

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT LUWEERO
HCT -00-CR-SC-0340-2013
(Arising from Luweero Criminal Case No. Luw/AA/031/2013)
Which also arose from Police Case No. L/CRB/0556/2013)

UGANDA **PROSECUTION**

VERSUS

SSALI SULAIMAN **ACCUSED**

BEFORE: HON. MR. JUSTICE JOSEPH MURANGIRA

J U D G E M E N T

1. Introduction:

- 1.1. The Prosecution is represented by Ms. Nabasitu Daisy, Principal State Attorney, the Resident State Attorney Luweero District.
- 1.2. Whereas the accused is represented by Mr. Walyemera Daniel from G. Baguma & Co. Advocates, Kampla, on state brief.
- 1.3. The Assessors in this case are
 - (i) Mr. Herbert Masaba
 - (ii) Issah Kiwalabye

2. Indictment

The Accused, Ssali Sulaiman, was indicted for aggravated defilement contrary to section 129 (3), (4) (a) and (c) of the Penal Code Act, Cap. 120, Laws of Uganda.

3. Brief facts of the case

The Accused, Ssali Sulaiman, between August, 2012 and April 2013 at Nalyamagonja village in Luweero District had sexual intercourse with Nabukenya Zubeddah, a girl aged 14 years.

4. Witnesses in the Case

4.1 Prosecution witnesses.

The prosecution called the following witnesses.

- (i) Nabukenya Zubeddah, the victim, PW1.
- (ii) Kawenaho Suwedi, PW2.

4.2 Defence witnesses

The defence never called any witnesses. In his defence the accused opted to keep quiet, which is his constitutional right.

5. Burden of Proof and standard of proof

5.1 Before resolving the issues in this case, it is important to note that in all criminal case except in cases of statutory offences, the prosecution bears the burden to prove all the ingredients of the charged offence.

5.2 The standard of proof is proof beyond reasonable doubt.

5.3 This burden of proof does not shift to the accused to prove himself innocent. The burden of proof always rests in the prosecution. And it is also our criminal law system that the accused should not be convicted on the weakness of the defence case or on mere suspicion. Any conviction must be based on the strength of the case as established by the prosecution through its witnesses. If there is any doubt in the prosecution case, such doubt must be resolved in favour of the accused. See the case of **Woolmington vs. DPP [1935] A.C 462 and the law of Oketcha Richard vs. Uganda Supreme Court Criminal Appeal No. 26 of 1995.** All these cases are enshrined on the principles as expressed in Article 28 (3) (c) of the Constitution of the Republic of Uganda and section 101 of the Evidence Act, Cap. 6, laws of Uganda, which are the presumption of innocence of the accused person until he/she is proved guilty by the prosecution.

6. Ingredients of the Indicted offence

In order for the prosecution to sustain the charged offence against the accused, the prosecution must prove the following ingredients of the offence of aggravated defilement which are well set out in section 129 (3), (4) (a) and (c) of the Penal code Act. They are:

- (i) The victim was aged 14 years and below.
- (ii) There was a sexual act that was performed on the victim.
- (iii) The accused is the person who participated in the commission of this charged offence against the victim.
- (iv) The prosecution also in this instant case has to prove that the accused was a guardian or was a person in authority of the victim.

7. Submissions by both Counsel for the parties.

7.1 In her submissions, Counsel for the prosecution, Ms. Nabasitu Daisy, Principal State Attorney, evaluated the evidence of the prosecution on every ingredient of the charged offence. She relied on the relevant law in her submissions in support of her arguments. She prayed this court to find the accused guilty of the offence of aggravated defilement and the accused be convicted accordingly.

7.2 In reply, counsel for the accused, Mr. Walyemera Daniel consented on the first two (2) ingredients of the offence charged. He however, endeavoured to challenge the 3rd and 4th ingredients of the charged offence. He submitted that the accused never participated in the commission of the charged offence. He stated in his submissions that the prosecution failed to prove its case against the accused person beyond reasonable doubt. He cited case law in support of his arguments. He prayed that the accused be acquitted of the charged offence of Aggravated Defilement.

8. Assessors' Opinion

I summed up notes to the gentlemen Assessors. In their joint opinion, the assessors found that the prosecution proved the four ingredients of the charged offence of Aggravated Defilement against the accused beyond reasonable doubt.

They advised me to find the accused guilty of the charged offence and convict him accordingly.

9. Resolution of this case by Court

9.1 At the time of submissions, both counsel for the parties agreed that the prosecution proved the 1st and 2nd ingredients of the charged offence. In their joint opinion, the two gentlemen assessors agreed to this position.

9.2 On the 1st ingredient

The victim was aged 14 years.

