



THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
AT THE SESSION HELD NAKASONGOLA  
CRIMINAL SESSION CASE NO: HCT-OO-CR-SC-0323-2017

UGANDA ..... PROSECUTOR  
VERSUS

SEKITTO EDWARD ..... ACCUSED

**JUDGMENT**

**BEFORE: HON. JUSTICE VINCENT OKWANGA TONNY**

The Accused, Sekitto Edward stands indicted on a charge of Aggravated defilement Contrary to Section 129 (3) (4) (a) of the Penal Code Act.

It is the case for the Prosecution that Sekitto Edward, on the 25<sup>th</sup> day of March, 2016, at Bukalira village in Nakaseke District, performed a sexual act with Nkinzi Jacqueline, a girl aged four years at the time. The accused denied the charge pleading not guilty.

In every case where an accused pleads not guilty, the burden to prove his guilt rests entirely upon the prosecution and this burden doesn't shift save in a few exceptional cases of which Aggravated defilement is not one.

On a charge of Aggravated defilement Contrary to Section C/S.129 (3) (4) (a) of the Penal Code Act, the prosecution is enjoined to prove the following essential ingredients of the offence, and these are;

- (i) That a sexual act was performed to the prejudice of the victim,
- (ii) The victim of the alleged sexual act was under 14 years of age;
- (iii) The accused was the one who performed that sexual act.

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- (ii) The victim of the alleged sexual act was under 14 years of age;
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On the side of the prosecution, evidence was presented through Gwanvu Juma, a Clinical Officer at Semuto Health Centre IV, who examined the victim, Jacqueline Nkinzi on Police Form 3A and compiled a Report of such medical examination dated 28/03/2016.

In that Report he found that the victim Jacqueline Nkinzi was a female juvenile aged around 4 years old at the time, a pupil resident of Bukatira village. At the time of such examination the victim had pain in the lower abdomen; she was mentally sound and normal in her limbs. In her genitals, the medical practitioner observed pain and bruises around her vulva with broken hymen which was assessed to have been caused by penetration by a blunt object, most likely a male's penis. The victim was recommended for medical treatment.

This Report was received in evidence on agreement between both parties herein under the memorandum of agreed facts Section 66 (1) of the Trial on Indictments Act. The Report was received in evidence and marked as Exhibit PE1.

Another piece of evidence which was also agreed to between the parties herein was a Medical Examination Report upon the accused, Sekitto Edward, as a suspect/accused of aggravated defilement. This Medical Examination was carried out by one Kalungi Mary, a Senior Nursing Officer at Semuto Health Centre IV, on 01/04/2016.

According to that Report, the above Health Practitioner had examined the accused, Sekitto Edward at Semuto Health Centre IV on Police Form 24 and compiled the Report on 01/04/2016. The Findings on that Report are that Sekitto Edward was a male adult aged 28 years old at the time, a resident of Bukatira village, mentally normal and bore no physical injuries on his body. His HIV



(Human Immunodeficiency Virus) sero Status tests turned negative. That Report was also received in evidence without any contest from the defence and was marked as Exhibit PE 2.

Further evidence was presented through PW5, Jacqueline Nkinzi, the victim herein who testified in Court after the Court had conducted a 'voire dire' to assess and determine her level of intelligence and whether she was possessed of sufficient knowledge and understands her duty of telling the truth in Court and whether she understands the nature of an oath or not.

After the Court had conducted a 'voire dire', the Court found out that she didn't understand the nature of an Oath, although Court was of the opinion that she was knowledgeable and understands her duty of telling the truth in Court and possessed of sufficient intelligence to justify the reception of her evidence, the Court then allowed her to testify and give her evidence not on oath, under Section 40 (3) Trial on Indictments Act.

In her evidence in Court, PW5 testified that she was six (6) years old at the time she gave her evidence in court and that it was her mother who had told her that she was six years old. She went further to tell Court that she knew the accused person as Sekitto Semato Edward who was staying in their village of Bakatira Jegolye Parish, Semuto Sub County, in Nakasongola District.

That she used to see the accused person at their home where he used to fetch water for their cows and he also used to milk the cows at their home. The victim continued in her testimony that on a certain day while her mother, PW3 was away, the accused had caught her by hand and led her to the garden with a promise of going to pick a jack fruit for her, and while in the garden the accused led her to a pig-sty where he removed her knickers, pulled out his penis and inserted it in her vagina.

She felt pain but the accused had told her not to shout nor tell anyone what had happened. Later on the witness told Jessica one of her siblings what the accused had done to her and Jessica told their elder sister, Nassiwa Leticia who informed their mother, Norah Oliver Namutebi, PW3, of what Jessica had told her. This was during day time. Her mother, Norah Oliver Namutebi checked her in her private parts together with one Nabukalu. She was later taken to Hospital and later on to Police where she recorded a statement at Police regarding this incident.

Further evidence from the prosecution was led through PW3, Oliver Norah Namutebi, 37 years old, mother to the victim who told Court that she is married to Edward Kimera with whom they had eight children. That Jacqueline Nkinzi is one of her children and that Jacqueline was now 7 years old having been born on 05/09/2011. She further told Court that she knows the accused person well as Edward Sekitto. She had known him for ten (10) years now and that he used to work for her as a porter, milking her cows and also fetching water for the cattle. She could recall that after attending a Parents' meeting at Bukatira Primary School on 25/03/2016, she came back from that meeting at around 4:30pm to find her said daughter Jacqueline Nkinzi asleep and she never noticed anything unusual on her.

