

UGANDA / JUDGMENT

Uganda v Ediangu (Criminal Sessions Case 234 of 2021)

[2025] UGHC 323 (19 May 2025)

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COURT

High Court of Uganda

BEFORE

Boniface Wamala, J

CASE / FILE NUMBER

Criminal Sessions Case 234 of 2021

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI
CRIMINAL SESSION CASE NO. 0234 OF 2021 UGANDA :::::::::::::::::::::
VERSUS EDIANGU JAMES :::::::::::::::::::::

Before: Hon. Justice Boniface Wamala

JUDGMENT

Introduction

[1] The accused in this case stands indicted of the offence of Aggravated Defilement c/s 116 (3) & (4)(a) and (c) of the PCA Cap 128. It is alleged that the accused in the month of August 2020, at Omirio village, Opuyo Parish in Soroti District being the biological father of Aluro Janet unlawfully performed a sexual act with Aluro Janet a girl aged 10 years. The accused person denied the offence and the case proceeded for hearing.

Representation

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

The Burden and Standard of Proof

[3] In 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

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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 defence signed a memorandum of agreed matters wherein some facts were agreed upon, namely that;

- a) The victim was 10 years old at the time of the incident;
- b) The accused is a biological father to the victim; and
- c) The victim and the accused lived in the same homestead.

[5] The following documents were also agreed upon in the said memorandum, namely;

- a) The victim's medical examination (PF3A);
- b) The accused's medical examination report (PF24A); and
- c) The sketch plan for the scene of crime.

[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, and PE3 respectively.

The witnesses

[7] The prosecution led evidence of three witnesses. **PW1** was the victim, **Aluro Janet**. She stated that she was aged 15 years, a student in P.5 at Amugagara

Primary School. In August 2020, she was aged 10 years and was staying at Omirio village in Soroti District. She was staying with her grandmother called Aguti Dina. The accused (her father) picked her and took her to his house which was about 10 meters from her grandmother's house. He told her to lay on his bed and he slept on top of her. He picked his penis and inserted it in her vagina. It was at night and he took long that she sustained injuries. She left the accused's house and ran away at night. At the time of the incident, her mother had left the accused's home and the accused had not married another wife. The victim stated that there was no light when the accused picked her from her grandmother's house but she was able to identify him by his voice. She reported the incident after some days. She further stated that it was not the first time the accused had defiled her as he had done it several times and threatened to kill her if she reported. She eventually reported to her uncle (Otigo Cypriano) and grandmother (Ebyara Felista), who told other elders and the matter was reported to police.

[8] PW2 was Ebyara Filista, a female adult aged 60 years, peasant farmer, resident of Omirio village, Opuyo Parish, Soroti District. She stated that the accused was his son in-law since he married her daughter Achen Sarah with whom they had two children but they had separated by the time the incident happened. The victim was her granddaughter, of 15 years of age at the time of testifying and was 10 years in 2020. The victim was staying at her father's home and they were neighbours. On the fateful day, the victim came running to her home at about 8:00 pm. When the victim entered her house, PW2 asked her why she was running but she kept quiet. When PW2 got out of the house, she met the victim's father outside. The father asked whether the victim had come to her home and she responded in the affirmative. The father instructed PW2 to call the victim out but when she did so, the victim refused. PW2 asked the accused what the problem was but he insisted that the victim should come out. PW2 advised the accused to first leave the victim and return to his home.

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The accused returned the next day at about 10:00 am and immediately the victim saw him, she entered the house and refused to come out. The accused made follow up visits on about four days. Later on, a one Oenen came and asked about the victim, the victim said that she did not want to go back because her father would defile her again. That Oenen informed the LC I Chairperson and the accused was arrested.

[9] PW3 was the victim's mother, Achom Sarah, a female adult aged 32 years, peasant farmer and resident of Agirigiroyi village, Okum Parish, Mukura Sub County in Ngora District. She stated that the victim was born on 27/02/2010 and was 15 years. The accused is her father whom she got married to in 2008 and they had two children. They separated in 2011. She first left with the victim but brought her back to her grandmother in 2014 because of lack of material support. She used to visit once in a while. In August 2020, while in Ngora, she received a phone call from her mother that her husband had defiled her daughter, the victim. She went to Soroti CPS and found the accused in police cells. She did not talk to him. When she talked to the victim, she told her that her father had defiled her several times. After their separation, the accused had demanded for return of dowry and it was refunded.

[10] In defence, the accused gave a sworn testimony as DW1 and did not call any other witness. He stated that he was a male adult aged 35 years, resident of Omirio village in Opuyo parish, Soroti sub county and District. He stated that the victim is his daughter, born in 2010. At the time of his arrest, he had separated with the victim's mother. On 15th July 2020, the victim told him that her grandmother wanted to take her to her mother and that if she is taken there, she was not going to see the accused again. Without his permission, the victim went to her grandmother on 28th July 2020. Three days later, the accused went and found the victim at her grandmother's place. He asked the grandmother about the victim's education to which she responded that the

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victim would return to her paternal grandmother's home where she had been staying. The victim however did not return and the accused never went to her grandmother again. He last saw the victim on 3rd July 2020. It was not true that he defiled his daughter in August since she had left in July and did not come back.

