

IN THE HIGH COURT OF UGANDA AT KUMI

CRIMINAL SESSION CASE NO. 67 OF 2016

UGANDA V WETAKA JUMA

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The accused person Wetaka Juma is indicted with aggravated defilement c/s 129(3) and (4) (a) of the Penal Code Act. It is alleged that the accused person on 25th July 2015 at Angopet cell, Bazaar ward, Kumi district, performed a sexual act on Aeenen Esther a girl aged six years.

Prosecution was led by Angoli Peter State Attorney while accused was represented by Erabu Timothy on state brief.

Assessors were Okwii Francis and Rose Asege.

The state has a duty to prove beyond reasonable doubt.

1. Age of the victim
2. Performance of a sexual act
3. Participation of the accused person.

Age of the victim

It was not disputed that the victim was examined at Kumi Health Centre on 25.7.2015 and found to be six years old. PF3A on which this finding was recorded was admitted by consent of both counsel.

The victim appeared in court to testify and she was obviously a child of very tender years and about eight years old.

I am therefore satisfied the state proved beyond reasonable doubt the victim was below statutory age of consent at the time of the alleged defilement.

Performance of a sexual act and participation by accused person.

The state relied on PF3A and oral testimonies to prove performance of a sexual act.

According to PW1 Erimu Robert, father of the victim, on 25.7.2015, at about 1 p.m, he returned home at Bazaar ward only to find the accused person had just defiled his daughter and was pulling up his trousers while the girl lay on the mattress looking weak with no pants while her dress was pulled up. It was his evidence that the accused was his tenant within the same premises so he knew him well.

He locked the house and went to call neighbours and among those who responded are his father Kizito Akol and Solanje Nsale .

It was the testimony of Solanje Nsale PW2 that on 25.7.2015, she took the victim Aeneen to Kumi Health Centre for treatment and on their return home, she put her in her father's house. It was evident Solanje is an in law of Erimu and they were neighbours.

According to Solanje, she observed accused was in his house when she returned from hospital.

It was after the return from hospital Erimu called her and on reaching Erimu's house, she found the child Aeneen lying on a mattress . She examined her and

found semen on her thighs . Meanwhile, accused was still in the house pulling up his trousers.

It was suggested by the defense in cross examination that the accused was framed by Erimu because he owed Erimu rent arrears . Yet in his sworn statement, the accused claimed he was framed because of a land dispute between Erimu's family and some Nubians. I disbelieve the defence case except for his admission he was at his house on the date and time the offence took place , an admission that places him at the scene of crime.

PF3A reveals the medical officer examined Aeenen on 25.7.2015 and found semen on her thighs although her hymen was intact.

PW4 Aeenen did not give evidence on oath and she was able to identify the accused whom she knew as a neighbour and that he gave her 100/ and defiled her . This piece of evidence is relevant because her father testified Aeenen Esther told him the accused used to give her 100/. This evidence goes to show the victim knew the accused person.

From the foregoing analysis, the accused was caught red handed by the Erimu PW1 when he was just done with defiling Aeenen from her father's house , a fact corroborated by Solanje who confirmed she left the girl in her father's house after their return from hospital and who examined her and found semen on her thighs, a fact confirmed by PF3A.

Furthermore, Erimu found the girl on a mattress with her dress up and with no pant while accused was pulling up his trousers.

The evidence called by the state is direct evidence of performance of a sexual act and participation by the accused in this criminal activity.

I agree with the assessors that the state proved beyond reasonable doubt the offence indicted.

Accused person is accordingly convicted of aggravated defilement as indicted.

DATED AT KUMI THIS 20TH DAY OF FEBRUARY 2018.

HON. LADY JUSTICE H. WOLAYO

Uganda v Wetaka Juma

28.2.2018

Accused present

Angoli State Attorney

Erabu Timothy for accused

Court clerk : Bruno Opolot

Sentence

The accused defiled a girl who was barely six years old, a very tender age to be subjected to sexual violence.

Aggravated defilement attracts a maximum penalty of death and therefore it is a very grave offence whose sentence should match its gravity.

The fact that defilement of young girls still persists in our community reflects a level of impunity and an indifference to consequences of their acts.

That the accused is a young man of 31 years is a mitigating factor.

Appropriate sentence is 25 years. As he has been on remand since July 2015, he is sentenced to 23 years and five months imprisonment.

DATED AT KUMI THIS 28TH DAY OF FEBRUARY 2018.

HON. LADY JUSTICE H. WOLAYO