

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**HCT-00-CR-SC-0630-2019**

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

**VERSUS**

**MUNYANEZA FRANK** ..... **ACCUSED**

**BEFORE: THE MR. JUSTICE MICHAEL ELUBU**

**JUDGEMENT**

The accused herein, **MUNYANEZA FRANK**, is charged with the offence of Aggravated Defilement, contrary to section 129 (3) and (4) (a) of **the Penal Code Act, Cap 120**.

It is alleged in the particulars of offence that the accused person, on the 18<sup>th</sup> day of December 2018, at Banda B2 zone Nakawa division of Kampala district, performed a sexual act on Babirye Faith a girl aged 7 years old.

The accused pleaded not guilty at his arraignment.

The brief case for the prosecution is that one Katwesigye Ruth – PW 3, is the auntie of the victim Babirye Faith and also the wife of the accused person. They all lived in Banda B2 Zone of Nakawa division in Kampala district. In December 2018, PW 3 had just had a baby and invited the victim to come and live with her and help with

running errands. Babirye Faith was 7 years old at the time. PW 3 reported that the victim fell sick and passed away.

In the evening of 18<sup>th</sup> of December 2018, PW 3 was washing clothes outside their house in the evening. She told the victim to into the house after she had bathed. PW 3 noticed that the victim took a long time in the house and went in to check. She found that the accused was lying on the bed with the victim kneeling astride him. The accused was having sexual intercourse with the victim on the bed. When he saw PW 3 the accused he jumped off the bed and run away.

PW 3 immediately made a report to the police. When the accused returned at about midnight he was arrested and charged with this offence.

The victim made a statement to police. She was also medically examined. The Medical Clinical Officer found that although her hymen was intact, there were bruises in the upper part and lateral part of her vulva. He also found tenderness. The findings were suggestive of recent sexual penetration. The report was tendered as **PE 1.**

The accused denied the offence. He stated that he worked as a shoemaker. That at lunchtime on the 18<sup>th</sup> of December 2018 he returned home to find his wife with a man. He had heard that his wife was having a relationship with this man. The accused asked his wife who this man was. She said he was a family friend. He chose not to confront the man but to leave and return to his workplace.

The accused states that the whole situation stressed him severely. He spent the rest of the day wondering what he should do. He eventually returned home between 11.00 pm and midnight. When he entered the house three men, including the man he saw during the day, descended on him. They started beating him while saying that

he had defiled Babirye. When the landlord heard the commotion he came and took the accused to Kyambogo Police Station.

The accused denied committing the offence. He stated that while he was in prison, he learnt that the victim had told her family the truth. As a result, PW 3 has been disowned by her family.

As this is a criminal case it is trite law that the burden of proof rests with the prosecution and never shifts (**Okethi Okale vs R 1965 E.A 555**). The standard of proof is beyond reasonable doubt (see **Kamesere Moses vs Uganda S.C.C.A 8/1997** (unreported))

The essential elements in a case of Aggravated Defilement are that:

- a) The victim was below 14 years of age.
  - b) That there was a sexual act performed on the victim.
  - c) The Accused person participated in the commission of this offence.
- a) The victim was below 14 years of age.**

Age, just like any other issue in dispute, must be proved by cogent evidence. The onus is on the prosecution to establish that the victim was below the age of 14 years.

In this case PW 3, stated that the victim got cerebral malaria and passed away during the second wave of the COVID pandemic. She however told the court that the victim was 7 years old at the time of the incident.

The victim was taken for medical examination and the report tendered as PE 1. The medical clinical officer found that the victim was who established that she was 7 years old.

Lastly PW 2, No. 33491 Detective Sargent Mwirollo Annette was a police detective attached to the Gender Desk at Jinja Road Police Station. She recorded a statement

from the victim which was tendered as **PE 3**. She told the court the victim was 7 years.

This Court did not see the victim and has to determine age based on the evidence produced. The defence does not dispute the age of the victim. I find the evidence produced regarding the age of the victim cogent. I am satisfied that this evidence proves beyond any reasonable doubt that the victim, Babirye Faith, was below 14 years of age.

I will now handle the next two elements jointly.

**b) That there was a sexual act performed on the victim.**

**c) The Accused person participated in the commission of this offence.**

The accused denied committing this offence. His evidence is that he found a man with his wife at lunch time. She was mingling posho at the time. That man whom he later established was called Jonathan was said to be in a relationship with his wife. Because of these circumstances he stayed away from home till about 11.00 pm to midnight. However when he returned the same Jonathan pounced on him alleging he had defiled the victim.

The prosecution relies on PW 3 Katwesigye Ruth. She is the wife of the accused. The court established from the witness that she had chosen to testify against her husband of her own free will.

It was the submission for the defence that PW 3 had been compelled to testify especially because she at one time appeared to have disappeared from the court premises. But this court questioned her several times and she insisted she was testifying voluntarily. It is the finding of this court that indeed PW 3 testified voluntarily.

PW 3 stated that she was at home with the victim on the 18<sup>th</sup> of December 2018. The accused was in the house. That the victim had a bath at about 6.00 pm before she went into the house to dress up. PW 3 notice that the victim had taken a long time in the house and so she went in to check. She found the accused lying on the bed with the victim on top of him. When the accused saw PW 3 he ran away from home. The victim told PW 3 that the accused had tried to push his penis into her vagina but did not penetrate.

This Court was informed that the victim is now deceased. However the victim had made a police statement at 2.00 pm on the 19<sup>th</sup> of December 2018. This was less than 24 hours after the incident allegedly happened. The statement recorded at the Gender desk of Jinja Road Police station by then Detective Corporal Mwirololo. The victim told this witness that the accused defiled her and she felt a lot of pain. Like someone was cutting her vagina with a razor blade. The statement was admitted under Section 31 of **the Evidence Act** because this court was satisfied that the victim was dead. That PW 1 obtained her statement. And that what the veracity of what the victim told PW 1 was tested through cross examination.

Section 129 (7) (b) of the **Penal Code Act** describes a sexual act to mean firstly penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ; or the unlawful use of any object or organ by a person on another person's sexual organ.

A sexual act like any other fact may be proved by direct evidence. In this case PW 3 found the accused having sexual intercourse with the victim. The victim was medically examined. The report shows evidence consistent with sexual penetration. The medical evidence therefore corroborates the testimony of PW 3.

That notwithstanding the victim had told PW 1 that the accused forced his penis into her vagina.

The accused denied the commission of this offence and set up an alibi. From the evidence however, the accused was properly placed at the scene of crime.

It was also suggested that the defence of temporary insanity was available to the accused as PW 3 alleged that he was a regular drug user and wildly uncontrollable at times. Under Section 10 of **the Penal Code Act** every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

The implication from Section 10 is that the person alleging insanity must prove it. There was no evidence produced to this end. The defence is not therefore available to the accused. In any event the accused denied committing the offence. The defence was raised in submissions.

It is therefore the finding of this court that the accused performed a sexual act on the victim which proves the second and third elements of the offence.

The assessor advised the court to find the accused guilty as charged. In full agreement with her I find **MUNYANEZA FRANK**, the guilty of the offence of Aggravated Defilement, contrary to section 129 (3) and (4) (a) of the Penal Code Act, Cap 120 and convict him.

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**Michael Elubu**

**Judge**

**16.7.2022**