



Under our legal system every person accused of a criminal offence is presumed to be innocent until that person is proved or pleads guilty (see: Article 28 (3) (a) Ugandan Constitution). The burden of proving an accused guilty lies upon the prosecution (*Woolmington v. D.P.P. A.C. 462*).

At this stage of the trial the prosecution must prove all the essential ingredients of the offence to such a standard upon which a reasonable tribunal, properly directing its mind on the law and evidence, would convict, if the accused offered no explanation. (See: *Rananlal T. Bhatt v. R [1957] E.A.336*).

The offence of aggravated defilement has three essential ingredients each of which the prosecution must so prove in order to prove the offence, namely:-

1. The victim must be aged below 14 years or there are other aggravating conditions such as the victim suffering from a disability, or the accused being a parent or guardian or had authority over the victim, or is a serial offender;
2. Performance of a sexual act ;
3. The accused must be the male who performed the sexual act on the victim.

On evidence the sole prosecution witness stated that she was and actually appeared to be 7 years old and at least below 14 years old.

Court is satisfied and accordingly finds that prosecution proved the first essential ingredient of the offence.

With regard to the second as well as the third essential ingredients of the offence the sole prosecution witness first stated that the accused entered the bedroom, removed his trousers and her knickers and did “bad manners” to her while she was asleep in

that bedroom. Further, that the accused had on three separate times had sexual intercourse with her before but threatened her with a knife to slaughter her if she ever reported to anybody. That she never reported to anybody before except her mother because of that threat but that on the occasion in issue she reported the incident to her mother.

In both cross examination and clarification to court, the witness confirmed that on the occasion in issue when the accused entered the bedroom the witness was asleep. That she was also asleep when the accused removed his trousers and her knickers and did 'bad manners' to her. That she knew what the accused had done to her only when she woke up and felt pain and saw the accused at the tap washing his legs some distance away from her home. That she did not see the accused either remove his trousers or her knickers or doing 'bad manners' to her.

It was after that type of evidence that the learned State Attorney stated that she would offer no further evidence.

Upon consideration of that evidence court finds that prosecution failed to prove the second and third essential ingredients of the offence.

Consequently court finds that prosecution evidence is not sufficient that the accused committed the offence.

In the premises court acquits the accused and sets him free forthwith unless he is held on other charges.

**E.K. Muhanguzi**  
**JUDGE**  
**19.02.2009**