

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT RUKUNGIRI**  
**CASE NO: HCT-05-CR-SC-0038 OF 2004**  
**UGANDA :::::::::::::::::::::::::::::::::::::: PROSECUTOR**

**VERSUS**

**AKANDINDA JACKSON :::::::::::::::::::::::::::::::::::::: ACCUSED**

**BEFORE: HON. MR. JUSTICE RUBBY AWERI-OPIO**

**J U D G M E N T:-**

The accused, Akandinda Jackson, was indicted for defilement contrary to section 129 (1) of the Penal Code Act. The particulars alleged that on 18<sup>th</sup> day of February 2003 at Ihembe village in Kanungu District did unlawfully and carnally knew Asiimwe Maase, a girl under the age of 18 years. When the indictment was read and explained to him, he denied the charge. By that plea the accused set in issue all the essential elements of the offence of defilement to be proved by the prosecution beyond reasonable doubt.

The essential elements of the offence of defilement requiring proof beyond reasonable doubt are:-

- (1) That Asiimwe Maasa was a girl below 18 years old on February 2003;
- (2) That she experience sexual intercourse; and
- (3) That the accused participated in the unlawful sexual intercourse.

In order to prove the above ingredients, the prosecution led evidence from six witnesses. These included Asiimwe Maase (PW1) and her father Mbabazi Justus (PW2). There was the evidence of Frank.

Orimushaba (PW3) who was with the victim during the time of the incident who reported the incident to the victim's father.

Katsigazi Richard (PW4) testified that he was the Local Council Chairman who led the victim's father (PW2) to where the accused was arrested and handed to P.C. Ochan (PW5) of Kambuga Police

Post. Lastly the prosecution relied on the medical examination report of the Late Dr Birungi whose evidence was introduced by Elias Kakwateki (PW6).

On whether the girl victim was below 18 years old, the prosecution relied on the victim's evidence. She testified that she was 18 years old and that she was born in 1987. Justus Mbabazi (PW2) who was the victim's father testified that the victim was born around October 1987 and that at the time of the alleged incident she was 15 years old. The above pieces of evidence were ably corroborated by the medical examination report by Dr Birungi who examined the victim on 21/2/2003 and established that she was 15 years old. The above pieces of evidence were not discredited.

Where professional evidence is not discredited, it ought to be believed: See **Omuroni Francis Vs Uganda, Court of Appeal Criminal Appeal No.2 of 2000** (unreported). It is therefore my conclusion that the prosecution has proved beyond reasonable doubt that Asiiimwe Maase was a girl below 18 years of age on the 18<sup>th</sup> February 2003.

On whether Asiimwe Maase experienced sexual intercourse, the prosecution again relied on the victim's evidence. She testified that on the fateful night she was going to contract a traditional Bakiga marriage with one Denis. However on reaching Denis's home they found he had gone on a safari. As they were returning home, the accused grabbed her and took her in a house where he had sexual intercourse with her throughout the night. The accused denied having sexual intercourse with the victim. He admitted sleeping in the same house with the victim but could not have sexual intercourse because the victim's relatives were also sleeping in the same house.

However, I cannot believe the defence story in light of the medical evidence. Medical evidence is a very good independent evidence to corroborate the complainant's evidence to prove penetration: See **Uganda Vs Ayo Cipiryano; Lira Criminal Session Case No. 17/96** (unreported).

In the instant case the victim was examined by Dr Birungi on 21.2.2003 and found to have signs of penetration. Her hymen had ruptured recently. She had traumatic inflammations involving vaginal walls, which were consistent with force sexually used. From the above evidence there is no doubt that the victim did experience sexual intercourse. The victim's evidence and the medical evidence is explicit on this issue. The two pieces of evidence were further corroborated by that of Frank Orimushaba (PW3) who testified that when they failed to rescue the victim from her assailant, they went back home and reported the incident to the victim's father. That proved that they did not sleep in the same house as alleged by the accused. That circumstantial evidence further corroborated the victim's evidence that she experienced sexual intercourse. See **Byaruhanga Didas Vs Uganda.**

With regard to the third ingredient the prosecution contended that the participation of the accused had been established beyond any reasonable doubt. The prosecution relied on the victim's evidence as supported by that of Orimushaba Frank (PW3). Their

evidence was that on the fateful night the victim had gone to strike a traditional Bakiga marriage. She was escorted by her relatives and friends, which included Orimushaba Frank (PW3). On arrival they did not find the promised suitor. As they were returning back the accused pounced on the victim and took her to his house where he forced her into sexual intercourse throughout the night. Orimushaba (PW3) and her group on failing to rescue the victim from the accused returned home and reported the matter to the victim's father who because of the under age of the victim, took up the matter with the local authorities which ended up with the arrest of the accused.

The accused relied on total defence and stated that the victim had gone to his home to initiate a traditional Bakiga marriage in which a girl follows a prospective husband to their home after which the victim's would follow and demand bride price. He testified that on this occasion, the lady had gone to his place together with her friends and they slept in his house but there was no chance for sexual intercourse because of the presence of those relatives and friends of the girl in the same house.

According to the evidence of the victim (PW1) and Orimushaba (PW3) the accused was not the rightful suitor. The rightful suitor was one Denis who unfortunately had gone to Rukungiri on a business trip. They testified that the accused took advantage of the rightful suitor and forced the victim into unlawful sexual intercourse. According to Mbabazi Justus (PW2) the father of the victim, the alleged marriage could not work because the victim was under age. As long as the victim was below 18 years old, she could not contract any legal marriage in law. The constitution provides that no marriage shall be contracted by children. Therefore even if this victim had experienced sexual intercourse with the said Denis, the offence of defilement would have still been committed because of incapacity to court due to her under age.

At the end of my summing up one assessor advised me to acquit the accused on the ground that all the ingredients were not proved beyond reasonable doubt. The other assessor on the other hand was of the view that all the ingredients had been

proved beyond reasonable doubt. As stated above, there was overwhelming evidence that the girl was below 18 years and that she had experienced sexual intercourse with the accused. The fact that she later got married could not absolve the accused because by then the offence of defilement was complete.

For the reasons stated above I agree with the other assessor and conclude that the prosecution has proved all the ingredients of the offence beyond reasonable doubt. I therefore find the accused guilty as charged and he is convicted accordingly.

**RUBBY AWERI OPIO**

**JUDGE**

**5/9/2005.**



**14/9/2005:-**

Accused present.

Twinomuhwezi present for the state.

Ndimbirwe for the accused on state brief.

Judgment read in open court.

**Twinomuhwezi:-**

I do not have previous record. Treat him as first offender. This is a serious offence. Defilement is rampant. There is a public outcry. He has been on remand since 4/3/2003, we pray for appropriate sentence which will teach others.

**Ndimbirwe:-**

He is first offender. We pray time taken in custody be considered. He believed that she was over age. We pray for leniency. He is a family man. Let court be considerate.

**SENTENCE:-**

This is a very serious offence. It entails maximum of death sentence. The accused is first offender. He has spent long in custody. The victim was fairly old and she had gone to contract an illegal traditional marriage since she was below 18 years old. The accused did bad in forcing her into sexual intercourse. The accused is a young man who should be given chance to reform and live a useful life. Considering that he has taken long in custody he is sentenced to three years imprisonment.

Right of Appeal explained.

**RUBBY AWERI OPIO****JUDGE****14/9/2005.**