

IN THE HIGH COURT OF UGANDA AT MASAKA

CRIMINAL SESSION CASE NO. 4 OF 2014.

UGANDA V KASUJJA IVAN

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The accused person Kasujja Ivan is indicted with aggravated defilement c/s 129(3)(4) (a) of the Penal Code Act. It is alleged that the accused person on 19th November 2012 at Kasana village in Kalungu district performed a sexual act on Nakawunde Stella a child under the age of 14 years.

Prosecution as represented by Aisha Naluve Principal State Attorney while the accused was represented by Jamira Lunkuse on state brief.

Assessors were Muwulya Haruna and Ndinoha Ronald.

The state had a duty to prove the following ingredients beyond reasonable doubt.

1. The victim was below 14 years
2. Performance of a sexual act
3. Participation.

Proof of age

That the victim was aged approximately six years at the time of the alleged offence in November 2012 was confirmed by PF3 A , PW3 Nassolo Betty mother of the victim , the victim herself , my assessment and that of the assessors. When she testified she was aged approximately 12 years old. Therefore, the victim was six or seven years old years in 2012 when the offence allegedly took place.

Performance of a sexual act and participation

With respect to performance of a sexual act and participation, prosecution relied on medical evidence and three prosecution witnesses to prove these ingredients.

According to PW1 Nakawunde Stella , on 19. 11.2012 at 8 p.m, she was at home with Brenda, Naka or Nakanyike , Sarah and Jane when her mother sent Nakanyike and Sarah to the shops . Soon after, Stella the witness and Brenda followed the two girls but instead, Stella and Brenda went to Jaja Lwasa's home to play.

According to the witness, Brenda who is the daughter of the accused with Nakanyike ran and left her at Lwasa's home after seeing Kasujja . It was Stella's testimony that the accused then held her hand and took her to a coffee tree, removed her pants and performed a sexual act on her.

After ordering her not to reveal to anyone, he left her to return home where she told Nakanyike what had happened.

According to PW3 Nassolo on 19.11.2012 , she was at home and sent three of her children to the shops who included Nakanyike Betty aged 20 years, Stella Nakawunde aged seven years and Brenda Nakakande daughter of the accused.

It was Nassolo's evidence that while Nakanyike returned with cooking oil, Stella the victim did not . In cross examination, Nassolo clarified that she had sent Nakanyike to the shops but the other children just followed her. Indeed Nassolo sighted the accused in the vicinity of her home before Stella returned.

When Stella returned, she informed Nakanyike that the accused had defiled her and when Nassolo examined her, she found that the girl's private parts were torn. According to Nassolo, Stella was shaking.

I found both witnesses credible . What is material is that Stella left home on the evening of 19.11.2012 with Brenda; that accused was sighted in the vicinity by Nassolo PW3 who also happens to be his mother in law as he produced Brenda with Nakanyike daughter of Nassolo.

Worthy of note is that accused was not wanted in the home of Nassolo for the reason that he never supported Nakanyike or her child. Accused admitted as much in his defence when he acknowledged Brenda is his daughter with Betty but whose second name he did not know.

I found Stella a credible witness who properly identified the accused that night as she knew him as father of Brenda , the girl she was with that night at Lwasa's place.

Performance of a sexual act was proved by medical evidence and the accounts of Nassolo and Stella. The fact that Nassolo examined her daughter that night and saw that her sexual organ had been interfered with coupled with PF3 that shows the girl sustained multiple bruises on the labia majora caused by penetration into the sexual organ is sufficient proof of performance of a sexual act.

Furthermore, Stella was in distress when she returned home that night which is further evidence that she had been sexually violated.

The accused person was arrested by Pw2 Sekijoba on 19.11.2012 at night but on the way to police, accused fled and was arrested almost four months later a fact admitted by the accused in his defence.

The act of being in hiding for four months after the offence is further proof of a guilty mind.

His explanation that he went into hiding because he feared the group that was taking him to the police would assault him is without merit.

Furthermore, his defence that he was in his shop until 9 pm and then left for home does not place him far from the scene of crime especially as he was seen near Nassolo's home at the time the children were out.

In agree with the gentlemen assessors that the state has proved beyond reasonable doubt that the accused person performed a sexual act on Stella Nakawunde a girl aged six to seven years .

He is convicted as indicted.

DATED AT MASAKA THIS 23RD DAY OF MAY 2017.

HON. LADY JUSTICE H. WOLAYO

SENTENCING

This case is aggravated by the deliberate action of the accused to target the victim as a way of getting back at her parents for rejecting him. Sexual violence against young girls is

condemned by both international and our laws and as such, this court must send the message that it will be punished appropriately when proved.

The accused is a young man which is a mitigating factor. Appropriate sentence is 28 years. As accused had been on remand since January 2013, he is sentenced to 23 years and six months imprisonment.

Hon. Lady Justice H. Wolayo