

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT ADJUMANI
HCT-01-CO-CR-0315 OF 2001

UGANDA ::

PROSECUTOR

VERSUS

BOJO EMMANUEL ::

ACCUSED

BEFORE: HON. MR JUSTICE AUGUSTUS KANIA

JUDGMENT:-

Bojo Emmanuel, hereinafter simply referred to as the accused, is indicted for defilement contrary to section 123 (1) of the Penal Code Act. The particulars of the indictment are that the accused in the month of August 2001 at Maaji Refugee Settlement Camp in Adjumani district did unlawful and carnally know Kevin Vudrio, a girl

under the age of 18 years. The accused denied the offence and pleaded not guilty.

The case for the prosecution briefly stated is as follows:-

The accused is the husband of PW3 Eimani Olga who is the mother of the victim PW2 Vudrio Kevin by another man. The accused and PW3 Eimani Olga have one issue who was about 2 ½ years old in 2001 August. All the above persons lived together in the home of the accused at Maaji Refugee Settlement Camp in 2001. During the month of August 2001, PW3 Eimani Olga went to Ciforo to attend a funeral where she was away for about two weeks. She left the victim and their 2½ years old child in the custody of the accused. One Monday night when the victim had gone to sleep in the kitchen, the accused followed her there. He woke her up and ordered her to go and sleep in the main house where he and PW3 Eimani

Olga ordinarily slept. The victim resisted but because the accused threatened to cut her with a panga if she did not comply, she yielded and went into the main house. Once in the house she was threatened with death if she refused to have sexual intercourse with the accused. The accused got his way and had sexual intercourse with her that night after which he ordered her to go back to the kitchen. Three days later the accused had sexual intercourse with the victim during the day and again that day at night. When PW3 Eimani Olga came back, the victim narrated her ordeal to her and the matter was reported to the local authorities who forwarded it to the police leading to the arrest of the accused.

The accused denied ever having sexual intercourse with the victim as alleged. He stated in his sworn statement

that PW3 Eimani Olga and the victim who testified against him had a grudge against him.

As a general rule in our criminal justice system the burden is on the prosecution to prove the guilt of the accused person. The accused shoulders no burden to prove his innocence. The accused can only be convicted if the prosecution proves his guilt beyond reasonable doubt. If a doubt arises as to the guilt of the accused, that doubt must be resolved in favour of the accused leading to his acquittal. See ***Woolmington Vs DPP [1935] AC 463, Lubogo & Others Vs Uganda [1967] EA 440*** and ***Seruwo Vs Uganda [1978] HCB 1.***

It is also trite that the accused is to be convicted on the strength of the prosecution case but not on the weakness of the case for the defence. See ***Israel Epuku s/o***

Achutu [1934] 1 EACA 166. This is so because there is no burden on the accused to put up a formidable case. After all he may even keep guilt if he chooses.

In proving its case beyond reasonable doubt the prosecution must also prove beyond reasonable doubt each and every essential ingredient of the offence with which the accused is charged. Failure to prove any one of the ingredients will automatically lead to the acquittal of the accused person.

There are three ingredients of the offence of defilement namely:

1. That the complainant was under the age of 18 years at the time of the offence.
2. That there was unlawful sexual intercourse with the complainant.

3. That the accused participated in having the unlawful sexual intercourse with the complainant.

To prove that the complainant was under the age of 18 years, the evidence of PW1 Dr. Tobias Kinyera, PW2 Vudrio Kevin and PW3 Eimani Olga. PW1 Dr. Tobias Kinyera's evidence is comprised in the exhibit P2 which is the medical examination report on the complainant. In it PW1 Dr. Tobias Kinyera found the complainant to be nine years old. PW2 Vudrio Kevin, the complainant herself on oath stated her age to be 10 years at the time of her testimony. PW3 Eimani Olga testified that the complainant was aged 9 years at the time of the offence. The accused conceded the victim was a little girl. Apart from the above evidence because the court found the complainant to be a child of tender years and therefore below 18 years, she was just subjected to a *voire dire*

before her testimony was received on oath. With no contrary evidence adduced with regard to the age of the complainant, I find that the prosecution has proved beyond reasonable doubt that the complainant was under the age of 18 years at the time of the offence.

