

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
HCT-06-CR-SC-00132 OF 2013

UGANDA..... PROSECUTOR

VERSUS

SSEKAMATE JUSTUS LAULAND.....ACCUSED

BEFORE: HON. LADY JUSTICE MARGARET TIBULYA.

JUDGMENT

The accused stands charged with aggravated defilement. It was alleged that he performed sexual intercourse with **NANYOMBI SHADIA** a person under 14 years of age when he was infected with Human Immunodeficiency Virus (HIV).

The brief facts are that on 7th November 2012 the victim(**Nanyombi Shadia**) 2 years old then was sleeping at about 9:00 Pm when her mother Pw4 (**Nalwadda Sauda**) escorted one Jalia Namuddu for a short call outside the house. They spent about 20 minutes outside. When they came back to the house Pw4 was walking ahead of Jalia Namuddu who had a torch. Pw4 just passed by where her child was sleeping and entered her room, but Jalia Namuddu who had a torch flashed in the child's direction. Jalia then shouted out telling Pw4 to see what was happening. The accused then got up very fast, his semen was dripping all over him and the child. Pw4 called people and the matter was reported to the police.

Pw2 (**No 3376 Second Lieutenant Mukasa Muhamood**) was at the police post when the matter was reported. He went to the scene and found the accused with sperms on his trousers which had been left unzipped. The accused did not deny the allegation. He revealed that he had defiled 4 or 5 other children in the area. He was medically examined and found to be HIV+ as per Exhibit P2.

The victim was found to have been 2 years old then, and her hymen was ruptured. The medical report is (**Exhibit P1**). The accused was found to be HIV+.

In his defense the accused denied the allegations but said that he at the place in issue and at about 9:00Pm, Pw4 and Jalia Namuddu went out and spent there about 20 minutes. When they came back they came with a police man. The accused was arrested and taken to the police station. He was not allowed to explain himself. He was informed that he had defiled a girl after two days. He

also said that he used to work for Pw4 (the victim's mother), who was supposed to pay her 2,000/= per day. She has however never paid him a sum of 480,000/=, his salary for 8 months. This is the reason she brought these allegations against him.

BURDEN AND STANDARD OF PROOF.

The burden of proving the accused's guilt beyond reasonable doubt is upon the prosecution throughout. 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 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 state evidence was that the victim was 2 years and 8 months at the time of the attack. The medical evidence also put her age at 2years then. She is said to be 6 years old now. The defense did not contest the fact that the victim was two years old, and i believed the evidence that she

was indeed two years on 7th November 2012 when she was defiled. This ingredient was sufficiently proved.

WHETHER THERE WAS UNLAWFUL CARNAL KNOWLEDGE OF HER.

Pw4 (**Nalwadda Sauda**) gave evidence that she saw the accused get off the victim very fast when a torch was flashed at him while he was in the sexual act with the victim. Pw2 ((**No 3376 Second Lieutenant Mukasa Muhamood**)) and **Nalwadda Sauda** (Pw4) both testified to seeing semen on the accused and on the victim.

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, eg, medical or other evidence, (**BASSITA HUSSEIN Vs UGANDA, S.C CRIM APPEAL NO. 35 OF 1995**). In this case the accused was seen coming off the victim while his semen was spilling. This was direct evidence as to the sexual act.

The accused denied having committed the offence but there sufficient evidence of him having been seen a sexual act with the victim, and with semen on his trouser and on the child. There is therefore sufficient basis for a finding that he had sexual intercourse with the victim.

This ingredient was sufficiently proved as well.

WHETHER THE ACCUSED IS THE ONE WHO COMMITTED THAT OFFENCE.

Pw4 saw the accused getting off the victim. His trouser was wet with semen, which had spilled on the child as well. There was therefore no possibility of mistaken identity.

I did not believe the accused's allegation that this is a frame up, given that Pw2, an independent witness also saw the semen. I reject the accused's denial, and together with it, the allegation of a grudge with the victim's mother. About the accused's HIV status, the medical evidence showing that he is HIV positive was tendered in evidence without objection. An admitted fact is to be taken as proved.

In agreement with the gentlemen assessors I find that the state has sufficiently proved that the accused defiled the victim who was aged 2 years and 8 months when he was HIV+. I accordingly convict him of aggravated defilement as charged.

Margaret Tibulya.

Judge.

29th April 2016