

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**HCT-00-CR-SC-0395**

**UGANDA:.....PROSECUTION**

**VERSUS**

**TUMUSIIME ADOLF:.....ACCUSED**

**BEFORE: MR. JUSTICE WILSON MASALU MUSENE**

**JUDGMENT:**

The accused, Tumusiime Adolf was charged with the offence of Aggravated Defilement C/S 129(3) and 4 (c) of the Penal Code Act.

The particulars were that the accused on the 24<sup>th</sup> day of February, 2013 at Bulange Zone "A" in Lungujja, Kampala District, performed sexual intercourse with Namuddu Molly, a girl aged 14 years and imbecile, when he was arraigned in court, he pleaded not guilty. By that plea, accused set in motion all the ingredients of Aggravated defilement to be proved by the prosecution beyond reasonable doubt.

The ingredients of the offence are:-

1. The girl was aged 14 years and an imbecile.
2. The victim was subjected to sexual intercourse.
3. Identification of accused as the person responsible.

As far as the 1<sup>st</sup> ingredient of the offence is concerned, a medical report, PF3A in respect of the victim was admitted in evidence at the beginning of the trial under s.66 of the T.I.A. the same was signed by Dr. Ojara Santo of Mayfair clinic. The age of the victim is given as 14 years and the mental status was described as Abnormal, poor speech and slow comprehension.

Secondly, PW1, Nakimuli Milly, the mother of the victim testified that she is 16 years now and does not talk. PW1 added that they communicate through sign language. PW1 added that although she cannot speak, as a mother, she talks to her and she understands.

Even PW2, Ssenkumba Edward also confirmed what PW1 had stated. In the circumstance, I find and hold that the prosecution has proved the first ingredient of the offence beyond reasonable doubt.

I now turn to the second ingredient of the offence, the act of sexual intercourse.

In the case of Badru Mwidu vs. Uganda {1994 -1995} H.C.B 11, the court of Appeal ruled that normally in sexual offences, the evidence of the victim is the best evidence on the issue of penetration. In this case, although the victim was present in court and could not talk, the prosecution relied on PW1, the mother of the victim. PW1 checked the private parts of the victim and saw a slippery substance coming out of her private parts, an indication of release of sperms into her following sexual intercourse.

Even PW2, Ssenkumba Edward, the father of the victim told court that upon receipt of a telephone call from the LCI Chairman, Paul Kawaga that he had seen a certain man raping PW2's daughter near the well, he rushed there. PW2 found the victim at the well full of grass all over the body and that she looked scared, almost crying.

In Sam Butera Vs. Uganda – Supreme Court Criminal Appeal No. 21 of 1994, it was held that the distressed condition of the victim was an important factor and sufficient corroboration.

Lastly on this ingredient, the PF 3, medical examination of victim revealed that there was semen like fluid on the victim and the hymen was ruptured and bruises on the vulva. Further observation by the medical doctor were that of confirmed penetration about a few hours old and that dirty clothing was evidence of struggle. In the premises, I find and hold that the prosecution has proved the second ingredient of offence beyond reasonable doubt reasonable doubt.

The last issue is identification of the accused. This court has considered the evidence of both PW1 and PW2, the mother and father of the victim. PW2 and others found the accused hiding in a bush near the Well.

The act of the accused running and hiding in a bush was not an act of an innocent person.

The accused was found covered with grass and part of his trouser near the zip was said to be having remains of sperm; more still, PW3, Paul Kawaga's testimony was that while on top of a house he was constructing, he saw accused grabbing the victim, rolling her down and started playing sexual intercourse. PW3 testified that when accused saw him and others approaching, he attempted to run away but they caught him. PW3's testimony was that he had to ring the police as the mob wanted to lynch accused. PW3 added:

“We arrested him near the scene of crime. The girl was still at the scene with knickers removed. We confirmed accused had played sexual intercourse on her. The accused even admitted having played sexual intercourse. The trousers were wet with semen. The accused prayed for forgiveness...”

When an elderly man of 51 years and well educated (Civil Engineer) state as above, this court did not doubt him. I also considered PW3’s demeanor throughout his testimony.

He was straight forward and impressed this court as a witness of truth. And since it was during day time, I find that there could be no mistaken identity. I disregard the accused’s defence of denial and that he was collecting scrap by the time of arrest. And much as accused stated that some people had been following him, he did not name them.

In my view, the evidence of PW1, PW2 and PW3 has properly put the accused at the scene of crime.

In my view, the third ingredient of the offence has been proved by the prosecution beyond reasonable doubt.

Having found and held that the prosecution has proved all the essential elements of the offence beyond reasonable doubt, and as advised by the assessors, I find the accused guilty and do hereby convict him as indicted.

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**WILSON MASALU MUSENE**

JUDGE

13.4.2016

Accused present

Wanamama Isiaya for State

Mr. Mooli Albert for accused

Assessors present

Olivia Nansuna, court clerk present

**WILSON MASALU MUSENE**

JUDGE

Court: Judgment read out in open court.

**WILSON MASALUMUSENE**

JUDGE

Mr. Wanamama Isiaya for state

I have no previous criminal records of the convict. The offence carries a maximum penalty of death. The victim was an imbecile. She deserved protection from convict rather than pouncing on her. I pray for a deterrent sentence.

**Wilson Masalu Musene**

Judge

Mr. Mooli Albert:

The convict is a first offender. He has 6 children in Kyenjonjo. He has been on remand for 3½ years and pray for leniency.

**Wilson Masalu Musene**

Judge

SENTENCE AND REASONS:

There are very many able bodied and sound women in and around Kampala. News of Radio and other media reveal that there are many women who are ready and willing and could give the convict a run for his money.

It was therefore uncalled for to play forceful sexual intercourse with an imbecile. And as submitted by the State, the convict should have protected the victim, a young girl of 14 years and an imbecile. Instead, he pounced on her like stories we hear of sailors who land on Mombasa 10 years on the high seas and are understandably sexually starved.

I agree that a deterrent sentence is called for and I shall consider mitigating factors and such as being a first offender and the period spent on remand of 3 ½ years.

In the premises, instead of 16 years, I subtract the period of 3½ years on remand.  
I do hereby sentence you to serve 12 years and 6 months imprisonment.

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**WILSON MASALU MUSENE**

**JUDGE**

**13.4.2016**