

UGANDA / JUDGMENT

Uganda v Apoo (Criminal Session Case 150 of 2020) [2025] UGHC 319 (7 May 2025)

[2025] UGHC 319

COURT

High Court of Uganda

BEFORE

Boniface Wamala, J

CASE / FILE NUMBER

Criminal Session Case 150 of 2020

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI CRIMINAL SESSION CASE NO. 0150 OF 2020

UGANDA !!!!!!!!!!!!!!!!!!!!!!!!!!!!!!! VERSUS

APOO SAMUEL ::::::::::::::::::::::::::::::

Before: Hon. Justice Boniface Wamala

JUDGMENT

Introduction

- [1] The accused person in this case is indicted of the offence of Aggravated Defilement c/s 129 (3) and 4 (a) of the Penal Code Act [now Section 116 (3) & (4) (a)] of the PCA Cap 128. It is alleged that the accused person on the 18th day of September 2019 at Agweng village in Kaberamaido District had sexual intercourse with Arebo Agnes, a girl aged 13 years. The accused person denied the offence and the case proceeded for hearing.

Representation

- [2] At the hearing, the state was represented by **Mr. Bamwesigye Emmanuel** and **Ms. Adero Doreen** from the Office of the Director of Public Prosecutions (ODPP) while the accused was represented by **Mr. Olobo James Felix** and **Mr. Justine Okwalinga**, counsel on state brief. The assessors were **Mr. Erwaku Lawrence** and **Ms. Acheko Proscovia**. Neither the accused, his lawyers nor the state objected to the assessors' appointment.

The Burden and Standard of Proof

- [3] In all criminal cases, an accused person is presumed innocent until proven guilty or until he or she pleads guilty; as provided for under Article 28(3)(a) of the Constitution of the Republic of Uganda. As such, the burden of proving each and every ingredient of an offence is always on the prosecution and never

shifts onto the accused. See: *Woolmington v DPP* [1935] AC 462. The accused person is only convicted on the strength of the prosecution case and not because of weaknesses in his defence. See: *Ssekitoleko v Uganda* (1967) EA 531. Each essential ingredient of the alleged offence must be proved beyond reasonable doubt. However, proof beyond reasonable does not mean proof beyond a shadow of doubt. The standard is satisfied once any evidence suggesting the innocence of the accused person, at its best, only creates a mere fanciful possibility but not any probability that the accused is innocent. See: *Miller v Minister for Pensions* [1947] 2 ALLER 372.*

The evidence in this case

Agreed facts

- [4] The state and the defence signed a memorandum of agreed matters wherein some facts were agreed upon, namely that;
- (a) The victim was a girl under the age of 14 years;
 - (b) The accused and the victim were known to each other; and
 - (c) The accused and the victim were both residents of Agweng village, Kamuk parish in Kaberamaido District.
- [5] The following documents were also agreed upon in the said memorandum, namely;
- (a) The victim examination report (PF3A);
 - (b) The accused examination report (PF24A);
 - (c) The birth certificate; and
 - (d) The sketch plan.
- [6] The memorandum of agreed matters was tendered and admitted in evidence in accordance with section 67 of the TIA. The agreed documents were admitted in evidence and marked as PE1, PE2, PE3 and PE4 respectively.

The witnesses

- [7] The prosecution led evidence of two witnesses while the defense did not lead any evidence since the accused person opted to remain silent. PW1 was Ejanu Joseph a male adult aged 47 years, peasant farmer, resident of Agweng village, Kamuk Parish, Kaberamaido Sub County in Kaberamaido District. He stated that he came to know the accused person about two

months before the case when a brother to the accused obtained land near PW1's land. Before the alleged incident, PW1 and the accused had ever talked to each other. On the morning of the incident, PW1 had gone for a clan meeting at Asala village, from where he left at about 8am. He had left four children at home including the victim. Upon return, he only found three children and the victim was missing. Upon inquiring, he was told that the victim had gone to her grandfather's home, one Opige Joseph. When PW1 went to the home of the said grandfather, he did not find the victim there. While returning home, he saw the victim emerging from a bush and running towards home. He also saw the accused coming out of the same bush and running away. When PW1 reached home, he asked the victim where she had gone and she responded that she had gone out. When he became aggressive to her, she told him that the accused had taken her to the bush and had sexual intercourse with her. PW1 opened her dress and discovered some discharge in her private parts. He called his cousin brother, one Eyutu Ronald, and they ran after the accused whom they arrested near a swamp. They took the accused person to Kaberamaido Police Station.

