

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MASAKA**  
**HCT-06-CR-SC-0116 OF 2013**

**UGANDA.....PROSECUTOR**

**VERSUS**

**NKWASIBWE JOHN.....ACCUSED**

**JUDGMENT**

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

The accused stands charged with two counts. In the first count he is charged with aggravated defilement and in the second count he is charged with incest. It was alleged that he performed sexual intercourse with his daughter **KIRABO NAKATE** a girl under 18 years of age.

The victim, Pw3 (**KIRABO NAKATE**) testified that one night the accused came back home drunk. When he was given food he threw it at his wife (**Pw2, NALUBEGA RUTH**), then asked her where she had been married. He turned to the victim and asked her where her mother had been married. He assaulted the victim and her mother until the victim, in order to save them from further assault, lied to him that indeed her mother had been married.

He then sent his wife (**Pw2, NALUBEGA RUTH**) to buy alcohol for him at the trading centre, but told her not to go with the victim. When she left he called the victim to the bed on which he was sitting and asked her to tell him how they had had sexual intercourse with her. She told him that no one had had sexual intercourse with her. He then got a mingling stick and threateningly told her to go to him. In fear she went and got on the bed and he defiled her. He told her that if she mentioned what he had done to anyone he would kill her.

The next morning she informed her mother, and even showed her the skirt she had been putting on which bore semen and blood stains. The matter was reported to the authorities. The victim was medically examined. The report was allowed in evidence as an agreed fact, (Exhibit P1).

In his defense the accused denied the allegations. He said that his wife got a child with the area chairman who is his brother. These charges are a result of that.

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 defense 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 18 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 mother said that she was born in 1994. The medical examination evidence which was agreed on put her age at 16 years. She said she is 22 years old now. The defense did not contest the fact she was below 18 years at the time of the alleged attack. 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 Pw3 (**KIRABO NAKATE**) said that the accused raped her. Her mother (**Pw2, NALUBEGA RUTH**) testified that when she saw the skirt which Pw3 had been putting on it bore blood stains and white stuff. She examined the victim and found a white substance and blood in her private parts. The medical evidence pointed to a ruptured hymen and penetration.

The defense did not contest the fact of defilement. The victim's evidence was corroborated by that of the mother to whom she complained at the earliest opportunity and who saw a blood-stained skirt, and blood and a white substance in the victim's private parts. The medical evidence that there was dry semen in the victim's private parts lent further credence to the complaint. That evidence sufficiently proves that there was carnal knowledge of the victim, and I so find.

## **WHETHER THE ACCUSED IS THE ONE WHO COMMITTED THAT OFFENCE.**

The accused denied the allegations and said that he had a grudge with the area Lc chairman who got a child with his wife.

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 he defiled her. She knew him being that he was her father. He was the only male in the house at the time. Moreover, the evidence about his conduct just before the attack also supports the allegation that he raped the victim. The evidence was that he sent his wife away and told her to go alone, leaving the victim with him. He therefore had the opportunity to defile her in the wife's absence. I did not believe the assertion that the alleged grudge with the LC chairman was the reason he was falsely accused of these offences. The Chairman denied the allegation that he has a child with the accused's wife. Most important though is the fact that the victim who is the complainant has no grudge with the accused. She is the one who originated the complaint and not the chairman. Whether or not the grudge with the chairman exists is of no consequence in the circumstances. The medical evidence supports the claim that the victim was defiled. The complaint is not baseless. I reject the assertion that the charges were motivated by a grudge.

I believed the evidence that it is the accused who defiled the victim and In agreement with the gentlemen assessors I convict him of the offence of defilement as charged.

## **INCEST**

The state has to prove that the accused had sexual intercourse with his relative, in this case a daughter.

I have already found that he indeed had sexual intercourse with **KIRABO NAKATE**. In his evidence he admits that she is his daughter. The state has therefore proved that the accused committed incest. He is convicted as charged in the second count as well.

**Margaret Tibulya.**

**Judge.**

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