THE HIGH COURT, AT ITS HEADQUARTERS, HEARING CRIMINAL CASES ON APPEAL, DECIDES ON CASE RPA 0591/15 / HC / KIG ON 21/01/2016 AS FOLLOWS:

PARTIES:

APPELLANT: BAPFAKURERA Samuel, son of BIRUSHYA and NYIRABAGENZA, born in 1982, resident of Karambo - Nyamiyaga, Gicumbi District, Northern Province,

Versus

DEFENDANT: PROSECUTION;

OFFENCE: Child defilement (Appeal against Case No. RP 0120/15 / TGI / Gic decided by Gicumbi High Court)

I. FACTS AND PROCEDURE

1. The Prosecution seized to the Gicumbi High Court accusing BAPFAKURERA Samuel of sexually abusing a twelve-year-old girl named Tuyisenge. After analyzing the prosecution's case, the Court convicted him of the crime and sentenced him to ten (10) years' imprisonment;

2. BAPFAKURERA Samuel was dissatisfied with the outcome of the case, and he appealed to the High Court, stating that the Gicumbi High Court had sentenced him to ten (10) years imprisonment after unfair trail, that the court did not pay attention to his defense, and he challenges the evidence relied upon to convict him;

3. The Prosecution replied by arguing that BAPFAKURERA's allegations are unfounded, saying that he admitted to spending night with the girl in the house, that a medical doctor confirmed that the child was raped, that his allegations that the semen found on him was a result of a dream are unfounded, and asks the court to uphold the conviction contained in the judgment under appeal;

4. The issue to be considered in this case is whether there is a defect in the evidence relied upon by the first instance court.

II. ANALYSIS OF THE ISSUE

a) ***With respect to the evidence relied upon in the first instance court***

5. BAPFAKURERA Samuel appealed with the purpose of proving that he was convicted of a crime he did not commit, criticizing the evidence relied on in the first instance, arguing that it did not prove the truth, and that his defense was ignored;

6. The Prosecution submits that the ground of appeal is unfounded, that he admitted to spending night with the girl in the house, and the doctor confirms that the child was raped, that his allegations that the semen found on him was a result of a dream are unfounded, and asks the court to uphold the conviction of the judgment under appeal;

7. In the first instance, the evidence relied on to convict BAPFAKURERA Samuel of raping a 12-year-old girl named TUYISENGE consist of TUYISENGE's own statement that BAPFAKURERA Samuel raped her, the statement of BAPFAKURERA Samuel admitting to spending night with TUYISENGE in the same house, the statement of a child named TWAGIRIMANA who testified that he found BAPFAKURERA Samuel sleeping with TUYISENGE, and that next to the place where they were sleeping there was a semen, testimonies from the witnesses interviewed, namely NIYIBIBA, BAZI and HABYARIMANA, who confirmed that BAPFAKURERA and Samuel BAPFAKURERA spent night in the same house. The Gicumbi High Court confronted these statements, corroborated them with the fact that semen was found in the place where they slept, and concluded that the rape of TUYISENGE had taken place, and that it had been committed by BAPFAKURERA Samuel who was with her;

(b) *The Court's analysis*

8. The High Court notes that Article 119 of Law No. 15/2004 of 12/6/2004 Relating to Evidence and its Production, on which the Gicumbi High Court based its decision, provides that in criminal cases, the evidence is based on all circumstances, and on law, the parties having been given the opportunity to be present and cross examine each other;

9. The Court observes, however, that the analysis of the facts presented in this case, as evidenced by the Prosecution's submissions, shows that TWAGIRIMANA, the father of TUYISENGE, filed the complaint explaining how he found BAPFAKURERA sleeping with TUYISENGE, and also raping her, because apart from sleeping together, he saw semen in the place where they slept, and as to whether TUYISENGE was raped by BAPFAKURERA Samuel, TUYISENGE confirmed it saying that BAPFAKURERA Samuel and NSABIMANA Theoneste successfully seduced her using a phone with the intention of raping her, that BAPFAKURERA Samuel had sex with in the night, but BAPFAKURERA Samuel only admits to sleeping in the same house but denies having sex with her, but that TUYISENGE had spent the night in that house when she came asking for accommodation, fearing that her parents would beat her because they had seen her with a phone;

