

UGANDA / JUDGMENT

Semanda Robert v Uganda (Criminal Appeal No. 34 of 2018) [2025] UGCA 125 (5 May 2025)

[2025] UGCA 125

COURT

Court of Appeal of Uganda

BEFORE

Gashirabake, JA, Asa Mugenyi, JA/ JCC, John Mike Musisi, JJA/JCC

CASE / FILE NUMBER

Criminal Appeal No. 34 of 2018

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THE REPUBLIC OF UGANDA**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

Coram: Christo er Gashirabake Dr. A a en John Mike Musisi JJA

CRIMINAL APPEAL NO.34 OF 2018

5 {An Appeal Arising from the Decision of the High Court of Uganda Holden at Mpigi @lizabeth Jane Alividza I.) in Criminal Session Case No. 001a6 of 2017)

SEMANDA ROBERT :: APPELLANT

-VERSUS-

UGANDA3.....3..... RESPONDENT

10 JUDGMENT OF THE COURT

r. INTRODUCTION

This is an appeal against the sentence of 20 years of imprisonment which was handed down by the High Court by Elizabeth Jane Alividza J. sitting at Mpigi. The appellant was convicted on the offence of aggravated defilement contrary to Sections 129(3) 15 and(4)(a)ofthePenal CodeActonthe 19sofApril 2018. ThetrialJudgeconsidered the period spent on remand of2 years and 8 months which she deducted from the sentence. She sentenced the appellant to serve 17 years and 4 months from the date of sentence.

2. BACKGROTIND

20 The particulars of the offence of aggravated defilement were that. On the 8th day of August 2015, at Kakomo Village, Mpenja sub-county in Gomba District, the

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appellant performed a sexual Act on a female juvenile aged 13 years. The leamed trial Judge sentenced him to 20 years of imprisonment.

The victim, aged 13 years, a pupil and a resident of Kakomo Village, Mpenja Subcounty in Gomba District, left home with her sister on the 8th August 2015 to look for

- 5 their mother. They did not find her at her work place. They continued to the home of Muwanga where there was a party thinking that they would find her there. She was not there. The victim's sister left for home while the victim remained at the party where she found her other two sisters. At about 21:00 hours, she went out to ease herself. But before she could do so, she came across three boys, whom she identified
- 10 as Serwanda, Nyombi and the appellant. The appellant grabbed her and dragged her to the bush, threatened her with a knife preventing her from calling out for help and defiled her. Afterwards, she went back to the party to look for her sisters who had already gone. She managed to find a one Yiga Innocent to whom she revealed that the appellant had defiled her. Yiga escorted her home. At home, she found her family
- 15 worried. She disclosed to them what had happened and investigations ensued. On medical examination she was found with a ruptured hymen.

The appellant was arrested, charged, tried and convicted of aggravated defilement.

He was sentenced to 17 years and 4 months of imprisonment.

3. GROUNDS OF APPEAL

- 20 Dissatisfied with the sentence, the appellant appealed against the decision on two grounds;
- t- That the trial judge erred in law when she conducted the hearing without having the assessors sworn in and thus leading to a miscarriage of justice.
- z- The trial judge erred in law and fact when she sentenced the appellant to ^a manifestly harsh sentence of 17 years and 4 months in prison.

During the hearing of the appeal and after careful perusal of the record, it was discovered that the trial judge actually administered oath upon the assessors before

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they took on their role. Ground one of the memorandum of appeal was therefore abandoned. Counsel for the appellant sought leave of court under Section 132(1Xb) of the Trial on Indictments Act, (now Cap 25) and Rules 2Q) a3Q)@) of the Rules of this Court to appeal against sentence only. Having abandoned the first ground of 5 appeal leave was granted.

Representation

The appellant was represented by Serunjogi Brian Alfred on state brief while the respondent was represented by Anna Kiiza, Chief State Attorney.

Determination of Ground 2. The trial judge erred in law and fact when she 10 sentenced the appellant to a manifestly harsh sentence of 17 years and 4 months in prison.

4. SUBMISSION OF PARTIES

Both counsel filed written submissions and invited the court to consider them at the hearing.

15 Submission by Counsel for the Appellant

Counsel for the Appellant submitted on the role of this Court as a first appellate court and the principles upon which the court may interfere with a sentence imposed by the trial court. He cited *Nsimbi Paul v Ugandar* Criminal Appeal No. 0187 of 2017 and *Kamija v Ugandg* Criminal Appeal No. 16 of 2000.

