

**IN THE HIGH COURT OF SIERRA LEONE  
HOLDEN AT FREETOWN**

**THE STATE  
VS.  
IBRAHIM DUMBUYA**

**BEFORE THE HONOURABLE JUSTICE M.M SAMBA, J  
DATED THIS 2<sup>ND</sup> DAY OF DECEMBER 2016**

**Counsel:**

**A.J.M. Bockarie Esq for the State  
Legal Aid Board for the Accused**

**Judgment:**

1. The accused was charged on a one count indictment dated 24<sup>th</sup> day of February 2016 with an offence of sexual penetration of a child contrary to Section 19 of the Sexual Offences Act, 2012. The allegation is that on the 12<sup>th</sup> day of May 2015, at Freetown, the accused, Ibrahim Dumbuya was engaged in an act of sexual penetration with a child, the victim in this matter whom I will call, A. The Prosecution tendered in evidence the following Exhibits:

1. Exhibit A1-11 being the voluntary caution statement of the accused;
2. Exhibit B being the birth certificate of the child;
3. Exhibit C1 being a school report card of the child;
4. Exhibit D1-3 being the charge statement of the accused.
5. Exhibit E being an endorsed medical report dated 13<sup>th</sup> May 2015 in respect of the victim, A.
6. Exhibit F being the committal certificate dated 29<sup>th</sup> June 2015

2. Four witnesses testified on behalf of the prosecution to wit:

PW1 was Ibrahim Sorie;

PW2 was the victim, A;

PW3 was the Investigating Officer; he tendered in evidence Exhibits A1-11, B, Exhibit C, Exhibit D1-3, Exhibit E and identified Exhibit Z.

PW4 was the Medical Doctor attached to the Rainbow Center at PCMH, Fourah Bay Road, Freetown. She acknowledged her signature on Exhibit Z and tendered same as Exhibit E1-3.

3. I use this opportunity to thank both Prosecutor AJM Bockarie Esq and Defence Counsel C. Semble for their respective addresses which to say the least made very interesting read on points of law and fact.

**4. Burden and standard of proof**

4.1. The prosecution has a duty to prove its case beyond reasonable doubt to gain a conviction on the offence as charged. See the case of *Woolmington Vs. DPP* which said principle of law has been adopted in all criminal cases within the

Sierra Leone jurisdiction.<sup>1</sup> This principle of law is not without exception. Where an accused pleads insanity to an alleged crime, it will remain the duty of the accused to prove that his situation falls within the M'Naughten rules. There are also statutory exceptions, which provide that where a defence is based on any exception, proviso or qualification, the accused will have the burden of proof in proving that the exception applies in his situation. In respect of the level of the burden of proof on the part of the Prosecution, I refer to the well known case of *R Vs. Edwards* (1975) QB 27 and *Miller Vs Minister of Pensions* (1947) 2 AER 372.

4.2. I am mindful of the fact that an accused is entitled to an acquittal if there is no evidence direct or circumstantial, establishing his guilt. I have cautioned myself that all doubts must be resolved in favour of the accused person. I have also cautioned myself that there is no direct corroboration in respect of whether it was the accused himself who sexually penetrated the victim, X. I shall now proceed to evaluate the evidence and the law before me.

## 5. The Law

5.1. The Sexual Offences Act, 2012, Act No. 12 of 2012 with amendments, consolidates the law relating to sexual offences. Section 19 of the Sexual Offences Act 2012, under which the accused is charged, creates the offence of sexual penetration of a child to wit:

*5.2. A person who engages in an act of sexual penetration with a child commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years.*

## 6. The Elements of the Offence

6.1. The offence of sexual penetration of a child contrary to Section 19 of the Sexual Offences Act, 2012 is complete if the prosecution proves the following elements:

- A person must have committed the offence. In the instant case, the allegation is that the accused, Ibrahim Dumbuya who himself is a human being and therefore a person, allegedly committed the act.
- Sexual penetration – the interpretation section of the Sexual Offences Act 2012 defines 'sexual penetration' as **any act which causes the penetration to any extent of the vagina, anus or mouth of a person by the penis or any part of the body of another person or by an object.** In the instant case, the allegation is that the victim's vagina was sexually penetrated by the accused. We shall see by evidence led how the said penetration was effected.
- Child – The act of sexual penetration must be of a child. A child is defined in the interpretation section of the Sexual Offences Act, 2012 to mean a person under the age of 18. The evidence before this court by way of a birth certificate shows that the victim A was born on the 16<sup>th</sup> day of

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<sup>1</sup> *The State Vs. Francis Mohamed Fofana Komeh & John Mans* (unreported).

January 2006; at the alleged date of commission of the offence therefore, the victim was about 9 years old and this was not controverted in any way by the defence.

6.2. *Mens Rea* – As is with all criminal offences, the prosecution must prove that at the time of commission of the offence the accused, Ibrahim Dumbuya had a guilty mind. Save in exceptional circumstance, the intention behind a criminal act can only be proved by inference. See para 1010 of the 36<sup>th</sup> Edition of Archbold's Pleadings, Evidence and Practice in Criminal cases of 1966 which reads *"the intention of the party at the time when he commits an offence is often an essential ingredient in it, and in such case, it is as necessary to be proved as any other fact or circumstance laid in the Indictment. Intention, however, is not capable of positive proof it can only be implied from overt acts"*.

