

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KASESE
HCT-01-CR-SC-163/2014

UGANDAPROSECUTION

VERSUS

KULE WILLIAMACCUSED

BEFORE: HON. MR. JUSTICE OYUKO. ANTHONY OJOK, JUDGE

JUDGMENT

The accused was indicted with the offence of Aggravated defilement Contrary to **Section 129(3), (4) (a)** of the Penal Code Act. It was alleged that on the 13th day of May 2014 at Katero village, Kasese District, the accused unlawfully had sexual intercourse with Masika Gileria a girl aged nine (9) years.

The accused denied committing the offence.

The prosecution produced 5 witnesses in a bid to prove its case. The accused did not bring any witnesses other than him.

Kwesiga Michael, State Attorney appeared for the state and Counsel Collins Accellam represented the accused on state brief.

Burden of proof

It is a requirement by the law that prosecution must prove its case beyond reasonable doubt because the accused has no duty to prove his innocence.

It is our principle of the law that an accused person should be convicted on the strength of the case as proved by prosecution but not on weakness of his defense. **(See: Insrail Epuku s/o Achietu versus R. [1934] I 166 at page 167).**

Standard of proof

Prosecution must prove its case beyond reasonable doubt. Any doubt in their evidence shall be resolved in favor of the accused.

The prosecution must prove all the ingredients of the offence of Aggravated Defilement in order to sustain a conviction thereof.

Ingredients of the offence:

1. That the Victim/child was below 14 years at the time.
2. That a sexual act was performed upon the child/victim.

3. That the accused is the one that performed the sexual act upon the child/victim.

That the Victim/child was below 14 years at the time:

The victim at the time of hearing this case stated that she was 12 years. PW3 and PW5, the parents of the victim also told Court the age of the victim which fell below 14 years. This was confirmed by PW2 the doctor that examined the victim, and the medical report that the girl was below 14 years old at the time the offence was committed. There is no contest as to the age of the victim.

That a sexual act was performed upon the child/victim:

PWI, the victim was found to possess sufficient knowledge of telling the truth. She told Court entirely what transpired and how she was defiled by the accused person. That the accused called her in the guise of sending her into the house then he grabbed her and performed a sexual act on her.

PW3 also examined the victim and found her to have been defiled. This was confirmed by PW4, the father to the victim. This evidence was corroborated by Medical report that indicated that on examination the victim was found to have been penetrated in private parts.

The prosecution ably proved this ingredient to the satisfaction of this Court.

That the accused is the one that performed the sexual act upon the child/victim:

PWI though a child was found to possess sufficient knowledge and her evidence was consistent and coherent in regard to what transpired. Her evidence was corroborated by the other prosecution witnesses and the Medical Report. The accused was known to the victim because they were neighbors renting at the same building. The sexual act was committed during the day that aided the victim to identify the accused. The accused was also found in the house after the alleged sexual act. Therefore, there was no issue of mistaken identity. There were several witnesses that identified the accused as the one that performed the sexual act on the victim.

I also observed the demeanor of the witnesses and the victim as they gave evidence in Court and found them reliable, consistent, unshaken and very truthful. There were no contradictions in the prosecution evidence.

The accused did not dispute living in the same building and being the Land Lord and also knowing the victim and her parents.

The prosecution did prove this ingredient sufficiently.

I disagree with the assessors' opinion to convict the accused with attempted defilement and I do convict the accused with aggravated defilement contrary to **section129 (3) & (4) (a)** of the Penal code Act.

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OYUKO. ANTHONY OJOK
JUDGE
10/03/2017

State: No previous record, been on remand for 2 years and 89 months. These cases are rampant. I pray for a deterrent sentence.

Allocutus:

Defence: the convict is a first offender, 23 years old, can be an asset to this nation, suffers from chest problems. Pray for a lenient sentence.

Court: the convict is a first offender, been on remand for 2 years and 9 months, is a family man and suffers from chest problems. However, this offence carries a sentence of death. The trauma, leave a lone the future. I do sentence the convict to 40 years.

Right of appeal explained.

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OYUKO. ANTHONY OJOK
JUDGE
10/03/2017