The prosecution adduced evidence from the medical evidence, the victim, PW1 and the grandfather, PW2. The victim herself in evidence stated that at the time of the sexual act on her, she was aged 14 years. This were corroborated by the evidence of PW2, who stated that the victim, PW1 was at the time the offence was committed, she was aged 14 years. Then PF 3A (Exh. P.1) upon which the victim was examined, and which was allowed in evidence for the prosecution pursuant to Section 66 (1) of the Trial on Indictment Act, Cap. 23 Laws of Uganda by consent of both parties proved that the victim at the time of the commission of this charged offence was aged 14 years.

Therefore, in agreement with both counsel for the parties and gentlemen Assessors, I hold that the victim was aged 14 years at the time the charged offence was committed against her. I further make a finding that the prosecution proved this 1st ingredient of the charged offence beyond reasonable doubt.

9.3 On the 2nd Ingredient of the offence charged: There was a sexual act Performed on the Victim

In her evidence, Nabukenya Zubeddah (PW1), the victim in her evidence stated that in 2012, she went together with the accused whom she was staying with to pick coffee in the coffee plantation. And that while there the accused forcefully had sexual intercourse with her. PW1 went on to state in her evidence that in January 2013, while she had gone with the accused to

plant maize in the garden near a swampy area, still the accused forced her into unlawful sexual intercourse. That on all occasions she could raise an alarm but nobody could come to her rescue. That she informed her mother of these incidents of which the mother did not take up immediate actions against the accused.

PW1 in her evidence stated that one month later she realised that she was pregnant. That she gave birth to a baby boy whom she handed to her mother to take care of. The pregnancy was proved by the medical report (Exh.P1) on which she was examined and she was advised by the examining medical officer to start the antenatal care immediately. PW2 in his evidence corroborated the evidence of PW1 and confirmed that PW1 became pregnant and produced a baby boy. Therefore, in agreement with the both counsel for the parties and the two gentlemen Assessors, I find that the prosecution proved this 2nd ingredient of the charged offence beyond reasonable doubt. There was indeed sexual act that was performed on the victim.

9.4 On the 3rd and 4th ingredients of the **charged offence**

- Participation of the accused in the commission of the **charged offence; and**
- That the accused was a guardian or a person **in authority of the victim.**

In his submissions, counsel for the accused, Mr. Walyemera Daniel, contested the participation of the accused in the commission of this offence. He submitted that the prosecution failed to prove its case against the accused beyond reasonable doubt. Counsel for the accused in his submissions raised the issue of identification of the accused by victim. He submitted that from the evidence of PW1 that during the said narrated incidents, there was no other person in their presence who could corroborate her evidence. He referred to the case of *Kiwanuka & Another vs. Uganda* [1977] HCB 1, whereby the court held that.

“A witness may be truthful but there would be a risk of a honest mistake particularly in the identification of the accused person”

In her submissions in rejoinder, Counsel for the prosecution does not agree with the submissions by counsel for the defence. She submitted that in sexual offences there is no need for corroboration of the evidence of the victim.

In her evidence PW1 the victim stated that the accused was married to her mother. That the accused is her father although not the real biological father. She had stayed in house with him and her mother or her parents since childhood. The accused was personally known to the victim and for the last 14 years, she was seeing the accused at their home. Again on all the two occasions the accused performed the sexual act on the victim was during day. Therefore, I am in agreement with counsel for the prosecution that there was no mistaken identity of the accused by victim. Besides, the victim reported incidents to her mother, though the mother decided to keep quiet about the whole matter. The victim also later informed PW2 of how the accused defiled her. Even at the police, in her statement she maintained that it was the accused who defiled her on those two occasions. The victim was consistent in her story she told to the 3rd parties in this case. It is important to note that in cross-examination, the defence's evidence were about on who would bring up the baby boy, the product of the sexual intercourse between the victim and the accused, to be a responsible person. In response, PW1 replied that:

“Her and the accused could be the ones to bring up their child to a responsible person in future”.

In evidence the defence never challenged PW1's evidence in examination in Chief. This clearly showed court that the defence was satisfied with the evidence of PW1 as it was given against the accused, which evidence totally incriminated the accused in the commission of the charged offence. In my considered view, therefore, counsel for the accused could not have raised the issues of identification of the accused during the commission of the charged offence and that of corroboration of the victim's (PW1) evidence.

In the issue of corroboration in sexual offences, the victim's evidence which is given on oath and tested in cross-examination by the defence is the best evidence. The evidence of PW1 is strong enough to the extent that it does not need to be corroborated. Such sexual act which is done in privacy, the evidence of the victim when believed by court is enough to incriminate the accused. The case of **Basonga Patrick vs. Uganda Criminal Appeal No. 42 of 2001**, quoted the case of *Rukunga vs. Republic* [2003] EA with approval, that the court of Appeal

of the Republic of Kenya found that there was no basis for requiring corroboration of the victim's evidence.

