

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA SITTING AT MBARARA

CRIMINAL APPEAL NO.154 OF 2013

MATSIKO WILSON:..... APPELLANT

VERSUS

UGANDA:..... RESPONDENT

(Appeal arising from the decision of the High Court of Uganda at Rukungiri before Hon. Justice Joseph Murangira delivered on the 23rd day of October, 2013 in Criminal Session Case No. 99 of 2012).

CORAM: HON. JUSTICE ELIZABETH MUSOKE, JA

HON. JUSTICE STEPHEN MUSOTA, JA

HON. JUSTICE REMMY KASULE, AG. JA

JUDGMENT OF COURT

The appellant was charged, tried and convicted of Aggravated Defilement contrary to section 129 (4) (a) and (b) of the Penal Code Act and sentenced to 20 years imprisonment. The appellant was dissatisfied with the sentence passed by the trial court and filed this appeal on the sole ground that;

1. The learned trial Judge erred in both law and fact by imposing a sentence of 20 years imprisonment on the appellant which sentence was harsh and excessive in the circumstances of the case.



The hearing of this appeal was through video conferencing due to the covid 19 pandemic. The appellant was able to follow the proceedings and have contact with his advocate,

Background

The brief facts of the case are that the victim was aged 10 years at the time the offence was committed. On the 13th day of August 2012, the victim was sent by her mother to collect goats from the bush at the foot of the hill where they had been taken to graze. The victim saw the appellant and his wife climbing the hill. Then suddenly the appellant refused to continue and opted to sit down. The wife of the appellant decided to continue alone leaving the appellant behind. The victim entered the bush to untie the goats and the appellant followed her, pounced on her and placed his hand on her mouth and ordered her not to shout. The appellant put the victim down and forcefully had sexual intercourse with her. When his penis failed to enter, the appellant used his fingers to pull the vaginal wall apart and then pushed in his penis. The victim bled from the vagina and the mouth, after the act. The appellant left the victim and went away. The victim painfully walked out of the bush and went towards home. Her mother met her crying and bleeding from her genitals and mouth. She narrated to her mother how she had been defiled by a man who was wearing a shirt with vertical and horizontal strips and was climbing a hill with a woman. Some villagers confirmed that they had seen the man climbing the hill and the case was reported to police after which the appellant was arrested the following day.

Representation

At the hearing of the appeal, Mr. Bruno Muhanguzi appeared for the appellant while Ms. Nabisenke Assistant DPP. appeared for the respondent.



Appellant's submissions

Counsel sought and was granted leave to appeal against sentence only. He submitted that the learned trial Judge based his sentence on the facts surrounding the commission of the offence but not the mitigating factors like the appellant being 22 years old with capability to reform. He relied on objective 3(e) of the **Constitution (sentencing for courts of Judicature) (practice) Directions 2013** on promoting uniformity, consistency and transparency in sentencing and contended that the sentence passed by the trial court did not promote that objective as it was too harsh and excessive and not consistent with passed court decisions in respect of similar offences.. Counsel relied on **Katusi Alisamu alias Kahima Vs Uganda COA Criminal Appeal No. 218 of 2011** in which a sentence of 14 years' for defilement was set aside and substituted with a sentence of 12 years' imprisonment. He prayed that this court finds the 20 year sentence harsh and excessive.

Respondent's submissions

In reply, counsel submitted that an appellate court will not interfere with a sentence imposed by the High Court in exercise of discretion on mere grounds that the members of court might have passed a somewhat different sentence. A sentence should only be interfered with if the trial court acted on wrong principles, overlooked some material factors or if the sentence is manifestly so high or so low as to occasion a miscarriage of justice.

The offence of aggravated defilement carries a maximum sentence of death and the circumstances surrounding the commission of the offence were brutal and gruesome and the 20 year sentence meted on the appellant was appropriate in the circumstances of the case.

Resolution by court



It is trite law that an appellate court should not interfere with the discretion of a trial court in imposing a sentence unless the trial court acted on a wrong principle or overlooked a material factor or where the sentence is illegal or manifestly excessive or too low to amount to a miscarriage of Justice (See **Kyalimpa Edward v. Uganda SC Cr. App No. 10 of 1995, and Kyewalabye Bernard v. Uganda Criminal App. No. 143 of 2001**).

We have been guided by the above principles in resolving this appeal. We have also taken into consideration all the submissions made by respective counsel and the authorities cited.

The learned trial Judge's sentencing order is as follows;

"In sentencing the convict, the following factors have been considered:-

- 1) All the mitigating factors advanced by both counsel for the parties.*
- 2) The offence was committed against a girl of 10 years old in extremely brutal manner.*
- 3) The convict deserved the sentence of death or to the least imprisonment for life*
- 4) The time he spent on remand is considered.*
- 5) The convict by pleading guilty appeared remorseful*

Wherefore, the convict is sentenced to 20 (twenty) years imprisonment in prison."

The learned trial Judge considered both the mitigating and aggravating factors and the period the appellant spent on remand. The maximum sentence on a conviction of Aggravated Defilement is death. It is therefore our considered opinion that the 20 year sentence meted on the appellant served the ends of justice and we find no reason to interfere with it.

This appeal is accordingly dismissed.



Dated this 13th day of October 2019



Hon. Justice Elizabeth Musoke, JA



Hon. Justice Stephen Musota, JA



Hon. Lady Justice Remmy Kasule, Ag. JA