

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA

HCT-06-CR-SC-0074 OF 2013

UGANDA..... PROSECUTOR

VERSUS

KAMUGISHA EDSON alias KAMU.....ACCUSED

BEFORE: Hon. Lady Justice Margaret Tibulya.

JUDGMENT

The accused stands charged with aggravated defilement. It was alleged that he performed sexual intercourse with **Nakisekka Mary** a person under 14 years of age.

The brief facts are that the accused got the victim at the borehole at 1:00Pm. He took her to a coffee plantation and defiled her. She went back home while crying and told her mother that the accused had defiled her. Her mother **Specioza Namugerwa** (Pw2) and Pw3 (**Nakigoye Mauricia**) an LC official examined her and found a watery/ bloody mixture in the victim's private parts. The victim was 6 years old at the time. Upon medical examination the victim was found to have very thick pus-like fluids, and bruises in the private parts. She had a lot of pain too. The medical report was tendered in as an agreed fact.

In his defence the accused said that he has never slept with any woman since he was born, and all that was said against him were lies. The victim must have been coached to say what she said.

BURDEN AND STANDARD OF PROOF.

The burden of proving the accused's guilt beyond reasonable doubt is upon the prosecution throughout. 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 evidence of the mother of the victim is that she was 6 years at the time of the attack. The medical evidence also put her age at 6 years then. She said she is 7 years now. A visual observation of the victim when she was testifying showed that she was still under 14 years of age. I believed the evidence that she was below 14 years on 29th October 2012 when she was defiled. This ingredient was sufficiently proved.

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

The 7 year old victim gave evidence that the accused had carnal knowledge of her. Her evidence is corroborated by that of her mother, Specioza Namugerwa (Pw2) who said that the victim went back home while crying over pain in her private parts. The distressed condition of the victim corroborated her evidence that she had been defiled, (**KIBAZO Vs UGANDA [1965] EA 507 AND FRANCIS JENDO Vs UGANDA CRIM APPEAL 3 OF 1997**).

The medical evidence also shows that her private parts were bruised. Her mother and Pw3, an LC official who examined her immediately after the attack saw a watery-bloody substance in her private parts.

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 evidence of the victim as corroborated by that of the mother and the medical evidence sufficiently proves that the victim was defiled, and I so find.

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

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 I have considered the following factors;

1. The victim knew the accused before the attack
2. The incident took place during day time. There was no possibility of mistaken identity,
3. The accused took the victim to a coffee plantation where they were just the two of them.
4. Immediately after the attack the victim named the accused as her attacker.

The victim testified that the accused was her assailant. The accused denied the allegations saying that he has never slept with a woman all his life. But the victim named him at the earliest opportunity; to her mother, to the LC and to the police. Consistence of complaint is relevant. There is no reason she could have framed him. Moreover she impressed me as a witness of truth. I hereby warn myself of the danger of convicting the accused on her uncorroborated evidence as I did to the assessors. I however believed the evidence that it is the accused who defiled the

victim. In agreement with the gentlemen assessors I find that the state has sufficiently proved that the accused defiled the victim. I accordingly convict him of aggravated defilement as charged.

Margaret Tibulya.

Judge.

28th April 2016