- [8] PW2 was Arebo Agnes Faith (the victim), a female adult aged 18 years at the time of testifying, resident of Agwang village, Kamuk Parish, Kaberamaido Sub-county in Kaberamaido District. She stated that she was 13 years in 2019 in primary four at Alem Primary school. She testified that the accused person was staying at the home of his brother called Opum Tonny and they were neighbors. She stated that on 18th September 2019, while going to her grandfather's home, she met the accused person who grabbed her, threw her down near a tamarind tree adjacent to the road and had unprotected sex with

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her. While still having sex with the accused, they heard her father's voice and she ran home while the accused person also took off. At home, she told her father that she had gone out and when he became aggressive, she told him that she had had sexual intercourse with the accused person. Her father checked her and discovered sperms on her thighs and knickers. Her father then reported the matter to police and she was medically examined the following day at Kaberamaido hospital.

Submissions by Counsel

- [9] The prosecution and the defence made and filed written submissions which have been adopted and relied upon by the Court.

The law and ingredients of the offence

- [10] The offence of aggravated defilement is provided for under Section 116(3) and (4) (a) of the Penal Code Act Cap 128 which states thus;

"(3) Any person who performs a sexual act with another person who is below the age of 18 years in any of the circumstances specified in sub-section (4) commits a felony called aggravated defilement and is on conviction by the High Court, liable to suffer death.

(4) The circumstances referred to in sub-section (3) are as follows –

- a) where the person against whom the offence is committed is below the age of *fourteen years ... "*"

-[11] In the instant case, for the accused person to be convicted of aggravated defilement, the prosecution must prove each of the following essential ingredients/ elements beyond reasonable doubt;

- a) That the victim was below 14 years of age.
- b) That a sexual act was performed on the victim.
- c) That it is the accused who performed the sexual act on the victim.

That the victim was below 14 years of age

[12] In law, the most reliable way of proving the age of a child is by the production of her birth certificate, any other documents speaking to her date of birth, followed by the testimony of the parents. However, other ways of proving the age of a child can be equally conclusive such as medical evidence, the court's own observation and common sense assessment of the age of the child. See: *Uganda v Oryem Bosco* (Criminal Case No. 116 of 2019) [2020] UGHC 78 (10 July 2020).

[13] In the instant case, it was agreed as a fact that the child was below 14 years. PW1, the victim's father, stated in his testimony that his daughter was aged 13 years and was schooling in primary four at Alem Primary School. The victim herself (PW2) also stated that in 2019, she was 13 years. Her short birth certificate, on record as PE3 indicates that the victim was born on \$18/7/2006\$; which makes her 13 years by 18th September 2019. In the medical report (PF3A) on record as PE1, the victim's age was estimated as 13 years basing on the number of teeth, and the fact that her breasts and pubic hair had started developing. This evidence was not contested by the defence. I find that the prosecution has proved this element of the offence beyond reasonable doubt.

That a sexual act was performed on the victim

[14] A sexual act is defined under section 116(7) of the PCA to mean; (a) penetration of the vagina, mouth or anus, however slight, of any person by a sexual organ; or (b) the unlawful use of any object or organ by a person on another person's sexual organ. Sexual organ means a vagina or a penis. On the case before me, there is evidence by the victim's father (PW1) who stated that upon return home of the victim, he asked her where she had been and she hesitated to disclose. When he became aggressive, the victim told him that the accused had taken her to the bush and had sexual intercourse with her. When

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he opened her dress, he discovered some discharge in her private parts. The victim herself (PW2) testified that the accused grabbed her, threw her down near a tamarind tree adjacent to the road and had unprotected sex with her. She stated that they were still having sex when she heard her father's voice. She ran back home as the accused also took off. PW2 stated that she had had two prior sexual encounters with the accused person. The medical examination report of the victim (PF3A), on record as PE1, indicates that when the medical officer examined the victim, he found that her hymen was no longer in place.

