

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MASAKA**  
**HCT-06-CR-SC-0021 OF 2013**

**UGANDA.....PROSECUTOR**

**VERSUS**

**Barisigala Charles.....ACCUSED**

**JUDGMENT**

**BEFORE: HON. LADY JUSTICE MARGARET TIBULYA.**

The accused stands charged with aggravated defilement. It was alleged that he performed sexual intercourse with **TURYAMUHAKI JANET** a girl under 14 years of age.

On 26<sup>th</sup> October 2012, **Pw5 (TURYAMUHAKI JANET)** was coming from her aunts home at about 7:00Pm when she met the accused the accused pushed her knickers down and removed his trousers and raped her.

Her mother **Pw2 (Edisa Tumuhimbise)** found the accused defiling her along the road to her home. She raised an alarm which **Pw1(Turyakira Eunice)**, the accused's wife responded to. **Pw1** heard **Pw2** telling the accused that he had defiled her child. She then ran fast to the scene and got the accused dressing up. At the scene the accused was drunk and was giving the victim alcohol.

In his defense the accused denied the allegations. He said that on the 17<sup>th</sup> July 2012 he bought land from the father of the victim. Her father and mother then got a misunderstanding. The accused decided to build a house for his other child in that land but his wife told him that all his

land is only for her children. His wife and the victim's mother then conspired to have him imprisoned so that he does not bring the other child to the land.

On the 25<sup>th</sup> the area chairmen arrested him on allegations of assaulting his wife. He was later taken to the police.

The burden of proving the accused's guilt beyond reasonable doubt is upon the prosecution throughout, see **Sekitoleko v Uganda [1967] EA 531**. The accused should not be convicted on the weakness of the defense but on the strength of the prosecution case.

The following ingredients must be proved beyond reasonable doubt;

- That the victim was under the age of 14 years.
- That there was unlawful carnal knowledge of her.
- That the accused is the one who committed that offence.

#### **THE AGE OF THE VICTIM.**

The victim's mother said that she was 10 years of age at the time of the attack. The medical examination evidence which was agreed on put her age at 11 years. I had the opportunity of seeing the victim in court. She said she is 13 years old now. Seeing her, I believed that she was below 14 years in 2012. The defense did not contest the fact she was below 14 years at the time of the alleged attack. I find that the first ingredient has been proved to satisfactory levels.

#### **WHETHER THERE WAS UNLAWFUL CARNAL KNOWLEDGE OF HER.**

In sexual offences that it is a settled rule of practice that the court has to look for corroborative evidence to both the fact of identification of the assailant and the fact of defilement/rape, see

**(GEORGE BANGIRANA VS. UGANDA [1975] HCB 361. Also CHILA & 1 Vs R. [1967] EA 722).**

It is the law that the slightest penetration is sufficient for the offence of defilement to be complete. **(MUJUNI APOLLO Vs UGANDA, C.A 26/1999)**. The hymen need not be touched or injured. The act of penetration or sexual intercourse may be proved by direct or circumstantial evidence, e.g., medical or other evidence, **(BASSITA HUSSEIN Vs UGANDA, S.C CRIM APPEAL NO. 35 OF 1995)**.

The victim **Pw5 (TURYAMUHAKI JANET)** said that the accused raped her. Her mother **Pw2 (Edisa Tumuhimbise)** said that she found the accused defiling the victim. **Pw1 (Turyakira Eunice)**, the accused's wife heard **Pw2** telling the accused that he had defiled her child. She then ran fast to the scene and got the accused dressing up. The medical evidence pointed to the possibility of attempted defilement on account of dry semen around the victim's private parts.

The defense did not contest the fact of defilement. The victim's evidence was corroborated by that of the mother who found the accused in the act, that of **Pw1** who found the accused dressing up and the medical evidence that there was dry semen in the victim's private parts. That evidence sufficiently proves that there was carnal knowledge of the victim.

#### **WHETHER THE ACCUSED IS THE ONE WHO COMMITTED THAT OFFENCE.**

The accused denied the allegations and said that he had a grudge with his wife over land he had bought from the victim's father. He wanted to give the land to his child who does not belong to his wife. His wife and the victim's mother conspired to have him imprisoned so that he does not give away the land.

The law is that a court ought not to base a conviction on uncorroborated evidence of a single identifying witness without warning itself of the danger of so doing, **CHILA & 1 VS R. [1967] EA 722**. The court must, after warning itself of the danger of convicting without corroboration, express itself to be convinced of the truth of the child's story.

In this case the victim and her mother testified that he defiled the victim. The medical evidence supports their claim. The accused's wife's evidence that she found the accused dressing up also lends credence to the claim. The accused's assertion that he had a grudge with his wife and the victim's mother is not credible since the victim who also said that he defiled her does not have a grudge with him.

I believed the evidence that it is the accused who defiled the victim and In agreement with the gentlemen assessors I convict him of the offence of defilement as charged.

**Margaret Tibulya.**

**Judge.**

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