

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
HCT-06-CR-SC-0058 OF 2013

UGANDA.....PROSECUTOR

VERSUS

LUKWAGO JOSEPH.....ACCUSED

JUDGMENT

BEFORE: HON. LADY JUSTICE MARGARET TIBULYA.

The accused stands charged with aggravated defilement. It was alleged that he performed sexual act with **IRUMBA JOSEPH MARY** a male child aged 5 years.

On the 25th of December 2012, Pw4 (**Nakiyimba Justine Kasagazi**) went to a pub with her children including the victim. While there the victim spotted his teachers and he went to them. The victim then disappeared and Pw4 started looking for him.

In the meantime Pw1 (**Lutaya Fred**) went for a short call and heard a child crying. He went to where the child was and saw the accused running. Pw1 hit him with a bottle and he fell. He raised an alarm and Pw2 (**Nalwadda Fausta Kayiwa**) and Pw3 (**Kato Joseph Mukasa**) came. The accused was taken to the police. The victim was bleeding from the anus. Pw4 (**Nakiyimba Justine Kasagazi**) examined him and found the anal area shattered, and he was complaining of pain in the lower abdomen.

The victim **IRUMBA JOSEPH MARY (Pw5)** testified that while at the pub, he saw his friends and went to where they were. He fell asleep and the accused took him to a dark place. The accused removed his “**thing**” and pierced him in the anus. The victim shouted calling his mother. **No 34735 D/IP NGARUYE (Pw7)** recorded a confession from the accused. The confession was allowed in evidence as **exhibit P.1**. The medical examination report was admitted as an agreed

fact, (**exhibit P2**). Pw8 (**Kigenyi Paul**), a Senior Clinical Officer who examined the accused said that he was normal. The report is exhibit P3.

In his defense the accused said that he had been at a bar and every one was drunk and every one was fighting. One Alex and Lutaya assaulted him accusing him of raping a child. He was taken to the police when he was bleeding. He wondered what the victim was doing in a bar at 11:00pm.

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 him.
- That the accused is the one who committed that offence.

THE AGE OF THE VICTIM.

The victim’s mother said that he was 5 years of age at the time of the attack. The medical examination evidence also put him at 5 years. When he testified he said he is 8 years old now.

The defense did not contest the fact and I had no reason to doubt it. 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 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).**

Pw1 (**Lutaya Fred**) saw the accused jump off the victim and run away. Pw2 (**Nalwadda Fausta Kayiwa**) and Pw3 (**Kato Joseph Mukasa**) saw the victim who was bleeding from the anus. Pw4 (**Nakiyimba Justine Kasagazi**) examined him and found the anal area shattered, and he was complaining of pain in the lower abdomen. The medical examination also revealed bleeding and tenderness in the region. The victim **IRUMBA JOSEPH MARY (Pw5)** testified that while at the pub, he saw his friends and went to where they were. He fell asleep and the accused took him to a dark place. The accused removed his “**thing**” and pierced him in the anus. The victim shouted calling his mother.

The victim’s evidence that he was defiled was corroborated by that of Pw 1 who saw the accused jump off him, and PW’s 1, 2, 3, and 4 who saw the child bleeding from the anal area. The medical evidence gives further corroboration to all that evidence, leaving no doubt that the victim was defiled.

WHETHER THE ACCUSED IS THE ONE WHO COMMITTED THAT OFFENCE.

The accused denied the offence, but said that he was at the bar and was arrested and beaten on accusation of raping a child. 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 testified that the accused defiled him. His evidence was corroborated by that of Pw1 (**Lutaya Fred**) who got him defiling the victim, and Pw2 (**Nalwadda Fausta Kayiwa**) and Pw3 (**Kato Joseph Mukasa**) who found Lutaya arresting the accused. In addition to this, the accused confessed to the commission of the offence. He repudiated the confession but there is sufficient corroboration of the same in the evidence of Lutaya who saw him coming off the victim.

The accused's admission taken with the evidence of Pw1 (**Lutaya**), Pw2 (**Nalwadda Fausta Kayiwa**) and Pw3 (**Kato Joseph Mukasa**) leaves no doubt that the accused defiled the victim. I accordingly convict him of the offence of defilement as charged.

Margaret Tibulya.

Judge.

16th May 2016