

Why Some Perpetrators of rape and Defilement still getting away with the law

Medical - legal lenses

After the 16 days of activism against gender based violence that ended on the 10th of December 2019, one would think acts or offences related to gender based violence would take a break because of the country wide activism, advocacy and enforcement against gender based violence. However my mind has been drawn to the recurrent incidents of rape and defilement that are happening in the country.

Rape is ubiquitous and takes place at work places in churches, in cars, marital homes, hospitals to mention but a few, While defilement takes place at schools ,homes and it is common with the guardian entrusted with the young girl that betrays the trust.

Looking at the latest police crime report of 2018 there were 15,366(Fifteen thousand, three hundred sixty six) cases of Defilement reported and 1580(One thousand five hundred eighty) cases of rape reported to the police, of the 1580 rape cases reported to police only 644 were taken to court, 16 secured convictions, 01 was acquitted, 7 dismissed, 620 are pending trial while 618 are still under investigation and this is just a tip of an iceberg

This article enumerates why despite country wide activism, advocacy and enforcement against these acts, some perpetrators are not apprehended, charged and convicted as the law provides hence getting away with the law.

Rape as defined by the penal code is the act of having unlawful carnal knowledge of a woman or girl without consent if the consent is obtained by means of threats or intimidation of any kind.

Defilement refers to all forms of sexual intercourse with children below the age of 18 years whether consensual or forced, the Penal code as amended provides that both male and female children can be defiled by either a Man or woman. Defilement can be aggravated if against a child who is 13 years and below, against children with disabilities, against any child by an HIV

infected offender, against any child by a person in authority over the child and against any child by a serial offender.

Rape and Defilement are criminal offences hence the burden of proof is on prosecution, while the standard of proof is that of beyond reasonable doubt. Rape and defilement are one of the cases where prosecution does a lot of work to adduce all the evidence necessary to prove the case beyond reasonable doubt and sustain a conviction.

The medical legal context of this is how this evidence has been extracted from the scene of crime, the examination of the victim by a medical person and filling of the police Form 3 by the medical personnel who examined the victim of Rape or Defilement, because if any of the above is not done right then it becomes hard to prove all the ingredients of the case beyond reasonable doubt hence sustaining a conviction.

However much filling of police form 3 by Health practitioners is no longer a reserve of medical doctors like in the past, other cadres like clinical officers and nursing officers are legally allowed to fill in police form 3 and adduce evidence in courts of law as expert witness. It is to be noted that much as the Health workers are willing to fill the forms, some of them don't know how to examine the Rape or Defilement victims to look for specific evidence that will be used to prove the ingredients of the case beyond reasonable doubt. It is important to note that experts' evidence is very important in prosecuting rape and Defilement cases and once the so called experts in a case messes up with examination and filling of the police form 3 then the perpetrators are getting away with the law not because they are not guilty but because the would be expert to incriminate the perpetrators lacks the skill, training and expertise to do so.

Further to note is that some Medical Personnel who fill in these forms are many times hesitant to fill the Rape and Defilement forms because they fear appearing before judicial officers and defend their findings during trial, Most health workers have never appeared in court during trial and they are scared by Court Decorum to the extent that some of them do not honor court summons as expert witness. From my experience as a Dentist I had an opportunity to examine a victim who had fractured a jaw during the act of Rape, I had issues with filling the police form 3 but after consultation I successfully filled the form but on my mind was how I would appear

before a judicial officer to adduce evidence, Fortunately or unfortunately was never summoned and nobody knows whether the perpetrator did not get away with the law

Further to note is that the victims of rape don't know the implications of early examination, some evidence like blood, Semen and others from which DNA of the perpetrator would be ascertained are washed away or lost if the victim takes long to be examined to enable extraction of this important evidence, by the time the victim goes to report to police it is already after 72 hours and all the evidence that would be used to incriminate the perpetrators is already washed away and lost.

What is even more worrying is that some victims who have been raped by HIV positive people may not benefit from Post Prophylaxis (PEP) because they report to the police after 72 hours when PEP cannot be of help hence end up contracting HIV/AIDS yet this would have been prevented because of the availability of PEP in most Government health facilities.

It may my considered submission that rape and Defilement are one of the rare cases to earn conviction because of the technicalities of the evidence required to prove all the ingredients of the cases beyond reasonable doubt.

As we continue to advocate and enforce the rights of the victims of rape and Defilement, we need to be mindful that proving all ingredients of rape and Defilement need extra caution and care during extraction and maintaining of the chain of evidence.

I call on all stake holders involved in advocacy and enforcement of Rape and Defilement cases that's the police, office of the DPP, Health Practitioners and all activists who work in the best interest of girl child that we have to progressively ensure caution and care is taken during the course of prosecuting Rape and Defilement cases, more so the medical –legal evidence and importantly the earliest opportunity to take Post Prophylaxis(PEP) that's within 72 hours after being Raped or Defiled by someone infected with HIV.



By Aruho Amon Kategaya

Dentist/Advocate High Court of Uganda

**PHD Candidate Medical Law-
University of Kwazulu Natal Durban
(UKZN)**

Medical –Legal Advocate

**Enforcement of patients and Health
Workers’ Rights Uganda
(www.ephwor.org)**

Email info@ephwor.org

**Member Patients’ Rights Voice
Network (PRIVON)**