Submissions by Counsel

[11] Counsel for the prosecution and the defence made and filed written submissions which I have considered in the determination of the matter before the Court.

The law and ingredients of the offence

[12] Section 116 (3) and (4) (a) & (c) of the Penal Code Act Cap 128 provide that; "(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 subsection 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 subsection 3 are as follows –

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

\$b)\$...

c) where the offender is a parent or guardian of or a person in authority over, the *person against whom the offence is committed ..."

[13] In the instant case, for the accused 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 the accused was a biological father to the victim;
- c) That a sexual act was performed on the victim; and

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- d) That it is the accused who performed the sexual act on the victim.

Resolution by the Court

That the victim was below 14 years of age

- [14] 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. It has however been held that 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).
- [15] In this case, it was agreed as a fact between the prosecution and the defence that the victim was a child of 10 years at the time of the alleged incident. The medical examination report of the victim PF3A also stated the victim's age as 10 years. In their testimony before court, the victim (PW1), her mother (PW3) and grandmother (PW2) stated that she was 15 years at the time of testifying and 10 years in 2020. This ingredient of the offence was not contested by the defence and I have found sufficient evidence by the prosecution to prove the same beyond reasonable doubt.

That the accused person was a biological father to the victim

- [16] It was an agreed fact between the prosecution and the defence that the accused person was a biological father to the victim. The testimony of the victim (PW1), her grandmother (PW2) and her mother (PW3) proved as much. The accused in his defence also agreed that the victim is her daughter. I find this element proved by the prosecution beyond reasonable doubt.

That a sexual act was performed on the victim

- [17] 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. Note that a sexual act does not necessarily have to be sexual intercourse. On the case before me, it was the testimony of the victim (PW1) that it was not the first time that the accused had defiled her. She narrated that on the fateful day, the accused took her to his house, told her to lay on his bed and he slept on top of her. He picked his penis and inserted it in her vagina. He took long that she sustained injuries. PW2, the victim's grandmother stated that in presence of a one Oenen, the victim stated that she did not want to go back because her father would defile her again. The victim's medical examination report (PE1 on record) showed that the victim's hymen was ruptured.

[18] I have noted that although the victim stated that she sustained some injuries in her vagina, the medical report (PE1) indicates that no injury was found in her genitals. I have considered the prosecution evidence that the victim had been defiled by the accused person before on several occasions. I have further considered that in regard to the incident in issue, the victim took some time before disclosing the reason for running away from her father's home. Indeed, although the incident is alleged to have taken place in August 2020, the victim was medically examined on 21st September 2020. This offers sufficient explanation as to why no injuries could be found in the victim's genitals upon medical examination. Furthermore, the finding in the medical report that the victim's hymen was ruptured is quite consistent with the prosecution evidence regarding the performance of a sexual act on the victim. I am therefore satisfied beyond reasonable doubt that a sexual act was performed by the victim and this element is proved by the prosecution.

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

- [19] 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 agreed as a fact that the accused was a biological father of the victim and that the two lived in the same homestead. In her testimony, the victim (PW1) stated that the accused had had sexual intercourse with her on several occasions. The victim graphically narrated what happened on the fateful day, in her father's house, on her father's bed. She also stated that although there was no light, she was able to identify the accused by his voice.
- [20] The evidence by the accused person is that he did not defile his daughter. He was only opposed to the daughter going to her maternal grandmother. The victim left without his permission and never returned. By the date of the alleged incident, she was no longer at his home. On the facts and circumstances before the Court, the question is whether there is any possibility of erroneous or mistaken identification of the accused person or a frame up against the accused.
- [21] The position of the law is that where the victim is the only identifying witness, evidence of corroboration may be necessary. The court may, however, proceed to convict an accused person based on uncorroborated evidence of a single identifying witness provided it warns itself of the likely danger and finds the evidence cogent and credible. Corroboration may be derived from direct or circumstantial evidence of relevant events and observations by other persons that occurred around the time, the conduct of the accused around the time of the incident, among other circumstances. See: *Kibale v Uganda* (1999) 1 E. A 148.

[22] In the present case, the evidence of the victim is corroborated by the evidence of her grandmother (PW2) regarding the conduct after the alleged incident. PW2 stated that the victim went to her home running, late in the evening, and refused to reveal what had happened. Shortly thereafter, the accused went to her home and insisted that the victim comes out; which the victim refused to do. The accused also refused to reveal what the problem was. The accused returned on about four occasions and the same scenario replayed. This evidence constitutes credible circumstantial evidence pointing to the accused's participation in the commission of the offence. It offers ample corroboration to the victim's evidence of identification of the accused person as the perpetrator of the offence herein. I do not find any possibility that the accused was framed up on this allegation by or with the assistance of his own daughter of 10 years then. The evidence adduced by the prosecution is therefore sufficient to prove beyond reasonable doubt that it was the accused that performed the sexual act on the victim.

Decision of the Court

[23] In all, therefore, I find that the prosecution has proved all the ingredients of the offence of aggravated defilement against the accused person beyond reasonable doubt. In agreement with the opinion of the gentlemen assessors, I find the accused person guilty of the offence of aggravated defilement and I convict him accordingly. It is so ordered.

Dated at Soroti this 19th day of May, 2025.

\$m\$ \$om74\$ Boniface Wamala JUDGE

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