

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

**HCT-06-CR-SC-0059 OF 2013**

**UGANDA..... PROSECUTOR**

**VERSUS**

**SSEMANDA JOHN.....ACCUSED**

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

**JUDGMENT**

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

The brief facts are that on 30<sup>th</sup> September 2012 the victim (**now 17 years old**) was going to buy threads when she found the accused on the way. He asked her to wait for him so that he escorts her but she ignored him and continued her journey. Without her noticing the accused followed her and at **Nyanga** he attacked her, held her mouth, removed her knickers and defiled her. She told him that she was going to report him to the police and he asked her not to. He offered to give her 20,000/= telling her that she is his wife from then. She nonetheless reported the matter to the police. The accused was arrested. The victim and the accused were medically examined. The victim was found to have been 14 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 and said that he knows that he is HIV+ and could not have defiled the victim. The victim's father wanted to but the accused's land and when the accused refused threatened to do something to the accused that he will never forget and these charges are a fulfilment of those threats.

## **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 14 years at the time of the attack. The medical evidence also put her age at 14 years then. She said she is 17 years now. The defense did not contest the fact that the victim was fourteen years old. I believed the evidence that she was 14 years on 30<sup>th</sup> September 2012 when she was defiled. This ingredient was sufficiently proved.

## **WHETHER THERE WAS UNLAWFUL CARNAL KNOWLEDGE OF HER.**

In sexual offences 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, (**GEORGE BANGIRANA VS. UGANDA [1975] HCB 361**. Also **CHILA & 1 Vs R. [1967] EA 722**).

The 17 year old victim gave evidence that the accused had carnal knowledge of her when she was 14 years old. She reported to the police immediately after the attack.

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**).

She gave evidence that the accused had carnal knowledge of her. The medical evidence also shows that her hymen was ruptured. The defense did not contest the assertion that she was defiled. The victim's evidence as corroborated by medical evidence sufficiently proves that she was defiled. This ingredient was sufficiently proved as well.

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

The law is that a court ought not 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 I have considered the following factors;

1. The victim knew the accused before the attack,
2. The incident took place during day time. There was no possibility of mistaken identity,
3. The accused and the victim were just the two of them at the time of the attack.
4. Immediately after the attack the victim named the accused to the police as her attacker.

The victim testified that the accused was her assailant. The accused denied the allegations saying that he has a grudge with the victim's father. It should be made clear that it was not the victim's father who originated the complaint. Whether or not he had a grudge with him is therefore not relevant.

The victim named her attacker to the police at the earliest opportunity. Moreover the attack took place during day time and the accused and the victim were well known to each other. There is therefore no possibility of mistaken identity and the victim impressed me as a witness of truth.

I hereby warn myself, as I did the assessors, of the danger of convicting the accused on her uncorroborated evidence. 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.

About the accused's HIV status the medical evidence was confirmed by his own admission that he is HIV positive. In agreement with the gentlemen assessors I find that the state has sufficiently proved that the accused defiled the victim when he was HIV+. I accordingly convict him of aggravated defilement as charged.

**Margaret Tibulya.**

**Judge.**

**28<sup>th</sup> April 2016**