

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA**

HCT-05-CR-CO-0178-2002

UGANDAPROSECUTOR
VS
SIRAGI BURORO GORDONACCUSED

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

Siragi Buroro Gordon is indicted for defilement, contrary to section 129 (1) of the Penal Code Act. The four witnesses called by the prosecution were Natukunda Jacqueline (PW1), Turyatamba Herbert Congo (PW2), Kedress Kwatampora (PW3) and Dr. Trifon Mugisha (PW4). The medical report was received as exhibit P.1 In his sworn statement in defence accused denied involvement in the offence alleged.

The prosecution case is that accused was a casual labourer employed by PW1 to work around her canteen in Kitwe trading centre. At about 11 a.m. on the day in question the victim, who at the time was a toddler; entered the canteen where her mother was crying and saying that accused had molested her. The victim was touching her private parts. When PW1 in the company of PW3 examined the victim there was semen in the private parts of the victim. When later the victim was medically examined she was found to have a freshly ruptured hymen. There were mobile sperms in her private parts. Accused was arrested and charged with the offence.

The onus is on the prosecution to prove the case against an accused person beyond reasonable doubt. Where the charge is of defilement the prosecution ought to prove the following ingredients:

- i. That the victim's age at the material time was below 18 years,
- ii. That the victim had sexual intercourse on the alleged occasion,
- iii. That the accused participated in the crime.

No birth certificate was produced as evidence of the victim's age. It was the evidence of PW 1, mother to the victim, that at the time of the alleged molestation the girl was 2 1/2 years old. The medical examination report made at the time shows the girl's age as about 3 years old. The girl's age is not disputed by the defence. I am satisfied the prosecution has proved this ingredient beyond reasonable doubt.

Sexual intercourse is said to have occurred when a female sexual organ is penetrated by a male sexual organ, however slight that penetration might be. PW4 examined the victim in this case and found that her hymen had got ruptured a very short time before. He confirmed that penetration had taken place. This finding is not contested by the defence even. I find this ingredient too has been proved beyond reasonable doubt.

Finally the prosecution must prove that accused participated in the alleged offence. Accused does not deny that he was present in the vicinity of the scene of crime at the time alleged. What he denies is that he was involved in having sexual intercourse with the victim. Accused does not know why this allegation was made against him but he suspected that it was because PW1 was reluctant to pay the Shs. 300,000/= owing to him. Accused said he had worked for PW1 for 5 years and that PW1 had paid his salary for 4 years but was reluctant to pay him the aggregate Shs. 300,000/= for one year's salary.

The only person who pointed accused out as the person responsible was the child, the victim. Her evidence doubtless requires corroboration. Apart from the fact that accused was in the vicinity court takes into account the fact that the victim was in a state of distress and her condition is corroboration enough. In *Abasi Kibazo vs Uganda* [1965] EA 509, 510 Sir Samuel Quashie-Idun, President of the Court of Appeal for Eastern Africa stated:

'We accept the learned trial Judge's finding based on the authorities of *R vs Zielinski* and *R vs Alan Redpath---* that in sexual offences the distressed condition of the complainant is capable of amounting to corroboration of the complainant's evidence, but we think that this would depend upon the circumstances and the evidence'.

The child in the instant case was crying out and mentioning the name of the accused as the one who had molested her. She was touching her private parts. Later it was discovered that she had

had sexual intercourse. I am satisfied that from that evidence accused was properly pointed out as the person who participated in the offence. This ingredient also has been proved by the prosecution beyond reasonable doubt.

I find accused's contention that he was framed because PW1 did not want to pay him his salary as an afterthought and a fabrication. In any case there is evidence he had joyfully continued to work for PW1. I reject the assertion as baseless.

The gentlemen assessors gave a joint opinion in which they advised that the prosecution has proved all the ingredients of the offence beyond reasonable doubt. They advised that I find accused guilty of the offence. I have expressed my finding in this judgment. It is similar to that of the gentlemen assessors with whom I agree. Accordingly I find accused guilty of the offence of defilement, contrary to section 129 (1) of the Penal Code Act and convict him of the charge.

P.K. Mugamba
Judge

25th April

25th April 2005 later 3.30 p.m.

Accused in court

Mr. Bazaare for accused person

Ms Amumpaire State Attorney

Ms Tushemereirwe court clerk

Court:

Judgment read in open court

P.K. Mugamba
Judge

Allocutus

State Attorney:

Convict is a first offender. He has been on remand for 3 years and about 6 months. The offence he committed is grave. I pray for a deterrent sentence.

Mr. Bazaare:

The convict is young. He is capable of repentance. He has regretted the offence. I pray he be given a lenient sentence.

Convict:

I pray that court gives me a lenient sentence.

SENTENCE

I have heard what has been said by counsel for both the convict and the State regarding sentence. I have also heard what the convict had to say. What the convict did deserves a very serious sentence. One would have expected the convict to protect the trusting child. I have taken everything into account including the period the convict has been on remand, which I deduct from the sentence I would otherwise have handed down. He is sentenced to 15 years' imprisonment.

P.K. Mugamba
Judge

Court:

Right of Appeal explained.

P.K. Mugamba
Judge