

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CRIMINAL APPEAL NO. 9 OF 1999

CORAM: HON. JUSTICE S.T. MANYINDO, DCJ.
HON. JUSTICE G. M. OKELLO, JA
HON. LADY JUSTICE C.N. B. KITUMBA, JA.

AGUDI GODFREYAPPELLANT

VERSUS

UGANDA..... RESPONDENT

*(Appeal from a judgement of the High Court
of Uganda at Mukono) (Mr. Justice Rugadya)
dated 9/3/99 in C.S.C. No. 2 of 1997)*

REASONS FOR THE DECISION OF THE COURT

On the 9th of March 1999 the appellant was convicted, by the High Court, for defiling a seven year old girl, contrary to section 123 (1) of the Penal Code Act. He was sentenced to 14 years imprisonment. With leave of this Court, he appealed against the sentence only. We heard the appeal and dismissed it for reasons which were reserved. We now give them.

The appeal is based on two grounds, namely, (a) that the learned trial Judge erred in sentencing the appellant without first hearing him in allocutus and (b) that the learned trial Judge erred in imposing a sentence which is manifestly excessive, although not illegal, as the appellant was a first offender, was aged 32 years and had been on remand for about two years.

Mr. Paulo Mpungu, who represented the appellant, submitted, on the first ground, that as a matter of practice, the accused should be asked to address court on the question of sentence. He had no

authority on the point. He could have cited, for what is worth, section 93 of the Trial on Indictments Decree, 1971 which states:

“93. If the accused person is found guilty or pleads guilty, it shall be the duty of the judge to ask him whether he has anything to say why sentence should not be passed upon him according to law, but the omission to ask him shall have no effect on the validity of the proceedings.”

In our view although failure to hear the accused on sentence is not fatal under the above provision, a trial court should always ensure that the accused or his Counsel, if he has one, is heard regarding sentence so that the court is able to take into account all relevant matters in assessing sentence. In the case before us the appellant was represented by Counsel, Mr. Bwengye, who addressed the court on sentence thus:

“Bwengye: Accused has no previous criminal record. He is therefore a first offender. This is a serious offence. Accused seems repentant. Not true that young ones will fall prey to his sexual menaces. Accused is a family person with 6 children aged between 3 and 15. Their mother died. They stay in Hoima. He is now a single parent... He has been on remand for two years. He is a hernia patient. Pray for leniency, for a sentence aimed at correcting him to become a good citizen.”

It seems clear to us that Counsel was speaking on instructions from the appellant. We do not see what more the appellant could have added. We therefore saw no merit in the first ground.

With regard to the second ground, Mr. Mpungu was unable to show how or why the sentence was manifestly excessive. His claim that the trial Judge had not taken into account the period the appellant had spent on remand could not stand as the record shows clearly that the trial Judge considered the point not once, but twice. The offence of defilement carries a maximum sentence of death. That sentence has yet to be imposed. On average a sentence of 15 years imprisonment is imposed. This was a bad case where the appellant defiled his landlord's child when he should have protected her. As expected, the seven year old victim was badly injured in the private parts in the process. As the learned trial Judge observed when passing sentence, it is necessary for defilers to be given sentences that will teach them a lesson

“never to destroy the lives of the young and vulnerable in our society”

We did not think that in the circumstances of this case the sentence imposed was manifestly excessive. That is why we dismissed the appeal.

DATED at KAMPALA this 21st Day of July, 2000.

HON. JUSTICE S.T. MANYINDO

DEPUTY CHIEF JUSTICE

HON. JUSTICE G. M. OKELLO

JUSTICE OF APPEAL

HON. LADY JUSTICE C.N. B. KITUMBA

JUSTICE OF APPEAL