In that case a man raped a lady who she alleged she knew before, but not by name. The man was not medically examined and therefore there was no medical evidence to connect him with the charged offence. Neither was there independent evidence connecting the accused with the crime save that there was ample evidence that indeed showed that the complainant was raped. The trial court believed the complainant and convicted the accused. The High Court confirmed on first appeal the Lower court's findings. On second appeal to the Court of Appeal, the only point raised by the Appellant was that the conviction was based on uncorroborated evidence. It was held:

“The requirement of corroboration in sexual offences affecting adult women and girls is unconstitutional to the extent that the requirement is against women and girls who think that time has now come to correct what we believe is a position which the courts have thereto taken without a proper basis, if any basis existed for treating female witnesses is differently in sexual case such basis cannot be properly be justified presently. The framers of the Constitution and Parliament have not seen the need to make provisions to deal with the issue of corroboration in sexual offences. In the result we have no hesitation in holding that decisions which hold that corroboration is essential in sexual offences before a conviction are no good law as they conflict with section 82 of the Constitution”

On 22nd April, 2004 the Court of Appeal of Uganda in its Judgment agreed with their approach. Depending on the circumstances of the case, the victim's evidence, like in the instant case before me, as a single witness proves the offence of defilement, generally there is no requirement of corroboration.

Consequently, I saw the victim, PW1 give evidence in court. The victim was steady, unshaken and she never contradicted herself even during cross-examination. There is no doubt in my mind that PW1 was speaking the truth. Her evidence is believable and reliable. In the case of **Nankya Vs. Uganda, Supreme Court, Criminal Appeal No. 24 of 1995**, it was held that:

“Whether a court believes one witness and disbelieves another is a question of credibility after the court has considered all the evidence and demeanour of witnesses”

In this instant case before me, that is what I exactly did before coming to the conclusion of believing PW1’s evidence. In this case the victim’s evidence put the accused at the scene of crime. Again, in this case, there is the corroborative evidence of the birth of a baby. In cases of **Mujuni Apollo Vs Uganda, Criminal Appeal No. 46 of 1999 at page 5** of the Court Judgment, their Lordships of the Court of Appeal held that:

“In sexual offences the court should normally look for corroboration of the evidence of the complainant but may convict on the evidence of the complainant done after due warning”.

In the result, therefore, I am in agreement with counsel for the prosecution and the two gentlemen Assessors that the prosecution proved the 3rd and 4th ingredients of the charged offence against the accused beyond reasonable doubt.

10. Conclusion

Considering the prosecution evidence on court record, the submissions by both counsel for the parties and my own evaluation and analysis of the evidence on court record and the law applicable to this case, I am in agreement with counsel for the prosecution and the two gentlemen Assessors, and I hold that the prosecution proved all the ingredients of the offence charged against the accused beyond reasonable doubt.

The accused is therefore, found guilty and convicted of the charged offence of Aggravated Defilement Contrary to Section 129 (3), (4), (a) and (c) of the Penal Code Act (Supra).

Dated at Luweero this 6th day of April, 2016.

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JOSEPH MURANGIRA
JUDGE

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT LUWEERO
HCT -00-CR-SC-034-2013
(Arising from Luweero Criminal Case No. Luw/AA/031/2013)
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UGANDA **PROSECUTION**
VERSUS
SSALI SULAIMAN **ACCUSED**

BEFORE: THE HON. MR. JUSTICE JOSEPH MURANGIRA
PROCEEDINGS
10/3/16

MS. Nabasitu Daisy Principal State Attorney for the State.
Mr. Walyemera Daniel form Baguma Co. Advocates for the Accused.

The accused is in court. The matter is for plea.

Mr. Kavuma Michael the Clerk in Court.

Court: The indictment is read and explained to the accused in the language he understands.

Joseph Murangira

Judge

10/3/16

Accused: It is true, my lord.

Court: Plea of guilty entered upon his submission of the charge.

Joseph Murangira

Judge

10/3/16

Prosecution: I am not ready with the facts. I pray for an adjournment to tomorrow.

Mr. Walyemera Daniel for the Accused no objection.

Court; The matter is adjourned to 11/3/16 at 9.00 a.m. for facts taking.

Accused further remanded.

Joseph Murangira

Judge

10/3/16

11/3/16:

Ms Nabasitu Daisy Principal State Attorney for the stat.

Mr. Walyemera Daniel for the Accused. The accused is in court. The matter is coming to read the facts.

Mr. Kavuma Michael the clerk is in Court.

Prosecution: The accused was indicted for Aggravated Defilement c/s 129 (3),(40(a)and (c) of the Penal Code Act. The victim Nabulya Zubedda was at time aged 14 years and she is a daughter Kadija Nabunya and Masadi Balikowa, Kadija Nabukenya divorced the father when the victim was aged 3 years. She came staying in Luwero concubining with the Accused together with the victim.

In March, 2013, the victim's grandfather Kawonaho Sowedi got information that the victim was pregnant. That she no longer went to school.

It was at that he came to inquire from the victim who could have impregnated her. The victim revealed that in August, 2012, the accused found her in a coffee plantation and requested her sex, but she refused but he forced her into sex.

