

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CR – CS – 0160 – 2015

UGANDA.....PROSECUTOR

VERSUS

BYAMUKAMA ADOLF.....ACCUSED

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE.

Judgment

The accused was indicted with Aggravated Defilement Contrary to **Section 129(3), (4) (a)** and **(c)** of the Penal Code Act. That on the 18th day of March 2015, at Kanangamanga Village, in Kyenjojo District, the accused performed a sexual act with his niece Riziki Ruth; a minor aged 13 years at the time. The accused denied the offence. The Prosecution produced 4 witnesses. The defence chose to keep quiet and did not bring any witness.

The state was represented by Sarah Bivanju, Senior State Attorney and Counsel Acellam Collins appeared on State Brief for the accused.

Burden of proof

It is a requirement by the law that the prosecution must prove its case beyond reasonable doubt because the accused has no duty to prove, his innocence (**Article 28** of the Constitution). (See: **Woolmington v D.P.P. [1935] AC 462. Uganda v Joseph Lote [1978] HCB 269**).

It is our principle of the law that an accused person should be convicted on the strength of the case as proved by prosecution but not on weakness of his defence. (See: **Insrail Epuku s/o Achietu v R [1934] I 166 at page 167**).

Standard of proof

Prosecution must prove its case beyond reasonable doubt. Any doubt in the evidence shall be resolved in favour of the accused.

Ingredients of the offence

1. That the Victim/child was below 14 years at the time.
2. That a sexual act was performed upon the child/victim.
3. That the accused is the one that performed the sexual act upon the child/victim.

In the instant case the victim was 13 years at the time the alleged sexual act was performed. The prosecution produced 4 witnesses, among whom was the victim, her sister, her father and the midwife who examined the victim. The accused chose to keep quiet so that Court could decide basing on the evidence as adduced by the prosecution.

That the Victim/child was below 14 years at the time:

The victim at the time of testifying in Court was aged 15 years. The medical report that was made at the time of examining the victim indicated that the victim had 14 sets of teeth meaning that she was not above 18 years therefore, a minor. The age of the victim was not contested.

That a sexual act was performed upon the child/victim:

Medical evidence as adduced by the prosecution showed that the victim had a ruptured hymen but no other injuries. PW4, the midwife that examined the victim categorically told Court in her testimony that there was no sexual act that had been engaged in by the victim before the examination was carried being 6 hours from the said incident. That the hymen was missing however, this was not a recent rupture but rather an old one. She went on to tell Court that if the victim had been involved in a sexual act she would have had bruises and that she would at least have had some redness on her genitalia which was not the case in the instant matter. From this piece of evidence, it is very clear that the victim was not involved in any sexual act what so ever.

The prosecution failed to prove this ingredient beyond reasonable doubt and I see no sexual act was ever performed on the victim.

That the accused is the one that performed the sexual act upon the child/victim:

The victim was said to have been sheltering at the accused's home at the night of the alleged incident and that the accused was very well known to her as "uncle". PW2 and PW3 also told Court that the accused was known to the family and was a clan mate to the father of the victim. However, none of the above witnesses did see the accused perform the sexual act on the victim. They told Court that they heard PW1 make an alarm and the father to the victim responded to the alarm by knocking down the accused's door. There were also a bit of contradictions as to the fact that the father came with other mourners and yet PW3 maintained that he came a lone.

The prosecution witnesses only told Court that the accused had defiled the victim however; it seems more of a concoction than a true story. None of the prosecution witnesses was able to corroborate the evidence of the victim since they did not see what actually happened at the alleged night of the incident. The prosecution in the instant case failed to place the accused at the scene of crime, the evidence as given by the prosecution witnesses was inconsistent.

Note should also be taken of the fact that it was dark and this was confirmed by PW1 and PW2.

Grudges

All the prosecution witnesses told Court that none of them had a grudge with the accused. However, during cross-examination PW2 told Court that their father's house had ever been burnt however, PW3 denied this fact and maintained that he was the truthful one between him and PW2 since he was the elder. This was a major inconsistency that goes to the root of the matter. The accused also told Court that the house that got burnt was for a brother to PW3 and that that is when disagreements started between PW3 and the accused. That the accused was suspected of having burnt the house and was even taken to Police.

It is my humble opinion that prosecution therefore failed to prove their case beyond reasonable doubt. There were a number of inconsistencies in the evidence of the prosecution witnesses. It is also my belief that indeed PW1's family has a grudge against the accused. I am also in agreement with the assessors that the accused should be acquitted for lack of evidence on the charge of aggravated defilement against him. He is acquitted and set free.

Right to appeal explained.

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OYUKO. ANTHONY OJOK

JUDGE

10/11/16

Read in open Court in the Presence of:

1. Sarah Bivanju – Senior State Attorney
2. Counsel Acellam Collins – for the accused on State Brief
3. Court Clerk – James
4. Assessors

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OYUKO. ANTHONY OJOK

JUDGE

10/11/16