

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT SOROTI
HCT-09-CR-SC-0063 OF 2013

UGANDA:.....PROSECUTION

VERSUS

ONYAIT AMBROSE:.....ACCUSED

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

Judgment

ONYAIT AMBROSE is indicted with Aggravated Defilement C/S 129 (3) and (4) (a) of the Penal Code Act. Prosecution alleged that on 29/2/2013 at Madera School of the blind in Soroti district accused performed a sexual act with a girl aged below 14 years. The accused denied the charges.

Both sides agreed that the victim was below 14 years and there was enough medical evidence tendered to prove that a sexual act had been performed upon her. PF3A was exhibited. It is participation that was denied.

Participation is by proper identification. The victim said she was lured into sexual intercourse by the accused. They walked to one of the school dormitories at the school for the blind and had sexual intercourse. The accused walked away leaving her behind. He came back at 9:00pm in the night and they had another round of sexual intercourse.

After 2 (two) days her aunt came looking for her and took her home. She took her to the police where she was interrogated and then taken for medical examination.

In cross examination she said she bled and felt pain but did not go home fearing being beaten by her guardian. That even on the second day she felt bad as she went through another round of sexual intercourse. She was forced into the act, this time around.

PW2 ATAI ALICE was the aunt of the girl. She is a medical doctor at Mbale.

That when the girl victim went missing she looked for her. She got reports that the girl was seen at night with the accused. When she confronted Anyait on the issue he denied the allegations.

The next day she got a report from one Secretary that the girl is in one of the dormitories at the school for the blind. It was raining but she rushed there and recovered the girl. She was alone in

the dormitory. She was so excited at recovering the lost girl. She did not immediately suspect that she had been defiled and so did not subject her to medical examination. She did not confirm her suspicion.

It is the police which subjected her to medical examination. Her hymen was perforated.

In his defence the accused said it is true he met the victim seated on the verandah of the Head Teacher's office late at night around 9:00pm. He had earlier on seen her picking oranges in the company of his sister Lucy that evening. He asked the night watchman to call in one Mr. Onyait the teacher in charge of the school security. By the time Mr. Onyait came the victim had disappeared in thin air at the school compound.

The accused's brother Erongot Paul 14, told Court that he used to sleep with the accused in the school dormitory. That they saw the girls going to pick oranges near the fence but he does not know how they left. Later in the night he was in the company of the accused when they met the victim seated at the verandah to the Head Teacher's office. They asked her what she was doing there and got no answer from her. When they called in Mr. Onyait the teacher in charge of security she disappeared in the dark night. He said he never saw her sleeping in the dormitory.

The next morning the aunt to the victim came looking for her and they told her how she had disappeared last night.

Later he learnt that she had been recovered.

The other evidence brought by the mother of the accused was to show that he was 17 years old at the time he is alleged to have committed the offence. I believe he was 17 years born on 15/2/1996.

In the final submissions Counsel questioned the conduct of the victim and the aunt of the victim. That the girl did not take advantage to escape when she was alone, and the aunt of medical training did not examine her daughter yet she at one time suspected that she could have been defiled. She wondered why the medical report did not talk of the girl bleeding in the private parts.

In my view these are minor inconsistencies after the fact of defilement and can be ignored. I would believe there is no one right way of reacting to a sexual assault.

Identification

The girl was recovered in a dormitory of the neighbouring primary school separated by a fence. The question remains one; was Onyait in dock the one who defiled the victim and hid her in the dormitory?

As far as identification is concerned there are serious gaps in the prosecution evidence. The Askari and Mr. Onyait in Charge of the school security did not testify. These are alleged to have been in the know that the girl was seen in the company of the accused at night.

There is also missing evidence of the Secretary who saw the accused in the school dormitory in the company of the girl. She allegedly then rang her aunt PW2 on that rainy day. Since the girl was found alone in a neighbouring school, the missing evidence of the Secretary would be very relevant. But now the evidence remains hanging. I would give the accused the benefit of doubt.

Because of the inconclusive evidence on the part of the prosecution, the circumstantial evidence could be capable of other interpretations. Any other person could have defiled the girl and hidden her in the dormitory not being the accused. The prosecution case is not water tight.

The accused is acquitted and set free.

Judge
04/05/2017