



Prosecution relied on the evidence of the victim (PW.4) the victim Bando Christine who confirmed that the accused is her stepfather. Accused in defence also did confirm the same. Also the mother DW.2 confirmed that accused was a stepfather of the victim. The evidence above sufficiently proves the fact that accused was a person under authority over the victim.

### **3. Performance of Sexual Intercourse**

There was evidence of PW.4 the victim, PW.1, PW.2 and PW.3 all who heard and saw PW.4 pregnant. Also evidence of PE.1 showing that the victim was defiled and by examination was about 3 months pregnant. Prosecution also relied on PE.3 (charge and caution statement). All the above prove sufficiently that there was sexual intercourse of the victim.

### **4. Participation**

I warned the assessors, and I warned myself on the evidence of participation.

The evidence on record from PW.1, PW.2, PW.3, PW.4, PE.1 and PE.3, proposes that it was accused person who had sexual intercourse with the victim. However accused and his defence through DW.2 and DW.3 denies the same. This type of evidence must be received with caution.

The prosecution has the burden to destroy the alibi set up by accused in his defence. Also counsel for accused relies on evidence of DW.2, as strong corroboration of accused's alibi. He also sought to cast doubt on the medical report (PE.1) on grounds that it gravely contradicts PW.1's evidence as it shows that by date of examination she was already pregnant yet she claimed she had never had sex before the alleged defilement.

Counsel further argued that the prosecution's evidence lacks the necessary corroboration of the victim's evidence and should not be believed.

I have carefully and with due caution examined the evidence on record and I do find as herebelow.

The prosecution has placed before court evidence of a single identifying witness. The evidence is side by side that of PE.1 (medical examination report), and PW.1, PW.2 and PW.3's testimonies.

The Court of Appeal in the case of *Okello Geoffrey v. Uganda Civil Appeal 0329-2010*, quoting *Basoga Patrick v. Uganda Cr. App. 42/2002* and *Mukungu v. R (2003) 2 EA*, held that:

*“The position of the law as regards corroboration in sexual offences is that a conviction can be entered even if there is no corroboration so long as the court has cautioned itself of the danger of conviction without corroboration... the evidence of a victim in a sexual offence the test to be applied to such evidence is that it must be cogent . The cogency itself is determined after a full evaluation of the evidence including whether or not the victim is a truthful and reliable witness. It goes without saying that if the evidence adduced of the victim is worthless, no conviction can be based on it but that if it is credible, a conviction can be based on it even if there is no corroboration.”*

That is the test I will subject to the evidence of PW.4.

The witness was in court. I observed her as she gave her evidence. She was bold, honest and truthful. She did not attempt to explain away the perceived inconsistency in her evidence and the medical report. She honestly said, she did not remember the exact date she was defiled but maintained it was only the accused (her father) who had ever played sex with her, and after the encounter she became pregnant.

She maintained that after the incident of discovering her being pregnant her mother sent her away to go and leave with her biological father, and that the accused on learning of her pregnancy ran away to Kidongole. There is consistency in her testimony even when it is tested against the rest of the evidence on record. The fact of her becoming pregnant is not denied by accused, who maintains it was other men who did so. The mother (DW.1) however was very evasive and feigned ignorance of her daughter’s pregnancy and denied knowledge of the fact that she even gave birth. I noticed in court that DW.2 (mother) and DW.3 (**Okia Yona**) were very evasive witnesses and depicted an unreliable demenour in court.

They were unwilling to answer questions put to them in cross-examination.

On the other hand PW.1, PW.2, PW.3 all state that the victim was impregnated and the accused and his wife (DW.2) were informed about it, but became hostile. (Evidence of PW.1).

**PW.3 Engroit Albert** recorded a charge and caution statement from the accused. The accused denied it as a forgery. After due inquiry court found that the statement was voluntary. The statement was admitted as PE.3. The content corroborates evidence of PW.4, in all material particular.

In admitting this exhibit court was aware that once a statement is repudiated, then even if it is admitted, it is not enough to base a conviction on it without other independent evidence to corroborate it. See: ***Omat Joseph v. Uganda Cr. App. 10/2001*** following ***Adroa Asenua & Anor. V. Uganda Cr. Appeal 10 of 1998.***

In this case PE.3 is corroborated by PW.4's evidence and vice versa.

I do find that the evidence of the defence of alibi is effectively destroyed by the evidence put forward through PW.1 who is an identifying witness placing accused at the scene of crime, alongside PE.4 where accused confesses that he indeed played sex with the victim on the alleged occasion.

The defence of alibi is therefore unavailable to the accused.

I have examined the alleged discrepancies or inconsistencies in the evidence and I find them minor. The fact that PE.1 (medical report of the victim) contains the fact that "hymen ruptured two weeks ago" and then the victim is about 3 months pregnant" is a contradiction. There is no explanation for it but, the evidence contained in PE.3, PW.1, PW.2, PW.3 and PW.4's evidence shows that as a result of the sex, the victim got pregnant and gave birth to a child who is still living. The doctor's guesswork of the length of rapture of hymen or pregnancy period remains a speculation which does not wash away the glaring truth that the victim was sexually assaulted and she became pregnant. When did the sex happen? From evidence of PW.4 it was on the day the mother left to go for burial.

DW.2 in her evidence confirmed that indeed she went to attend a burial but she never slept there. This admission confirms the fact that the day that accused is alleged to have defiled is traceable to that day of burial. The accused through PE.3 however clearly confesses that on the day the wife left for burial he developed sexual argue for PW.4, and indeed lured her into sex, where after she got pregnant. The discrepancies pointed out by defence, are too minor and do not go to the root of this chain of causation

to create a doubt in the prosecution's case. The prosecution's case is strong in its assertion that the accused person was indeed the culprit.

This fact is further supported by the accused's alleged behavior of running away to Kidongole after realizing that PW.4 is pregnant. This evidence is supported by the testimonies of PW.1, PW.2, PW.3 and PW.4. Accused's conduct was not consistent with innocence. I do not believe the defence. The defence amounts to mere denials. The witnesses called were evasive. The prosecution destroyed the defence of alibi. There is no doubt in my mind that the accused person in this case committed the sexual intercourse against the victim.

The assessors in their joint opinion also found accused liable and advised court to convict him as charged.

I am in agreement with their finding. I do hereby find that the accused person is guilty of the offence of defilement. I find him guilty and do convict him thereof as charged.

**Henry I. Kawesa**

**JUDGE**

**13.09.2016**