

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL SESSION CASE NO KAS-062-2014

UGANDA

PROSECUTOR

VERSUS

PULE RICHARD

ACCUSED

BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

The Accused was indicted for Aggravated defilement contrary to Sections 129(3) and (4)(a) of the Penal Code Act. The Prosecution case is that on the 1st November 2014 at Bumbu-Kiteezi Village, Wakiso District, the accused performed a sexual act with Ndagire Audrey Jesca a girl aged three years.

The accused denied the charge and the Prosecution assumed the duty to prove all ingredients of the offence.

Michael Oligo(PW1) a Medical Clinical Officer attached to Mayfair Clinic at Wandegeya examined both the victim and the accused persons on Police Forms 3A and 24A respectively. In his reports which were admitted as Prosecution exhibits, the victim was found to be three years as at the 1st November 2014. The accused was stated to be twenty six years with full mental faculties on the 4th November 2014 when he was examined.

An examination of the victim's genitals revealed an intact hymen and an inflammation on the vulva. A watery discharge with a sticky feeling was observed in the genitals. PW1 attributed the injuries to probable sexual intercourse and opined that the inflammation was suggestive of superficial penetration.

The victim's mother Namwanje Jane (PW2) received the victim from the accused who came carrying her since she was asleep. The victim had earlier left home to play with other children at her grandmother's home. As soon as she was delivered The victim woke up and told PW2 that the accused had "bitten" her 'below the stomach' while pointing at her genitals. PW2 checked the victim and noticed some fluid upon which she called Namiiro Betty who also examined her and confirmed the same. PW2 and Namiiro Betty lodged a complaint at Kiteezi Police Post from where they were referred to Mayfair Clinic escorted by a female Police Officer who had also examined the victim.

PW2 told Court in her testimony that the accused was staying in the neighborhood and used to visit the home of the victim's grandmother. He was known to the victim and even used to take her and other children to his home. It was PW2's evidence that no one saw the accused

defiling the victim but the grandmother had mentioned that the victim was taken from her home by the accused.

The case was investigated by Detective Seargent Ejoku Okello (PW3) who received the complaint from PW2 and issued Police forms 24A and 3A prepared by PW1. PW3 recorded statements from witnesses and visited the scene of crime which was pointed out to him by the victim and her grandmother. According to PW3 the victim confirmed to him how the *'accused had taken her to his bed and bitten her private parts.'* When PW3 interviewed the accused, he admitted that he had hosted the victim on that day but denied defiling her.

In his defence, the accused admitted that the victim and her family members used to go to his residence and he had no grudge with them. He further told Court that his master always quarreled with residents in the area and had instructed him to block a foot path on his land which displeased the victim's auntie called Betty. The accused narrated that the victim's family engaged in witchcraft and his master did not want them to step in his compound.

Regarding the events of the 1st November 2014, the accused admitted that the victim went to his residence as he was carrying on with normal house chores. That he offered the victim a yam which she did not eat and later he saw her walking home. He carried the victim to her grandmother's home but was advised to deliver her to the mother's house in the same compound. He was however later arrested and accused of defiling the victim.

In cross examination, the accused confirmed to Court that his master did not have a grudge with PW2 and had never quarreled with her. He further told Court that PW2 used to come to his residence and he had no grudge with her. The accused further confirmed that the victim did not move anywhere from the time she arrived at his residence but claimed he did not see her coming from her home.

It was submitted for the Prosecution that proof of a sexual act was contained in the evidence of Oligo Michael (PW1) who medically examined the victim and observed an inflammation of the vulva and a waterly discharge with a sticky feeling. It was further argued that there was no grudge between PW2 and the accused or his master which ruled out any false accusations against the accused person. The fact that the victim consistently named the accused as the perpetrator was further pointed out as evidence of participation of the accused in the commission of the offence.

