

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT SOROTI
CRIMINAL SESSION CASE. 11 OF 2012
UGANDA V ETONU JUVENTINE

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

The accused person in this case is charged with aggravated defilement c/s 129(2) (3) (4) of the Penal Code Act. It is alleged that the accused person on 24th October 2011 at Casso Orphanage Home, Opuyo in Soroti district performed a sexual act with Amuge Sylvia a girl aged eleven years.

Prosecution was led by Mr. Noah Kunya SSA while the accused person was represented by Mr. Ogire on state brief. Assessors were Mr. Joshua Ocole and Ms Florence Amodong.

Prosecution had a duty to prove beyond reasonable doubt that the accused person performed a sexual act with a girl below 14 years.

That the victim was aged eleven years at the time of the offence is not disputed. PF 3 confirmed the age and the girl in her testimony on oath said she was 14 years which puts her age at eleven in 2011.

Proof of sexual act

The prosecution relied on testimony of PW1 Agwang Josephine, a guardian to the victim , PW2 Amuge Sylvia and medical evidence in form of PExh. 1 (PF.3) to prove a sexual act. An examination of PF.3 shows that the victim was examined on 25.10.2011 at Soroti regional hospital by Dr. Oumo John who found that the hymen was broken a few hours prior to the examination, and there was marked bleeding from the private parts. The medical evidence alone proves beyond reasonable doubt that sexual activity took place within hours of the examination.

Participation

With regard to participation, the evidence of PW2 Amuge who gave sworn evidence after a voire dire was conducted, shows that on 24.10.2011, at about 4 p.m, she was playing with five

other children at CAsso orphanage when the accused person, their watchman, called them to the office for sugar to prepare tea for him. After giving out the sugar, the accused sent off the other children and asked the victim to remain behind as he wanted to give her something sweet.

According to the witness, the accused person picked a pencil and a gunny bag which he placed behind the door to the office, and closed it. He told her to remove her pants which she declined, upon which he kicked her, she fell on the ground and he proceeded to remove her pants. He removed his sexual organ, and pushed it in her sexual organ. It was at this point that PW1 Agwang entered the office.

The testimony of PW2 Amuge is corroborated by that of PW1 Agwang, who works as a matron at the orphanage. On the 24.10.2011, on her return to the orphanage at about 4 p.m, she observed that the accused person, a watchman, was not at his usual post.

On entering the manager's office, she called out to the watchman whom they also referred to as 'pastor'. He emerged from behind the door with his trouser belt loose while at the same time, PW2 Amuge was behind the door from where the accused person had emerged. He pleaded for mercy while saying that he had been tempted by satan as PW2 narrated to the witness the sexual activity that had just taken place.

PW1 further examined the victim and found semen in her thighs.

In defence, it was suggested during cross examination of PW1 Agwang that there was a grudge between her and the accused as one time a bicycle went missing and the accused person was made to pay for it.

It was also suggested during her cross examination that the witness coached the victim what to say.

However, I listened carefully to the testimonies and find that PW2 Amuge, the victim was very sincere in the presentation of her evidence and her testimony is corroborated by the testimony of PW1 Agwang in all respects. Apart from narrating to PW1 the incident, she testified that the accused pleaded with PW1 to forgive him.

The accused person in his sworn evidence suggested that PW1 Agwang took the victim to the dormitory from where she assaulted her and later locked her up. That this was after PW1 found him giving out pencils to the children including the victim.

He further said PW1 Agwang had a grudge with him because he had declined to give her extras like sugar from the store.

A careful evaluation of the evidence of PW1 Agwang and PW2 Amuge places the accused person at the scene of crime. He was at the orphanage on the 24.10. 2010, alone with the children. He was found red handed as he emerged from behind a door with his trouser belt loose , he pleaded for mercy that he had been tempted by satan, the girl had semen in her thighs, and on examination the next day, the examining doctor found the hymen had recently been broken.

I disbelieve the unsworn testimony of the accused person and agree with the two assessors that the prosecution has proved its case beyond reasonable doubt.

The accused person is accordingly convicted of the offence as indicted.

DATED AT SOROTI THIS 18TH DAY OF JUNE 2014.

HON. LADY JUSTICE H. WOLAYO