

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
HOLDEN AT KAMPALA

CORAM: **HON. G.M. OKELLO, J.A.**
 HON. LADY JUSTICE A.E.MPAGI-BAHIGEINE, J.A.
 HON. S.G. ENGWAU, J.A.

CRIMINAL APPEAL NO.57 OF 1999

BETWEEN

SENTONGO STEPHEN:..... APPELLANT

AND

UGANDA.RESPONDENT

**(Appeal from the sentence imposed by High Court
sitting at Kampala on 12th May, 1999 in
Criminal Case No. 21 of 1998).**

REASON FOR JUDGMENT OF THE COURT

This appeal is against sentence only. We heard it on 11/4/2000 and dismissed it reserving our reasons therefore which we now give.

The appellant was convicted by High Court (Moses Mukiibi, J.) on 12/5/99 of defilement contrary to section 123 (1) of the Penal Code Act and was sentenced to 12 years and six months imprisonment. On or about the 9th day of November 1996 at Namuwongo 'A' Zone in Makyinde Division in Kampala District during day time, the appellant who lived in the neighbourhood of the home of the victim's maternal aunt, called the victim Noura aged 8 years from her aunt's home to his house where he defiled her. The matter was reported to the authorities and the

appellant was arrested and indicted for the offence. The medical examination on the victim revealed inflammation of her vulva which was indicative of penetrative sex.

The sole ground of the appeal was that the sentence imposed by the trial judge on the appellant was manifestly excessive given the period which the appellant spent on remand. Mr. Mugogo learned counsel for the appellant, cited **Twinomatsiko Eric Vs. Uganda, Criminal Appeal No. 2 of 1997, Supreme Court (unreported)** and **Sembusi Badru Vs Uganda, Criminal Appeal No. 12 of 1996, Supreme Court, (unreported)** and pointed out that, in those two cases, the appellants were aged 20 years like the appellant in the instant case, and that they all spent two years on remand. Twinomatsiko was sentenced to 12 years imprisonment while Badru was sentenced to ten years imprisonment. On appeal, their sentences were both reduced to 7 years. He prayed that his client's sentence should also be reduced to 7 years in consonance with those authorities.

Ms. D. Lwanga, Principal State Attorney supported the sentence. She however distinguished the two cases cited by counsel. According to Ms. Lwanga, Twinomatsiko's sentence was reduced from 12 years to 7 years because at the time of his sentencing he was a juvenile aged 17 years about whom the Supreme Court observed that he should have been dealt with under section 5 of the Reformatory School Act. As for Badru (supra), his sentence was reduced from ten years to seven years because the trial judge did not while sentencing him take into account the period the appellant had spent on remand. She prayed that the appeal be dismissed as the factors in those two cases were not the same.

Sentence is a matter of discretion of the trial judge. Appellate court can only interfere with such discretion where:-

- (a) it is evident that the trial judge acted on a wrong principle or;
- (b) the trial judge overlooked some material factors or;
- (c) the sentence is manifestly excessive in view of the circumstances of the case.

See: **James s/o Yovan Vs. R. [1951] 18 EACA 147.** None of the above conditions is present in the instant case. The trial judge acted on the correct principle in sentencing the appellant. This is

an offence which carries a maximum sentence of death. The trial judge took into account the two years which the appellant spent on remand. He did not overlook any material factor.

It must be pointed out that while uniformity of sentences in case of a similar nature is desirable, sentences imposed in previous cases of a similar nature are not precedents. They merely afford material for comparison to attain the desired uniformity. See: **Ogalo s/o Owoura Vs R. [1954] 24 EACA 270.**

In the instant case, the authorities cited above were not good comparison as the two cases differ from the instant one on their facts. It was for these reasons that we dismissed the appeal.

Dated at Kampala this 19th day of May 2000.

G.M. OKELLO,
JUSTICE OF APPEAL

A.E.N. MPAGI-BAHIGEINE
JUSTICE OF APPEAL

S.G. ENGWAU
JUSTICE OF APPEAL