

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CRIMINAL CASE No. 0007 OF 2017**

5    **UGANDA** ..... **PROSECUTOR**

**VERSUS**

10    **A1. OPAKRWOTH JEREMY**        }  
      **A2. SHAFIK TADIK**                } ..... **ACCUSED**

**Before: Hon Justice Stephen Mubiru.**

**SENTENCE AND REASONS FOR SENTENCE**

15    This case came up on 11<sup>th</sup> April 2017, in a special session for plea bargaining. The accused was indicted with the offence of Simple Defilement c/s 129 (1) of The *Penal Code Act*. It was alleged that on the night of 16<sup>th</sup> – 17<sup>th</sup> April 2015 at Ring West village, Abeju Parish, Nayapea sub-county in Zombo District, the accused had unlawful sexual intercourse with Atyeronimungu Evaline, a girl under the age of eighteen years.

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      When the case was called, the learned State Attorney, Ms. Gertrude Nyipir reported that she had successfully negotiated a plea bargain with both accused and their counsel. The court then allowed the State Attorney to introduce the plea agreement and obtained confirmation of this fact from defence counsel on state brief, Mr. Samuel Ondoma. The court then went ahead to ascertain  
25    that both accused had full understanding of what a guilty plea means and its consequences, the voluntariness of the accused's consent to the bargain and appreciation of its implication in terms of waiver of the constitutional rights specified in the first section of the plea agreements. The Court being satisfied that there was a factual basis for the plea, and having made the finding that both accused made a knowing, voluntary, and intelligent plea bargain, and after they had  
30    executed a confirmation of the agreements, went ahead to receive the agreements to form part of the record. The accused were then allowed to take plea whereupon a plea of guilty was entered in respect of each of them.

The court then invited the learned State Attorney to narrate the factual basis for the guilty plea, whereupon she narrated the following facts; on 16<sup>th</sup> April 2015, at around 8.00 pm, the victim and her sisters sneaked out to go to a disco dance at a bar in Ring West village. At around 1.00 am a fight ensued at the bar which caused a lot of chaos and the victim and her sister ran into  
5 different directions. A1, A2 and another still at large followed the victim. They caught up with the victim and A1 cut the victim with a knife on the head and caused her to fall down. As she was down A1 removed her clothes and knickers and performed sexual intercourse with the victim while threatening the victim that he would injure her. After A1 was done, A2 also performed sexual intercourse with the victim and after he was done, the third person at large as  
10 well performed sexual intercourse with the victim. The three of them then escorted her to her home since she was too weak. They informed the victim's parents that they found someone else chasing the victim and they rescued her. The victim responded immediately and informed the parents that it is the accused that had performed sexual intercourse on her. On hearing that, the accused fled. The matter was reported to the police post and the victim was examined at Nyapea  
15 Hospital where she was admitted and when examined on P.F 3A by Dr. Okairwot Justin, she was found to be 15 years old. She had a scalp laceration of about 10 cm long. She had healing abrasions of the right leg caused by friction and her hymen was ruptured. The possible causes were sexual intercourse. Both accused were examined on P.F 24 and A1 was found to be 19 years old with normal mental status. A2 too was examined and was found to be 18 years old with  
20 sound mind. Both police forms 24 and P.F 3A were tendered as part of the facts.

Considering that the manner of the attack on the victim was life threatening and involved a "gang rape", the court cautioned both accused of the possibility of enhancement of the proposed sentence. After both accused confirmed that despite that possibility they were still willing to go  
25 ahead with the plea bargain, they were asked whether the facts as narrated were correct.

Upon ascertaining from the accused that the facts as stated were correct, both were convicted on their own plea of guilty for the offence of Simple Defilement c/s 129 (1) of The *Penal Code Act*. In justification of the sentence of eight (8) years' imprisonment proposed in the plea agreement,  
30 the learned State Attorney adopted the aggravating factors outlined in the plea agreement. The learned defence counsel too adopted the mitigating factors outlined in the plea agreement. In his

*allocutus*, A1 stated that he grew up with his father, since his mother died. He was also operated upon. A2 said he was in school and his father had died. He left the three of them with their mother. He dropped out of school and began riding a boda boda in order to help his younger siblings. The victim was not available in court to make her victim impact statement.

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I have reviewed the proposed sentence of eight years' imprisonment in light of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Agaba Job v. Uganda C.A. Cr. Appeal No. 230 of 2003* where the court of  
10 appeal in its judgment of 8<sup>th</sup> February 2006 upheld a sentence of 10 years' imprisonment in respect of an appellant who was convicted on his own plea of guilty upon an indictment of defilement of a six year old girl. In the case of *Lubanga v. Uganda C.A. Cr. Appeal No. 124 of 2009*, in its judgment of 1<sup>st</sup> April 2014, the court of appeal upheld a 15 year term of imprisonment for a convict who had pleaded guilty to an indictment of aggravated defilement of  
15 a one year old girl. In another case, *Abot Richard v. Uganda C.A. Crim. Appeal No. 190 of 2004*, in its judgment of 6<sup>th</sup> February 2006, the Court of Appeal upheld a sentence of 8 years' imprisonment for an appellant who was convicted of the offence defilement of a 13 year old girl but had spent three years on remand before sentence. In *Lukwago v. Uganda C.A. Crim. Appeal No. 36 of 2010* the Court of appeal in its judgment of 6<sup>th</sup> July 2014 upheld a sentence of 13 years' imprisonment for an appellant convicted on his own plea of guilty for the offence of aggravated  
20 defilement of a thirteen year old girl. Lastly, *Ongodia Elungat John Michael v. Uganda C.A. Cr. Appeal No. 06 of 2002* where a sentence 5 years' imprisonment was meted out to 29 year old accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl.

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The aggravating factors in this case are that; the accused used a deadly weapon to threaten and actually inflicted harm on the head of the victim to cower her into submission. I have also considered the fact that she was subjected to multiple sexual assaults after which she was too weak to return home on her own. The cut on the head and the multiple sexual assaults combined  
30 created a potential life-threatening situation. On the other hand, the mitigating factors are that both accused were relatively young men at the time. They also have been on remand for two

years, since April 2015. They also are first offenders who have readily pleaded guilty. They therefore deserve a reformatory rather than a retributive sentence.

Having considered the sentencing guidelines and the current sentencing practice in relation to offences of this nature, I reject the sentence proposed in the respective submitted plea agreements entered into by the accused, their counsel, and the State Attorney and instead, sentence each of the accused to a term of imprisonment of ten (10) years, to be served starting today.

- 10 Having been convicted and sentenced on their own pleas of guilty, the convicts are advised that they have a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

Dated at Arua this 19<sup>th</sup> day of April 2017.

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Stephen Mubiru  
Judge.  
19.04.17