

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT MASAKA

[CORAM: Egonda-Ntende, Obura & Musota JJA]

CRIMINAL APPEAL NO. 154 of 2012

(Arising from High Court Criminal Session Case No. 115 of 2011 at Masaka)

BETWEEN

BANTEGEYE MATIA.....APPELLANT

AND

UGANDARESPONDENT

*(An appeal from the judgment of the High Court of Uganda [Akiiki-Kiiza.J.,]
delivered on the 9th day of May 2012)*

JUDGEMENT OF THE COURT

Introduction

1. The appellant was indicted and convicted, on his plea of guilty of guilty, of the offence of aggravated defilement contrary to section 129 (3) (4) (a) of the Penal Code Act. The particulars of the offence were that on the 4th day of October 2011, the appellant at Kyaziiza village in Bukomansimbi District performed a sexual act with Nantongo Margret, a girl under 14 years. He was sentenced to serve a period of imprisonment for 13 years. He now appeals, with leave of this court, against sentence only on the following sole ground,

‘That the trial court erred in law and fact when it passed a harsh sentence in the circumstances of the case having readily pleaded guilty thus occasioning a miscarriage of justice against him.’

2. The respondent opposed the appeal.

Submissions of Counsel

3. At the hearing, the appellant was represented by Mr. Jurugo Isaac on state brief and the respondent was represented by Ms. Ann Kabajungu, Senior State Attorney in the Office of the Director, Public Prosecutions.
4. Mr. Jurugo submitted that the sentence passed against the appellant was harsh and excessive because the learned trial court did not give due attention to the fact that the appellant had readily pleaded guilty to the offence of aggravated defilement. That the trial court did not take into consideration the fact that the appellant in allocutus stated that he understood the nature of the offence for which he was being charged and was remorseful. These ought to have counted strongly in his favor. He prayed that this court reduces the sentence of 13 years to 10 years imprisonment. He relied on the case of Rwabugande Moses v Uganda SC Criminal Appeal No. 25 of 2014.
5. Ms. Kabajungu in reply submitted that the sentence of 13 years is not harsh considering the circumstances. That there is a big age difference between the appellant and the victim. The victim was 13 years of age while the appellant was 50 years in the charge sheet though in mitigation it was stated that he was 40 years. That it was not the first sexual encounter between the appellant and the victim. She submitted that the court took into consideration the mitigation

factors of the appellant before arriving at its decision. That in light of the maximum penalty of death for a conviction of aggravated defilement, a sentence of 13 years of imprisonment is not harsh and excessive.

Analysis

6. The facts of this case are that on 4th October 2011, the victim aged 13, went to the appellant's house to get food which the accused had promised her. Upon entering his house, the latter took her to his bedroom and defiled her. The victim's father received information that his daughter whom he thought had gone to school had instead entered the appellant's house.
7. Upon acting on that information, the victim's father found her in the appellant's house and upon interrogation revealed that the appellant had just defiled her and had done so on various occasions. The matter was reported to the LC and police whereupon the appellant was arrested and charged with the offence of aggravated defilement.
8. With regard to the power of an appellate court to interfere with a sentence of the trial court, it has been consistently held in numerous cases both by the Supreme Court and the former Court of Appeal of East Africa that this power is limited. In the case of Livingstone Kakooza V Uganda, SC Criminal Appeal No. 17 of 1993[unreported] the Supreme Court stated,

‘An appellate court will only alter a sentence imposed by the trial court if it is evident it acted on a wrong principle or overlooked some material factor, or if the sentence is manifestly excessive in view of the circumstances of the case. Sentences imposed in previous cases of similar nature,

while not being precedents, do afford material for consideration'

9. This is the sentencing order of the trial court;

'Sentence and reasons thereof:-

Accused is allegedly a first time offender. He has pleaded guilty saving court's time and resources. He has been on remand for 7 months which I take into account. He has prayed for leniency. However, accused committed a serious offence, which could amount to a death penalty upon conviction.

The victim was only 13 years of age. Even if the accused is 40 years old, he is not least fit to be her father. He lured her in his home with food and then takes her vulnerability and defiled her. So as to gratify his sexual appetite.

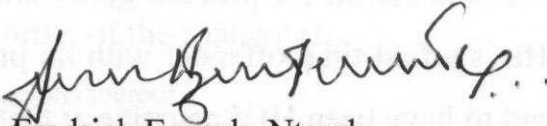
Accused has to be condemned by the court passing appropriate sentence to fit the crime.


Putting things into consideration, I sentence the accused to 13 (thirteen) years imprisonment.'

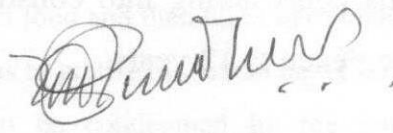
10. In this instant case, we find that the learned trial judge did not take into consideration that the appellant was remorseful nor the fact the appellant was a first time offender with no previous record of conviction. His statement that 'the accused is allegedly a first time offender' implies that the learned trial judge was doubtful as to the truthfulness of the statement and did not actually put the fact into consideration while arriving at the sentence imposed against the appellant. We therefore find reason to interfere with the sentence of the trial court.

11. We note that the victim was only 13 years. This is a serious offence that carries the maximum penalty of death. The appellant was 50 years old. However, the appellant was remorseful. He pleaded guilty and saved the court's time and resources. He is a first time offender with no previous record of conviction. He was found to have been HIV negative at that time. He spent 7 months on remand.
12. In Birungi Moses v Uganda, CA Criminal Appeal No. 177 of 2014, (unreported) the appellant was convicted of the offence of aggravated defilement and sentenced to 30 years imprisonment. The victim was 8 years old at the time she was defiled. The appellant was 35 years and had spent 3 years on remand. This court taking into consideration the period spent on remand reduced the sentence to 12 years.
13. In Kabwiso Issa v Uganda, SC Criminal Appeal No. 7 of 2007, (unreported) the appellant was convicted of aggravated defilement and sentenced to 15 years imprisonment. On appeal to the Court of Appeal, the sentence was confirmed. On further appeal to the Supreme Court, the court reduced the sentence to 10 years imprisonment.
14. In the circumstances of this case we are satisfied, taking into account all mitigating and aggravating factors, that a sentence of 10 years imprisonment will meet the ends of justice. We therefore reduce the sentence to be served by the appellant to 10 years imprisonment, to be served from 9th May 2012 the date he was convicted.

Signed, dated and delivered at Masaka this 30th day of July 2018.


Fredrick Egonda-Ntende
Justice of Appeal


Hellen Obura
Justice of Appeal


Stephen Musota
Justice of Appeal