

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA**  
**CRIMINAL SESSIONS CASE No. 0013 OF 2015**

**UGANDA** ..... **PROSECUTOR**

**VERSUS**

**KASUJJA GEORGE WILLIAM** ..... **ACCUSED**

**Before Hon. Justice Stephen Mubiru**

**SENTENCE AND REASONS FOR SENTENCE**

When this case came up on 11<sup>th</sup> June, 2018 for plea, the accused was indicted with the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of the *Penal Code Act*. He pleaded not guilty and the case was fixed for commencement of hearing on 19<sup>th</sup> June, 2018. Today, there are three prosecution witnesses in attendance ready to testify but the accused has chosen to change his plea and the indictment has been read to him afresh. It is alleged that on 25<sup>th</sup> April, 2014 at Kulambiro-Tuba, Kyanja Parish, in Kampala District, the accused performed an unlawful sexual act with Nanda Prossy, a girl aged 12 years. The accused has pleaded guilty to the indictment.

The learned State Attorney, Ms. Adongo Harriet has narrated the following facts of the case; on 25<sup>th</sup> April, 2014 the victim, a one Nanda Prossy who is a juvenile, a pupil in primary four aged 12 years was asleep on her bed as usual. During the night, she woke up and saw the accused who lived with them in the same house, he was near her bed seated next to her. He held her mouth, telling her to keep quiet and not to make any noise otherwise he would kill her. Because of the fear, the victim decided to keep quiet and obey his instructions. He then inserted his penis in the victim's vagina but because of her tender age he could not achieve deep penetration. She felt pain, but went back to sleep. Her mother Nakiwu Harriet was in the house at the time but her father who is a boda boda rider was still at work. The victim checked herself and felt some slippery stuff coming out of her vagina and cleaned it off. She did not tell her parents because she was afraid that the parents would beat her for allowing that to happen to her. After about a week her mother saw her walk with difficulty and got concerned and she asked her someone kicked her from school or sexually abused her and that is when she gained confidence and

confided in her mom that the accused had performed a sexual act with her but she feared to tell her because of fear of beating. Her mother then informed her father Salongo Livingstone about what the daughter had told her. I immediately the father of the victim called the local authorities and told them of what had transpired. The Vice Chairperson of the area was called by the father and on his arrival the accused began to run away and he escaped. It was during the night. The next day they managed to arrest him. The victim was medically examined after the matter was reported to the police, by Dr. Ojara Santo, a medical officer at Market street Nakawa and found that she was 12 years old because she had only 28 teeth and also based on the immunisation form which showed she was born in 2002. There were no injuries on other parts of her body. In her genitals; the hymen was intact, there were no bruises seen, there was inflammation on the posterior vulva, seen with whitish vaginal discharge. She was HIV -ve. He signed and stamped it. The accused was later arrested and detained in custody. He was examine by the same doctor on 12<sup>th</sup> May, 2014 and was found to be of the apparent age of 27 years. He had 32 teeth. Everything about him was normal including his mental status. He was then charged accordingly. Both police forms; P.F. 3A and P.F 24A as well as a photocopy of the immunisation card were tendered as part of the facts.

Upon ascertaining from the accused that the facts as stated were correct, he has been convicted on his own plea of guilty for the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of *The Penal Code Act*. Submitting in aggravation of sentence, the learned State Attorney has stated that the convict was being taken care of by the father of the victim and was like a son in the home. The victim was like a sister to the convict. The kind of offence is so rampant where men take advantage of young girls. The action of the accused in changing plea was after seeing the witnesses in court. He is not remorseful at all. He should have admitted long before and resources would not have been wasted. His change of plea is an afterthought. The maximum is death. The victim was a pupil with a bright future. She was by then only in primary four and according to her at school she is considered an outcast due to the act. She prayed for a deterrent sentence which would act as a signal to other would be perpetrators. She proposed 30 years' imprisonment.

In response, the learned defence counsel Ms. Wakabala Suzan prayed for a lenient custodial sentence on grounds that; the convict has readily pleaded guilty. Right from police he was admitting the offence. (She tendered in his plain statement as part of the facts). He is remorseful and on that day he was under the influence of alcohol. He is a first offender with no previous  
5 record of conviction. According to the medical evidence, the victim did not suffer any physical injury. There was no sign of sexual penetration in the past week and the vaginal discharge was due to candidiasis. He was aged 27 years at the time and thus youthful. He was a builder before his arrest. He deserves a short custodial sentence and can reform with a short sentence. He has been on remand for four years and eight months. For a person who from the police was willing to  
10 plead guilty, his right to a fair and speedy trial has been violated. In comparison with other cases, she suggested seven years' imprisonment.

In his *allocutus*, the convict apologised to the complainant and the victim. For the time he has spent at Kitalya prison farm, he is sorry for what he did and prayed for a lenient sentence. In  
15 their victim impact statement, the biological father and mother of the victim, Salongo Kusabunga Livingstone and Nalongo Nakiwu Harriet, stated that the victim was embarrassed on the village. She had to receive treatment for the STI. Even at school she was jeered for some time but it has now almost been forgotten due to the passage of time. They left it to court to determine an appropriate sentence in the circumstances.

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According to section 129 (3), the maximum penalty for the offence of Aggravated Defilement c/s 129 (3) and (4) (a) of the *Penal Code Act*, is death. However, this punishment is by sentencing convention reserved for the most egregious forms of perpetration of the offence such as where it has near lethal or other extremely grave consequences. Since in this case death was not a very  
25 likely or probable consequence of the act, I have discounted the death sentence.

