

Hon Justice Tsekoko

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CRIMINAL SESSION CASE NO.54 OF 1992

Defilement

UGANDA PROSECUTOR

VERSUS

SEMUGOMA WILLIAM ACCUSED

BEFORE: THE HON. MR. JUSTICE C.M. KATO

J U D G M E N T

The accused person William Semugoma whom I shall hereinafter refer to as the accused is indicted for defilement of a girl under the age of 18 years contrary to Section 123(1) of the Penal Code Act, as amended by Statute 4 of 1990. The accused pleaded not guilty to the indictment.

The facts of the case as outlined in the indictment are that on or about 28th May, 1991 at the village of Bunamuwaya in the district of Mukono the accused had sexual intercourse with one Fatuma Namboze, a girl who was under the age of 18 years.

Prosecution called a total of four witnesses. The first 3 witnesses: Fatuma Namboze (PWI), Kasifa Nampijja (PWII) and Dr. Katende (PWIII) appeared in court, but the evidence of the 4th witness Joseph Omuna (PW4) who was the arresting officer was admitted under section 64 of T.I.D. The case for prosecution as established by the evidence of those witnesses was that on the 28th May, 1991 the complainant Fatuma Namboze (PWI) was at home with other children and the accused who was working at their home as a casual labourer and as a night watchman, went to the room where the complainant used to sleep. He got hold of her and dropped her on the bed, he held her mouth and started playing sex with her. He threatened her that if she ever told anybody of what had happened he would tie her hands and drop her in the lake. The complainant did not immediately complain to anybody because of this fear but after some weeks when her mother came back from Masaka where she had gone for a visit she informed her of what had happened after the mother had discovered that she was not walking normally and she was having some discharge from her vagina. The complainant was dashed to the hospital where she was examined by Dr. Katende who found out that the girl had in fact had sexual intercourse with somebody, she had some injuries in her private parts.

On the other hand the case for the defence was a complete denial of any involvement by the accused in the commission of the offence. In his own unworn statement the accused complained that the person who had defiled the young girl was a different man altogether known by the name of William Sengoba. The accused complained that the mother of the victim had decided to put him into this problem because he had aided William Sengoba to escape.

It is the law that prosecution bears the duty of proving beyond reasonable doubt the guilt of an accused person. The burden does not shift to the accused person: Woolmington V D.P.P. (1935) AC 462 and Okath. Okale V Uganda (1965) EA 555 at 559. In a case of defilement like the one now under consideration the prosecution is duty bound to establish to the satisfaction of the court two main matters namely:- that the victim of defilement was below the age of 18 years at the time the alleged defilement took place, secondly it must also be proved that there was carnal knowledge of the girl or penetration into the victim's vagina. It is also the duty of prosecution to call evidence connecting the accused with commission of the alleged offence.

In the instant case the complainant told court that she was about 12 years at the time of the commission of the crime. Her mother confirmed that her daughter was in fact aged 12 years at the time as she was born on 28.2.1980. The doctor who did not specifically carry out any examination regarding the age of the girl estimated the age to be between 14 and 16 years. Taking the evidence of these people to be truthful I find that the victim Fatuma Namboze at the time of the alleged defilement was between the age of 12 and 16 years, which means the victim was below the age of 18 years at the time she was defiled.

Regarding the second ingredient of this crime the prosecution relied on the evidence of three witnesses namely PW1 Fatuma Namboze who testified that on that particular day when she was in one of the rooms at her home she was knocked down by the accused who put out his penis between her legs and proceeded to have sexual intercourse with her and she felt pain as he was doing so. After the intercourse she saw some whitish substance running out of her vagina. In her evidence the mother of the girl Kasifa Nampijja testified that on her return from Masaka where she had paid a visit she found that the complainant was walking with some difficulty and she asked her what had happened. The complainant told her what had happened to her, then she proceeded to examine her private parts which she found full of pus and was having foul smell. She attributed this to an act of sexual intercourse. The doctor who examined the complainant also was of the opinion that the young girl had had sexual intercourse prior to the examination.

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The evidence of these three witnesses is not seriously challenged by the defence on this point. What the defence says is that the alleged defilement was not by the accused but by some other person. I accept the evidence of the three prosecution witnesses to be quite truthful and I find it as a fact that there was penetration and therefore prosecution has proved beyond reasonable doubt that the complainant was defiled.

In coming to the above conclusion I have been fully mindful of the fact that the complainant being a child of tender age and this being a sexual offence corroboration of her evidence was required. I have been satisfied that such corroboration has been sufficiently provided by the testimony of the doctor and that of the complainant's mother both of who discovered that the girl had actually had sexual intercourse with somebody. This case must clearly be distinguished from the case of : R V Ramanzani Bin Mawingu (1936) 3 EACA 39. In that in that case the alleged corroborative evidence was given by children whose evidence required corroboration, but in the present case the complainant gave sworn evidence and the evidence of the doctor and that of Kasifa did not require any corroboration.


The pertinent question that now requires determination of this court is whether or not the accused had anything to do with the defilement of this young girl.

It is the case for prosecution that the accused was responsible for the defilement. On the other hand it is the case for defence that the accused did not have anything to do with this young girl but another man called William Sengoba did. This issue is connected with another issue of identification. According to the complainant this incident took place during broad daylight and she had known the accused as the night watchman of their home before. She had also been seeing him working on the fence. According to PW2 the accused was so much used to the family that he was being treated as a child of the family. In my view these facts inevitably show that the accused was not a stranger to the complainant. The accused's story that it was William Sengoba who committed this offence is merely based on the mistake which was corrected at the beginning of the trial. The mistake was that the name Semugoma had been mis-spoken as Sengoba but prosecution applied for an amendment and the name was correctly changed to Semugoma.

To my mind the person whom the complainant saw was nobody else but the accused. The Accused's claim that Sengoba William is different from him cannot be sustained. I accordingly hold that the accused was positively identified by the complainant as there were conditions favouring correct identification.

I must point out here that Fatuma Namboze impressed me as a young girl of high degree of intelligence and understanding which appeared to be above that of ordinary girls of her age. The possibility of her mistaking the accused for another person is totally rejected.

In all these circumstances and in complete agreement with the unanimous opinions of the two gentlemen assessors I hold that prosecution has proved its case against the accused beyond reasonable doubt. I find the accused guilty of the offence of defilement contrary to section 423(1) of the Penal Code Act and I do convict him of that offence.


C.M. KATO

J U D G E

17/12/92