THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE

HCT-04-CR-SC-0074-2013

UGANDA……..……PROSECUTOR

VERSUS

A.1 OLOWO KAMALI
A.2 OWERE JACOB
A.3 ABDALAH YUSUF
A.4 OWOR CHARLES ALIAS KULAWAYA …….……ACCUSED

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

JUDGMENT

A juvenile offender **Olowo Kamali** together with adult offenders to wit **A.2 Owere Jacob, A.3 Abdallah Yusuf** and **A.4 Owor Charles alias Kulawaya** are jointly indicted for aggravated defilement c/s 129 (3) and (4) of the Penal Code Act.

Prosecution alleges that the accused persons together with one at large on 28th September 2012 at Nagongera Town Council in Tororo District performed a sexual act with **Nyapendi Teddy** a girl aged 13 years.

All the accused persons denied the indictment.

In criminal trials, it is the duty of the prosecution to adduce sufficient evidence to prove the offence against the prisoner beyond any reasonable doubt. This burden rests onto the prosecution throughout the trial.

In a bid to execute its duty prosecution called in evidence five witnesses. The accused persons were the only defence witnesses. A.1 and A.2 denied the offence, A.3 and A.4 denied the offence and each pleaded a defence of alibi.

To prove the offence of aggravated defilement, prosecution has to prove the following ingredients.

1. That the complainant, in this case **Nyapendi Teddy** was a girl aged below 14 years at the time of offence.

2. That a sexual Act was performed on the victim.
3. That the accused person (s) performed the sexual Act.

In some instances it may be necessary to prove that:

4. The accused had authority over the victim or whether there exists other aggravating factors of the offence.

According to the testimony of the complainant, she gave her age at the time of testimony as 14 years. This meant that at the time of offence last year, she was about 13 years old.

This is corroborated by the medical evidence which was admitted during the preliminary hearing and marked Exhibit P.1. According to that exhibit which comprised PW.1, the victim was examined by **Dr. Opete Andrew** of Tororo Main Hospital on 29.09.12 on PF.3A and found to be aged 13 years at the time of examination.

The defence agreed to the admission of this evidence.

I am therefore satisfied beyond any reasonable doubt that **Nyapendi Teddy** was 13 years at the time of this offence.

2. Whether a sexual Act was performed on **Nyapendi Teddy**.

As I have stated while resolving issue 1, the medical examination report on F.3A Exhibit P.1 was admitted in evidence during the preliminary hearing. In that report **Dr. Opete Andrew** examined the victim and found that she had scratches on the face and neck. The back of the head was smeared with mad. The chest was full of bruises and scratches. The back was smeared with mad. She had swollen limbs and her vagina was widened, bruised and reddened. She had seminal fluid like discharge massively draining with a foul smell. The cause of all these was a sexual assault. This medical opinion is corroborated by the testimony of the victim (PW.2) that she was dragged by a group of men to a bush and defiled repeatedly from 7:00p.m to 12:00midnight.

From the said evidence which is overwhelming I have no doubt that prosecution has proved that a sexual act was performed on **Nyapendi Teddy**. This ingredient has also been proved beyond any reasonable doubt.

3. Whether the accused persons participated in the offence.

Two eye witnesses testified in this trial. PW.2, the victim told court that all the accused persons are acquaintances. She said that on the fateful day, she left home in the evening with **PW.3 Aketch Damali** to go for night prayer at Nagongera deliverance church. Along the way, they were joined by both **A.1 Olowo Kamali** and **A.2 Owere Jacob** whom she knew well. They conversed. That all of a sudden, **A.3 Abdullah Yusuf** and **A.4 Owor Charles alias Kulawire** intercepted them. The latter were with the person still at large. The intruders i.e. A.3 and A.4 with the one at large harassed A.1 and A.2 and grabbed PW.2 and dragged her to the bush and defiled her for a long time and in turns upto midnight. By the time, **PW.3 Aketch Damali** had ran away thus escaping the ordeal.

During her testimony PW.2 identified each of the accused persons by touching each and explaining what role each played. The same applied to PW.3. PW.2 reported the incident immediately to **PW.4 Okech Muhamad** who rescued her. PW.4 is an LDU who was on duty and met the victim in a distressful state. She narrated her ordeal to him and he escorted her to her uncle, then to church where A.1 and A.2 were arrested taken to police and they implicated both A.3 and A.4 with another still at large.