She raised an alarm but no one came to her rescue. On coming back home she informed her mother, who played it cool. Her mother informed the victim that if the accused repeated it, the matter would be reported to police.

Later in the month of January, 2013, the suspect went with the victim to dig till the evening. And in an isolated swampy area, the accused forced the victim into sexual intercourse. And due to the repeated acts, the victim became pregnant.

This matter was reported to the police by her grandfather and the accused was arrested.

The victim was subjected to medical examination on police Form 3A on 11/4/2013. It was discovered that she was pregnant and her hymen was broken some time back and she need to start Antenatal case.

The accused was also examined on PF 24A on 30/4/2013 and he was found to be 24 years old and of normal mental status.

I pray to exhibit PF 3A and PF 24A in court.

Counsel for the Accused: I have no objection.

Court: PF 3A and PF 24A are allowed in the facts for the prosecution and marked Exh. PA and Exh. PB respectively.

Joseph Murangira

Judge

11/3/16

Prosecution: Those were the facts of the case.

Accused: The facts are not correct.

Court: The accused was changed his plea of guilty to a plea of not guilty. A plea of not guilty is entered.

Joseph Murangira

Judge

11/3/16

Prosecution: The witnesses are not in court today.

We have agreed with counsel for the accused on the agreed facts as stated on Facts: agreed up by both Nabukenya Zubeddah was examined on 11/4/2013 at Bamugolodde Health Centre 3 on a defilement case which was referred to that. from Kalongo police PF4. That victim is 14 years old and that the circumstances as narrated are that the victim was assaulted by her step father in January 2013, being the 2nd time. And in the due cause she conceived.

The victim was of a normal mental status. Had no injustices on the chest but the breasts were enlarged and darkened. The abdomen had distended with a mass of about 20/40. And that the hymen was broken some time back. That she need to start antenatal immediately. And that she was pregnant.

She was examined by the medical clinical officer called Nakiyingi Juliet.

That about the accused. He was examined on PF 24 at Kasana Health Centre 4. He was referred there by Luwero Police Station on charges of Aggravated Defilement. He was found to be a male...aged 24 years and was of a normal mental status. He did not have any injuries and no any relevant observations were made. He was examined by medical clinic officer Mr. Obbo James. It was signed, sealed and dated 30/4/2013.

Prosecution: I pray to tender these 2 exhibits as agreed upon by counsel for the accused.

Mr. Walyemera Daniel for the Accused.

No objection. That is the true prosecution we have agreed to.

PF3A and PF 24A are allowed in the evidence for the prosecution as Exh. P1. And Exh. P2 respectively.

Joseph Murangira

Judge

11/3/16

Prosecution: We need to have the Assessor's opinion.

Assessors:

1. Mr. Herbert Masaba, 32 years. Teacher by profession, currently I am not teaching, I reside in Kasoma zone, Luwero Town Council, - 0773-001467. I am a protestant.

Counsel for the accused: No objection to him being an Assessor in this case. The assessor has taken his role.

2. Mr. Isaah Kiwalabye, 48 years, businessman, at Ngogolo Trading Centre in Butuntumula sub. County in Luwero district. I am a Muslim – 0782-086030 affirms.

Counsel for Accused: No objection to him being an Assessor.

The Assessor has taken his role.

Prosecution: We pray for an adjournment to 15/3/16.

Court: By consent of the parties this matter is adjourned to 15/3/16 at 9.00 a.m for hearing.

Accused further remanded.

Joseph Murangira

Judge

11/3/16

15/3/16:

Ms. Nabasitu Daisy Principal State Attorney for the state.

Mr. Walyemera Daniel for the Accused.

The accused is in court. We are not able to bring the witnesses for today. I pray for an adjournment.

Mr. Walyemera Daniel for the Accused.

I have no objection the adjournment.

Court: by consent of the parties this case is adjourned to 30/3/16 at 9.00 a.m. for hearing.

Joseph Murangira

Judge

15/3/16

30/3/16:

Ms. Nabasitu Daisy Principal State Attorney for state.

Mr. Walyemera Daniel for the accused. On state brief. The accused is in court. We have 2 witnesses and we are ready to proceed. The 2 Assessors are in court. Mr. Nekusa Amos the clerk in the court.

PW1: Nabukenya Zubedah, 17 years peasant farmer in Kayirima village, Kigejjo parish Kalongo sub. County in Nakasongola District. I do not go to school. Muslim affirms.

In 2013 I was in school but it was a holiday time, I was in Butuntumula was in Primary school. I was aged 14 year. I was staying with my mother Nabunya Hadija, Saali Sulaiman (Accused). Saali Sulaiman had married my mother. My biological father is called Balikoowa Masudi. I stayed with my mother and the accused when I was still young. By the time I came to understand, we were staying with the accused.

