

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT SOROTI
HCT-09-CR-SC-0005 OF 2016

UGANDA:.....PROSECUTION

VERSUS

OPOLOT EDMOND:.....ACCUSED

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

Judgment

Opolot Edmond was charged with aggravated defilement of a girl aged 5 years C/S 129(3)(4)(a) of the Penal Code Act. The alleged victim was a well known neighbour and there is nothing like mistaken identity.

The girl told Court that the accused told her to lie on his bed which she did. That he removed “his thing” and inserted it in her private parts which she indicated by touching. That she felt pain and cried. He let her go out.

That she immediately reported him to her mother who took her to the hospital.

The victim’s mother said she was drawing water at a nearby borehole when she saw her daughter coming out of Edmond’s house. She noticed the daughter walking with difficulty with legs apart.

She asked her what had happened and the girl told her Edmond had used witchcraft on her, the family slang for sexual intercourse. She examined her private parts and found a whitish fatish substance which she took for semen. The child was taken to police.

The medical examination could not be done until the next day at Soroti Regional Hospital.

PF3A exhibited as Exhibit PE1 was filled by a Dr.V. Aruo. He said there were no injuries except that the vulva had been bruised. He said the hymen was Lax. The mental status of the girl victim was Normal according to the doctor. She had no physical difficulty and was walking and moving normally. The doctor said she was emotionally Normal.

In his defence the offender denied the allegations. He admitted the fact that the young girl went to his house and he gave her a piece of sugarcane but did not take her to his bed or sleep with her.

PF3A

The girl's behavior and emotions did not reveal any stress or pain. But the doctor concluded that the inner part of her sex organ was bruised and her hymen was loosened (Lax).

The mother of the girl victim believes she saw semen but this does not feature in the medical report.

Evidence of a child

Evidence of a child of tender years as a single identifying witness has to be received with a lot of caution to rule out fantasy and coaching by elderly people around the child.

Analysis of Evidence

This is a borderline case where the other ingredient of aggravated defilement are not denied except the sexual act itself. The age of the girl is not denied. She was 5 years old. Both the accused and alleged victim were clearly seen at the alleged scene of crime-Edmond's house. The question is; "was the girl defiled?" Her hymen was intact, there is no evidence of bleeding and tearing of any membrane or walls of the sex organ of this young girl.

I am fully aware that it is possible to perform a sexual act with a child and there is no rupture of the hymen and no bleeding. The slightest degree of penetration is enough to constitute defilement.

However this case is so unique. Medical evidence tendered shows that the mental status of the girl was **Normal and she was not stressed at all**. She was behaving without any emotional characteristics. The hymen was not ruptured but merely Lax.

In my opinion the doctor was vague. Lax means “Loose” or loosened and relaxed. That cannot be said of a hymen. It is either intact or ruptured. The outer lips of the private parts are what may have been so described as Lax. And the behavior of the young girl could not have remained Normal if she had bruises of the vulva. The vulva is a sensitive part inside the female sex organ. The girl would have reacted to the pain of bruises which she did not.

I doubt whether this offender performed the sexual act and the girl’s conditions remained Normal both physically and emotionally. It is a lie.

Conclusion

My conclusion is that the mother was rightly suspicious and vigilant in keeping an eye on her daughter but these allegations of defilement were baseless. The semen was her own imagination. The medical opinion is vague and speculative. I will resolve the doubts created in the minds of Court in favour of the accused. I rule that prosecution has failed to prove its case beyond reasonable doubt. The offender is therefore acquitted of the offence of Aggravated defilement.

He is set free unless held on other lawful charges.

Judge
26/04/2017