

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT ARUA

CRIMINAL SESSION NO 0034 OF 2008

UGANDA **PROSECUTOR**

=VERSUS=

ANGUYO FESTO alias OPIO **ACCUSED**

JUDGMENT

(Before Hon. Justice J. W. Kwesiga)

The Accused person, Anguyo Festo alias Opio, is charged with aggravated defilement contrary to section 129(3) of the penal code Act. It is alleged in the particulars of the offence that the Accused, during the month of September, 2007 at Nyirivu village in Arua District had unlawful sexual intercourse with Eyotaru Scovia, a girl under the age of 14 years.

The brief facts of the case are that all the material time the victim aged 13 years and the Accused person aged about 20 years are neighbours in the village and well known to each other. The Accused pulled the victim, on one occasion, into his house and had sexual intercourse with her. He repeated it on several occasion in his house. On the third occasion he had sexual intercourse with the victim in the bush where she had gone to collect firewood.

From the onset, the Accused person is presumed innocent until he pleads guilty or until he is proved guilty as charged.

The Accused person pleaded not guilty and therefore the prosecution has the burden to prove beyond reasonable doubt all the essential ingredients of the offence namely:-

1. That the victim is a girl of the age under 14 years.
2. That there was sexual intercourse with the victim.
3. That the Accused person is the culprit who had sexual intercourse with the victim or participated in sexual intercourse with the victim.

The State called 4 witnesses; the court called 1 witness, while the Accused gave unsworn statement in Defence and called no witness. The Court shall proceed to determine whether the essential ingredients of the offence have been established by the above witness's testimonies.

PW 1, the victim SCOVIA EYOTARU, testified on Oath, that she did not know her age. Her mother EVA NYOKARU testified that the victim is 14 years and she was 13 years in July/September, 2007 when the offence was committed. There is no doubt that PW 2, EVA NYOKARU the mother of the child victim told the true age of the victim as 14 years at the time of the trial which makes the victim about 13 years at the time of defilement.

This Court observed PW 1, the victim as she testified and Court had to conduct a **VOIRE DIRE** after being satisfied that she was a child of tender years. It is not always imperative to seek medical evidence to establish age of the victim in cases of defilement. Where the victim or her mother sufficiently testifies to the fact of age or where the trial Judge on looking at the victim can safely decide on the fact that the victim is below or above 14 years. In this case it has been proved beyond reasonable doubt that the victim SCOVIA EYOTARU was aged about 13 years at the time of the offence.

PW 1 the victim testified that she knows the Accused person as Opio, he lives in her village. Sometime in September, 2007 the Accused had sexual intercourse with her. He pulled her to his house and had sexual intercourse with her.

She said “..... *He called me inside their house, I refused, he came caught my hand and pulled me inside the house. He told me if I shout he would stab me with a knife. He said I should not reveal to anybody or else he would kill me*”. “*The second time I was collecting firewood..... threw me down and started doing bad manners.*” The third time was in his house.

Under cross-Examination she described the process of sexual intercourse thus “...*He sat on me and doing to me bad manners... He removed the thing for urinating and put it in mine which is also for urinating. It happened to me three times, it was not on the same day.*” She reported on the third day to her mother.

PW2 EVA NYOKARU corroborated the evidence of the victim. She reported that Opio had had sexual intercourse with her. That he threatened her with a knife.

PW 3 Dr. Oder Emmanuel examined the victim whom she found to be 13 years old, she had a ruptured hymen, and no other visible injuries. After the close of both the prosecution and defence cases, I realized that both the victim and the Accused persons had been examined for sexual transmitted disease on instructions of Dr. SIMON ALIGA of Kuluva Hospital. The said Doctor was summoned as a Court witness under S.39 (1) of T.I.A he confirmed he had made request for Laboratory tests for blood of ANGUYO FESTO OPIO (then a suspect) and SCOVIA EYOTARU (a victim).

His request was prompted by the victim’s complaint of defilement followed by abdominal pain while passing urine. Following this witness the prosecution called additional witnesses.

PW 4 OJORO ALEX, the Laboratory Technician who examined the victim and the Accused’s specimen, found that SCOVIA EYOTARU had syphilis estimated to be 8 days old. The specimen of ANGUYO FESTO he found strong reactive syphilis which was mature whereas the syphilis found on the victim was beginning to manifest itself. The Laboratory reports were admitted as P.E III and P.E IV respectively.

The evidence of PW 4 OJORO ALEX and Dr. SIMON ALIGA over-whelmingly corroborated the victim’s evidence that the Accused person defiled her. Her description of the process of sexual intercourse clearly portrayed that he penetrated her sexual organ. When she said he put his thing for urinating into her thing for urinating, I was left in no doubt what so ever that he inserted his penis in her vagina.

It is settled legal position that however slight penetration may be it will constitute sexual intercourse for purposes of sexual offences of rape and defilement.

In the instant case apart from the victim's evidence, there is the evidence of medical officers that corroborated the penetration by the fact of ruptured hymen coupled with syphilis found in both the victim and the Accused. This is very strong circumstantial evidence that proves that not only was there sexual intercourse, it was committed by the Accused person.

Despite the fact that the that the victim PW 1 was a child of tender years she was so consistent, firm and gave court evidence of identification of the Accused person, description of the manner in which the unlawful sexual intercourse was executed, even if the corroborative evidence had not been found, her evidence alone would have been enough to have the Accused convicted.

The Supreme Court of Uganda in **KIBALE ISOMA Vs UGANDA, SCCA NO 21 of 1998** held that testimony of a truthful witness requires no corroboration.

The court of Appeal of Uganda in **ABBAS KIMULI Vs UGANDA CR. APPEAL NO. 210 OF 2002** held that a testimony of a truthful witness requires no corroboration.

The Court of Appeal also observed that in cases of this nature, doctor's report is desirable but not mandatory. Corroboration is mandatory.

In the instant case there is both the medical evidence and reports and there is overwhelming evidence that corroborates that of the victim on both the fact of sexual intercourse and identification of the Accused person.

Both Assessors have similarly found that the prosecution evidence has proved all essential ingredients of the offence and that the Accused person's defence has no substance. I do respectfully agree with the gentlemen Assessors and I find the Accused person guilty of aggravated defilement and I accordingly convict him.

J.W.KWESIGA

JUDGE

13/10/2008.

Read in presence of:

Mr. Anguzu Lino – RSA

Mr. Madira Jimmy for Accused or state brief.

State:

The Accused is a first offender. I year and 16 days on remand. Defilement is serious which attracts a Maximum death sentence. The Accused person infected the victim with STD capable of ruining her Reproductive system. Pray for deterrent sentence.

Defence:

No previous criminal record. 19 years old still a young man Capable of reforming.

Court:

I have considered the submissions above and I have found the Accused needs a sentence that will allow him enough time to reform. I do hereby sentence him to 15 years imprisonment.

J.W.KWESIGA

JUDGE

13/10/2008