For the accused, it was submitted that there was no proof that the waterly sticky substance allegedly seen was forensically proved to be semen secreted by the accused and there was no explanation for the observed inflammation. Counsel argued that the victim could have fed her mother and the Police on lies or could have been manipulated since she was not produced in Court for a voir dire examination. Court was invited to resolve any doubts in the Prosecution evidence in favour of the accused.

The ingredients of the offence of Aggravated defilement that the Prosecution is required to prove are that the victim was below the age of fourteen at the time the offence was allegedly committed and that a sexual act was performed with the victim by the accused. The

Prosecution is required to prove all the three ingredients of the offence to the standard of beyond reasonable doubt. The accused is under no duty to prove his innocence since any conviction is premised on the strength of the Prosecution evidence and not on the weakness of the evidence brought by the accused.

Oligo Michael (PW1) a Clinical Medical Officer examined the victim on the 1st April 2014 and stated that she was three years old at the time. The victim's mother(PW2) stated that she was six years at the time she gave her testimony on the 8th January 2017. Counsel for the accused did not contest the age of the victim or lead evidence contrary to that of the Prosecution in that respect .I therefore find it safe to conclude that the victim was below the age of fourteen at the time the alleged offence was committed.

The Prosecution is also required to prove that a sexual act was performed with the victim. Evidence of a sexual act in the instant case lies in what the victim narrated to her mother(PW2) and the Investigating Officer(PW3).The mother's and PW3's evidence was that the victim told them that "*Richard had bitten her below the stomach while pointing at her genitals.*" The medical report compiled by PW1 indicated that the victim's hymen was intact but there was an inflammation on the vulva and a waterly discharge with a sticky feeling in her genitals. The injuries were attributed to probable sexual intercourse. PW1 clarified to Court that the mucoid characteristic of the waterly substance in the victim's genitals led to his conclusion that it could have been semen.

The victim did not testify in Court as it was reported by the Prosecution that she could not recall what took place at the time. I however find corroboration of what the victim reported to PW2 and PW3 in the medical evidence of PW1 who examined her on the same day the offence was allegedly committed. I find the only plausible explanation to the injury to the victim's genitals and the waterly substance to be that a sexual act was performed with her.

The accused denied defiling the victim but accepted that he hosted her though he claimed not to have seen her coming to his residence.PW2 on the other hand told Court that the grandmother confirmed that the accused took the victim from her home.The accused admitted that he carried the victim to her grandmother's home only to be told to carry her to PW2's home.This evidence in my opinion confirms the assertion that the accused had taken the victim from the grandmother's home as there would be no reason to return the sleeping child to a place he had not originally picked her from.

It was the evidence of the accused that the victim and other children used to go to his residence and he particularly had no grudge with the victim's mother. He also told Court that the victim did not leave his residence until he carried her home. What then could explain the victim's insistence on the accused as the person who bit her under the stomach? The plausible explanation is that he was the perpetrator. The victim knew the accused very well and was not a stranger to his residence,the offence was committed in day light since she was returned to PW2 at about 4.00pm and the medical evidence generated on the same day indicated tampering with her genitals.I find the denial as to how the victim arrived at the residence of the accused to be an afterthought that lacks credibility and intended to mislead Court to believe that he did not pick the victim from the grandmother's compound.

It was submitted that the sticky substance observed by PW1 was not proved to be semen which argument carries some credibility. In sexual offences however, emission of seed is not an ingredient the Prosecution is required to prove. Proof of a sexual act lies in evidence of penetration that was contained in the report to PW2 and PW3 by the victim and corroborated by the medical report generated by Oligo Michael(PW1)

The Prosecution case was premised on the circumstantial evidence of what the victim reported and the medical evidence by PW1. For a court to convict on such evidence, the exculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis than that of guilt. The moral certainty in the Prosecution case lies in there being no other co-existing circumstances to weaken or destroy the inference that the accused committed the offence. He picked the victim from her grandmother's home and returned her when she was defiled.

I find the accused guilty of Aggravated defilement contrary to section 129(3) and(4)(a) of the Penal Code Act. I accordingly convict him.

Moses Kazibwe Kawumi

Judge

5th February 2018.