

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MBARARA**  
**CASE NO: HCT-05-CR-SC-119 OF 2001**

**UGANDA ::::::::::::::::::::::::::::::::::::::**

**PROSECUTOR**

**VERSUS**

**KODO MUHUMUZA ::::::::::::::::::::::::::::::**

**ACCUSED**

**BEFORE: HON. MR. JUSTICE PAUL K. MUGAMBA**

**JUDGMENT:-**

The charge against Muhumuza Yafesi a.k.a Kodo is that of defilement contrary to section 123 (1) of the Penal Code Act then.

The prosecution adduced evidence of five witnesses. PW1 was Dr George Wasswa, PW2 was Nalubega Edith, PW3 was Yoramu Bashaija, PW4 was the complainant herself while PW5 was Aida Tumwesigye. In his defence the accused made a statement on oath. He called no witnesses.

In summary the prosecution case is that accused was married to PW2 and the two lived together in the same house. The complainant was daughter of PW2 and related to accused as father although accused was not her natural father. At about 10.00p.m. on 4<sup>th</sup> April 2001 when PW2 had gone out to buy some paraffin the complainant had remained in the house with her young siblings and the accused. The complainant had gone to the bedroom to see her baby sibling to bed when the accused followed her there and had sexual intercourse

with her, a girl below 18 years of age. Accused then warned the complainant against revealing what had happened to anybody because if she did he would cut and kill both she and PW2. The complainant heeded that warning until she started feeling pain and was taken to hospital for examination and treatment. The she revealed that she had had sexual intercourse with the accused, who was immediately arrested and charged.

Accused admitted in his defence that he was once married to PW2 but that the two had separated and were living apart, at the time of the alleged offence. Accused denied involvement in the offence and denied living in the same house as the complainant at the time alleged. He said the case was a frame up by PW2 who had a grudge against him because of the soured relationship.

The prosecution has a duty to prove the case against accused person beyond reasonable doubt. See **Okethi Okale Vs Republic [1965] EA 555**. In a case of defilement, the prosecution must prove:-

- (i) that the complainant was below 18 years at the time of the alleged offence;
- (ii) that the complainant had sexual intercourse at the time alleged; and
- (iii) that the accused participated in the alleged crime.

Regarding the first ingredient, a birth certificate is the best proof of an individual's age. This was not produced in evidence. Courts however can gather evidence of age from persons acquainted with the fact of an individual's age, from medical evidence and from observation of the

individual. In this case PW2 the mother of the complainant testified that the complainant was born in 1985. The complainant herself told court that she is 17 years and that she was born in 1985. That evidence was not rebutted. The girl herself when she testified before court appeared to be below 18 years. I am satisfied the prosecution has proved this ingredient beyond reasonable doubt.

The second ingredient to prosecution has to prove is that the complainant had sexual intercourse on the occasion alleged. She was the only witness to the incident who testified. Although the evidence of a complainant in sexual offences need not be corroborated, as a matter of practice court will always find it safe to look for some corroboration before it convicts on the evidence of that

single witness. See **Chila and Another Vs Republic [1967] EA 722.**

It was several days before the complainant told anybody about what had taken place on the night of 4<sup>th</sup> April 2001. However when she was examined on 17<sup>th</sup> April 2001 by PW1 he found that her hymen had been ruptured within 1-2 weeks. PW1 noted that the area around the complainant's private parts was tender which meant she would feel pain when the private parts were touched. There were no signs of venereal disease or discharge but then according to PW5 the complainant had been taken to Mbarara Hospital first on 11<sup>th</sup> April 2001 when she was first examined and given treatment. From the above I am satisfied that prosecution has proved beyond reasonable doubt that the complainant had sexual intercourse at the time alleged.

The prosecution must prove also that the accused person participated in perpetuating the offence. According to the complainant she was with the accused in the house on the night in issue when the offence is alleged to have been committed. PW2 and PW5 also agree accused lived in the house at the time. The evidence of PW3 is to the same effect. Accused was well known to the complainant and it is not possible she could have mistaken him for another person. PW3 testified that when accused was arrested he admitted he had had sexual intercourse with the complainant and asked to be pardoned and released.

The defence of the accused was an alibi. When an accused person sets up an alibi as his defence it is not his responsibility to prove it. The prosecution must disprove the alibi by adducing evidence which places the accused

person squarely at the scene of crime. In his defence the accused person first stated that he did not know the complainant but later admit to knowing her because he had married PW2, her mother. It does not make the testimony of the accused credible when he can easily make such a U-turn on a common place fact. His knowledge of the complainant did not require second guessing. Proved lies may make the inference of guilt stronger and can amount to corroboration. See **Uganda Vs Mwase and others [1976] HCB 217**. I am satisfied that accused sought to tell lies in order to show that he was not connected to the events on the material night. His alibi has been disproved by prosecution evidence and I reject it as a tissue of lies. The prosecution has proved this ingredient also beyond reasonable doubt.



The assessors in their final opinion advised me to convict the accused person. For the reasons I have given in the course of this judgment I agree with that opinion. I find the accused person guilty of the offence of defilement and convict him accordingly.

**PAUL K. MUGAMBA**

**JUDGE**

**18<sup>TH</sup> DECEMBER 2003.**