



How the law caught up with a defiler

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On a Sunday morning of January 28, 2018, two girls, A.S and her cousin Sandra, were sent to harvest cassava from the garden. The two girls were approached by a man nicknamed Bombay while in the garden. Bombay was notorious in the village for molesting women and girls. On seeing the man, the two girls took off while alarming.

The man pursued them and caught Sandra who wrestled herself free and fled. The man, however, decided to fol-

low A.S whom he caught, tore her underwear and threw her down and proceeded to have penetrative penile vaginal sex with her.

Sandra was at a distance of about 10 metres and watched the whole episode unfolding. Abdu, a village-mate who was cutting trees nearby, responded to the alarm of the two girls and came to their rescue with a machete.

When he witnessed what was happening, he raised his machete as he approached Bombay and, out of fear, Bombay stopped his heinous act and fled. Abdu escorted the girls for a short distance and then allowed them to pro-

ceed home while he returned to continue with his work.

The mother of A.S returned from church at 10am that day and found her daughter crying. When she inquired, A.S told her mother that Bombay had sexual intercourse with her and Sandra corroborated her story.

The mother of A.S took both girls to the nearest police post from where they were referred to the health centre. The medical examination showed that the genitals of A.S had visible signs of hyperemia surrounding the vulva.

Hyperemia is a sign of acute inflammation and is seen as redness and is due to an increased blood flow to a particular area. Online research indicates that one of the causes of hyperemia is injury.

On the probable cause of the injuries in the genitals, the medical officer stated that it was blunt force trauma. Although not very conclusive, the medical report corroborated the testimonies of all the other witnesses that the inju-

ry was as a result of a sexual act.

The victim of the sexual assault was referred to the nearest hospital and was given Post Exposure Prophylaxis (PEP) for the prevention of infection with the Human Immune-Deficiency Virus (HIV). This treatment was administered for six months and A.S went back for drugs for more six months.

Bombay was arrested from his parents' home the very day of the incident by a police officer of the Child Protection Unit. He told the police officer he did not commit the crime he was being accused of and that he did not know A.S. He stated that he never went out of home on the day in question and never met the two girls.

He further stated that he was alone at home and was clearing grass from the compound. He also stated that he was born in 1986 and studied up to Senior Three level. He was charged with the of-

DIRECT EVIDENCE

Court can convict a person accused of a sexual offence in the absence of medical evidence provided that there is strong direct evidence when the circumstances of the offence are so clear and compelling as to leave no ground for reasonable doubt. Medical evidence is merely advisory and goes to the fact, not the law, and court may reject it.

fence of aggravated defilement.

One of the forms of the offence of aggravated defilement is performing a sexual act with a person under the age of 14 years at the date of the sexual act. Prosecution must, therefore, prove to the Court's satisfaction that the victim, at the time of the sexual act, was below 14 years.

The age of a girl can be proved by one or combination of the following, her birth certificate or immunisation card or school records; testimony of the parents of the girl; the girl's own testimony regarding her age; medical evidence such as dentition and physical developments of the girl (Tanner staging); court observation and common sense assessment of the girl. The Children's Act also offers a useful guide on how the age of a child can be determined.

A.S testified that she was born on July 17, 2004. She also stated that in 2018 when she was sexually, she was in primary four. Her mother testified that she gave birth to A.S on July 17, 2004.

The medical report indicated that A.S was 13 years based on the Tanner Staging. The defence did not bring in any contrary evidence nor was the prosecution evidence challenged.

Court was, therefore, satisfied that the age of the victim of 13 years had been proved beyond reasonable doubt.

The law defines a sexual act as the penetration of the vagina, mouth or anus, however slight, of a person, by a sexual organ; or the unlawful use of any object or organ by a person on a sexual organ.

The law further clarifies a sexual organ as the vagina or penis of another person. The Supreme Court noted that penetration, however slight, suffices to prove sexual intercourse and that penetration for the purposes of a sexual act need not be deep.

Penetration can, therefore, be proved either by the victim's evidence, medical evidence, or any other cogent evidence.

It is not obligatory that medical evidence be produced to prove a sexual act although once medical evidence is adduced by the prosecution, court will consider it.

Court may also consider medical evidence alongside other relevant evidence. It is a settled principle of law that rapture or non-rapture of the hymen per se is not conclusive proof of sexual intercourse or absence of it. Medical evidence is merely advisory and goes to the fact, not the law, and court may reject it.

Court can convict a person accused of a sexual offence in the absence of medical evidence provided that there is strong direct evidence when the circumstances of the offence are so clear and compelling as to leave no ground for reasonable doubt.

In the present case the two girls, each independently, narrated in court what happened on the morning of Sunday 28th January 2018, when they were sent to the garden to harvest cassava and how they were approached by Bombay. Their evidence was without any major contraction.

A.S told court in graphic details what happened to her; how she was pursued and her underwear torn by Bombay whom she knew very well as a village-mate; how Bombay wrestled her down and forcefully had sex with her.

Sandra told court how she watched the whole sexual assault on A.S from a distance of about 10 meters in broad day light as she kept coming backwards to see what Bombay was doing to A.S.

To be continued