

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

CRIMINAL JURISDICTION

CRN 73/10

THE STATE

VS

MUSA CEASER MANSARAY

Counsel:

Mr. A. Sesay Esq. for the State

Mr. E. Kargbo Esq. for the Accused.

JUDGMENT DELIVERED THIS 15th DAY OF December 2012 BY
HONOURABLE MRS. JUSTICE V. M. SOLOMON J. A.

JUDGMENT

BACKGROUND/CHARGES:

In this matter the accused is charged with the following offences:

Count 1: Attempting to have carnal knowledge of a girl under the age of 14 years contrary to Section 9 of the Prevention of Cruelty to Children Act Cap 31 of the Laws of Sierra Leone 1960

The particulars of offence are that the accused on the 15th day of November 2009 at Freetown in the Western Area of Sierra Leone attempted to carnally know and abuse Diana Gevao a girl under the age of 14.

Count 2: Indecent assault contrary to Section 9 of the Prevention of Cruelty to Children Act Cap 31 of the Laws of Sierra Leone 1960.

The particulars of offence are that the accused on the 15th day of November 2009 at Freetown in the Western Area of the Republic of Sierra Leone indecently assaulted Diana Gevao a girl under the age of 14 years.

The accused appeared in the Magistrate court in Freetown for a preliminary inquiry and after several hearings the matter was committed to the high court.

The accused appeared in the High Court and pleaded not guilty to both charges. On the application of the state and with the consent of counsel for the defence the Accused was tried by a judge alone instead of by judge and jury. The prosecution called 3 witnesses. The accused elected to rely on his witness statement and did not to call any witness.

Both counsel submitted written closing addresses.

Trial commenced on the 23rd December 2011.

CASE FOR THE STATE:

PW1 Diana Gevao the complainant is a school girl of the Annie Walsh Memorial School. She identified the accused and said she knew him through this matter. She recalled the 15th November 2009. On that day as she was riding her bike at the 34 Military Laboratory she saw her uncle and the accused person sitting at the lab. Both of them were sitting outside the lab. Her uncle waived to her and called her. She went there and parked her bike before the lab. She said the accused asked her about her mum and she told him that her mother Adama Tommy is at home. The accused then told her to go with him into the lab as he has a message for her mother. She went with him to the lab inside the room called surology room. He sat on the chair and asked her to sit on his lap. She sat on his lap. He removed his clothes and tried to remove hers and was touching her breasts. She jumped up and shouted and as she jumped up he ran to shut the door. As he was shutting the door she ran outside the room. She then took her bike and started crying. She called her uncle and accused called him too. Her uncle went to him first together they went inside the surology room and she followed them. She heard him say "E look lek say dis pekin conscious nar for beg am for me" as

he said that she left the room. Her uncle then asked her what happened but she was unable to speak as she was crying. Then her uncle Samuel Lewally begged her not to tell her dad. She and her uncle went to her father's house at Wilberforce. Her father asked her what happened and she explained to him. She and her father and her uncle all went to the Military police and made a statement. Then she and her father went to the FSU Lumley police station and made a report. The matter was then referred to court.

Under Cross examination by counsel for the accused she said that was the first time she went to the lab to ride her bike. She also said she went there to take blood tests and her uncle Lewally was working there. On that day it was her uncle who called her. When he called her he was sitting with the accused. The lab was just a step down. There was another person present. That she has never seen the accused there before. Then she said she used to see the accused but she does not know if the accused is her uncle's boss. That she does not know of any incident between the accused and her father. That she did give evidence in magistrate's court No. 1. That at the magistrate's court she said that she entered the lab room twice. She did talk to her uncle. That she went to the military police the same day. That she and her father are not living together. That when she rode off she went straight to her dad. That she is now staying with her dad's brother at Juba. That she made a statement to the police at Lumley. That she entered the lab and that is what she said to the police. That is not a made up story. It is what happened. That she has her birth certificate tendered "A".

PW2 is Samuel Lewally the uncle of the complainant PW1. He is a medical and laboratory technician. He identified PW1 as his niece and testified that he knows the accused. He said the accused is his co worker at the 34 military hospital. They have worked together for almost two years. He recalled November 2009. He said some time in November

2009 the accused and him were sitting at the laboratory corridor with a Mr. Samba. They were watching DVD when they saw Diana riding a bicycle. It was in the afternoon. She parked opposite and waived at them. They responded. That she came down to meet him. Then the accused asked of her family. She replied her mother is doing well. He told Diana he has a message for Diana's mother. He called Diana into the laboratory. He and Samba were watching DVD. Few minutes later Diana came out of the laboratory and went at first to her bike after a while she called him at the same time accused called him too. He responded to his call first accused. The accused asked him whether he knows the Complainant and he answered yes. The accused said to him it appears as if Diana is conscious and that he should talk to her. He asked what he should talk to her about. The accused did not say what. He then responded to Diana's call. She was crying and narrated the story that the accused called her in the lab and started playing with her breasts. She said she will explain the full incident to her father so he took her bike and went with her to her father Mr. Gevao. He was angry. Her father came to the lab and they went to the military police to make a statement. He made a statement to the military police and then came to court. He also made a statement at the Lumley police station.

