

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT SOROTI
CRIMINAL SESSION CASE. 5 OF 2012
UGANDA V ENYANGU WILLIAM

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The accused person in this case is charged with aggravated defilement c/s 129 (4) (a) of the penal code. It is alleged that the accused person on 5th December 2010 at Agule village in Kaberamaido district performed a sexual act with Irago Recho a girl aged 8 years.

Prosecution was led by Mr. Noah Kunya, Senior State Attorney, while the accused person was represented by Mr. Tiyo on state brief.

Assessors were Mr. Ocole Joshua and Ms Amoding Florence.

The prosecution had a duty to prove beyond reasonable doubt that the accused person performed a sexual act with the victim Recho, a girl aged 8 years.

That the victim was aged eight years at the time of the offence in 2010 is not disputed. Medical evidence, admitted by consent as PEx.1 showed that the victim was aged eight years in 2010 when she was examined .

On whether a sexual act was proved, prosecution relied on evidence of the victim's parents, i.e, PW1 Otai Daniel, PW2 Irago Florence, PW3 Irago Recho, a medical report, Pexh. 1, and medical notes Pexh. 1A, pexh. 1B.

PW1 Irago Recho aged 12 years testified on oath after I had administered a voire dire. She testified that on 5.12.2010, on her way from the trading centre, she was chased by the accused person whom she knew as a resident of the village, he held her neck and inserted his sexual organ into her after removing her pants. In cross examination, the witness named the accused as Willy and that this is the name

she had heard people call the accused person. That the accused person warned her not to tell her mother and promised to buy her a soda.

In cross examination, the defence sought to discredit the evidence of PW2 Irago Florence that the victim returned crying when the witness testified she was not crying when she returned home.

However I find this a minor discrepancy given the lapse of time and the fact that the victim was only eight years old at the time of the offence.

While corroboration is not mandatory to prove defilement, in this case, it is critical in this case in view of the conflicting medical evidence produced by the prosecution.

PW1 Otai, father of the victim testified that on 5.12.2010, he returned home and was informed by his wife that PW3 Recho had told her that the accused person Enyangu had defiled her on her return from the trading centre. Both PW1 and PW2 Irago Florence are in agreement that the accused person is the son of Otai's sister and therefore their nephew and had grown up in the same village as the couple. PW1 proceeded to examine her and found that she was bleeding from her sexual organ which was swollen and there were sperms. He reported the defilement to police and took his daughter to a health centre II at Kakure for examination.

PW2 Irago Florence testified that on 5.12.2010, the victim returned from Kakure trading centre while crying and informed PW2 that Willy had defiled her. On removing her pants, the witness observed that it was blood stained upon which she raised an alarm but did not examine her.

When her husband returned, she informed him and they went to police who referred them to Health centre. That the police referred them to a health centre in Kakure is doubtful because PF.3 issued by Kalaki police post was filled by a Dr. Edielu of Lwala Hospital.

What is noteworthy is that the treatment notes tendered together with Pexh. 1 show that the victim was examined on 5. 12.2010 and the unidentified medical person at the health centre who examined her found: Clear rupture of the hymen, thick sperms at the vagina, clear bleeding of the vagina.

Yet on 6 .12.2010, she was treated at Lwala hospital and the notes marked PExh. 1B show that the victim reported no pain when passing urine or walking and no pain in the lower abdomen.

Pexh. 1, the medical report shows she was examined on 6.12.2010, a day after the alleged defilement and the examining doctor found signs of penetration except that the hymen was ruptured and the rupture was not fresh.

The discrepancy between Pexh. 1A, Pexh. 1B and Pexh.1 is difficult to comprehend. While the unidentified medical person on 5.12.2010 in Pexh. 1A found clear signs of ruptured hymen, semen and bleeding of the sexual organ , Pexh. B reveals the victim was not in pain and was in general fair condition. In view of the non-identification of the medical personnel in Pexh. 1A, I will disregard these notes and instead rely on Pexh. 1B medical notes recorded at Lwala hospital and Pexh. 1, which is PF.3.

Of these two exhibits, Pexh.1, suggests there were signs of penetration of the eight year old girl but no signs of injuries . The fact that the rupture of the hymen was not fresh is irrelevant.

On the whole, I find that PW2 Irago Florence corroborates the complaint of the victim that she was sexually assaulted. The evidence of PW1 Otai that he examined his daughter is suspect as such examination is usually done by the female gender of the household, a fact denied by PW2, mother of the victim.

Notwithstanding credibility of PW1 Otai, PW2 Irago Florence was consistent and her testimony alone is sufficient to corroborate the testimony of PW3 as she was the first person to interact with the victim soon after the sexual assault. Further corroboration is provided by Pexh. 1 which noted signs of penetration.

Relying on the evidence of PW 3 that the accused person inserted his sexual organ in her, the evidence of PW2 that she observed blood on her pants, and Pexh.1 that there were signs of penetration all collectively to point the conclusion that a sexual act took place.

With regard to participation, I am satisfied that PW3 positively identified the culprit as Willy and whom she pointed out in court as the accused person. That he is referred to in the village as Willy was confirmed by PW2 Florence Irago.

In cross examination of PW2, the defence attempted to make out that the accused person could not be found on the night of 5.12.2010 because he was hiding from a mob. This is irrelevant to the case because I did not read any guilt in the failure to find him at his home by PW2.

In defence the accused person remained silent although in cross examination of witnesses, the defence suggested that the accused sometimes experiences period of insanity, a defence that was not pursued to its logical conclusion. PW2 in particular denied that the accused was insane sometimes.

I am in agreement with the two assessors that the prosecution has proved beyond reasonable doubt that the accused person defiled Irago Recho and he is convicted as indicted.

DATED AT SOROTI THIS 18th DAY OF JUNE 2014.

HON. LADY JUSTICE H. WOLAYO