

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
HCT-06-CR-SC-0052 OF 2013

UGANDA..... PROSECUTOR

VERSUS

KASIBANTE PAULO.....ACCUSED

BEFORE: HON. LADY JUSTICE MARGARET TIBULYA.

JUDGMENT

The accused stands charged with two counts of aggravated defilement. It was alleged that 26th October 2012 he performed sexual intercourse with **Nakinobe Christine** a girl aged 16 years when he was infected with Human Immuno-deficiency Virus, (HIV). In the second count it was alleged that on the same day, time and place he performed sexual intercourse with the same girl knowing that she is disabled.

Pw3 (**Francis Matovu**) sent the victim (Pw6) and Pw5 (**Mugumya Iga Richard**) to fetch water. The victim (**Pw6**) and Mugumya's account is that on their way back at about 4:00 PM they met the accused, whom the victim knew. He told her to escort him to the forest and she refused. He showed her 2000/= but she still refused to follow him. The accused got her Jerrican from her and pulled her towards the forest as she cried and while there he defiled her.

Mugumya (Pw5) ran home to inform their grand-father, Matovu Francis (Pw3) who tried to go and rescue the victim but found her on the way coming home while crying. She had not even brought the water. She mentioned that Kasibante was her attacker.

Pw1 (**Namugwanya Maxencia**), the victim's mother said that the victim was 16 years old when the incident took place. She took her for medical examination. The medical report is (**exhibit P.1**) also shows that she was 16 years old at the time, and that there were abrasions and tenderness in her private parts at the time she was examined. The cause of the injuries was said to have been forceful penile penetration. She was found to be dumb as well. The accused was also examined and found to be infected with Human Immuno-deficiency Virus, (HIV) (the medical report is Exhibit P2).

Pw4 (**Lubega William**) was coming from work when he found the victim and the accused at about 6:00pm. The victim was crying but when she saw him she was happy. The girl then said; - **“that one, that one”**, as she was pointing at the accused and at the same time pointing to her

private parts, which to Pw4 meant that the accused had defiled her. He met Pw3 (**Matovu Francis**) who also explained to him what had happened.

In his defense the accused (**Kasibante Paulo**) on 27th October 2012 he was at his place of work and stayed at home all day because his boss had told him that he was going to bring some workers. The workers arrived at 7: 00 am. He worked with them till 7: 00 pm he went to Bbotela stage in town to buy food for them.

On the way about 7:30pm he met one Noah and his wife. He conversed with them. Towards 8:00pm the victim came and knocked at the door. Mrs. Noah escorted her to her home. Later Mrs. Noah quarreled with (Willy, Pw3) who later called to say that the plan he had set had been accomplished that day. Willy the said that he was going to the police to report that the victim had been defiled by the accused.

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, (**OKETHI OKALE Vs. R, [1965] EA 555**).

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 state evidence was that the victim was 16 years at the time of the attack. The medical evidence also put her age at 16 years then. The defense did not contest the fact that the victim was sixteen years old, and there is no reason not to believe the evidence that that was her age. I therefore believed that she was 16 years on 27th 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).**

She gave evidence that the accused had carnal knowledge of her. The medical evidence also shows that there were abrasions and tenderness 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).** In this case the victim testified that she was defiled and the medical evidence supported her evidence in this regard. In agreement with the gentlemen assessors, I find the fact that the victim was defiled sufficiently proved.

WHETHER THE ACCUSED IS THE ONE WHO COMMITTED THAT OFFENCE.

The victim in this case was 16 years old and therefore not one of tender years. She gave evidence that the accused whom she knew before the attack was the one who defiled her. The incident

took place at about 4:00 PM. There was no possibility of mistaken identity. Twelve year old Mugumya (Pw5) who was with her when the accused accosted her also said he ran to go and call their grand-father when the accused was pulling the victim to the forest.

In his defence the accused narrated how the victim went to his home. This evidence corresponds with the prosecutions account through Pw3 (**Matovu Francis**) that the victim went to ascertain where the accused was. The evidence is useful in that it shows that the victim knew the person she was looking for. There was consistence of complaint as well as shown by Pw 4's evidence (**Lubega**) that when he met the victim and the accused in the road, she complained to him that the accused had defiled her.

The accused denied the allegations saying that Pw 4(**Lubega**) threatened to cause him problems. He did not indicate to court the exact problem he had with Lubega and /or why Lubega would have wanted to land him in problems. Moreover even if there had been a problem between him and Lubega, it is not Lubega who originated this complaint. There is no indication that the accused had any problem with the victim

I did not believe the accused's allegation that this is a frame up and reject his denial. The victim impressed me as a witness of truth. I believed her evidence that the accused defiled her. In agreement with assessors, I find the fact that it was the accused who defile the victim sufficiently proved.

About the accused's HIV status the medical evidence was not denied. I find that the state has sufficiently proved that the accused defiled the victim when he was HIV+. I accordingly convict him of aggravated defilement as charged in count 1.

As for the charge in count 2, there was evidence that the victim was disabled. The medical evidence showed that she was/is dumb. Again this fact was not disputed, and I find it sufficiently proved. I accordingly convict the accused of aggravated defilement as charged in count 2.

Margaret Tibulya.

Judge.

29th April 2016