Under Cross- Examination by counsel for the accused he maintained that he worked with the accused. That he is his senior. That he recalled testifying before magistrate Conteh. That he did tell the magistrate that he went with PW1 to her father. That he said that to the police too. He denied that he called the complainant when she parked her bike. That both of them called Diana about the same time. That after he spoke with the accused he came out and she was still on the bike and he went to meet her on her bike. That he wants this court to believe that he left with the victim for her father's house. That his evidence is not contrary to that of the victim.

PW3 is Hannah Charles. She is attached to the family support unit lumley police station. She recognises the accused. That she knew him whilst on duty on 15th November 2009 when a report of indecent assault was made by the father of the complainant Captain Gevao involving the accused and the complainant aged 11. That she obtained a statement from Captain Gevao and she also interviewed the victim Diana Gevao, on the 5th January 2010. That together with DSGT 29 Samuel Kargbo they cautioned and questioned the accused person. That was done at Lumley police station. That he was questioned by DSGT Kargbo 29 and he recorded his answers in English. He was cautioned in krio and answered in krio and she recorded it in English at the conclusion of the interview and read it over to him in krio and he admitted it to be true and correct. She identified the statement witnessed by DSGT 29 S. Kargbo. She identified her signature dated 5th January 2010. The statement was tendered as exhibit "B". That apart from this on 5th January 2010 she charged accused with offence of indecent assault. He was cautioned and questioned in krio by DSGT 29 which she recorded down at the conclusion. That she read it over to him in krio and he admitted it to be true and correct. That the accused signed it witnessed by DSGT 29 S. Kargbo signed as a recorder. The charged statement is dated 5th January 2010. That she signed it and it is the original and tendered exhibit "C".

PW3 was cross examined by counsel for the accused. She maintained that she cautioned the accused and he denied the allegation. That she charged him with the offence of indecent assault contrary to section 9. That was the offence she investigated during her investigations. That she was informed that the accused was in the company of the uncle of the complainant. That she obtained a statement from the uncle of the victim. That was done not on the same day but about a week after. That she did not investigate a case of attempted rape.

Counsel for the state tendered committal warrant exhibit "D" with no objections by counsel for the accused.

That ended the case for the prosecution.

CASE FOR THE ACCUSED:

The accused was duly informed of his rights. He was put to his election to give testimony and/or call witnesses; rely on his statement or make an unsworn statement. Counsel for the accused informed the court that the accused is relying on his statement and that he is not calling any witnesses. That ended the case for the accused.

FINDINGS:

Having carefully considered all the evidence of the prosecution and the exhibits and having read the closing addresses of both counsels these are my findings:

The arguments of defence counsel is in respect of the validity of the committal warrant and the indictment are issues that have been dealt with before trial commenced in this matter and as a matter of fact this court gave the ruling that the accused is properly charged in the indictment. I will therefore waste no time on this issue. I stand by my ruling and will not consider it has it has been disposed of.

As to the elements of the offences I find that the prosecution has discharged the onus of proof beyond a reasonable doubt against the said accused person. The age of the complainant is a material averment and I am satisfied that the age of Diana Gevao was under 14 at the time the offence was committed particularly in light of exhibit "A". I find the evidence of the complainant Diana Gevao credible. Her testimony that the accused removed his clothes and played with her breast while she was sitting on his lap discloses the actus reus of indecent assault. I am also satisfied that these acts by the accused constitute an attempt to have carnal knowledge

with PW1 as they are immediately connected with the carrying out of such an offence. There is no evidence before this court to suggest otherwise.

There is no evidence to raise the slightest doubt in my mind as to the credibility of PW1. Her testimony was in fact corroborated by PW2 where he said that the complainant came out crying and explained to him what has happened and the accused told him that the complainant is conscious and that he should beg her not to tell anyone of the incident.

In light of the evidence disclosed above I therefore find that the prosecution has proved that the accused intentionally assaulted the complainant, that the assault and the circumstances accompanying them are grossly scandalous and are capable of being considered by any right minded person as indecent, immoral, and disgusting and that the accused intended to commit such an assault.

I also find that the prosecution has proved that the accused attempted to have carnal knowledge of the complainant. The acts of the accused removing his clothes and asking the victim to sit on his lap together with his acts of playing with her breasts are not merely remote from the commission of the offence but immediately connected as they and this can reasonably be regarded as having no other purpose than the commission of the offence. There is no evidence before me to assume otherwise as counsel for the defence will want this court to do. I therefore find Musa Ceaser Mansaray Guilty under count 1 and sentence him to imprisonment to two years and Guilty under count 2 and sentence him to imprisonment for two years. The two sentences are to be served concurrently.



HON. JUSTICE V. M. SOLOMON J. A.