



THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT MASAKA

Criminal Appeal No. 0290 of 2015

(An Appeal Against Sentence in a Judgement dated 27th July, 2017 by Hon. Justice John Eudes Keitirima in Masaka High Court Criminal Session Case No. 125 of 2015)

Muhanguzi Emmanuel..... **Appellant**
versus

Uganda **Respondent**

20 **Coram: Hon. Lady Justice Elizabeth Musoke, JA**
Hon. Justice Ezekiel Muhanguzi, JA
Hon. Justice Remmy Kasule, Ag. JA

JUDGMENT OF THE COURT

25 This appeal arises from the Judgment of Hon. Justice John Eudes Keitirima in High Court of Uganda at Masaka Criminal case No. 0125 of 2012 dated 27/07/2015 in which the appellant was convicted of aggravated defilement and sentenced to 15 years imprisonment. He now appeals against sentence only.

30 **Back ground.**

The facts of this case, as accepted by the trial Court, are that the appellant, a religious pastor, asked permission from the victim's parents, Kwagalakwe Julian, the mother, and Siibo Paul the father, for the victim, who was aged 16 years and schooling, to stay
35 with him. The appellant to sponsor her studies. The parents consented to the request. The appellant was married and was thus a parent/guardian to the victim.

Soon after the victim joined the appellant's home, the appellant's wife left the appellant due to some misunderstandings. Thus the
40 victim was left with the appellant, together with other children of the appellant, staying in the same house.

The appellant then started demanding for sex from the victim and in March 2012, he began assaulting her sexually. The victim became pregnant. The appellant then took the victim from his
45 house to a house of another "Brother" Lutalo in Kampala.

The parents of the victim had not yet known where she had been taken but got to know when she came back and was pregnant. She told everything as to how the appellant had been having sex with her and was responsible for the pregnancy, to her parents. The
50 appellant was arrested and charged with aggravated defilement.

The Victim was medically examined in Rakai Hospital. Her pregnancy was confirmed. She later produced a child, a baby boy, in December 2012.



The appellant was tried, convicted of aggravated defilement and
55 sentenced to 15 years imprisonment. Dissatisfied, appellant
lodged this appeal against sentence only.

Legal Representation

At the time of hearing this Appeal, the appellant was represented
by learned counsel Mr. Joseph Wasswa, while Ms. Asiku Nelly,
60 learned Senior State Attorney, was for the respondent.

Ground of Appeal

The sole ground of appeal is;

***“The learned trial Judge erred in law and fact to impose a
term of 15 years imprisonment which sentence was harsh
65 and manifestly excessive under the particular facts of the
case”.***

This Court, with no objection from the respondent, granted leave
to the appellant to appeal against sentence only pursuant to
section 132(1) (b) of the Trial on Indictments Act and Rule 43(3)(a)
70 of the Rules of this Court.

Submissions for Appellant

Counsel for the appellant submitted that the sentence of 15 years
imprisonment imposed by the trial Judge was harsh and
manifestly excessive in the circumstances of this case. The
75 appellant was remorseful and the victim and her mother had

expressed their intentions of forgiving him. Counsel further contended that the learned trial Judge had erred in holding, while passing sentence, that the appellant acted very irresponsibly and wasted Court's time with a full trial, when he knew that he had
80 committed the offence. Counsel argued that it was the appellant's constitutional right to plead not guilty and for the prosecution to prove the case against him beyond reasonable doubt through a full trial. Therefore the appellant ought not to be punished with a harsh sentence by reason of his having exercised a constitutional
85 right.

Learned Counsel cited the Court decision of ***Kizito Senkula Vs Uganda, Supreme Court Criminal Appeal No. 0024 of 2001*** in which a sentence of 13 years was substituted for a sentence of 15 years for the offence of aggravated defilement.

90 Counsel also referred to Court the case of ***Zziwa Mohammed v Uganda, Court of Appeal Criminal Appeal No. 217 of 2003*** which also was of aggravated defilement of a 15 year old victim by a 29 year old taxi driver and the same circumstances involving birth of a child existed. The Court confirmed a sentence of 5 years
95 imprisonment as appropriate. Counsel invited this Court to appraise the evidence and invoke Section 11 of the Judicature Act to maintain consistency and uniformity with past Court decisions on sentence by passing a lenient sentence of 12 years imprisonment upon the appellant.

Submissions for the Respondent

Counsel for the respondent opposed the appeal and supported the sentence imposed by the trial Court. She submitted that under Section 129(3) (4) (b) and (c) of the Penal Code Act, the maximum sentence for Aggravated defilement upon conviction is death. In this case, the appellant was given only 15 years imprisonment. The trial Judge in passing the sentence, had considered the fact that the victim was only 16 years old, was under the guardianship of the appellant who is a pastor and who had agreed to take care of her by supporting her at school, only to turn around and abuse her sexually, resulting into pregnancy. These facts aggravated the sentence. As to the mitigating factors, the court considered the age of the appellant of 32 years, these making it possible for the appellant to reform.

He was a first offender and had a family of six children to support. He had spent 3 years on remand. There was also a baby born by the victim fathered by the appellant, who had to be supported.