[15] In light of the above evidence, the legal principle of corpus delicti applies on the present facts. The presence of seminal fluids around the child's private parts, even in absence of any sexual penetration, would suffice to prove commission of a sexual act on the victim. This fact is corroborated by the victim's testimony that she had had two prior sexual encounters with the accused person and the medical evidence showing that the victim's hymen was no longer in place at the time of the medical examination. I find that the prosecution has proved this element of the offence beyond reasonable doubt.

That it is the accused who performed the sexual act on the victim

[16] In order to prove the participation of an accused person in the commission of an alleged offence, the prosecution has to adduce evidence which places the accused person at the scene of the crime or that discloses him/her as the perpetrator of the alleged crime. The evidence may be direct or circumstantial. In this case, it was an agreed fact that the accused person and the victim were well known to each other as neighbours at the same village. The victim in her testimony narrated to the Court the events leading to the incident on the fateful day. She stated that she had had sexual intercourse with the accused person on two previous occasions. On those occasions, he would entice her by touching her body. On the fateful day (18/09/2019), while going to her grandfather's home, she met the accused person who grabbed her, threw her down near a tamarind tree adjacent to the road and had unprotected sex with

her. As they were still having sex, they heard the voice of her father (PW1). She then ran back home as the accused also took off. This evidence is corroborated by PW1 who stated that he saw both the accused person and the victim coming out of the same bush and running to different directions. PW1 then called his cousin brother, one Eyutu Ronald, with whom they chased the accused person and arrested him at a nearby swamp. They took him to Kaberamaido Police Station.

[17] It is apparent that the circumstances of the present case were favourable to proper identification of the accused person. In *Abdullah Nabulele & 2 Others v Uganda* [1978] UGSC 5 (5 October 1978), it was held that the factors that determine the quality of identification evidence include the length of time the witness had to watch the offender, the distance, the light and familiarity of the witnesses with the accused person. On the present case, the

accused and the victim were neighbours and well known to each other. The evidence by the victim (PW2) that she had had two prior sexual encounters is believable especially since it was corroborated by medical evidence that the victim's hymen was no longer in place. The accused person was therefore positively identified by the victim and her father and there is not the slightest possibility of error or mistaken identification of the accused person.

[18] The theory advanced by counsel for the accused person in their submissions is that the accused could have been framed up by the victim, probably due to her father (PW1) having gotten aggressive to her; and to save herself she chose to mention the accused's name who was a neighbor. I find this theory so fanciful and devoid of any bearing on the facts of the present case. The evidence by the prosecution indicates that no grudge existed between the prosecution witnesses and the accused person. As such, no reason for or possibility of a frame up against the accused person is apparent. Similarly, the possibility advanced by defence counsel in their submissions that the accused was in the swamp grazing at the material time is strongly negated by the

prosecution evidence. On the evidence and circumstances of the case as a whole, the prosecution has proved beyond reasonable doubt that it was the accused person that performed the sexual act on the victim. This element of the offence has also been proved beyond reasonable doubt.

Decision of the Court

[19] In all, therefore, I find that the prosecution has proved all the essential elements of the offence of aggravated defilement against the accused person beyond reasonable doubt. In agreement with the opinion of the lady and gentleman assessors, I accordingly find the accused person guilty and convict him of the offence of aggravated defilement under section 116 (3) and (4)(a) of the Penal Code Act Cap 128 as indicted.

It is so ordered.

Dated this 7th day of May, 2025.

Stome may Boniface Wamala

JUDGE

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