



PW 5 Dr. Drametu Dominic testified that Dr. OPAR examined the victim and among other things he found that she was 8 years old. Prosecution exhibit P 1 (Police Form N0. 3) is not dated and it is difficult to tell when Dr. Opar made this examination. Its appendix was not tendered and the police form requesting for this examination was not tendered. These omitted forms which ordinarily come with police form N0. 3 would have filled in this gap to take care of the none inclusion of the date of examination.

However, the evidence of the victim and that of her mother who is the best witness as to when she gave birth to the victim puts her age at 8 years in 2008 when the offence was committed. This court had opportunity to see the victim testify and there was no doubt from her appearance that she was below (14) fourteen years. It is not necessary for the prosecution to prove the exact age of the victim. It is enough to prove that the victim was below (14) fourteen years at the time of the offence. I am satisfied that this element of the offence has been proved beyond reasonable doubt.

The medical evidence contained in P.1 shows that the victim's hymen was not ruptured, however, the girl's Labia Majora were bruised and the bruises were at least 36 hours old. He stated that these bruises were consistent with force having been used sexually. (See P.1)

PW.1 PEACE PAULA the victim testified that the accused grabbed her and defiled her when she had gone to the accused person's house to fetch fire. She stated it was at 1.00 pm; the accused removed his shorts, pulled her clothes up, pulled out her underpants and proceeded to have sexual intercourse with her. After the act she went home crying, she found nobody at home and did not tell anybody. By the time she told her mother, the mother had been informed by the neighbour.

PW 2 Amadrio Santa, aged 13 years, gave evidence on oath, corroborated PW 1 she knows the accused very well because they live in close neighbourhood. PW 1 went to fetch fire from the accused person's house. She saw the accused lift and carry the victim into his house, closed the door, she later saw from his window and saw him on top of the victim. He had no trouser, the victim's dress had been moved upwards towards the chest, she saw him having sexual intercourse with the victim.

PW 3 LETIO JANE aged 18 years, she knew both the accused and the victim. By the time PW 3 went to see through the window of the accused person's house, the accused was in the process of putting on his trousers, the victim was also dressing up. This was around 1.00 pm and therefore there was enough light to aid correct identification. PW 3 reported the incident the following day to the victim's mother.

PW 4 FLORENCE LIMIO, the victim's mother testified that the victim returned from school very early the next day complaining of pain. She was not walking normally. On being asked what was wrong she revealed ENERIKO (the accused) had sexual intercourse with her. She checked the victim and found blood coming from the victim's private parts. She started cleaning the victim's with warm water and by the time she took her for medical examination bleeding had stopped. I find that the above prosecution evidence proves that sexual intercourse took place.

It is immaterial that the hymen was found intact because the rapture of the hymen depends on the depth of penetration.

It is trite that slightest penetration is sufficient to prove sexual intercourse. See **MUZE IMANA VS UGANDA Cr. Appeal N0. 85 of 1999 (C.A)**

The final issue to be resolved is whether the accused person participated. The accused person gave a defence of denial. He said that at the material time he was engaged in a casual labour job and on a daily basis, he used to leave by 9.00 am and return by evening time. The effect of the defence is that on the material day he was not at home at 1.00 pm. This is a defence of ALIBI and the accused person has no duty to prove it. Once an accused person sets up a defence of Alibi the onus is upon the prosecution to disprove it by adducing evidence that places the accused at the scene of crime at the material time.

I have considered the evidence of PW 1, PW 2 and PW 3 on this element of the offence of identification vis-avis the defence of ALIBI. I am satisfied that the prosecution evidence puts the accused person at the scene of crime and I reject the defence of ALIBI as being untrue.

Both Assessors have advised me that the prosecution has proved all the ingredients of the offence and that the defence is false and I agree with them. I find the accused person guilty of aggravated defilement and he is convicted accordingly.

**J.W. KWESIGA**

**Judge**

**4/11/2009**

**SENTENCING**

**State:**

No previous record. He is a first offender. This is a very prevalent offence. It is a vice that has invaded this country. This one of disturbing cases, the convict was 50 years old. The victim was just 8 years. The age gap is very wide. He should have been protecting the victim.

His action should be considered. This offence attracts death sentence. I pray for a death sentence.

**Defence:-**

(a). Accused states:-

I have no parents my parents are dead. I am the only one alive. My brothers left children under my care. I have many dependants. I am sick, I have chain pain. I pray for lenience.

(b). **Defence counsel**

The convict has been on remand for almost 1 year. He is sickly. He has responsibility of large family. Each case should be considered on its own circumstances. He has asked for forgiveness, he is remorseful. It would not serve ends of Justice to sentence him to death.

**Court:**

I have considered the period of 1 year the accused has spent on remand. I have considered that he is 53 years old and appears to be sickly. However the offence committed is so grave considering that the victim was such a young girl. He deprived her of her innocence with brutality in broad day light. This offence is so common in this region and the offenders deserve punishment.

This court has a duty to give a sentence that will teach the accused person a lesson and also to be a warning to others intending or potential defilers to take heed. I am unable to forgive the convict as he pleads because of the above.

I do hereby sentence the accused person to fifteen (15) years Imprisonment.

**J.W. KWESIGA**

**JUDGE**

**4/11/2009**