

UGANDA / JUDGMENT

Uganda v Olupot (Criminal Session Case 276 of 2020) [2025] UGHC 322 (16 May 2025)

[2025] UGHC 322

COURT

High Court of Uganda

BEFORE

Boniface Wamala, J

CASE / FILE NUMBER

Criminal Session Case 276 of 2020

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT SOROTI
CRIMINAL SESSION CASE NO. 0276 OF 2020 UGANDA ::::::::::::::::::::::::::::::::::

VERSUS

OLUPOT CHARLES ::::::::::::::::::::::::::::::::::

Before: Hon. Justice Boniface Wamala

JUDGMENT

Introduction:

- [1] The accused in this case stands 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 on the 3rd day of May 2020, at Labor village in Serere District unlawfully performed a sexual act with Acuga Edith Lucy, a girl aged 03 years. The accused person denied the charges and the case proceeded for hearing.

Representation

- [2] At the hearing, the state was represented by Ms. Nambozo Irene 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 it was agreed that the victim was 03 years old on 3/5/2020 and that there was a sexual act performed on the victim. The parties also agreed upon some documents, namely; the victim's medical examination report (PF3A) and the accused person's medical examination report (PF24A). 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 and PE2 respectively.

The witnesses

- [5] The prosecution led evidence of three witnesses. The accused made a sworn testimony and called no other witness. PW1 was the victim's father, Okota Moses. He stated that the accused is a son to one of his neighbors called Olira Shedrach. The victim (Acuga Edith Lucy) is his daughter, born in 2018 and was 03 years in May 2020. He stated that on the fateful day, while he was at home, two boys came holding the victim saying that they had gotten the accused sleeping with her in a bush under an Emit tree. PW1 rushed and called the LCI Chairperson, called Arikod James. He moved with the chairperson and the victim to the accused's home where people had gathered.

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Amuge Dimitirina checked the victim and found blood and sperms around her private parts. When the accused was asked about the matter, he denied. PW1 and other people around went to the scene; which was in a bush near the accused's home. PW1 saw the grass lying down and the surface disturbed, appearing like some had laid there. The LC chairperson called the police and the accused person was arrested and taken to police. The victim was taken to a Health Centre IV for medical examination.

- [6] PW2 was Dementeriya Amuge Isiah, a female adult aged 68 years, peasant, resident of Labor village and parish, Labor Sub-County in Serere District. She stated that the accused was his neighbor and the victim is her granddaughter. On the fateful day, at around 5:00 pm, she was called by her son, Okota Moses, the victim's father who told her that the victim had been defiled by the accused person. PW2 went to the scene of crime which was under an Emit tree. She found there many people including the LCI Chairperson who asked her to check the victim. She made the victim lie on her back and on checking her, she found blood and white semen-like fluids in her vagina. She also noticed that the victim was unable to walk properly as she was limping. She stated that the accused had been seen by his brother called Elochu and his brother in law whose name she could not recall.
- [7] PW3 was No. 56582 D/C Ikwalingat Beatrice, a police officer attached to Soroti CPS. She stated that in May 2020, she was attached to Serere Police Station working at the Gender desk. The investigating officer in a case of defilement involving the accused person requested her (PW3) to record statements from two juvenile witnesses, namely Ojakol Richard and Elochu Emmanuel. The two witnesses revealed to her that they had found the accused person defiling the victim, Acuga Edith Lucy. The statements of Elochu Emmanuel and of Ojakol Richard were tendered in evidence by the prosecution and were admitted as PE3 and PE4 respectively.
- [8] For the defence, the accused, Olupot Charles testified as DW1. He stated that he did not know Acuga Edith Lucy, the victim. He knew Okota Moses but did not know that he had a child by that name. He denied defiling the victim. He stated that on the day he was arrested, the area LCI Chairperson, Okodi James and Okota Moses went to his home at about 7.35 pm, forcefully entered his house, picked his money amounting to UGX \$796,000/\$ = and started beating him. They then pulled him outside and called people while saying that he had defiled their child. He was later taken to police. He stated that on 3rd May 2020, when the defilement is said to have occurred, he had gone to a place called Kamodi to visit his relatives. He said Kamodi was quite far away from Labor village where the incident was said to have happened.