Counsel submitted that the appellant breached the trust he had with the parents of the victim and also ruined her future. Relying on ***Ederema Thomas v Uganda: Court of Appeal Criminal Appeal No. 554 of 2014*** where court sentenced the accused to 18 years imprisonment, counsel urged Court to uphold the Sentence of 15 years imprisonment passed against the appellant.

She further supported her submission with the case of ***Abale Muzamil v Uganda: Court of Appeal Criminal Appeal No. 39***

of 2014, where the Court of Appeal upheld the 19 year sentence of the accused for aggravated defilement. She submitted that the 15 year imprisonment sentence was still within the range of sentences of the decided cases. She thus prayed that this Court
130 should not interfere with the sentence of the trial Judge.

Resolution by Court

We have carefully considered the submissions of both counsel, and we have also perused the Court record and the authorities cited to us. This Court, as a first appellate Court, has a duty to re-
135 appraise the evidence and to make its own inferences on all issues of law and fact. See: **Rule 30(1) of the Rules of this Court, and also Kifamunte Henry Vs Uganda: Supreme Court Criminal Appeal No. 10 of 1997 and Bogere Moses Vs Uganda: Supreme Court Criminal Appeal No. 1 of 1997.**

140 In **Kyalimpa Edward V Uganda: Supreme Court Criminal Appeal No. 10 of 1995**, the Supreme Court, following the holding of **R v Haviland (1983) 5 Cr. App. R(s) 109** stated as follows; as to the duty of the appellate Court in altering sentence imposed by the trial Court:

145 **“An appropriate sentence is a matter for the discretion of the sentencing judge. Each case presents its own facts upon which a judge exercises his discretion. It is the practice that as an appellate court, this court will not normally interfere with the discretion of the sentencing judge unless the**
150 **sentence is illegal or unless court is satisfied that the**



sentence imposed by the trial judge was manifestly so excessive as to amount to an injustice: Ogalo s/o Owoura vs R. (1954) 21 E.A.C.A. 270 and R.V Mohamedali Jamal (1948) 15 E.A.C.A 126". We are also guided by another Supreme Court case, referred to by both Counsel in their submissions, of **Kamya Johnson Wavamuno vs Uganda: Supreme Court Criminal Appeal No. 16 of 2000** in which Court stated:

"It is well settled that the Court of Appeal will not interfere with the exercise of discretion unless there has been a failure to exercise discretion, or failure to take into account a material consideration, or an error in principle was made. It is not sufficient that the members of the Court would have exercised their discretion differently".

The maximum sentence to which the appellant in this case was liable after conviction is death. We note that before the sentencing by the trial Court, counsel for the accused then, submitted on matters in favor of the accused. Furthermore, in his allocutus, the accused also cited factors in mitigation. These factors were repeated by counsel for the appellant before this Court. The Trial judge specifically stated that he had considered both the mitigating and the aggravating factors presented to Court. Though the learned trial Judge was not justified to assert that the appellant had wasted the Court's time when he (appellant) knew very well that he had committed the offence, we are not satisfied that, on re-appraising all the evidence, that this observation on the part of the trial Judge, made the sentence passed over the appellant to be unjustified. The Trial Judge gave convincing justification, the

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above observation notwithstanding, for the sentence imposed on the appellant. There is nothing to show that, based on both the
180 aggravating and mitigating factors, the sentence imposed by the trial judge was manifestly excessive, harsh or illegal so as to call for our interference.

In ***Byaruhanga Lozio Vs Uganda: Court of Appeal Criminal Appeal No. 168 of 2009***, this Court upheld a 14 year sentence
185 upon an accused who defiled his neighbor's daughter. The Appellant had not pleaded guilty. In ***Ntambale Fred Vs Uganda: Court of Appeal Criminal Appeal No. 0177 of 2009***, this Court confirmed a sentence of 14 years where the appellant had defiled his own daughter.

190 In ***Rugarwama Fred v Uganda, SCCA No. 39 of 1995***, the Supreme Court upheld the sentence of 15 years upon the appellant for aggravated defilement of a 5 year old girl.

In ***German Benjamin V Uganda, Court of Appeal Criminal Appeal No. 142 of 2010***, the victim aged 5 years was sexually
195 assaulted by a 35 year old appellant who was convicted and sentenced to 20 years. On appeal, this Court set aside the said sentence and substituted the same with a 15 year imprisonment sentence.

In the appeal before us, the accused ruined the future prospects
200 of the victim when he deceived her parents that he was going to look after her and provide for her education. Instead, he turned her into his wife. He breached his trust, as someone who was

regarded as a pastor, and acted very irresponsibly. The victim was aged only 16 years by then. The appellant was her guardian. He prematurely turned the victim into a mother and interrupted, if not for good, her prospects for future education.

We therefore find that the sentence passed against the appellant of 15 years imprisonment was appropriate. The learned trial Judge arrived at the same after he had considered the period the appellant had spent on remand. We too agree with the learned trial Judge.

We find no merit in the appeal.

Order of Court

Having found no merit in the appeal, this appeal stands dismissed. The sentence of 15 years imprisonment passed by the learned trial Judge upon the appellant is hereby upheld. The same is to run from the date of the conviction of the appellant which is 22nd July 2015.

Dated at Masaka this..... 12th day of Feb 2019.



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**Elizabeth Musoke
Justice of Appeal**



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**Ezekiel Muhanguzi
Justice of Appeal**



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Remmy Kasule
Ag. Justice of Appeal

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