In August, 2012 we had some to the coffee plantation to pick ready coffee. Then the accused forced me into sexual intercourse. As were picking the coffee the accused told me that she loves me and I told him that but you are my father but he said he was not my biological father and he defiled me by force. He threw me down, removed my knickers, he inserted his penis into my vagina. I screamed but nobody came to my rescue. After defiling me, he said that I should not report him to my mother. He gave me money not to tell my mother, but when I reached home I told my mother. My mother told me when he does next again I should tell her. The accused kept denying.

In January, 2013 during the day time the accused again defiled me. We had gone to plant maize near the swamp. I was with the accused. He got hold of me, threw me down, removed

my knickers and defiled me . I made an alarm but no body came to my rescue. My mother had gone to my maternal grandfather.

The accused told me of not to tell my mother. When she came back and I told her and my mother told my grandfather called Mukiibi Mustapha. After one month I discovered I was pregnant. It is because I was no longer feeling the same. I kept at home and every time I could be sleeping my mother came to know that I was pregnant. My mother called my grandfather, Kawonaho Sowedi who came and they arrested the accused shifted me and took me to Naalya village, Wakinoni Kasiso. He was later arrested. I was taken to the police of Kalongo to report the accused.

The police wrote a letter and sent me to Bamugolodde Health Centre. I was examined and the nurses told me that I was pregnant of 5 months. They told me that I should start antenatal care until I gave birth on 30/7/2013 to a baby boy. The bay is now with my mother.

I do not stay with my mother. She stays in Nabilya.

These are the only 2 incidents the accused defiling me. When he would be defiling me. I could feel pain and blood could come from my vagina.

In the same house, we were staying with Byansi Jamail (my younger brother), Hussan Ssekyanzi (4 years), Sebaana Muhamed (7 years) and others but I was the oldest child.

I only had forceful sex with the accused.

I left the kid with my mother.

That is all.

Counsel for the accused cross examination.

- I want my child to be a responsible person in future.
- The accused could be the ones to bring up our child to a responsible person in future.

Cross-examination: Closed.

Cross-examination: The accused has 4 children with my mother.

- My mother is still in his home.
- The accused is a Muslim.

- When we were staying with him he was a Muslim.

Cross-examination: The home where my child is with my mother belonging to the accused.

Re-examination: Closed.

PW1, Sowedi Kawonaho, 70 years, peasant farmer in Kanyima village, Kigejjo parish Kalongo sub.county in Nakasongola district.

Muslim affirms s/s. I know Nabukenya Zubedah this is my grandchild. Her father is Masudi Balikowa who is Luzira prison. He was accused of killing a person. The victim's mother is Kadija and she stays in Butuntumula . Zubedah is now aged 18 years. I do not know when she was born.

Zubedah was staying with her mother since her birth until she was removed from there when she became pregnant. I saw the accused when she was arrested. He was arrested because he impregnated Zubedah (victim). I first heard rumours that the victim no longer was going to school as she was found to be pregnant. I then called Haji Rajjab Byekwaso, the younger brother of the father of the victim. He came to me , then went to where the victim was staying and found the her pregnant and the accused was then arrested. I was told that the accused forced the victim into sex and impregnated her. I went to the police at Kalongo police post and we made a statement.

I talked to Zubedah who told me that the accused forcefully defiled her and impregnated her.

The victim produced a baby by now the victim stays with her aunties. The baby is with the victim's mother.

That is all.

Counsel for the Accused cross-examined. Nil.

Prosecution: The prosecution wishes to close its case.

Counsel for the Accused:

We are not making submissions one a no case to answer. I leave it to court.

Prosecution: We, too leave it to court.

Court: according to the prosecution evidence on court record, the prosecution has established a prime facie case against the accused.

The accused therefore can offer a defence, if any.

Joseph Murangira

Judge

30/3/16

Counsel for the Accused: I pray adjournment to 31/3/16.

Prosecution: No objection.

Court: The case is adjourned to 31/3/16 at 9.00 a.m for defence.

Accused further remanded.

Joseph Murangira

Judge

30/3/16

31/3/16:

Mr. Walyemera Daniel for the accused on state brief. The accused is in court

Ms. Nabasitu Daisy Principal State Attorney for the prosecution.

The matter is for defence

The accused person has elected to stay silent. He is not calling any witnesses. The 2 Assessors are in court.

Mr. Kavuma Michael the clerk is in court.

Prosecution: We would have submitted now, but there are others to be heard. In the premises. We pray for an adjournment to 4/4/16

Court: The matter is adjourned to 4/4/16 at 9.00 a.m for submissions.

Accused further remanded.

Joseph Murangira

Judge

30/3/16

4/4/16:

Ms. Nabasitu Daisy Principal State Attorney for the state.

Mr. Walyemera Daniel is the accused on state brief. I am ready to proceed. The 2 Assessors are in court.

Mr. Kavuma Michael the clerk is in court.