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 ... "*"

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[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; and
- c) 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

[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. 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).

[13] In this case, it was agreed between the prosecution and the defence that the victim was 03 years old at the time of the incident. The medical examination report of the victim (PF3A) also admitted in evidence upon agreement between the parties indicated the victim's age as 03 years basing on her dental formula. In his testimony before the Court, the victim's father stated that the victim was born in 2018 and was 03 years in 2020. The victim was produced before the Court for observation since she was too young at the time of the incident and could not have had memory of what had transpired. This ingredient of the alleged offence was not contested by the defense. The evidence adduced by the prosecution is sufficient to prove beyond reasonable doubt that the victim was a girl below the age of 14 years.

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. Note that a sexual act does not necessarily have to be sexual intercourse. On the case before me, the victim's father (PW1) stated that the victim was brought to him by two boys who told him that they had found the accused sleeping with her in a bush under an Emit tree. When the victim was checked by PW2, she found blood and white semen-like fluids in her vagina. PW2 also observed that the victim was unable to walk properly as she was limping. The victim's medical examination report (PE1) revealed that the hymen was ruptured and the probable cause was penetrative sex. In law, pursuant to the principle of corpus delictus, even in absence of penetration, the presence of seminal fluids on the child's private parts amounts to a sexual act. The prosecution has proved beyond reasonable doubt that a sexual act was performed on the victim.

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

- [15] 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 evidence. The accused person in this case was well known to PW1 and PW2 as they were neighbours. He was also well known to the two juveniles who got him with the victim. The two boys, Elochu Emmanuel and Ojakol Richard, went with the victim to her father (PW1) and informed him that they had found the accused defiling the victim. The two boys were then aged 14 and 13 years respectively. When the victim was checked, seminal fluids were found on her private parts.

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- [16] It was shown in evidence by the prosecution that Elochu Emmanuel was a brother to the accused and Ojakol Richard was a brother in-law to the accused. It was further shown by the prosecution evidence that the two boys had made statements at police but because of their relationship with the accused, they were prevented from being available to testify. Their statements were tendered in evidence by the police officer who recorded them, D/C Ikwalingat Beatrice (PW3) and they were exhibited as PE3 and PE4 respectively. The accused admitted that Elochu Emmanuel was his brother although he denied knowing Ojakol Richard. In the statement of Elochu Emmanuel, on record as PE3, he had stated that he found the accused seated while his zip of the trouser was open. Accused was carrying the victim and had put his penis in her vagina. In the statement of Ojakol Richard (PE4), he had stated that the accused disappeared with the victim and their sister got concerned and told them to go and look for the accused. He and Elochu Emmanuel found the accused in a nearby bush carrying the victim and his penis was in her vagina.

- [17] The accused person, in defence, denied the allegation and stated that at the time the incident is said to have occurred, he had travelled to a faraway village to visit his relatives. The accused thus put up a defence of alibi. Where an accused person puts up a defence of alibi, he has no duty to prove it. The burden lies on the prosecution to disprove it; by adducing credible direct or circumstantial evidence placing the accused at the scene of the crime as the perpetrator or participant in the commission of the offence.
- [18] In the present case, the accused person was linked to the commission of the alleged offence by the statements of Elochu Emmanuel and Ojakol Richard; which statements were corroborated by the fact that when the victim was checked, there was evidence that she had been involved in a sexual act. I have not found any reason to doubt the statements of Elochu Emmanuel and Ojakol

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Richard. Given their age, they had no motive or reason to tell lies against the accused who was their relative. The prosecution evidence thus rules out any possibility of mistaken identification or a frame up of the accused person. My conclusion, therefore, is that the accused person is effectively placed at the scene of the crime. Once the accused is placed at the scene of crime, his defence of alibi collapses. See: Chemonges Fred v Uganda (Criminal Appeal No. 12 of 2001) [2003] UGSC 7 (19 February 2003). Prosecution has therefore proved beyond reasonable doubt that it was the accused person that performed the sexual act on the victim.

Decision of the Court

- [19] In all, therefore, I am satisfied 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 as indicted and I convict him accordingly.

It is so ordered.

Dated this 16th day of May, 2025.

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Boniface Wamala JUDGE

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