

UGANDA / JUDGMENT

Uganda v Kibirango Ali alias Musiramu (HCT-17-CR-SC-0025-2024) [2024] UGHC 1253 (18 July 2024) [2024] UGHC 1253

COURT

High Court of Uganda

BEFORE

Wolayo, J

CASE / FILE NUMBER

HCT-17-CR-SC-0025-2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT NAKASEKE

CRIMINAL SESSION CASE NO. HCT-17-CR-SC-0025-2024

UGANDA V KIBIRANGO ALI ALIAS MUSIRAMU

BEFORE LADY JUSTICE HENRIETTA WOLAYO

RULING

Introduction

- At the close of the prosecution case, the court has a duty under Section 73(1) of the Trial on Indictment Act Cap 23, to determine whether the prosecution has made out a prima facie case sufficient to place the accused person on his defense. A prima facie case was defined in *Bhat v R* [1957]EA 332 as one where a reasonable tribunal properly directing its mind to the law and evidence will convict having regard to the evidence and if no reasonable explanation was forthcoming from the accused person.
- The accused person in the instant case is indicted with aggravated defilement c/s 129(3) (4) (a) and (d) of the Penal Code Act. It is alleged that on 15.10.2021, the accused person performed a sexual act on K. J a girl aged thirteen years.
- On 28.5.2024, the accused person denied the charge when the indictment was read to him. Prosecution was led by Peace Bashabe chief state attorney while the accused was represented by Emmanuel Damba on state brief.

4. Tumukunde Evans and Dr. Serunjogi Mohammed were appointed assessors and took the assessors' oath on 6.6.2024 when hearing commenced.

Burden of proof

1. The prosecution had a duty to adduce credible evidence that disclosed the following ingredients of aggravated defilement:
 1. Victim was below 14 years
 2. Performance of a sexual act
 3. Participation by the accused.
2. At this stage, the state has a duty to make out a prima facie case against the accused person sufficient for me to put him on the defense.

Age of the victim

1. It was an agreed fact that the victim was aged 13 years when she was examined on 17.10.2021 by Ssendi Emma of Nakaseke Hospital and his findings recorded on PF3A. Her own father Mutemere Mukulu Zubairu PW1 gave her age as 15 years as at 6.6.2024. This means in 2021 when the offence was allegedly committed she was approximately 13 years.

Performance of a sexual act.

1. This too was an admitted fact based on PF3A which shows the victim was examined on 17.10.21 and found with a ruptured hymen and abrasions in her genitals.

Participation.

1. According to the victim's father Mutemere Mukulu Zubairu, he came to know the accused person after this case. On 15.12.2021, he went into town to buy airtime and on his return, he found when the victim was not at home. One Amina informed him that she had disappeared at 8 p.m, Next day, he reported to the police and he learnt that the accused had taken his daughter. He actually quoted her as telling him that the accused had taken her as his wife but later said he had taken her to work.
2. Zubairu's testimony is that the victim never revealed to him that she had been defiled and he learnt of it through the medical examination. He also revealed that he does not know where the girl is as she has switched off her mobile phones and at the same time, he said she lives with him in Kyagwe.
3. The contradictory pieces of evidence from Zubairu to the effect that the victim either went to work or to be a wife are not helpful and render the witness unreliable, moreover, he was not there when the victim was found in the home said to belong to the accused person.

4. The other witness the state relied upon is ASP Mutonyi Emma PW2, formerly attached to Butalango police station. It was her testimony that on 16.10.2021, LC1 Chairman of Kyolola one Kasule Rogers filed a report of a missing girl, K. J and that she was last seen with Nalutaya Farida on 15.10.2021. On mounting a search for Nalutaya, Mutonyi found her together with son of the accused who informed Mutonyi and team that his father had rented a house in the trading centre.
5. It is the LC 1 chairman who informed Mutonyi that the victim had been seen in the rented room of the accused person. On reaching the room, Mutonyi found the girl seated on the bed but the accused was not in the room and she told the officer that the accused had defiled her from there.
6. In cross –examination, ASP Mutonyi’s testimony was that the accused was her neighbor yet she denied knowing him and it is the LC1 chairman who led the police to the alleged room of the accused person.
7. The credibility of ASP Mutonyi is in issue since she claimed to be a neighbour to the accused person but did not know him. Furthermore, finding the girl in the rented room did not imply that it belonged to the accused person since he was not present at the time especially as it his unnamed son who told the chairman that the room belonged to the accused person. The chairman who was instrumental in tracking the whereabouts of the victim did not testify.
8. That the girl informed the officer that she had been defiled is not supported by her written statement to the police and therefore, this is weak evidence of participation of the accused in the crime.
9. In conclusion, the evidence on participation by the accused is so scanty that no reasonable court would convict the accused if the accused did not offer any explanation.
10. In the premises, a prima facie case has not been made out and accused is acquitted of the offence indicted. He is released from custody unless lawfully held in connection with some other offence.

DATED AT NAKASEKE THIS 18TH DAY OF JULY 2024.

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LADY JUSTICE HENRIETTA WOLAYO

Legal representation

Peace Bashabe, Chief State Attorney for the prosecution

Emmanuel Damba for the accused person on state brief

18.7.2024

Accused present

Kirabo holds brief for Bashabe Peace for the prosecution

Sekayiri holds brief for Damba for the accused.

Court: Ruling delivered.

Judge

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