

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT RUKUNGIRI

HCT-CR-11-CSC-067/2012

CRIMINAL CASE RUK. 00-CR-CSC-17/2011

CRB 381 /2011

UGANDA ::: PROSECUTOR

VERSUS

ARINGANIRA ISAAC:::ACCUSED

BEFORE HON. MR. JUSTICE J.W KWESIGA

JUDGMENT

ARINGANIRA ISAAC, is indicted for Aggravated Defilement contrary to Sections 129 (3) 4 (a) (b) of the Penal Code Act. It is alleged that on 25th April, 2011 at Nyamirama village in Kanungu District performed a sexual act with Akampurira Mackline a person under the age of 14 years.

The Accused person denied the allegation at the commencement of the trial and maintained his denial up to the end of the trial in his defence. The State had the duty to prove the case against the Accused person and proof must be beyond reasonable doubt. The prosecution had to prove that Akampurira Mackline was aged below 14 years at the time of offence, she was subjected to a sexual Act by the Accused person. Proof of these elements of offence will be found after the summarized Prosecution evidence below:-

PW 1 Dr. Musiimenta presented the findings of Dr. Kasadha Daniel who examined the victim at Nyakibale hospital. She was found to be 13 years old, her hymen was ruptured and there were male semen's in her private parts. Prosecution exhibit P.E.1, the medical report shows defilement had been committed within less than 24 hours before examination, she was still actively bleeding.

PW 2 Barnad Muhiirwe, the victims under testified that on 25th April, 2011 at about 5:00 p.m he found children who were throwing stones into the bush and they told him that a man had pulled Mackline into the bush was raping her. He went into the bush and found the Accused on top of the victim in the act of sexual intercourse. He caught the Accused before he could escape. He took the Accused to Police. PC Turyamureeba, testified that on 25th April, 2011 Barnad Muhiire and Karuhize brought the Accused to the Police Post together with the victim. He rearrested the Accused and referred the victim for medical examination. PW 4

Akampurira Mackline, 15 years old at the time of testifying told court that she knew the Accused who lives in the same cell, he grabbed her while she was going to buy paraffin at 5:00 p.m, took her to the bush, removed her knickers and started having sexual intercourse with her. She made alarm, PW 2 and other people came to the scene and arrested the Accused. She felt a lot of pain and developed pus in her private parts. In DEFENCE the Accused denied participation. He said he knew the victim but he was never at the scene of crime. He only met the victim on the street of the town where he was arrested on 25th April, 2011. PW 4 Mackline Akampurira told court that she was born in 1996. The medical report puts her age at 13 years at the time of the offence. I agree that she is 15 years at the time of testifying and she was below 14 years in April 2011 when the offence was committed. I am satisfied that the age of the victim has been proved to have been about 14 years at the time of the offence. It is immaterial that there was no proof of the exact date of birth. The fact that she stated her age as 15 years old and the medical examination states she was 13 years old in 2011 puts her age at about 14 or below in 2011. There is doubt as to whether this girl was below 14 years but clearly she is not yet 18 years old and any sexual intercourse with her was unlawful and defilement because she had no capacity to consent by virtue of her age.

Sexual intercourse was proved by the evidence of PW 4 Akampurira Mackline, the victim, PW 2 Muhiire Barnad who caught the Accused red-handed. The evidence of the two witnesses was corroborated by the medical evidence. Participation has been proved overwhelmingly by evidence of PW 2 Muhiire and PW 4 Mackline Akampurira. The offence took place at 5:00 p.m when there was natural light. The Accused was well known to the two witnesses and they had opportunity to recognise him while he committed the offence and when he was being arrested. The above evaluation of the prosecution evidence leaves no doubt that the offence of defilement was committed and by the Accused person. Medical evidence adduced by the prosecution does not show that the victim contracted any sexually transmitted disease. There is no proof given to show that the Accused is a person living with HIV. The age of the victim was not clear whether she was below 14 years of age at the time of the offence, however it was established that she was below 18 years which would amount to simple defilement. I have considered the opinion of the assessors, they did not address the inconsistencies on the fact of age and the inconclusive evidence of the Accused person HIV status. In the circumstances I find the Accused person guilty of simple defilement contrary to Section 129 (1) of The Penal Code Act. He is accordingly convicted.

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J.W. KWESIGA

**JUDGE
13/12/2012**

PRE-SENTENCING FACTS

STATE:

No previous record. I pray the Court considers the circumstances, he grabbed her, forced her into sexual intercourse. He abused the girls rights and defence. Defilements are rampant. We pray for deterrent sentence.

DEFENCE:

He is aged 23 years old, he was years old, the convict is a first offender, he is convicted of a lesser offence than he had been charged with. The victim is a relatively he has been on remand since 25th April, 2011. The convict is HIV positive, he is on drugs. He is remorseful, capable of reforming.

COURT: SENTENCE:

I have considered what has been submitted for and against the Accused person. He forcefully defiled the victim, the Accused person deserves a punishment that will send a warning to all potential defilers to stop this mischief which is almost an epidemic in this region. There is no age that gives anybody to commit the offence. I do not find the Accused persons age a mitigating factor, therefore I do sentence the Accused/convict to **(15) Fifteen years imprisonment.**

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**J.W. KWESIGA
JUDGE
13/12/2012**

In the presence of :

Mr. Baguma Batson, RSA for the State.

Mr. Bwagi Jonathan for the Accused.

M/S Ampaire Everlyne- Court – Clerk.