as a bastard and at times box her in bed. PW3's sorrowful testimony concluded that accused used to play sexual intercourse with her

so many times till she became pregnant and produced the twins. PW3 also told court how the accused was arrested and how blood samples were taken from her and the twins, otherwise he added that one Richard had attempted to play sexual intercourse on her but she resisted. And that it was after reporting Richard to accused her father, that accused decided to turn on her.

In the premises and given that solid and unweathering testimony of PW3 and other witnesses, I find and hold that the accused's defence of denial was merely to evade the course of Justice. The story that he had two wives, whose names he could not tell properly, was in my view a pack of lies and his so called Defence is hereby rejected. I find and hold that the third ingredient of the offence has been proved by prosecution beyond reasonable doubt.

Having found and held that prosecution has proved all the ingredients of the offence beyond reasonable doubt, and as advised by the Assessors, I do hereby convict the accused of Aggravated Defilement.

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WILSON MASALU MUSENE

JUDGE

13.4.2015

Accused present

Wanamama for State.

Mr. Alenyo on watching brief.

Mr. Mooli Albert for accused

Assessors present

Olive Nassuna, court clerk present.

Court: Judgment read in open court.

Wilson Masalu Musene

Judge

Mr. Wanamama for State:

I have no previous criminal record. However, the maximum penalty is death. The recent sentencing guidelines put the minimum at 30 years. The victim was a daughter of the convict. It is a rare case. I call for a harsh and rehabilitative sentence.

He should be put away from his other children and girls in society.

Wilson Masalu Musene

Judge

Mr. Mooli Albert

Convict is 47 years old. He has been on remand for 4 years. He has two wives and 6 children. He regrets the incident and prays for mercy.

Wilson Masalu Musene

Judge

SENTENCE AND REASONS:

At this stage of civilization, it was indeed a cruel and degrading Act to play sexual intercourse with one's own daughter.

It is also contrary to the African traditions and cultures, including Buganda customs where convict and victim belong. It defeats all understanding of all people for one to leave all women and pounce on his own daughter as the convict did. In her testimony, victim said that she kept on asking his father why he was doing all that as a parent and that convict would threaten her and at times beat her.

The courts of law will not sit back and watch such cruel, crude, barbaric, uncivilized and uncalled for actions like convict did. The convict does not deserve any mercy, and as prayed by

State Counsel should be kept out of society for a fairly long period to protect young children including his own. The court as usual is obliged to take into account mitigating factors such as being a first offender and regretting the act.

I shall also take into account the 4 years of remand.

Before sentence, I call upon all members of society that we should respect our traditions and customs (in Africa) which are unparalleled to other peoples cultures elsewhere in Europe and America. In such places, practices which are abhorred by African cultures like sodomy and homosexuality are freely practiced. But even then, Americans and Europeans don't play sexual intercourse with their own children. It is goats and cows and other wild animals that sometimes do so.

All in all and in the circumstances, instead of 29 years, I subtract the period of 4 years of remand and do hereby sentence you to serve 25 years imprisonment.

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WILSON MASALU MUSENE

JUDGE

13.4.2016