Prosecution: The matter is for final submissions. The accused is indicted with Aggravated defilement c/s 129 (3) and (4) (a) and (c) of the Penal Code Act.

Brief facts of the case are that Saali Sulaiman between August 2012 and April 2013 at Nalya Magejjo village in Luwero district had sexual intercourse with Nabukenya Zubedah a girl aged 14 years.

We called 2 witnesses Nabukenya zubedah the victim and Kahanaho Sowedi the grandfather of the victim.

In proving this case the burden of proof entirely lies on the person to prove all the ingredients of the offence beyond reasonable- Ref. Woolimington vs. DPP (1935) Act.

In the proving the ingredients of Agg. Defilement.

- Age of the victim that she was below 14 years.
- That sexual act was performed on her
- The accused is the one who participated in the commission of act of offence.
- We have also prove that accused is guardian or a person in authority to this victim.

On the ingredient of Age:

This was proved by the victim herself in her evidence when she stated that she was 14 years in 2013.

Then PF3 A – Exh. P1 after which she was examined proved that her age at the time was 14 years. Therefore, we have proved that she was aged 14 years pursuant to section 129 (4) (a) of the P.C.A.

On 2nd ingredient:

On performing of a sexual on the victim. It was PW1 (victim) in here evidenced state that on 2012 they went together with accused within whom they were staying to pick coffee while there the accused made sexual advances to the victim which she refused. Therefore the accused pulled her down, removed her knickers and had sexual intercourse with her. She made an alarm but no body came to her rescue she told this court that she informed her mother who promised that if the accused does it again she would take up the matter.

PW1 went on to state that in January 2013 while she had gone with the accused to plant maize near the swapy area, still the accused person forced her into sexual intercourse. She raised an alarm and nobody came to her rescue and she also informed her mother of this incident which the mother did not take up immediately.

PW1- further stated that one month after she was pregnant and that she gave birth to a baby boy who she handed over to her mother to take care of.

This pregnancy was proved on police form 3A on which she was examined and she was advised to take antenatal care immediately.

PW2 – also conformed the pregnancy and subsequently of her giving birth by the victim.

On the 3rd and 4th ingredients:

PW1 stated in her evidence that the accused her father although not the biological father – but was a concubine with her mother with whom she stayed with since childhood.

The accused was personally known to the victim because they used to stay together in the same house.

And on all the 2 occasions the accused performed the sexual act on the victim was during day time and therefore there was no possibility of mistaken identity. Besides the victim reported these incidents to her mother though the mother decided to keep quiet about it until a time PW2 got to know about it and sent the victim's uncle one Byekwaso to investigate the allegations of the victim's pregnancy which subsequently led to the arrest of the accused person.

It is worth to not that it is the evidence of one witness – PW1. However, looking at all the circumstances regarding the commission of this offence regarding the accused, I invite court to find that the accused person participated in the commission of this offence and convict him.

And in sexual offences the victim's evidence is the best evidence. This was stated in the case of Badru Nasindu vs. Uganda court of Appeal no. 1 of 19992 – unreported. In addition to this it is a legal acquirement in sexual offence Act. The court should not look out for corroboration evidence, but the court should look for the corroborative evidence of the complainant.

In this case we have the corroborative evidence of the birth of a baby. This was held in the case of Mujuni Appolo vs. Ug. C.A. Criminal Appeal No. 46 of 1999, at page 5 of the judgment.

Following this submissions the prosecution has only proved all the ingredients of the offence of Aggravated Defilement as required.

And I pray that this court convicts the accused as indicted.

I so pray.

Mr. Walyemera Daniel for Accused: In reply. I agree with the brief facts of the evidence. I also agree with ingredients of the offence as provided under S. 129 (3) c (4) (a) of the penal code act.

It is true that the burden of proof lies on the person Woolmington vs. DPP (1935) AC 462. There is also Oketcha Richards vs. Ug. SCCA No. 26 of 1995. All these cases are buttressed by article 28 (3) (c) of the constitution of Uganda and section 100 of the Evidence Act Cap 6.

We intent to contest the participation of the accused in the said offence.

The accused is only convicted on the strength of the prosecution case rather than the weakness of his defence. I refer to Ug. Vs. Oloya [1977]. HCB 4. Also with analysis of evidence the standard of proof should be beyond reasonable doubt. I refer Okoth Okale vs. Republic, (1965) EA 55. This case emphasises that the accused has no duty whatsoever to prove his innocence . The burden is on the prosecution.

Lastly, that if there is any doubt in the minds of the court, that doubt. I should be given to the benefit of the accused.

On the issue of participation of the accused.

As indicted earlier by my colleague there is evidence one identifying witness the victim in this case.

It is clear from PW1 that during the said incidents, there was no other person in their presence to corroborate her evidence.

In the case of *Kiwanuka and another vs. Ug.* [1977] HCB Act 11 Court held that a witness may be truthful but there would be a risk of a honest – mistake particularly in identification. This case points out that care must be taken in evaluating evidence of such a nature.