- 20 Counsel submitted that the trial Judge ignored while convicting the appellant, important matters of circumstance which he ought to have considered. He contended that the evidence adduced by the respondent, PEX 1, the medical examination report, indicated that the victim was examined a day af\er the alleged offence of aggravated defilement was committed on her. That even though the victim had a
- 25 ruptured hymen, the rupture was not recent. It was indicated in PEXI that the cause

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of the not recent rupture was a penis. This meant that the victim had been engaging in sexual affairs with other persons prior to the offence committed by the appellant.

It was further submitted that the appellant was a first offender and that the victim had previously had carnal knowledge with other people before the appellant defiled her. Counsel prayed that the sentence be reduced.

Submissions by Counsel for the Respondent.

Counsel for the respondent submitted that the sentence meted out by the trial court was neither harsh nor excessive but rather appropriate in the circumstances. She submitted that while sentencing the appellant, the trial Judge considered mitigating

10 factors. She mentioned that the appellant was a first offender and was remorseful. He had engaged in school while in prison. Counsel submitted that it was these considerations which compelled the learned trial judge to be lenient to the appellant and granted him a sentence of 17 years and 4 months.

5. ANALYSIS OF COURT

15 Role of the first Appellate Court

Under Rule 30(1) of the Judicature (Court of Appeal) Directions, 2005, the duty of this court as the first Appellate Court is to re-evaluate the evidence on record and come to its conclusions. This was re-echoed in *Henry Kifamunte vs Uganda* [1998] UGSC 20.

20 Regarding the power of this Court in interfering with the discretion of the sentencing judge, the Supreme Court in *Kyalimpa Edward vs Uganda*, Criminal Appeal No. 10 of 1995, (unreported) referring to *R vs De Havilland* (1983) 5 Criminal Appeal No. 109, held as follows on page 114:

> "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

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interfere with the discretion of the sentencing judge unless the sentence is illegal or unless the court is satisfied that the sentence imposed by the trial Judge was manifestly so excessive as to amount to injustice: *Ogalo s/o Owoura vs R* (1954) 21 EACA 270 and *R vs Mohamedali Jamal* (1948) 15 EACA 126"

5 In *Aharikundira vs Uganda* (supra), the court found that;

"There is a high threshold to be met for an appellate court to intervene with the sentence hardened down by a trial Judge on grounds of it being manifestly excessive. Sentencing is not a mechanical process but a matter of judicial discretion therefore, perfect uniformity is hardly possible. The key word is "manifestly excessive." An appellate court will only intervene where the sentence imposed exceeded to permissible range or sentencing variation."

We agree with the respondent's counsel that the learned trial judge considered the mitigating factors while sentencing the appellant. She recognized the appellant as a first offender who was also repentant. She was also alive to the fact that the accused

- 15 had commenced lessons while in prison which would make him a better person on reintegration into society. She however considered the gravity of the offence as it involved the use of force and a knife which is a dangerous weapon. The victim was at the time of commitment of the offence of tender years. We have considered the fact that the maximum sentence for the offence of the aggravated robbery is death.
- 20 Guideline 6(c) of the Judicature (Sentencing guidelines for court of Judicature (practice) Directions (2003) provides that every court shall when sentencing an offender take into account the need for consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offences committed in similar circumstances. In *Ninsiima v Uganda*, Criminal Appeal No.
- 25 1080 of 2010, the court upheld a range of 15 to 18 years for aggravated defilement and reduced a 30 years sentence to 15 years improvement.

In *Candia Akim v Uganda*, Criminal Appeal No. 181 of 2019, the court upheld a sentence of 17 years improvement for the aggravated defilement of an 8 year old by

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her stepfather. The trial Judge sentenced the appellant to 20 years of imprisonment. She found that the appellant had been on remand for a period of 2 years and 8 months. She sentenced him to 17 years and 4 months from the date of sentence. We find the sentence of 20 years of imprisonment appropriate in the circumstances of this case. It is neither manifestly harsh nor excessive.

We shall uphold the sentence and dismiss this appeal accordingly.

We so order Dated at Kampala this day of. 2025 Christopher Gashirabake Justice of Appeal Dr. a genyru
Justice of Appeal John ke Musisi

Justice of Appeal

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