

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
HCT-06-CR-SC-0001 OF 2013

UGANDA.....PROSECUTOR

VERSUS

NDYABALEMA FULUGENSIO.....ACCUSED

JUDGMENT

BEFORE: HON. LADY JUSTICE MARGARET TIBULYA.

The accused stands charged with aggravated defilement. It was alleged that he performed sexual intercourse with **NAMUGENYI SPECIOZA** a person under 14 years of age. The brief facts are that the accused was a herdsman for the victim's family and the victim used to take to him the family cows for grazing. One day she took to him the cows and he told her to lie on a jacket he had spread on the ground. He proceeded to defile her and later gave her 100/= and (**pan**) Kabalagala.

Her aunt (**Nampijja Topista, Pw3**) saw her with the money and asked her where she had got it. The victim's friends whom she had earlier told that she had been having sex with the accused, and that he gave her money and pan in return, informed the aunt about it. Her aunt then asked the victim who confirmed that the story was true. She further told her that the accused had defiled her many other times. The aunt examined her and confirmed that she had been defiled. A medical examination further confirmed the defilement.

The accused denied the charges and said that he has a grudge with the victim's grandmother, the reason they brought the charges against him.

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 medical evidence (**Exhibit P2**) put the victim at 10 years of age then. I had the opportunity of seeing her when she gave evidence. She testified that she is now 11 years old. From my observation she might have been 11 years but was certainly under fourteen years in 2013. The defense did not contest the fact that she was under fourteen years in 2013. 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**).

The victim testified that the accused had carnal knowledge of her. Her aunt examined her and found that she had been defiled. The medical evidence also shows that her hymen was ruptured. That 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.

The accused denied the allegations and said the victim's grandmother has a grudge with him. But the victim testified that the accused was her assailant. The complaint was not originated by the grandmother, and it is not coming out of the blue, given the proven fact that the victim was defiled indeed. There is credible evidence that she used to take cows to him for grazing. This is evidence showing that he had the opportunity to defile her. The act took place during day time, minimizing the possibility of mistaken identity. I did not believe the defense contention that the complaint was motivated by the alleged grudge.

I have in addition considered that the victim knew the accused before the attack, and the attack took place from the bush where they were just the two of them. I found no reason why 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 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.

16th May 2016