It is also important to note that the only witness who would corroborated to the evidence of the alleged victims mother. PW1 clearly stated in court she mentioned these incidents to the mother. The question is why did the prosecution not bring the mother to court as a witness.

I therefore submit and reiterate that the prosecution has failed to prove its case beyond reasonable doubt against my client, the accused person. I therefore pray that this matter be dismissed.

Prosecution in rejoinder

In regard to the failure to call the mother to corroborate the evidence of the victim, in reply. The mother to the victim in this case did not witness these incidents of sexual intercourse. She was just informed by PW1 after the 2 incidents. Despite of that the mother never took action against the accused. There was no need therefore for the prosecution to call this witnesses in this case.

Besides this and despite her knowledge of these incidents by the mother, it PW2 who sent the uncle to the victim to find out on the rumours they had heard. It is therefore possible that the victim's mother was protecting the accused and that is why she could not report. As I stated herein before, corroboration in sexual offences is not necessary. In this case however pregnancy and the PF3A are corroboration of the PW1's evidence.

There was no possibility of mistaken identity of the accused. There were other conditions that favoured the identification of the accused person.

I therefore reiterate my earlier prayers and pray that this court finds the accused guilty and convicts him as indicted.

I so pray.

Summing up Notes to the Assessors:

1. The indictment: aggravated defilement contrary to section 129 (3).(4) (a) and (c) of the Penal Code Act, Cap. 120.
2. The ingredients of the offence charged.
 - (i) The victim a child aged 14 years and below.
 - (ii) Sexual act was performed on the victim.
 - (iii) The participation of the accused in the commission of the offence.
 - (iv) The accused was a guardian or a person in authority of the victim.
3. Burden of Proof and stand of Proof.
 - The burden of proof in proving the case against the accused lies on the prosecution.
 - The proof must be beyond reasonable doubt.
 - In Criminal cases the burden of proof does not shift to the accused to prove himself innocent. The burden of proof always rests on the prosecution.
 - If there is any doubt created in the prosecution case that doubt must be proved in favour of the accused.
4. The evaluation of evidence of both parties.
 - 4.1 Evidence for the prosecution: The prosecution called 2 witnesses.
 - In the evaluation of evidence you must consider whether the prosecution witnesses gave direct evidence, circumstantial evidence- on which you have to consider where it is tight enough to be relied by court.

- Consider contradictions and inconsistencies, if any in the prosecution evidence. If they are there, are they major that could go to the roof of the prosecution case or they are just minor.
- Consider the issue of identification were these factors that could have enabled the prosecution witnesses to properly identify the accused at the time the offence was committed.
- Consider the issue of corroboration. Are these circumstances in the prosecution case that could corroborate the evidence of the prosecution.

4.2: The Defence evidence

In this particular case, the accused opted to keep quiet, which is his constitutional right. In this instance you have to remember that the burden of proving the guilty of a prisoner is on the prosecution.

5. After evaluating the prosecution evidence and relating it to the charged offence, you will be in position to make your opinion on the case. You will then advise me to either convict or acquit the accused person.

Court: That is the end of the summing up notes. Do you have anything to ask me for clarification?

Assessors: Every thing is now clear to us.

Court: Are you ready to sign your opinion today.

Joseph Murangira

Judge

4/4/16

Assessors: We shall give our opinion on 5/4/16 at 9.00 a.m.

Court: Case is adjourned to 5/4/16 at 9.00 a.m. for the Assessors opinion.

Accused further remanded.

Joseph Murangira

Judge

5/4/16

5/5/16:

Ms. Gertrude Apio for state Attorney for state, holding brief for Ms. Nabasitu Daisy Principal State Attorney for the state.

Mr. Walyemera Daniel for the accused on state brief.

The Accused is in court. The matter is coming for the assessor's opinion. I have instructions to drive it.

Mr. Kavuma Michael – Clerk. The 2 Assessors are in court.

Court: We are ready with our opinion. We are giving a joint opinion.

The Assessors' Joint opinion

Mr. Herbert Masaba. Considering the facts of various pieces of evidence that have been brought to this court in a matter before us. Here is our opinion.

As regards the years of the victim's age it is not contested. And considering the sexual act upon the victim, we think the prosecution proved the fact through the medical report brought to court. And this medical evidence was admitted by the victim herself (PW1) and who said that she became pregnant and gave birth to a baby boy and PW2.

About the participation of the accused, even if these was a single identifying witness in this case, we realised that on both occasions the act was done during day time.

It was therefore very impossible for the victim to have made a mistake in identifying the accused. Given the fact that she knew him very well and she had stayed with her since she was a child. Also the fact that he was a father figure to the victim he should have known better to protect her, respect her right as a daughter.