Although both A.3 and A.4 denied the offence and pleaded defences of *alibi* the strong and consistent prosecution evidence put each of the two at the scene of crime. DW.1 and DW.2 knew DW.3 and DW.4. They implicated them on first information. This implication was minutely corroborated by the strong evidence of the victim who identified the two while in the dock.

The investigating officer's sketch plan and what he saw when he visited the scene tallied with the description of what took place by DW.1, DW.2, PW.1, PW.2 andPW.3.

I am therefore satisfied beyond any reasonable doubt that both DW.3 Abdullah Yusuf and **DW.4 Owor Charles alias Kulawaya** were the culprits. Their respective defences of *alibi* was destroyed by the strong prosecution evidence and on this I agree with the opinion of the lady and gentleman assessors.

I am however not satisfied that both A.1 and A.2 participated in this offence. Their denial is confirmed by what both PW.2 andPW.3 said that preceded the offence. The victim said both A.1 and A.2 did nothing to her. It would appear she later implicated them because of the trauma she went through and recalled her encounter with the two prior to the offence. The fact that A.1 was found in the church soon after without any mad is enough to show that they were not at the scene of crime. I agree with the assessors' opinion that no evidence sufficiently implicated A.1 and A.2 in the commission of this offence.

For the reasons I have outlined I am satisfied beyond doubt that prosecution has proved participation of both A.3 and A.4 in the commission of this offence. They were part of the group that dragged the victim and gang defiled her from 7:00p.m to midnight that day. I will however find that participation of the juvenile offenders A.1 and A.2 has not been proved beyond any reasonable doubt. As I have already stated I am in agreement with well considered opinion of the assessors.

Consequently I will find that the offence of aggravated defilement has not been established against A.1.

I will also find that **A.2 Owere Jacob** is not guilty and will acquit him of aggravated defilement c/ss 129 (3) and 4 of the Penal Code Act. The indictment in respect of the two is dismissed.

I will however find **both A.3 Abdullah Yusuf** and **A.4 Owor Charles alias Kulawaya** guilty and convict each for aggravated defilement c/ss 129 (3) and (4) of the Penal Code Act.

Stephen Musota

JUDGE

26.03.2013

26.3.2013
All 4 accused produced.
Chekwech Resident State Attorney.
Angura on State brief.
Adude Interpreter.

Resident State Attorney: Case for judgment.

Court: Judgment delivered.

Resident State Attorney: A.3 and A.4 are first time offenders. Under S. 129 (3) PCA this offence carries a death sentence. The circumstances are so grave. The victim suffered harm and lost dignity.

Considering the age of the victim and the number of people who had sex with her rendered victim defenceless and subjected to torture. The offence is rampant is rampant and young girls are .victims of the offence. I pray that the convicts are given a harsh punishment so that they do not repeat the same act to other victims. I so pray.

Angura: 1st convict A.3 is a first offender. The A.3 has been in prison for enough time and must have learnt a lesson. He is remorseful and he is a bread winner of the family. I pray that court be pleased to give him a caution since he has learnt and he is reformed.

Regarding A.4 he is first offender. He did not waste court's time. He is a family man and the time he has been in prison is enough to make him learn. I pray court be pleased to give him a short sentence.

Stephen Musota

JUDGE

26.03.2013

Sentence and Reasons:

Each of the convicts is a first offender. They each committed a very serious offence. They abused the modesty of a young innocent girl and subjected her to a traumatic experience of gang defiling her for almost 6 hours. This was a brutal act on the side of the convicts. Given the gravity of offence and the fact that the offence is rampant, I think none of the convicts deserves leniency. I will however consider the time spent on remand and other surrounding circumstances and not impose the ultimate sentence but sentence each of the convicts as follows:

1. **A.3 Abdullah Yusuf** is sentenced to 16 years imprisonment.
2. **A.4 Charles Owor alias Kulawaya** is sentenced to 16 years imprisonment.

Right of appeal explained.

Stephen Musota

JUDGE

26.03.2013