

IN THE HIGH COURT OF UGANDA AT KUMI

CRIMINALS SESSION CASE NO. 196 OF 2016

UGANDA V OPOLOT BEN ALIAS BOSCO

BEFORE HON. LADY JUSTICE H. WOLAYO

5 JUDGMENT

The accused person Opolot Ben is indicted with aggravated defilement c/s 129 (3) and (4) (a) of the Penal Code Act. It is alleged the accused person on 7th May 2016 at Kachede Kachumbala village Bukedea district performed a sexual act on Agudi Jackline a girl aged 6 years.

10 Prosecution was led by Engena George RSA while the accused was represented by Erabu Timothy on state brief.

Assessors were Okiror Joseph and Amuge Esther.

The state had a duty to prove beyond reasonable doubt age of the victim, performance of a sexual act and participation.

15 Age of the victim

That Agudi was six years at the time of the alleged offence is not disputed. PF3A admitted by consent shows she was examined on 9.5.2016 and was found to be six years old. Agudi also testified and it was obvious she is a girl of tender years.

The state therefore proved beyond reasonable doubt the victim was a girl of tender years.

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Performance of a sexual act and participation.

The state relied on four witnesses to prove these two ingredients.

According to PW4 Agudi, she was at home with Amuge boiling cassava when someone came and chased them, she fell while Amuge her sister entered the house. It was her evidence this

25 someone took her to the cassava garden, and removed her pants.

Although she was unable to articulate what that someone did to her, she pointed to the accused as the person who chased her and identified him as Ben.

Her elder sister Amuge Elly aged nine years old corroborated Agudi's evidence that somebody came to their home while they were boiling cassava, chased them and when Agudi
5 fell, he took her to the cassava garden. On her return, she observed she was bleeding from the rear. She identified the person as Ben and that she had seen him before as he passes by the nearby road.

This witness admitted she did not tell her mother what had happened to Agudi but confirmed the incident happened during the day and that she locked herself in the house when the
10 accused took Agudi to the cassava garden.

These two girls who gave unsworn testimony are the identifying witnesses in this case.

With respect to their mother PW2 Ikiriya Jesca, she returned home on 7.5.2016 from the rice field to find Agudi seated and bleeding but both Agudi and Amuge remained quiet when asked what had happened to Agudi.

15 It was Ikiriya's evidence that she took Agudi to a nearby clinic run by PW1 Kaladi Helen who happens to be a sister to Ikiriya.

In cross examination, her evidence was that Agudi failed to get up when sent for water and that is when she noticed the bleeding. Her evidence further is that the accused is her clan mate and at one time he came knocking at her door at night but she did not open for him.

20 With respect to Kaladi Helen, PW1, she admits examining Agudi and goes on to say she cleaned her up then sent her to the Health centre which was odd because she in effect destroyed whatever evidence was there. Although she claims to have seen fresh blood on the victim, this evidence is suspect because none was found by the medical officer who examined the victim on PF3A.

25 Even without evidence of blood, the fact that the medical officer observed a gaping vaginal orifice is conclusive evidence of performance of a sexual act.

With respect to participation, while there is some doubt as to whether the act was recent or past, the accused person was positively identified by both girls as the perpetrator of the crime. Agudi identified him as the person who defiled her.

I looked carefully at this girl as she pointed to the accused and I believed her. It is very possible the accused had defiled her before because of the gaping orifice observed by the medical officer.

5 In defense, the accused made a sworn statement in which he testified he was at the trading centre on a Sunday (8.5.2016) when he sighted Ikiriya and her daughter Amuge and he was immediately arrested. He also testified he was with Osekeny Ibrahim and Okwii Peter both of whom testified as defense witnesses and said they were with Opolot from 6 am to 6 p.m on 7.5.2016 at work ferrying bricks to Bukedea Lifeline Academy.

10 The key point here is not so much that accused committed the defilement that specific day, but that the girls identified him as the person who defiled the victim.

Given the victim had a gaping vaginal orifice, she could have been defiled before 7.5.2016 by the accused person whom she positively identified and placed at the scene of crime. I therefore reject the denials by the accused and his alibi presented through his two witnesses.

15 I agree with the two assessors the state has proved beyond reasonable doubt the offence indicted.

He is convicted of aggravated defilement c/s 129(3) (4) (a) of the Code Act.

DATED AT KUMI THIS 1ST DAY OF MARCH 2018.

HON. LADY JUSTICE H. WOLAYO

2. 30 p.m.

20 Accused present

Engena George RSA for state

Erabu for accused –absent.

Court clerk: Bruno

Ct. Judgment delivered

25 State: maximum penalty is death

The victim was only six years old

Offence is on the rise. We need a deterrent sentence.

I pray for the maximum penalty.

Accused: I take care of old women. I have a wife and children.

I suffer from chest and back pain. I suffered a broken waist.

5 **Sentence**

The aggravating factors in this case are the very tender age of the victim, the psychological damage inflicted on this young girl who was sexually violated and used by this grown man.

It is possible he was getting back at her mother who had spurned his advances given that he tried to enter her house at night one day.

10 Whatever his motive, defilement of girls of tender years is condemned by the UN Declaration on Violence against Women and this court has an obligation to punish it once proved.

That accused is a young man of 30 years is a mitigating factor.

Taking into account of the sentencing guidelines, appropriate sentence is 30 years. As accused has been on remand since October 2016, he is sentenced to 28 years and eight

15 months imprisonment.

DATED AT KAMPALA THIS 1ST DAY OF MARCH 2018.

HON. LADY JUSTICE H. WOLAYO