In your humble opinion, therefore, we have come to the conclusion that the prosecution proved beyond reasonable doubt that it was none other than the Accused in the dock who committed the unlawful sexual act.

We therefore find him guilty of the offence of Agg. Defilement.

And henceforth advise this Honourable Court to convict the accused as per the law.

That is all.

Court: Judgment shall be delivered on 6/4/16 at 9.00 a.m. Accused further remanded.

Joseph Murangira

Judge

5/5/16

6/4/16:

Ms. Nabasitu Daisy Principal State Attorney for state.

Mr. Walyemera Daniel for the Accused. The accused is in court.

This case is for judgment and I am ready to receive it. The 2 Assessors are in court.

Mr. Nekusa Amos the Clerk is in court.

Court: Judgment is delivered to the parties in open court.

further remanded.

Joseph Murangira

Judge

6/4/16

Prosecution – Allocutus:

- I have no previous record of the accused.
- This case is very rampant in this jurisdiction and in the whole country at large there is need to protect these young girls from acts of this nature.
- The victim was aged 14 years when she was exposed to the sexual act at an early stage.
- This act was repetitive on the victim.

- The accused is a step father who was supposed to take care of the victim.
- He failed to discharge that duty and subjected her to trauma.
- There is an issue who was the baby boy at stake as he is lacking the proper parental guidance.
- The maximum sentence of this offence is death. This case does not fall under exceptional circumstances.
- I therefore pray for deterrent sentence against the accused which would act as a warning to other intending defilers. I propose 25 years since as spent 4 years in prison already. I so pray.

Counsel for the Accused: In mitigation for sentence.

I am guided by paragraph 55 of the sentencing guidelines that provides for the circumstances that this Honourable court should consider in mitigation. I am also guided by the case of Susan Kigula & others vs. A.G. – Criminal Appeal No. 3 of 2009. Where the court held that an offender must be able to present evidence of his character and history for purposes of determining for him an appropriate sentence.

As stated earlier, the accused is 1st offender.

- The Accused has a family to look after. This came out clearly in the evidence.
- The accused is likely to reform considering his behaviour in this court. He looked remorseful.
- The Accused person has spent about 4 years on remand and paragraph 15 of the sentencing. Guidelines provides that that was to be taken into consideration. When passing an appropriate sentence.
- The accused is from a humble background which could have effect his mindset in leading to commit the said offence.
- In regard to the suggested sentence of 25 years, this Honourable Court is embrowned... under this sentencing guidelines, considering at the other factors in the case.

Therefore suggest a sentence of 10 years minus the period he has spent on remand. I so pray.

Court: Sentence shall be delivered at 2.00 p.m. today.

Joseph Murangira

Judge

6/4/16

At 5.00 p.m.: Prosecutor is in court.

Counsel for the convict has already gone.

The accused is in court. We note that My Lord, you have been in court the whole day and the sentence is not ready.

We pray for an adjournment to tomorrow.

Court: Sentence shall be delivered on 7/4/2016 at 9.00 a.m. Accused further remanded.

Sentence and reasons for the Sentence:

In passing the sentence against the convict the following factors shall be considered:

1. All the factors submitted by counsel for the state, and that for counsel for the convict.
2. I take Judicial notice that the offence of Aggravated Defilement is prevalent in this jurisdiction and the entire country. There is therefore a dire need to curb this offence through passing appropriate sentence against the convicts. The sentences that could deter other male persons from indulging in defiling young girls.
3. The sexual assaults against the victim by the convict resulted into a pregnancy and eventually to giving birth to a baby boy. Thus, the future of the victim was totally ruined by the unlawful sexual acts that were performed on the victim by the convict.
4. The convict breached the trust of guardianship or a person in authority of the victim, when instead of protecting her from any possible dangers, the convict defiled the victim.
5. The sexual acts on the victim traumatised her. Even she had to leave school. The victim abused the victim's child rights enshrined in the constitution of the Republic of Uganda.
6. The convict is a first offender.
7. On examination according to P.F3A (exh). P1) the victim's HIV status is negative.
8. The convict has been on remand for a period of 3 years.

Wherefore, in consideration of all the above stated factors, I would have sentenced the convict to 15 (fifteen) years imprisonment. However I do deduct the period of 3 years the convict has stayed on remand from the sentence of 15 years. Accordingly therefore, the convict, Ssali Sulaiman is sentenced to (Twelve) years imprisonment.

Joseph Murangira

Judge

7/4/16

Dated at Luwero this 7th day of April 2016.

Joseph Murangira

Judge

7/4/16

Ms. Nakafeero Fatimah State Attorney holding brief for Nabasitu Daisy Principal State Attorney for state.

Mr. Walyemera Daniel for the convict on stat brief is absent.

The convict is in court.

The 2 Assessors are in court

Mr. Nekusa Amos the clerk is in Court..

Court: The sentence is delivered to the parties in open court. Right of Appeal is explained to the parties.

Joseph Murangira

Judge

7/4/16