

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**HOLDEN AT KITGUM**  
**HCT-02-CO-SC-0062-2016**

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

**VERSUS**

**LANYERO GRACE:.....ACCUSED**

**BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT**

**RULING**

Lanyero Grace herein after called the Accused was indicted for Aggravated defilement contrary to section 129 (3) (4) (a) of the Penal Code Act.

It was alleged that the accused on the 23<sup>rd</sup> of March 2016 at Tereza Education Centre Gangdyang village in Kitgum District performed a sexual act with Akot Jovia a girl aged 3 years of age. At the close of the prosecution case, Counsel Ocorobiya Lloyd for the Accused submitted on no case to answer on behalf of the Accused.

The Ruling is therefore in respect of the submission of no case to answer.

The Prosecution case was that the victim Akot Jovia went to school on 23<sup>rd</sup> March 2016 at Tereza Education Centre. She was dropped as usual by the bod boda rider Mr. Abel Ocitti Patrick who apart from seeing signs of dried tears, did not observe anything else on the child when he picked her in the evening at 4.00 p.m.

PW7 Aciro Babra Rebecca who received the child claimed she saw a stressed child and blood stained clothes of the child. The blood was much. She just washed. She then saw the child urinating blood stained urine with difficulty. She asked the child who did not respond and was not bothered to find out where the bleeding was coming from.

PW1 Nyarrua Collin the mother of the victim gave a very lengthy testimony but in short it was to the effect that her daughter went to school well but when she returned in the evening, she discovered she was unwell, her changing dress was blood stained and blood was flowing on her thighs. She had difficulties in urinating and her urine was mixed with blood she did not however bother to check in her private parts. This was on 23<sup>rd</sup> March 2016 that the Doctor told them that someone has tampered with the child's private parts.

PE1 and PE3 revealed that the vaginal orifice was hyperemic with bruises around the hymen,

PW1 the mother of victim informed court that the child informed her that her Teacher pierced her with a knife and that the Police carried out an identification parade where the child pointed at the Accused hence this case. The child failed completely to identify her own Teacher and could therefore not qualify to testify.

Both the Prosecution and the Defence agreed on the ingredients of sexual act and age of the victim.

At the close of the Prosecution case the only evidence on the ingredient of participation of the Accused was the identification parade.

PW5 D/WC No.57542 Amone Jackline attached to Kitgum Police Station informed court that she was the Investigating Officer of the case. That she was allocated a file on 29<sup>th</sup> March 2016 where the suspect was unknown.

That she went to school on 29<sup>th</sup> March 2016 with D/sgt Ogik and the Head Teacher called 4 Teachers from the Nursery Section and the child identified the Accused Lanyero Grace.

During cross examination she informed court that the Teachers first lined up in the Headmaster's office and after the child failed to identify, they went outside. The

father of the child also carried the victim, promised to buy her sweets if she points to the perpetrator. To appreciate the peculiar facts in this case, it is important to define an identification parade.

*“It is a group of persons including one suspected of having committed a crime assembled for the purpose of discovering whether a witness can identify the suspect”.*

Identification parade can provide very good evidence where the witness expresses the ability to identify the suspect. *The procedure of conducting an identification parade is well established.*

- 1. The Investigating Officer in the case is not entitled to be present at the Identification Parade.*
- 2. The Identification itself should consist of at least 8 people who resemble the suspect in age, height and general appearance.*
- 3. Where the suspect has an unusual feature which cannot be replicated on other members of the parade, steps should be taken to conceal the location of the feature on the suspect.*
- 4. The suspect has a right to be represented by an Advocate.*
- 5. When the suspect is brought to the place where the identification parade is held, they are asked if they have any objection to the arrangements or the participants in the parade.*
- 6. The suspect is also allowed to choose his/her own position in the line.*
- 7. Before the witness/es attend the identification parade, arrangement should be made so that they are unable;*
  - (a) To communicate to each other if they are many about the case.*
  - (b) To see any member of the parade.*

***(c) To see or be reminded of the photograph or description of the suspect e.g. in this case one would not be allowed to say point out at your Teacher.***

***(d) To see the suspect before the identification parade.***

***(e) A video recording or colour photograph must be taken of the identification parade.***

All the above procedure is intended to ensure that the process is not flawed to make it admissible like any other evidence.

The court can exercise its discretion if it is of the view that admission of identification parade evidence will have adverse effect on the fairness of the proceedings.

This discretion is usually exercised if there has been serious and substantial breaches of the rules governing identification parade which renders the evidence unreliable.

After all the above procedure has been followed, then the Officer conducting the parade completes PF69 where the suspect signs after giving a comment on whether she/he was satisfied with the manner in which the identification parade was conducted and the Officer also makes comments and signs.

With the above elaborate procedure, PW5 D/C Amono Jackline's evidence of the so called identification parade of 4 Teachers who first met in the Headmaster's office in the presence of the victim was but a hoax. No wonder she did not prepare PF 69 to guide her parade and also to prove that indeed she conducted the parade in the absence of any photographs.

As Investigating Officer, she totally ruined the case as there is no evidence that any identification parade was conducted in accordance with the known criminal procedure of conducting parades.

The ability of a witness to identify the suspect is very important. I was lacking in this case.

With the above serious and substantial breach of the rules governing identification, the prosecution is left with a mere scintilla of evidence.

The law as spelt out in the case of *(R-T Bhatt Vs R (1957) E.A 332)* is ***that a submission of no case to answer may be made and upheld when***

- (a) There has been no evidence to prove an alleged essential element of the offence.
- (b) The evidence adduced by the Prosecution has been discredited as a result of cross examination or is so manifestly un reliable that no reasonable tribunal could safely convict on it.

It was further held in the same case that;

“A Prima facie case must mean one where a reasonable tribunal properly directing its mind to the law and evidence could convict if no explanation is offered by the Accused”.

I have carefully considered the evidence on record and submissions of both Counsel on the law applicable and I must confess that I cannot find any shred of evidence connecting the Accused with the commission of the alleged crime.

The conduct of the mother and PW7 Aciro Babra whereby they failed to check the victim’s private parts on the very first day after seeing blood stained clothes, blood flow on her thighs and blood mixed with urine coupled with the child’s behavior as described leaves a lot be desired and makes the whole case appear dramatic.

It is incredible that a mother could resist checking the child’s bleeding private parts for all that long.

With the above said, I agree with the Defence that there is no evidence on participation of the Accused person.

He is accordingly acquitted on no case to answer and should be released unless held over other lawful charges.

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Margaret Mutonyi

**JUDGE**

**5<sup>th</sup> May 2016**