

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT RUKUNGIRI
HCT-CR-11-CSC-139/2011
CRIMINAL CASE RUK. 00-CR-CSC-033/2009
CRB 871 /2009

UGANDA ::: PROSECUTOR

VERSUS

MATSIKO SADAYO:::ACCUSED

BEFORE HON. MR. JUSTICE J.W KWESIGA

JUDGMENT

MATSIKO SADAYO, the Accused person, is indicted under **Section 129 of the Penal Code Act** for **Aggravated defilement**. It is alleged that Matsiko Sadayo, on 22nd January, 2009 at Bigaga cell, in Rukungiri District had a sexual act with **Kyokunzire Olivia** a girl aged below 14 years. The Accused person pleaded not guilty and the state proceeded to prove the charges against the Accused.

The State case is that the Accused forcefully had sexual intercourse with Kyokunzire Olivia on 20th June 2009 and as a result she became pregnant and subsequently delivered a baby girl. The Accused denied the allegation and demanded that DNA tests be made to prove that he was not responsible for the alleged sexual intercourse and the pregnancy. For the prosecution to secure a conviction must adduce evidence to prove that:-

- (a) Kyokunzire Olivia was aged below 14 years at the time of the offence.
- (b) That she was subjected to sexual intercourse.
- (c) That it is the Accused person who committed the offence.

The Accused person is presumed to be innocent until he is proved guilty. The State has the duty to prove all the three elements of the offence beyond reasonable doubt before a conviction can be secured.

I will now summarise each witness's evidence before determining whether the elements of the offence were proved. PW 1 Benon Nkunamubanzi told court that he participated in the investigations of the case. He arrested the Accused, interrogated him but he denied. He referred the case to Rukungiri Police Station for further management.

PW 2 Kyokunzire Olivia, 16 years old, she testified that the Accused was her village mate and on 22nd January, 2009 the Accused forcefully had sexual intercourse with her. He found her looking after goats. He threatened to beat her if she disclosed this matter. She was discovered pregnant by her school teacher. She was examined medically and it was confirmed that she was 3 months pregnant.

Under cross-examination she stated it was at 6:00 p.m on 20th January, 2009 and that she had no sexual intercourse with any other man before. PW 3 Ahimbisibwe Cleofas, 33 years old, the victim's brother-in-law and guardian told court that Olivia got pregnant when she was in primary seven and she said it was the Accused who raped her. He denied being responsible for the pregnancy.

PW 4. Ahimbisibwe Hildah, 27 years old, the sister of the victim told court the girl was born on 16th May, 1996. She was discovered pregnant at school and she revealed that Sadayo Masiko was responsible. He raped her when she had gone to collect goats.

PW 5 Dr. Musiimenta Emmanuel, presented medical findings of Dr. Luyimbazi which was tendered as prosecution exhibit P.E 1. This report dated 15th May, 2009 states she was 13 years old, her hymen was rapture long ago and she appeared pregnant.

With the above evidence the prosecution closed its case. The Accused person totally denied participation and demanded for DNA test to exonerate himself. In Defence, the Accused person admitted that he knows the complainant Olivia Kyokunzire, because she stays with his neighbour **CLEO AHIMBISIBWE**. He stated that he has never had sexual intercourse with her. He stated he gave his blood specimen for DNA test to rule out his being responsible. DNA report was admitted as court exhibit CW 1 it categorically stated that the Accused can not be the man that made the complainant pregnant to produce the child alleged to have being conceived during the unlawful sexual intercourse in the defilement in question.

Participation in sexual intercourse can be proved in cases similar to be case at hand by the victim's testimony plus medical evidence or any other evidence including people who may have seen it happen. In this case it was the word of the girl against the Accused and no other witness was available to corroborate the complainants claim that it is the Accused person. The only remaining evidence that would have conclusively implicated the Accused person would have been DNA test results. The results ruled out the Accused person and therefore created reasonable doubt in his

participation as an essential element of the offence of defilement. While there is no doubt that the victim was below 14 years of age by 15th May 2009. She was infant 13 years old according to medical evidence (see appendix to Police Form 3). From her evidence she gave birth pursuant to the alleged defilement. The medical doctor could not establish the date of penetration or rapture of the hymen. There is doubt that the prosecution evidence proves defilement but it does not prove beyond reasonable doubt that it was by the Accused person. The DNA Report Ref FB 109-12 dated 13th August, 2012 excluded the Accused person from being the father of the child, therefore this corroborates the Accused persons Defence that he never participated in defiling the complainant.

I agree with the submissions of Mr. Matsiko Milton, the Defence Advocate that the Prosecution has not proved participation beyond reasonable doubt.

The opinion of the Assessor is that the Accused person be acquitted and I agree, the Accused person is hereby **Acquitted**.

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J.W. KWESIGA
JUDGE
14/12/2012

ORDER:

The Accused person shall be availed a copy of the **DNA ANALYSIS REPORT** to help him in case of any paternity Civil Claims.

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J.W. KWESIGA
JUDGE
14/12/2012