With regard to the fact of sexual intercourse with the complainant, the complainant PW2 Vudrio Kevin herself testified that when her mother had gone to attend a funeral at Ciforo she was left at home with the accused and her half brother aged 2½ years. On one Monday night when she had gone to sleep in the kitchen, her assailant woke her and forced her to go and sleep in the main house. Once in the main house, her assailant forced her to have sexual intercourse with her, threatening to cut her with a panga if she refused. She yielded and her assailant had sexual intercourse with her

after which he chased her back to the kitchen. It is also the complainant's evidence that three days later on a Thursday her assailant again had sexual intercourse with her during the day and during the night of that same Thursday. There is also the evidence of PW1 Dr. Tobias Kinyera who examined the complainant and compiled his medical report on Police Form 3, which was tendered as an exhibit under the provisions of section 64 of the Trial on Indictments Decree. In it he found that the hymen of the complainant had been ruptured, penetration had taken place and that the complainant had injuries - bruises on the left of the labia majora and on the right labia minora. He found these injuries to be seven days old and consistent with force having been sexually used, which means sexual intercourse did take place. The defence did not dispute the fact of sexual intercourse. I

find the prosecution has also proved this ingredient beyond reasonable doubt.

This now takes me to the last ingredient of the offence of defilement, which is that it was the accused who had unlawful sexual intercourse with the complainant. The accused is implicated in the commission of this offence by the testimony of PW2 Vudrio Kevin the complainant. Her evidence is that in August 2001 her mother PW3 Eimani Olga went to attend a funeral at Ciforo where she stayed for about two weeks. She was left with the accused and her half brother a child of 2½ years. One Monday night as she was sleeping in the kitchen, the accused went there and asked her to relocate and go to sleep in the main house. When she resisted, the accused who was carrying a panga threatened to cut her with it if she did not obey. So she yielded and went to the main

house. Once in the house the accused threatened her with death if she did not agree to have sexual intercourse with him. It was the complainant's evidence that after the accused had had sexual intercourse with her he sent her back to the kitchen. Because she was crying, the accused followed her to the kitchen and warned her that if she did not stop crying he would cut her with the panga, leave her in the kitchen and he would run to a place where he would not be found. All the same she continued crying and the accused went to the kitchen and sat near her.

The complainant further testified that the same week on Thursday the accused again had sexual intercourse with her during the day and again at night, she testified that all the times when the accused had sexual intercourse with her he always placed the panga on the mat where they lay.

Because the complainant had known the accused for one and half years as both of them lived in the same home and therefore the accused was very familiar, because the accused had sexual intercourse with the complainant including one in broad day light and each time the sexual intercourse took place in the bed of the accused, I find that there is no question of mistaken identity.

Besides the evidence of the complainant of the participation was not at all challenged in cross-examination leading to the inference that even the accused considered it true.

The accused made a sworn statement in which he denied committing the offence. All he knew was that the complainant had a boil on her buttocks and he advised her that her mother should be the one to look at it. He

gave evidence that when his wife returned from Ciforo he stayed with her very happily for a week before he was suddenly arrested and later informed that he had defiled a girl. The accused alleged that the evidence of PW2 Vudrio Kevin and of Eimani Olga is motivated by the fact that by witness bore him a grudge.

The accused claimed that his wife is only interested in taking away the food he produces because he is lazy. She developed a grudge with him because he was telling her to go and work in the garden, as he detests. As for the complainant, he stated that she bore him a grudge because whenever he sent her to collect water she would refuse and that is why she told lies against him.

In the first place I find the general line of the defence of the accused irrelevant and his explanation implausible

more so when the prosecution evidence incriminating him remains uncontroverted. I reject his defence in toto. As for the claim of the existence of a grudge I found it baseless.

In sexual offences there is need for the evidence of the complainant to be corroborated by some other independent material evidence. The need for corroboration of the complainant's evidence does not however mean that it is unlawful to act on the uncorroborated evidence of the complainant. The court has the power to take such uncorroborated evidence of the complainant as the basis of a conviction provided that the judge warns the assessors of the dangers of acting on the uncorroborated evidence of the complainant and he also warns himself of the same danger and then satisfies

himself that her evidence is truthful. See ***Chila & Another Vs Republic [1967] EA 722.***

In the instant case though the complainant was a 10 year old girl, I found her evidence to be clear, simple, consistent and uncontradicted and truthful. Though her evidence of the participation of the accused is not corroborated I believe it to be truthful. I will therefore act on it as I duly warned the assessors as I now warn myself.

In the result, the prosecution having proved all the three ingredients of this offence beyond reasonable doubt, in agreement with the unanimous opinion of the assessors, I find the accused Bojo Emmanuel guilty of the defilement of Vudrio Kevin contrary to section 123 (1) of the Penal Code Act and convict him accordingly.

AUGUSTUS KANIA

JUDGE

8/12/2003.

Right of Appeal explained.

AUGUSTUS KANIA

JUDGE

8/12/2003.

Judgment delivered in the presence of:-

Mr. Oyarmoi - for the accused.

The accused.

Ms. Nataline Madrara - English/Kiswahili interpreter.

Mr. Asubo - State Attorney absent.

AUGUSTUS KANIA

JUDGE

8/12/2003.