

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

**HCT-06-CR-SC-0046 OF 2013**

**UGANDA.....PROSECUTOR**

**VERSUS**

**LUBOWA MATHIAS BOAZ.....ACCUSED**

**JUDGMENT**

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

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

Pw2 (**Yakobo Kazoya**) testified that the victim and others went to the forest to collect firewood. He and Pw4 (**Nabuuma Luusi**) later heard an alarm and when they responded, they found the victim who told him that she had been defiled. The victim was 12 years old then.

Pw4 learnt that the assailants had abandoned their motor cycle at the kraal. She recovered it and took it to the Pw3 (**Nanziri Immaculate/chairman's home**). Pw3 and 4 separately examined her and found that she had been defiled. They rung the police and Pw1 (**No. 29239 Sgt Kiplimo George**) who came for the motor cycle.

Meanwhile the accused went to Kyotera police station and reported that his motor cycle had been stolen. Kyotera police rung Rakai police station who told them that there was a complaint of

defilement. The accused was detained. At Kyotera police station an identification parade was conducted and the victim picked out the accused as the assailant.

In his defense the accused said that he is a boda boda operator, and that on 21<sup>st</sup> November he and another went to Kiweewa's farm to get a sheep. They found when the herdsmen had left the place. They walked looking for them, but failed to get them. When they went back to the Kraal they found when their motor cycle had been taken away. Thinking that it had been stolen, they reported the loss to Kyotera police station. The police told them to continue looking for it. On the

22<sup>nd</sup> when they went back to the police to follow up the issue they were arrested and detained on allegations of defilement.

At Kyotera they were told that the victim had come to identify the assailant. The OC did not let them change cloths. They were 7 inmates and other police officers. All inmates were told to face the wall. The accused heard a voice say, "**That one**," then the OC told him to turn which he did. He saw the girl pointing at him. His friend Bbale Francis who had money, gave them 50,000/= and was left to go with his motor cycle.

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 defence 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 grandfather said that she was 12 years of age at the time of the attack. The defense did not contest the fact. 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).**

Pw4 (**Nabuuma Luusi**) and Pw3 (**Nanziri Immaculate**) both mature women testified that they examined the victim and found that she had been defiled. This was after she complained to them about the sexual assault. The defense does not contest the fact that the victim was defiled. The uncontested evidence of the two witnesses 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 the victim did not testify. It is common ground however that an abandoned motor cycle was confiscated by the relatives of the victim after she complained about being defiled.

The accused denied the offence and said that the motorcycle was taken from where he had left it and he thought it had been stolen.

The evidence that he and another ran away after committing the offence was not challenged. The identification evidence is sufficiently corroborated by the admitted fact that the accused was in the area where the defilement took place from on the day in issue, and that he had a motor cycle which he left at the place. I believed the evidence that he left the motor cycle under the circumstances described by the prosecution witnesses, otherwise he would not have been picked out as the assailant.

The proved fact that the victim was defiled proves that the allegation is not out of the blue. There is no reason why the victim could have picked on the accused. The fact that he was picked out and yet to his admission he had been at the place of the attack on the day in issue leaves no doubt that he is the assailant.

I rejected his denial and 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 the offence of defilement as charged.

**Margaret Tibulya.**

**Judge.**

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