10. The Court notes that BAPFAKURERA Samuel's statement is corroborated by that of BAZI Julienne who explained that on 22/3/2015, at 2:00 pm, she saw TUYISENGE on the bridge near the sugarcane field, and when she asked her what she was doing she told her that she fled her parents who wanted to beat her because they saw her with a phone. This statement coincides with that of NSABIMANA Theoneste who said that his phone was with TUYISENGE that night, which shows that, indeed, TUYISENGE spent a night with a phone whose origin was unknown to her parents, which made them angry to the point of planning to punish her and she escaped and went to hide in a bridge near the sugarcane field, where BAZI Julienne saw her, after which she decided to seek accommodation where BAPFAKURERA Samuel slept in the house where the sorghum was stored. The sorghum store house belonged to TUYISENGE's father named TWAGIRIMANA, and according to HABYARIMANA Eugene in his statement appearing on Annex 20, BAPFAKURERA Samuel ordinarily slept in the store house as a watchman over the sorghum, which also shows that TUYISENGE's statement confirms that she arrived at the house brought by those who wanted to rape her and seduced her with a controversial telephone;

11. The Court also finds that although TWAGIRIMANA testified that there was a semen near the place where BAPFAKURERA Samuel and TUYISENGE had been sleeping, none of the witnesses who found BAPFAKURERA Samuel and TUYISENGE in the house indicated that he had ever seen semen in the house, and the medical report, apart from saying that there was a red spot on TUYISENGE's vagina, did not show that semen was found on TUYISENGE at the time of the examination, so it is questionable whether the semen was actually there, and what is the evidence to that, because TUYISENGE was immediately taken to the clinic so that it be possible to gather evidence of rape including semen, because BAPFAKURERA Samuel was asked why semen was found where they were lying , and he replied that he had ejaculated in a dream;

12. The Court finds that the foregoing evidence do not prove irrefutably that BAPFAKURERA Samuel committed the offense but casts doubt, for the following reasons:

- TUYISENGE description on how she arrived at the sorghum store where she was found with BAPFAKURERA Samuel, and how she was raped is questionable because there is no evidence that she was truthful as described above;

- There is no evidence as to the cause of the redness of the posterior sin of hymen of TUYISENGE, nor as to when the problem started, especially since in Annex 20, HABYARIMANA Eugene describes how TUYISENGE was afraid to return home because she was late because she was hanging out with a boy named GASANA;

- There is no evidence that spending night in the same house was followed with rape, especially since BAPFAKURERA Samuel and BAZI julienne concur that TUYISENGE was afraid to return home for fear of being punished, which shows that it was a possibility for her to spend a night in the store house, especially that the house belonged to her father.

13. The Court also observes that Article 165 of Law No. 30/2013 of 24/5/2013 relating to Criminal Procedure Code provides in its paragraph 1 that: "*The benefit of doubt shall be given in favour of the accused*" and this article continues in paragraph 2 that " *If the proceedings conducted as completely as possible do not enable judges to find reliable evidence proving beyond reasonable doubt that the accused committed the offence, the judges shall order his/her acquittal.*", which is why the Court holds that BAPFAKURERA Samuel is innocent of the crime of child defilement.

III. COURT DECISION

THE HIGH COURT

14. HOLDS that the appeal filed by BAPFAKURERA Samuel is admissible because it has been filed in accordance with the law, and the Court finds it well-founded;

15. HOLDS that the judgment under appeal RP 0120/15/TGI/Gic is amended in all its aspects, and BAPFAKURERA Samuel is acquitted on appeal;

16. DECIDES that BAPFAKURERA Samuel wins;

17. ORDERS that BAPFAKURERA Samuel be immediately released;

18. ORDERS that the legal costs be borne by the State.

ISSUED AND READ IN PUBLIC ON 21/1/2016.

JUDGE	**REGISTRAR**
Se/	**Se/**
BUKUBA UMULISA Claire	**MUREKATETE Bernadette**