

2<sup>nd</sup> draft  
18/10/2001

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA**

**AT MENGO**

CORAM: ODOKI, C.J., ODER, KAROKORA, MULENGA  
KANYEIHAMBA, J.J.S.C.

CRIMINAL APPEAL NO/ 28/2000

B E T W E E N

TWEHAMYE ABDU .....APPELLANT

A N D

UGANDA .....RESPONDENT

**REASONS FOR THE DECISION OF THE COURT:**

Abdu Twehamye, the appellant was tried by the High Court sitting at Mpigi for defilement contrary Section 123 (1) of the Penal Code. He was convicted and sentenced to 7 years' imprisonment. His appeal to the Court of Appeal was dismissed. On 19<sup>th</sup> September, 2001 we heard and dismissed his appeal. We then intimated that we would give our reasons for our judgment at a future date. We now do so.

The background to the appeal is as follows:

On 20<sup>th</sup> September, 1996, at Kitamu village, in Mpigi District, at about mid-day, Juliet Nambasa, PW3, then aged 7 years, was defiled by the appellant. The appellant was employed by the victim's mother, as a shamba boy. The appellant and his wife, lived about 300 metres away

from the victim's home. On that day, the appellant's wife took the victim to the appellant's house and gave her lunch. After lunch, the appellant's wife, her baby, and the victim took a nap on a bed. After some time the appellant's wife woke up and left the victim still sleeping on the bed. After the wife had left, the appellant went into the room where the victim was sleeping and defiled her. When the victim woke up, she found him on top of her. She then ran to her home where she immediately informed the house girl about what had happened to her. The victim's mother was informed immediately she returned from work in the evening of that same day. On examining the victim's private parts, the mother found them bruised and her daughter's underwear wet with semen. In the meantime, the appellant fled from his own house and went into hiding. A search for him was mounted and with the help of his own brother, Benon Zabasaija, PW4, he was eventually found hidden in someone else's house. He was arrested and later charged with defilement. At the trial, his defence was one of denial and of a frameup by his employer. Irene Kalibala, whom he claimed owed him wages. The learned trial judge rejected the appellant's defence, believed the prosecution evidence and convicted him of defilement and sentenced him to seven (7) years' imprisonment. The appellant appealed to the Court of Appeal which dismissed the appeal.

The Memorandum of Appeal before us contained one ground of appeal framed as follows :-

*The honourable Justices of the Court of Appeal erred in law and fact when they did not reevaluate the evidence on record and came to a wrong conclusion of confirming the appellant's conviction.*

Mr. Moses Kuguminkiriza, counsel for the appellant, submitted that the Justices of Appeal were in error to confirm that it was the appellant who committed the offence of defilement. He contended that there was only one piece of direct evidence given by the victim herself who was a child. Counsel contended that such evidence needs to be corroborated in order to satisfy the proviso in s. 38 (3) of the Trial on Indictments Decree, 1971 and this had not been done by the prosecution in this case.

Counsel further contended that the evidence of identification upon which the trial judge relied to convict the appellant was inconclusive in that in the process of search for the culprit, the appellant had been found in a place where he personally had frequented in the past and therefore his presence there indicated nothing more than an innocent and routine visit to a place of his frequent visits. Counsel submitted that if the learned Justices of Appeal had properly reevaluated the evidence, they would have found the appellant not guilty of the offence of defilement.

Mr. Kuguminkiriza prayed for the conviction to be quashed, sentence to be set aside and the appellant to be set free.

Mr. Vicent Okwanga, Senior State Attorney, for the State, supported the conviction and sentence. He contended that there had been corroboration of the victim's evidence. In the first place, the victim knew the appellant very well as an employee of her mother (PW2), and therefore she could not have been mistaken about the identity of the person who defiled her. In any event, her testimony was corroborated not only by the evidence of her mother but the conduct of the appellant as testified by his own brother, (PW4), and the medical report by Dr. Balungi which was admitted in evidence with the consent of the appellant. Mr. Okwanga

submitted that there was no merit in the appeal and it should be dismissed.

In our view, the only issue raised in the submissions on behalf of the appellant is whether or not the evidence of the principal witness and victim (PW3) was corroborated. In her testimony, Irene Kalibala, PW2, and mother of the victim said,

*'She reported that Abdu had slept on Juliet. Juliet is the victim in this case. She is my daughter. Juliet was then 7 years old. Immediately I called Juliet. I asked her what happened? She answered Abdu did bad things to me. I asked her what exactly do you mean by bad things. She then narrated the story. I immediately decided to look at her private parts and the clothes she was putting on. The private parts were bruised, the panty was wet, the skirt she said he had urinated on was wet with sperms on it. I went for assistance I went to the accused's place but he was not there. I continued looking for him but discovered him after 2 hours deep in the village where he was hiding in Kyambazi. I was assisted in the search by his brother by name of Benon Zabasaija. We took him to L.C.I Mukono.'*

The appellant's brother Benon Zabasaija, PW4, also testified. He said.

*"I know Aabdu Twehamye. He is my young brother. I saw Mrs. Kalibala. She was with her daughter Juliet, i.e., Juliet Nambasa, I know her as a villagemate and at one time I was her porter.... I know Nambasa Juliet as a daughter to Irene Kalibala. I recall the 20 9 1995. I was at Kitemu at about 6.00 p.m. She told me she wanted Abdu my brother. I asked her why she wanted Abdu and she said that he had defiled my girl called Juliet Nambasa. She told me to look for him and if I failed she would arrest me because I was the one who brought him. I walked and started to look for Abdu in places he normally goes in the evening. We found Abdu at his friend where he normal stays.... We found Abdu inside the house, the house was locked. I called him."*

In cross-examination, PW4 said,

*"I called him 3 times and the 3<sup>rd</sup> time he said there was a misunderstanding about money. Irene replied that. "I know about the money but you have defiled my daughter."*

We are satisfied that there was sufficient evidence to corroborate the testimony of the victim.

In our view, the learned Justices of Appeal adequately reevaluated the evidence and came to their own conclusion that the appellant was properly convicted. We found no merit in the appeal and for these reasons we dismissed it.


Dated at Mengo.....this, day of .....2001

B.J. ODOKI.....

CHIEF JUSTICE

  
A.H.O. ODER.....

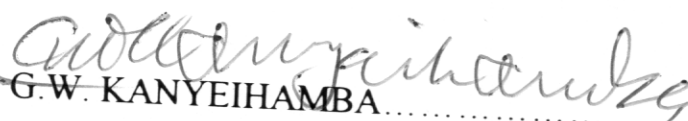
JUSTICE OF THE SUPREME COURT

  
A.N. KAROKORA.....

JUSTICE OF THE SUPREME COURT

J.N. MULENGA.....

JUSTICE OF THE SUPREME COURT

  
G.W. KANYEIHAMBA.....

JUSTICE OF THE SUPREME COURT