

According to the evidence of both the prosecution and defence, Lubwama Patrick is the Director and head of a school called St. Andrew Primary School in which the alleged victim was a pupil in P.2 and resident in his home at school. Therefore, it is not in dispute that he was her guardian or a person with authority over the girl.

(a) That the alleged victim was a girl aged below 14 years.  
 (b) That the accused person performed the act.  
 (c) That the accused person was her guardian or person in authority.

elements of the offence:-

For the state to get a conviction in this case, the prosecution evidence must be adequate to prove beyond reasonable doubt the following

Lubwama Patrick is indicted under Section 129(3) and 4(a)(b) and (c) of the Penal Code Act. The prosecution alleges that during the month of July 2016 at Bwebajja Dawe LC.1- Sisa Sub-county, Wakiso District while being HIV+ and a lawful guardian performed a sexual act with Namatovu Hadjja, a girl aged 13 years. The accused person pleaded not guilty to the charge and in defence he maintained that this is a fabricated case.

**JUDGMENT**

**BEFORE: HON. MR. JUSTICE J. W. KWESIGA**

**LUBWAMA PATRICK :::::::::::::::::::: ACCUSED**

**VERSUS**

**UGANDA :::::::::::::::::::: PROSECUTOR**

**HCT-00-CR-SC-1370-2016**

**IN THE HIGH COURT OF UGANDA AT ENTERBE**

**THE REPUBLIC OF UGANDA**

In view of this provision of the Law, proof of a sexual act will depend on credibility of her evidence. There is no doubt that she knew the accused because it is an agreed fact that she was in his school and was residing in the same home where she lived in same room with a maid. She did

***witnesses shall in any case be required for the proof of any fact"***  
***provisions of any other Law in force, no particular number of***  
***"133- Subject to the*** Evidence Act states:- "133- Subject to the provisions of any other Law in force, no particular number of witnesses shall in any case be required for the proof of any fact"

Under normal circumstances, the victim has direct evidence of the sexual act because she is involved. It would be enough evidence to prove this act because S.133 of the Evidence Act states:- "133- Subject to the provisions of any other Law in force, no particular number of witnesses shall in any case be required for the proof of any fact"

The most important evidence in this matter is the testimony Hadijja Namatovu, the victim. Her testimony and her appearance also confirmed by PW4 Asilku Denis that she was 13 years and therefore, below 14 years of age. The prosecution proved the fact of age beyond reasonable doubt and what remains to be resolved is whether there was sexual intercourse with her and whether it was by the accused person.

July 2016, within a week's period.  
 seen on 3<sup>rd</sup> August 2016 when the defilement was allegedly done on 27<sup>th</sup> August 2016 started investigation of this case but never gave court any helpful evidence.

PW2, Imbikia Juliet (D/c) on 4<sup>th</sup> August 2016 started investigation of this case but never gave court any helpful evidence.  
 PW4, Denis Asilku a Clinical Officer who examined the alleged victim told court that he found that this girl was sexually active and had had sexual intercourse earlier. The hymen had got ruptured long ago and no injuries to PW1 on which date he defiled her.

While she had gone to the school to follow up the beating of Ziadda, Namatovu told her that the accused had been touching her breasts and private parts. That the accused had once defiled her but did not disclose and she learnt that the accused had beaten and detained her at school.  
 PW1, Nuru Nakanjako, the complainant's evidence is that the accused, her children's teacher beat up Ziadda Birabwa her daughter and defiled Namatovu Hadijja. She complained that Ziadda had not returned home

household work to raise her school fees. She lived with Margie and other children of the accused. According to her evidence in 2017 he called her to the bedroom, put her on the bed, held her breasts and thighs he had sexual intercourse and she started bleeding. He repeated it next day at 7:00 p.m.

That she told Margie (DW2) and Juliet who told her mother, the Accused's (wife) who in turn told PW1 Nakanjako. Nakanjako immediately took her home and to police at Bwebajja for medical examination at Najjanankumbi. This evidence of a sexual act is evaluated with the accused's defence evidence because these two are the alleged participants in the act. The accused admitted the girl was brought to him by Ziadda Mbawa, PW1's daughter seeking to study. This girl was needy, so he admitted her and let her stay in his home to assist the maid as she went to school to supplement school expenses.

PW1, Nakanjako demanded that the accused pays money to help the girl's poor parents which he declined to do and this led to a conflict with PW1, Nakanjako, the complainant.

He punished Zaidda, a daughter of PW1 for escaping from school, this aggravated the bad relationship and PW1 came to the school with a group of 6 people to attack the accused. On 4<sup>th</sup> August 2016 he was arrested for beating Zaidda and defiling Namatovu.

His police statements (pain and charge and caution were admitted as court Exhibit CE1 & CE2). He denied participation throughout the trial.

DW2, Margaret Atim (Margie) told court that the complainant and victim told lies. The alleged victim never told her of any defilement as she alleged. She lived with the girl in the same room. One day the Accused called Hadijja Namatovu to fetch for him a book he had forgotten at school, she brought the book, took it to him in his bedroom and immediately returned to the sitting room where they normally sat watching a t.v.

CE2, the charge and caution statement gave a detailed account showing the conflict between Nakanjako over beating her daughter Ziadda as the basis of fabricating a defilement case.

In my view, the accused person's evidence establishes a motive for fabrication and possible false evidence of PW1 and PW3, the complainant and the victim. If this is to be believed, it would create doubt in the evidence of these key witnesses to resolve this issue. It is necessary to find some other evidence in the case as a whole to balance the evaluation.

According to PW4, Asiliku Denis who examined the victim under police form PF.3A on 3<sup>rd</sup> August 2016. He found no signs of recent penetration. The girl's hymen had ruptured long ago and most probably before 27<sup>th</sup> July 2016.

The record history in PF3A states as narrated by the victim that on 27<sup>th</sup> July 2016 was an attempt to defile. He explained that from the appearance of the rupture of the hymen, it took place two weeks or more before. Therefore, this could not be around the period when the accused person is alleged to have done it which placed the offence to have been within 6 to 7 days before the date of examination. The victim was confirmed to have been sexually active and the hymen rupture has not been proved as the responsibility of the accused.

In my view, if the alleged sexual act had been done within 6 to 7 days before the medical examination and had led to bleeding as alleged by the victim, the examining Medical Officer ought to have seen evidence of recent injuries. He saw no injuries at all.

Secondly, Margie (DW2) denied ever being told by the victim as she alleges that the accused had defiled her. The complainant on the other hand is a witness whose evidence depends on the alleged information of the victim which has been discredited by the medical report and above all, she has been depicted as a complainant who pursued the arrest and malicious

- Ms. Nshakanabo for accused person.
- Mr. Senyada holding brief for Mr. Tuhairwe Julius – SSA for state.
- Ms. Boogere Gorret – Court Clerk.

In the presence of:-

J. W. Kwesiga  
**Trial Judge**  
30/05/2018

Dated this **30<sup>th</sup>** day of **May 2018**.

The accused person is hereby found not guilty and acquitted.

believable evidence that he actually defiled this girl.  
that the accused person had opportunity to defile the girl, there is no  
state proved that the would be victim is a girl aged below 14 years and  
defilement against the accused beyond reasonable doubt. Whereas the  
of the Assessors that the prosecution has not proved the case of  
Considering all the above evidence together, I agree with the joint opinion  
allegations of Aggravated Defilement.  
prosecution to punish the accused person for a different purpose using