

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT SOROTI
HCT-09-CR-SC-0048 OF 2013

UGANDA:.....PROSECUTION

VERSUS

OLUPOT JOHN FRANCIS:.....ACCUSED

BEFORE HIS LORDSHIP HON. MR. JUSTICE BATEMA N.D.A, JUDGE

Judgment

Olupot John Francis stands indicted with one count of Aggravated defilement C/S 129 (3) and (4) (a) of the Penal Code Act.

It is alleged that on the 3rd day of September 2012 at Odelai, Pamba ward in Soroti Municipality in Soroti district the accused performed a sexual act with the girl victim (A.D) aged 12 years old. The accused denied the charges.

The prosecution and defence agreed on some facts:

1. That the girl victim was 12 years old.
2. That she was a neighbour living in the room next to where accused rented on the same house at Odelai, Pamba.
3. That accused was a male adult of sound mind.

Dr. Ekumait who testified in Court and was cross examined at length said he found evidence of some slight penetration. There was marked reddening of the mouth of the female sex organ of the girl victim most likely caused by a male sex organ.

In effect two ingredients of defilement are admitted as proved.

1. The girl was below 14 years of age.
2. A sexual act was performed upon her.

Participation of the accused in the commission of the crime is denied. The only identifying witness is the victim. She was sleeping in a dark room and only woke up to find a man sleeping on top of her. She shouted and tried to make noise. The person assaulting her held her mouth and

said “keep quiet. I am Olupot”. He forced his male sex organ into her private parts. She struggled with him till he left her and went out.

The girl victim said she recognized him by his voice. The matter was reported to her mum and later police.

PW2 Okanyum Daniel is a young brother of the girl victim. They slept in the same room. He did not hear anything of what is alleged to have taken place that fateful night. He was only told of it by his sister the next day. He confronted the accused and he denied the offence. But he promised to buy some cabbages for the girl if they did not report the allegations.

Prosecution submitted that accused’s conduct of trying to bribe PW2 into silence with a cabbage points at his guilt. But the promise to buy the cabbage is denied by the accused. There is nothing to confirm that the accused made the said promises.

Identification

The circumstances of the case are such that the girl-victim could not properly recognize the face of the accused in the dark. We only have identification by voice. Because these were neighbours, there is some remote possibility that accused’s voice was well known to the girl victim but a lot of caution must be taken. There could be mistaken identity since the voice was not loud but hushed. The girl was awakened from deep sleep and may not have heard clearly to recognize the voice. With these doubts in mind I am reluctant to rely on this evidence to convict. I give accused the benefit of doubt.

The prosecution case is not strong enough to sustain a conviction.

The accused is acquitted and set free unless held on other lawful charges.

Judge
05/05/2017