

**IN THE HIGH COURT OF UGANDA AT MOROTO**

**CRIMINAL SESSION CASE NO. 56 OF 2015.**

**UGANDA V LOCHORO APANGORA**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**JUDGMENT**

The accused person is indicted with two counts of aggravated defilement c/s 129(3) (4) (a) of the Penal Code Act. In count one , it is alleged that the accused person on 22.10.2014 at Nayese ward, Losilang parish, Kotido district, performed a sexual act with Lonyala Anyese a girl aged below 14 years.

In count two, it is alleged that the accused person on 22.10.2014 at the same place, performed a sexual act with Lemukol Madelina a girl aged below 14 years.

Prosecution was led by Mr. Amalo Zerald RSA while the accused person was represented by Mr. Engulu Philip on state brief.

Assessors were Lomilo Joseph and Noma Margret.

Prosecution had a duty to prove beyond reasonable doubt the following elements of aggravated defilement.

1. That the girls were below 14 years
2. Performance of sexual acts
3. Participation by the accused person.

**Proof of age.**

Prosecution relied on medical evidence to prove age. PF3 for the two victims show that Lonyala Anyese who was examined on 27.10.2014 was aged about 12 years while the sister Lomukol Madelina was of apparent age of 14 years. The two girls testified and both were visibly below 14 and 15 respectively which means they were below 14 years in October 2014.

**Performance of sexual acts and participation**

Prosecution relied on the testimonies of the two victims , their mother and medical evidence to prove performance of sexual acts.

According to PW1 Lomukol Madelina, on 12.10.2014 in the evening as cows were entering the kraals, the accused person arrived at their home. Both her parents were not at home . On her mother Lochen's return, the accused person was served food.

He was shown where to sleep in a different house ten meters away house while she went to sleep in another house with her sister Anyese and their mother.

It was Lomukol's testimony that while she slept, the accused made her his wife and that when she woke up, she realized he was performing a sexual act with her after which he moved to do the same to her sister Anyese. It was at this point that PW1 Lumokol woke her mother who woke up and found the accused defiling Anyese.

Lumokol's testimony was corroborated by that of her mother Lochen Betty PW3. It was Lochen's testimony that on 22.10.2014, the accused was welcomed as a visitor with two young boys. She did not know him prior to the visit but she learnt later that his father Logira was a friend to her husband.

According to Lochen, after serving the accused and two young boys food and showing them where to sleep, she went to sleep in her house . Lochen was awoken at night by her daughter Lumukol who reported that there was someone in the house and on flashing a torch, the accused emerged from Anyese and kicked Lochen in the stomach. It was Lochen's testimony that she grabbed the accused as he kicked her while she raised an alarm.

Among those who responded to the alarm were Lochan . The accused was tied up until the next morning when Lochen alerted the LC 1 chairman and police who picked him from her home.

Anyese PW2 also corroborated the testimonies of her sister and mother and confirmed that she woke up when she felt a weight on her as he made her his wife. According to the witness, she recognized him when her mother flashed a torch after she was awoken by Lumukol.

With respect to performance of a sexual act, both girls confirm hat the accused performed sexual acts with them . Their testimonies are corroborated by their mother who examined them that

night and found semen in their private parts. PF3 for the two victims also confirmed sexual activity took place although they were examined on 27.10.2014 , five days later.

With respect to identification of the accused person, both girls were consistent in their testimonies that the accused had come home in the evening as a visitor; they saw him that night when he was detained by people who answered the alarm and in the morning when he was collected from their home by police. The question of mistaken identity is out because according to Lochen and Anyese, the other two boys he came with were much younger than him so it could not be them.

In his defense, the accused denied committing the offence but admitted to being in the area and claimed he was arrested for cattle rustling.

I find that the accused person was positively placed at the scene of crime by all the eye witnesses as the person who defiled the two girls Lomukol and Anyese both of whom were below 14 years when the offence was committed.

I am in agreement with the two assessors that the prosecution has proved beyond reasonable doubt that the accused person defiled the two victims the same night in the same room one after the other, and he is convicted on the two counts of aggravated defilement as indicted.

**DATED AT MOROTO THIS 22<sup>ND</sup> DAY OF JULY 2016.**

**HON. LADY JUSTICE H. WOLAYO**

**22.7.2016**

Accused present

Amalo Zerald. RSA

Engulu for accused .

Court clerk. Christine

Sentence

The conduct of the accused in defiling two girls at the same place and in their home is an aggravating factor.

That this is a gender based violence case is an aggravating factor because it manifests a pattern of violence against girls.

That accused is aged 20 years is a mitigating factor.

Appropriate sentence is 15 years imprisonment. On each count.

As accused has been on remand since November 2014, he is sentenced to thirteen years imprisonment on each count.

The sentence to run concurrently.

**LADY JUSTICE H. WOLAYO**