

and sleep as they could address the issue the following morning.

PW-2 got home at about 9.00pm. She found the complainant dirty. The complainant reported to her that the appellant (Peter) had raped her. The following morning complainant's uncle namely G M took her to Mbakalu Police Station. She reported the case. She was issued with a P-3 form and referred to hospital. PW-3 escorted her to Naitiri Hospital. PW-4 examined her and filled the P-3 form. He found that her left minor limbs were tender. Her external genitalia was in good condition. The hymen was missing and had a white greasy discharge in the vagina. She was HIV negative, but her urine had pus. She was treated. The Clinical Officer was of the opinion that she had been defiled. Her age was also assessed and it was confirmed to be 14 years then. Her P-3 form, treatment notes and age assessment report were produced in court as exhibits.

The appellant in his unsworn testimony in defense stated that on 28.6.2012 he was at home splitting firewood. John called him and tricked him to get to the Patrol Base where he was arrested and placed in custody. He was not told the reason for arrest. When he was charged in court he denied the offence.

He, the appellant appealed to this court against conviction and sentence on the grounds:-

- 1. That the court's sentence was based on hearsay.**
- 2. That the prosecution evidence had serious contradictions.**
- 3. That no evidence linked him to the offence.**
- 4. That the trial magistrate was biased in relying only on the prosecution case.**
- 5. That the entire evidence fell short of establishing the offence beyond reasonable doubt.**
- 6. That the sentence imposed was illegal given that the evidence does not support a conviction.**

I have weighed the entire evidence in the file, grounds of appeal and submissions by both sides. The ingredients of the offence which the court needed consider were:-

- 1. The age of the complainant to establish whether she was a child;**
- 2. whether the appellant was well identified or recognized as the culprit; and**
- 3. whether he penetrated the complainant's vagina with his penis.**

Complainant (PW-1) in her evidence in chief stated firmly that she was 14 years old. PW-4 who assessed her age confirmed she was aged 14 years and produced a report to that effect. The evidence was not challenged and the court had no reason to find her age to be otherwise. It was therefore established beyond reasonable doubt that by the time of the alleged offence, the complainant was aged 14 years.

On recognition of the appellant as the culprit, the complainant gave an impressive, firm and well detailed account of how the appellant, who was working in her aunt's hotel tactfully delayed her till it was dark. He then escorted her home in company of another called John. When John Left them, the appellant commended the move where he ended up defiling her. She knew the appellant before and the chain of events is so well connected, leaving no gap where anyone else would have come in and defiled her. The evidence is convincing beyond any reasonable doubt that it's the appellant who committed the offence.

On the 3rd issue the complainant narrated what the appellant did to her. He pulled her pant and biker. He removed his private part and placed it on hers. He then started doing her. She felt pain. He did it till 9pm. These words considered together, when weighed in line with the finding of PW-4 that her inner limbs were tender, the hymen was missing and had a greasy discharge in the vagina, of which led PW-4 to conclude that she was defiled, leaves no doubt that she was penetrated.

The three ingredients of this offence were therefore well established by the prosecution beyond reasonable doubt. The appellant was correctly convicted of it and sentenced legally to serve 20 years imprisonment. The appeal therefore lacks merit and is dismissed.

Judgment read in the presence of the state counsel, court assistant and the appellant this 17th day of July 2017.

S. M. GITHINJI

JUDGE