

**IN THE HIGH COURT OF UGANDA AT KUMI**

**CRIMINAL SESSION CASE NO. 55 OF 2016**

**UGANDA V AMURIAT FRANCIS**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**5 JUDGMENT**

The accused person is indicted with aggravated defilement c/s 129(3) (4) (a) and (b) of the Penal Code Act. It is alleged that on 28<sup>th</sup> day of January 2016 at Kalapata village, Kumi district, the accused person performed a sexual act on Amongin Hellen, a girl aged 12 years.

Prosecution was led by Engena George, RSA while the accused person was represented by  
10 Obore David.

Assessors were Okwii Francis and Rose Asege.

The state had a duty to prove beyond reasonable doubt the following elements of the offence indicted:

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

**Age**

That the victim was aged between twelve and thirteen years was not disputed. PF3A admitted by consent of both counsel reveals that she was examined on 24.1.2016 at Nyero  
20 health centre by Opedo Moses, a medical Clinical Officer and found to be 12 to 13 years old. The state has therefore proved beyond reasonable doubt the victim was below fourteen years at the time of the alleged defilement.

**Performance of a sexual act and participation**

25 This is defined by section 129 (7) of the Penal Code as penetration of the sexual organ however slight or the unlawful use of any object or organ on another person's sexual organ.

PF3A reveals that the girl was examined at Nyero Heath Centre by a clinical officer Opede Moses on 29.1.2016 and her thighs had white fluids and her sexual organ had lacerations. Her

hymen was broken. The clinical officer concluded the lacerations were caused by a blunt object.

According to PW1 Asekenye Christine, mother of the victim, on 28.1.2016 at about 6 p.m,

5 she found the accused, her maternal uncle, had defiled her daughter Amongin Hellen at the swamp whereupon, she accosted him for it and raised an alarm.

In cross examination it was her evidence it is her son Joseph Alenyo who reported to her the defilement by the accused person.

10 It was her evidence she examined Amongin and found her sexual organ was dirty, it had semen and she was bleeding.

Her evidence is collaborated by the evidence of Alenyo Joseph her son aged 10 years.

According to Alenyo who gave sworn testimony because he was of sufficient intelligence to know the importance of taking the oath, he was on his way to the well when he heard  
15 someone scream and on reaching near the place where the noise was coming from, he saw the accused person, his grandfather on top of Amongin his sister, defiling her in the bush.

It was his evidence that he ran to call his mother.

In cross examination, his evidence is that the incident happened at about 6 p.m.

Her evidence is collaborated by that of PW2 Moka Joseph who saw Asekenye move towards  
20 the well at about 6 p.m and shortly later, he heard an alarm . He reached the scene near the swamp and found accused and Asekenye mother of the girl wrestling. It was Moka's testimony the accused told him ' I have finished'.

It was the evidence of Moka he saw the girl pull up her pants when he reached the scene.

25 The victim appeared before me in chambers but she could not testify because of her condition. She has a disability in speech is mentally impaired, a fact confirmed by PF3 A where she is described by the clinical officer as a girl of unstable mental status, with impaired speech.

30 The accused gave sworn testimony in which he admitted being at the well at 6 p.m and being in the same location with Alenyo PW3 as well as Amongin, the victim but denied defiling her. He also confirmed that Alenyo told him he was going to call Asekenye, mother of the victim.

I have evaluated all the evidence including the defence case and I find that performance of a sexual act was proved beyond reasonable doubt by Alenyo who witnessed the accused in the act as well as Asekeny who examined her daughter immediately after the act and found semen and blood in her sexual organ.

- 5 On participation by the accused in this criminal act, I am satisfied with the evidence of Alenyo who saw the accused on top of his sister and went to call their mother Asekeny who responded immediately and found the accused still at the scene of crime.

Moreover, he placed himself at the scene of crime at the time of the offence when he admitted to being at the well for the purpose of taking a bath.

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I wish to comment on the sub section under which the accused was indicted. He was indicted under section 129(4) (b) on the basis that accused was HIV positive yet no evidence was led to this effect as PF24 simply shows that the accused was reputed to be HIV positive. This is insufficient proof HIV status.

- 15 I have found above the victim is a person with disability in the mind and speech.

Under section 129(4) (d), where the victim is a person with disability, the offence is aggravated defilement. The state also proved beyond reasonable doubt the victim was between 12 and 13 years which also brings the conduct under the category of aggravated defilement.

- 20 In conclusion, I agree with the gentleman assessor that the state proved beyond reasonable doubt the offence of aggravated defilement.

He is convicted of aggravated defilement under section 129(4) (a) and (d) of the Penal Code Act.

- 25 **DATED AT KAMPALA THIS 27<sup>TH</sup> DAY OF FEBRUARY 2018.**

**HON. LADY JUSTICE H. WOLAYO**

**1.3.2018**

- 30 **12:30pm**

Accused present

Engena George RSA for state

Obore David for accused on state brief.

**Mitigation.**

- 5   **State:** maximum penalty is death. The victim is a disabled person very vulnerable, I wish to tender a photograph as proof

**Court:** photograph admitted.

**State:** she deserves protection moreover she was a young girl of tender years. I pray for a maximum penalty.

- 10   **Obore:** convict is a first time offender, he is HIV positive he had confirmed to me, he has four children, I pray for leniency.

**Accused:** I pray for leniency as I have a sight disability, I am HIV positive, I care for two old women and four children, and I have a back complication.

**Sentence**

- 15   The aggravating factors in this case are the tender age of the victim and that she is a person with disability in speech and is mentally impaired. Obviously the accused saw her as an easy prey but the law considers her vulnerable which is an aggravating factor in the sentencing guidelines.

Persons with disabilities have as much right to legal protection as normal persons.

- 20   Accused asserts he is HIV positive which is a mitigating factor but also an aggravating factor because he exposed the victim to infection.

Appropriate sentence under the sentencing guidelines is 30 years. As accused has been on remand since January 2016, he is sentence to 28 years imprisonment.

**HON. LADY JUSTICE H. WOLAYO**