Where the death penalty is not imposed, the next option in terms of gravity of sentence is that of life imprisonment. Only one aggravating factor prescribed by Regulation 22 of the Sentencing Guidelines, which would justify the imposition of a sentence of life imprisonment, is applicable  
30 to this case, i.e. the victim was defiled repeatedly by an offender who is supposed to have taken primary responsibility of her. A sentence of life imprisonment may as well be justified by

extreme gravity or brutality of the crime committed, or where the prospects of the offender reforming are negligible, or where the court assesses the risk posed by the offender and decides that he or she will probably re-offend and be a danger to the public for some unforeseeable time, hence the offender poses a continued threat to society such that incapacitation is necessary (see *R v. Secretary of State for the Home Department, ex parte Hindley* [2001] 1 AC 410). I do not consider the sentence of life imprisonment to be appropriate in this case since the accused has been apologetic right from the time of arrest.

When imposing a custodial sentence on a person convicted of the offence of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*, the *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* stipulate under Item 3 of Part I (under Sentencing ranges - Sentencing range in capital offences) of the Third Schedule, that the starting point should be 35 years' imprisonment, which can then be increased on basis of the aggravating factors or reduced on account of the relevant mitigating factors.

Although the manner in which this offence was committed did not create a life threatening situation, in the sense that death was not a very likely immediate consequence of the act such as would have justified the death penalty, they are sufficiently grave to warrant a deterrent custodial sentence. At the time of the offence, the accused was 27 years old and the victim 12 years old.

The age difference between the victim and the convict was 15 years. The accused abused the hospitality of the victim's parents and exposed her to ridicule and embarrassment at school and in the neighbourhood as well as the danger of contracting sexually transmitted diseases. However I am mindful of the decision of the Court of Appeal in *Ninsiima v. Uganda Crim. Appeal No. 180 of 2010*, where the Court of appeal opined that the sentencing guidelines have to be applied taking into account past precedents of Court, decisions where the facts have a resemblance to the case under trial. In that case, it set aside a sentence of 30 years' imprisonment and substituted it with a sentence of 15 years' imprisonment for a 29 year old appellant convicted of defiling an 8 year old girl.

I have also reviewed current sentencing practices for offences of this nature. In this regard, I have considered the case of *Agaba Job v. Uganda C.A. Cr. Appeal No. 230 of 2003* where the

court of appeal in its judgment of 8<sup>th</sup> February 2006 upheld a sentence of 10 years' imprisonment in respect of an appellant who was convicted on his own plea of guilty upon an indictment of defilement of a six year old girl. In the case of *Lubanga v. Uganda C.A. Cr. Appeal No. 124 of 2009*, in its judgment of 1<sup>st</sup> April 2014, the court of appeal upheld a 15 year term of imprisonment for a convict who had pleaded guilty to an indictment of aggravated defilement of a one year old girl. In another case, *Abot Richard v. Uganda C.A. Crim. Appeal No. 190 of 2004*, in its judgment of 6<sup>th</sup> February 2006, the Court of Appeal upheld a sentence of 8 years' imprisonment for an appellant who was convicted of the offence defilement of a 13 year old girl but had spent three years on remand before sentence. In *Lukwago v. Uganda C.A. Crim. Appeal No. 36 of 2010* the Court of appeal in its judgment of 6<sup>th</sup> July 2014 upheld a sentence of 13 years' imprisonment for an appellant convicted on his own plea of guilty for the offence of aggravated defilement of a thirteen year old girl. Lastly, *Ongodia Elungat John Michael v. Uganda C.A. Cr. Appeal No. 06 of 2002* where a sentence 5 years' imprisonment was meted out to 29 year old accused, who had spent two years on remand, for defiling and impregnating a fifteen year old school girl. Accordingly, in light of those aggravating factors, I have adopted a starting point of twenty (20) years' imprisonment.

Against this, I have considered the fact that the convict has pleaded guilty. The practice of taking guilty pleas into consideration is a long standing convention which now has a near statutory footing by virtue of regulation 21 (k) of *The Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*. As a general principle (rather than a matter of law though) an offender who pleads guilty may expect some credit in the form of a discount in sentence. The requirement in the guidelines for considering a plea of guilty as a mitigating factor is a mere guide and does not confer a statutory right to a discount which, for all intents and purposes, remains a matter for the court's discretion. However, where a judge takes a plea of guilty into account, it is important that he or she says he or she has done so (see *R v. Fearon [1996] 2 Cr. App. R (S) 25 CA*). In this case therefore I have taken into account the fact that the convict has pleaded guilty, as one of the factors mitigating his sentence, hence reducing it to thirteen years.

I have considered further the submissions made in mitigation of sentence and in his *allocutus* and thereby reduce the period to ten years' imprisonment. In accordance with Article 23 (8) of the Constitution and Regulation 15 (2) of The *Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, to the effect that the court should deduct the period  
5 spent on remand from the sentence considered appropriate, after all factors have been taken into account. I note that the convict has been in custody since 14<sup>th</sup> May, 2014. I hereby take into account and set off a period of four years and one month as the period the convict has already spent on remand. I therefore sentence the convict to a term of imprisonment of five (5) years and eleven (11) months, to be served starting today.

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Having been convicted and sentenced on his own plea of guilty, the convict is advised that he has a right of appeal against the legality and severity of this sentence, within a period of fourteen days.

15 Dated at Kampala this 19<sup>th</sup> day of June, 2018

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Stephen Mubiru  
Judge,  
19<sup>th</sup> June, 2018.

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