However, after about two days, when she was coming back from the market where she had gone to do some shopping for the Easter celebrations, when she reached home, her daughter Leticia Nassiwa, PW4, told her that Jacqueline Nkinzi was defiled by the accused, Edward Sekitto. That was around 12:00pm when Leticia told her this story. On receipt of that report she took Jacqueline and examined her in her private parts where she noticed some sticky whitish substance in her private parts. She also called a neighbor one Specioza Nabukalu who also checked Jacqueline in her private parts and confirmed that Jacqueline was indeed defiled. She advised her to take the victim to hospital immediately for treatment.



PW3 also asked Jacqueline Nkinzi what had happened to her and she narrated to her mother what she had told Court how the accused led her to the garden with the promise of going to pick a jack fruit before the accused took her to a pig-sty, removed her knickers, removed his penis, put her down and had sexual intercourse with her.

PW3 then took the victim to Kalege Health Centre II from where she was referred to Police after the Medical Officer had confirmed to her that the victim was defiled. She later on took the victim to Semuto Health Centre IV where the victim was further examined and tested for her HIV sero status. The accused was later on arrested from his house that night and when asked after his arrest he admitted in the presence of PW3 to having defiled the victim.

The story of PW4 corroborates the story of PW3 regarding the report the victim made to her sister Jessica and how Jessica later on told PW4 who in turn told the mother, PW3, that the accused took her to the garden with a promise to pick a jack fruit but then led her to the nearby pigs-sty where he removed her skirt, removed his trousers, laid her down and they had sexual intercourse with her.

From the evidence before me, I find that the story of PW5, the victim herein was amply corroborated by that of the medical practitioner on Police Form 3A, Mr. Gwanvu Juma, a Medical Clinical Officer at Semuto Health Centre IV, who examined her on 28/03/2016, and found bruises around her genitals with a ruptured hymen. The victim was suffering from pain at the time of such examination. The cause of such injuries observed in her private parts was by a penetrating object, probably a man's penis. That piece evidence corroborates the victim's story that a sexual act was performed on her.

By reporting to her sister one Jessica and later on confirming to her mother, PW3, and another sister PW4, Leticia Nassiwa, that the accused had had sexual intercourse with her.

I find and hold that the victim's conduct in reporting immediately to her sister, Jessica that she was defiled by the accused is a conduct that is capable of corroborating her own story that it was the accused and no one else who defiled her.

There is also ample evidence to show that the accused was working at the home of the victims' parents as a porter, milking cows and fetching water for the cows. He was well known to all the children in that home, including the victim herein. The accused doesn't deny this. When he was arrested from his house at midnight, he admitted in the presence of PW3, to have committed this offence. That conduct further corroborates the evidence of PW5, Jacqueline Nkinzi, the victim herein.

Accused's defence of grudge and allegation that PW3 owed him some shs.360,000/=, being his full year's wages which the victim's mother didn't want to pay him appears to be too farfetched and doesn't flow with the rest of his entire defence where in one breath he also alleges that PW3's family wanted to grab his land, a kibanja inherited from his late father and that the step-son to PW3 also enticed his wife to leave him.

In my most honest view, such allegations are not supported by the totality of evidence before Court.

I further find that the defence of alibi is not available to him as it was raised very belatedly by the accused after his cross examination by the prosecution. It was at the final clarification by Court after the State Counsel had already closed the cross examination of the accused that the accused belatedly brought in the defence of alibi by alleging that on the alleged date, 25/03/2016, he had left for Semuto town to repair his bicycle. I find it a very weak defence, so to say.

The law on alibi as a defence is well settled. An accused person who puts up an alibi as a defence does not thereby assume the duty of proving that his alibi is true. He only needs to raise the defence, and once raised, it is the duty of the prosecution to adduce evidence that puts the accused person at the scene of crime



at the time the crime was being committed.

**See Moses Bogere and Another -vs- Uganda, Criminal Appeal No. 01 of 1997, (Supreme Court).**

However, once the prosecution's evidence puts the accused person at the scene of crime at the time the crime was being committed, then the alibi is destroyed.

In the instant case, I find that the accused's alibi was belatedly raised after his defence and the cross examination were all concluded. It was only when this Honourable Court sought to clarify certain matters/facts mentioned in his defence that the accused told Court that on 25/03/2016 he had left his home at Bukatira village very early at 6:00am and came back very late to milk the cows at 7:00pm.

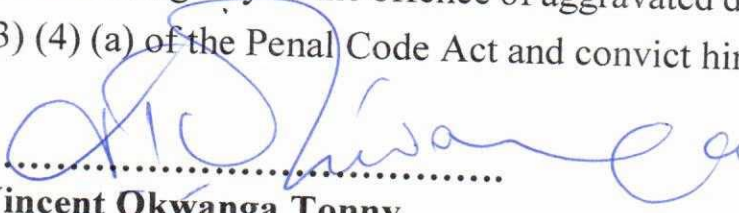
I find this alibi to have been an afterthought as the evidence of PW5, Nkinzi Jacqueline has clearly put the accused person at the scene of crime at the time this crime was being committed.

The alibi belatedly put up by the accused is thereby destroyed, I so find.

I therefore reject it for the above reasons and I believe the prosecutions' version of the events instead.

All in all, I find that the prosecution has proved the case of aggravated defilement Contrary to Section 129 (3) (4) (a) of the Penal Code Act against the accused person beyond reasonable doubt.

In full agreement with the unanimous verdicts of the two assessors herein, I find the accused guilty of the offence of aggravated defilement Contrary to Section 129 (3) (4) (a) of the Penal Code Act and convict him accordingly.

  
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**Vincent Okwanga Tonny**

**Judge**

**04/10/2018**