



The incident was reported to the father of the two sisters, **A.R (PW3)**. He in turn reported to the police at the AP camp Turkwel. He was assigned two police reservist to effect the arrest of the appellant. These included **Ekidor Ebei (PW4)** who arrested and handed the appellant to the police at Lodwar.

**Simon Akundunyang (PW6)**, a clinical officer at Lodwar District Hospital produced a P3 form which was completed and signed his colleague Wycliff Rangima who carried out a medical examination of the complainant and concluded that indeed the complainant had been defiled.

A dental technologist, **Michael Loposh Engor (PW5)**, based at the Lodwar district Hospital assessed the age of the complainant and placed it at eight (8) years. He produced the necessary age assessment report.

**P.C. Evans Momanyi (PW7)**, based at Lodwar police station received the necessary report and investigated the case together with a colleague. Thereafter, he preferred the present charge against the appellant.

The appellant's defence was a denial. He said that he was found sleeping at a goats shed and apprehended. He was taken to the chief's office whereupon he was handed over to the police. He was assaulted and threatened by police officer before being taken to Lodwar police station. Later, he was taken to court and was shocked when the charge was read to him.

The learned trial magistrate considered all the foregoing evidence and concluded that the case against the appellant had been proved beyond reasonable doubt.

In this court's opinion, the learned trial magistrate was justified to arrive at that conclusion. This is because, on its own consideration of the evidence, this court notes that the fact that the complainant was defiled was not disputed and was indeed established by her own evidence together with that of her sister (PW2) and the clinical officer (PW6).

The basic issue for determination was therefore the identification of the appellant as the offender. This was clearly and credibly resolved by the complainant's evidence as supported by that of her sister (PW2). The two had previously known the appellant very well. They recognized and identified him as the culprit. The complainant's sister (PW2) found him defiling the complainant. He was literally caught in "**flagrante delicto**" (caught in the act). His denial of the offence and his defence was generally discredited by the very strong evidence against him. Consequently, his conviction by the learned trial magistrate was sound and proper.

With regard to the sentence, it was established that the complainant was aged eight (8) years at the time of the offence. The sentence imposed against the appellant was in accordance with the law and cannot be interfered with by this court.

In sum, this appeal is without merit and is hereby dismissed.

**[Delivered and signed this 14th day of May, 2013.**

**J.R. KARANJA.**

**JUDGE.**