

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CRIMINAL DIVISION)
HCT-00-SC-0034-2020

UGANDA-----PROSECUTION

VERSUS

LUBOYA HERBERT-----ACCUSED

BEFORE HON: JUSTICE ISAAC MUWATA
JUDGEMENT

The accused, Luboya Herbert is charged with aggravated defilement contrary to section 129 (3), (4), (a) of the Penal Code Act. It was alleged that between the month of May-July ,2019 at Komamboga Central Zone in Kampala District, the accused performed a sexual act with Nakiyemba Shina a girl aged 13 years old.

At the hearing, the accused person was represented by Counsel John Kiggundu while the prosecution was represented by State Attorney Edwin Amanyanya

In criminal cases, the prosecution bears the burden to prove the offence against the accused. This burden of proof does not shift to the accused to prove himself innocent. The burden of proof always rests on the prosecution. The prosecution must adduce evidence to discharge its burden of proof. The prosecution has to prove the offence against the accused beyond reasonable doubt. If there is any doubt in the prosecution case, then it must be resolved in favor of the accused.

In this case, the prosecution had prove the following ingredients:

- 1. That the victim was at the time aged below 14 years.**
- 2. A sexual act was performed on her.**
- 3. Participation of the accused.**

The question as to the victims age is not contested; the medical evidence adduced is satisfactory to prove this ingredient. The police form 3A indicates that the victim was 13 years old. I therefore find that this ingredient was proved beyond reasonable doubt

Similarly, the question as to whether a sexual act was performed on the victim is also not contested, the medical evidence of PW2 indicates that the victim's hymen had been ruptured. Although it showed that her genitals had no injuries, the evidence that it had been ruptured is sufficient enough that a sexual act had been performed on the victim

Lastly in respect to the participation of the accused, the prosecution must adduce evidence direct or circumstantial placing the accused at the scene of crime. The accused denied committing the offence

There was no direct evidence linking the accused to the commission of the offence since the victim was not produced in court as a witness, and no witness placed him at the scene of crime.

The prosecution relied on circumstantial evidence of PW1 who testified that she was only told that the victim would always enter the accused's house. It was her evidence that a neighbor told her that the victim used enter the accused's house in the morning.

The neighbor referred to by PW1 in her testimony was not produced in court to confirm these claims. Her evidence amounts to hearsay and as a general rule such evidence is inadmissible. Section 59(a) of the Evidence Act provides inter alia that oral evidence must be direct in that it must be the evidence of a witness who says he or she saw it.

It is therefore my considered view that the prosecution relied on insufficient circumstantial evidence of PW1 and thus failed to prove beyond reasonable doubt that the accused performed a sexual act on Nakiyemba Shina the victim and as already noted above if there is any doubt in the prosecution evidence, then it must be resolved in favor of the accused.

The accused person is accordingly acquitted of the offence of aggravated defilement and should be set free unless his being held on other lawful charges

I so order.

JUDGE

9/03/2023