

UGANDA / JUDGMENT

Barasa Samuel v Uganda

(Criminal Appeal No. 294 of 2003)

[2006] UGCA 15 (12 January 2006)

[2006] UGCA 15

COURT

Court of Appeal of Uganda

CASE / FILE NUMBER

Criminal Appeal No. 294 of 2003

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CRIMINAL APPEAL NO. 294 OF 2003

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\par Tororo (Mwondha, J.) dated 3-3-2003 in Criminal Session Case

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Barasa Samuel, the appellant, was charged and convicted on his own plea of guilt of defilement contrary to section 129 (1) of the Penal Code Act. He was sentenced to 8 years imprisonment.

\par

\par The following are the facts leading to the appeal. On 29/3/2001, the victim and her brother were returning home from school when they met one Awino Jennifer, the appellant\’s

wife. She persuaded the victim to go with her to her home to help her with housework. The victim accepted and went with Awino.. Awino told the

victim to sleep with the appellant in the same house at night but she refused. The victim and Awino shared the same bedroom. In the middle of the night the victim and Awino went outside to ease themselves. The victim returned to the house first and fo

und the appellant in the bedroom. The appellant grabbed the victim and defiled her. The victim made an alarm which was answered by the appellant\’s brother who kicked the door and rescued her. The matter was reported to the victim\’s

parents who in turn re

ported to the police. The victim was medically examined and found to be thirteen years old. Her hymen had been ruptured and there were injuries and inflammation on her private parts. The injuries were consistent with force having been used. She also

had a bruise on her left knee. The appellant was also medically examined. He was found to be mentally normal and was aged 29 years.

\par

\par When the case came up for trial before the High Court, the appellant pleaded guilty to the charge of defilement. He was

convicted and sentenced to 8 years imprisonment. He now appeals to this court with leave, against the sentence on the following ground:

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The sentence of eight years passed by the trial judge on the appellant was harsh and excessive in the circumstances of the case considering that the appellant as a first offender who pleaded guilty, saving the court\quote

s time and expenses of a protracted trial.\94

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Mr. Mark Bwengye, learned counsel for the appellant, contended that the sentence of 8 years imprisonment was ha

rsh and excessive. He submitted that the appellant was remorseful, had a family to look after and had been on remand for two years. In passing sentence on the appellant the learned trial judge did not take into account the fact that he had been on reman

d for two years. He prayed this court to reduce the sentence to four years as the appellant had been on remand for two years.

\par

\par Ms Alice Komuhangi, leaned Senior State Attorney, did not agree. She supported the sentence of 8 years that was imposed by the t

rial court. She argued that the sentence was neither harsh nor excessive. She submitted that the learned trial judge took into account all relevant matters before passing the sentence. She prayed court to dismiss the appeal and to uphold the sentence.

\par

\par It is trite law that this Court would only interfere with the sentence passed if it is illegal or manifestly excessive as to amount to a miscarriage of justice.

\par

\par In the instant case, appellant's counsel has attacked the learned trial judge for failure to

take into account the period of two years which the appellant spent on remand. With due respect, his criticism on the learned trial judge has no basis. The record of appeal shows that before passing sentence the learned trial judge took into account all

relevant factors including the period spent on remand. Hence the record reads:

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Court: Though the convict is a first offender who has pleaded guilty, I take serious view of this offence since it carried a maximum sentence of death. There was no jus

tification whatsoever for the convict to which to have sexual intercourse with a minor of only 13 years when he had a wife. He was aged 29 years more than twice the age of his victim. I shall pass a deterring sentence and he is therefore sentenced to 8

years imprisonment }\fs24\ul\insrsid10375000\charrsid10706727 taking into account the period he has been on remand.}\fs24\insrsid10375000\charrsid10706727 \94 } {\b0\fs24\insrsid10375000\charrsid10706727 ({\b0\fs24\insrsid10706727\charrsid10706727

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\par The sentence of 8 years imprisonment was neither illegal nor excessive. The appeal is devoid of merit. It is accordingly dismissed.

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\par JUSTICE OF APPEAL

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