## 7. Evidence Analysis

7.1. PW1, was Ibrahim Sorie, the victim's uncle. He recognized the accused as someone living with his uncle, the victim's father. He recalled the 12<sup>th</sup> day of May 2015, the alleged date of the incident. His evidence before this Court is that after 4.00pm on that fateful day, as he walked towards the room of the victim's father, he saw the victim jump off the accused who was lying on the bed of the victim's father, Mohamed Kargbo. Upon seeing him, the victim ran out of the room in crying; she had only her chemise on and had no panty on. PW1 told the Court that he saw the accused with his trousers half way down his legs. The victim told PW1 she had been sexually penetrated by the accused for which he made a report to the police.

7.1.2. In answer to cross examination, the accused agreed with Defence Counsel that he has heard before that the accused had sexually penetrated another child before this incident. I wonder why Defence Counsel would ask a question for which she would not have known how the answer would affect her client's case. This answer no doubt reveals the fact that the accused has a record of penetrating children. PW1 also agreed with Defence Counsel that the victim was crying when she jumped off the accused. No follow-up question was put by Counsel leaving the Court to imagine whether or not the victim's tears were caused due to pain at the hands of the accused during the act or otherwise. The question in any event was very unnecessary and unhelpful to the accused person's case.

7.1.3. Why would the Defence Counsel ask the witness whether the victim was limping when he saw her jump off the accused? Counsel also asked whether the witness observed any fluid including sperm or blood on the victim or on her chemise as she ran off. Is Counsel confirming the allegation but saying however that it was not the accused person's first encounter with the victim or that the victim had been deflowered anyway? How helpful really was this line of cross examination to the accused' case when the offence is one for sexual penetration and not 'deflowering' a child?

7.2. PW2 was the victim, A. A gave her testimony on oath, having demonstrated her appreciation of telling the truth. She recognized the accused as someone who lived with her and her father. She told the Court that on that fateful day, the accused invited her to do what she referred to as 'finger finger', that is, for the accused to insert his fingers into the victim's vagina; that the accused covered himself up in their bed to hide from her uncle, PW1. She told the Court that PW1 met him in the bedroom together with the accused. She further told the Court that the accused inserted his penis into her vagina that the accused had inserted his fingers into her vagina. She told the Court that she was taken to a hospital, examined and treated.

7.2.1. In answer to cross examination questions put by Counsel for the accused, PW2 reiterated that the accused inserted his fingers into her vagina inside the room where they were at. She said she did not shout for help when the accused inserted his fingers into her vagina and she confirmed her dress mode as explained to this Court by PW1, that she had no dress on when PW1 saw her jump off the accused save her chemise. PW2 told the Court that she did feel pain when her vagina was penetrated and that she reported her pains when she was taken to the hospital for examination and treatment. I still am baffled as to why the questions on pain.

7.3. **PW3**, being the investigating officer, DPC 11234 Charles Conteh told the Court that on 12<sup>th</sup> May 2015, he was on duty at the Family Support Unit, Aberdeen Police Station when a report of sexual penetration was made by Mohamed Kargbo on behalf of his daughter, Umarr Kargbo. He produced an endorsed medical report he had given to the victim as Exhibit Z.

7.3.1. PW3 told the Court that the accused was arrested and brought to the Aberdeen Police Station on the 12<sup>th</sup> day of May 2015 he tendered the accused person's statement to the police as Exhibit A1-11. He tendered the birth certificate and school report card of the victim as Exhibits B and C respectively. PW3 told the Court that he charged the accused with the offence of sexual penetration on the 6<sup>th</sup> day of June 2015. He tendered the charge statement of the accused as Exhibit D1-3.

7.3.2. Again in cross examination, Counsel followed her usual lines of questioning to which the witness told the Court that he did not observe any foreign material or blood on the dress of the victim and that the victim was in a stable condition when she was taken to the police station by her father.

7.3.3. **PW4** was the Medical Doctor attached to the Rainbow Center, Dr. Matilda King. She told the court that on the 14<sup>th</sup> day of May 2015 she received, examined and treated the victim, A, at the conclusion of which said examination she prepared a Report. She tendered the original of the said Medical Report to the Court as Exhibit E1-3. PW4 told the court that her examination revealed complete rupture of the hymen. She concluded that the victim had been forcefully penetrated which was the reason why there was no hymen found on X.

7.3.5. No question was put to the PW4 in cross examination.

8. The prosecution closed its case on the 2<sup>nd</sup> day of November 2016. The Prosecutor tendered from the Bar the Committal Certificate of the accused which was marked Exhibit F1-2. On that same day the accused was put to his election pursuant to Section 192 of the Criminal Procedure Act of 1965, Act No. 32 of 1965. Having sought advice from his legal representative, the accused chose to rely on his statement to the police as in Exhibits A1-11.

9. The evidence before this Court is that the act of sexual penetration went on on the 12<sup>th</sup> day of May 2015. Counsel must remember that the charge is one for sexual penetration of A by the accused, Ibrahim Dumbuya and not one for who deflowered A.

10. As said, the accused chose to rely on his statement to the police. I shall therefore now look at what the accused said to the police upon his arrest for the alleged offence. I refer to Exhibit A1-11, which dealt with allegations of previous sexual penetration of the victim by the accused while the victim lived with her grandmother as well as the current allegation against the accused Ibrahim Dumbuya. I read Exhibit A1-11 in its entirety and I state that it was a complete denial of the allegation against the accused.

11. I note that offences of a sexual nature against a child need to, by law, be corroborated to gain conviction. Sections 6, 7, 9 and 10 of the Prevention of Cruelty to Children's Act 1960 provide for the following:

- a. abusing a child under the age of thirteen and fourteen years of age;
- b. abusing a child between thirteen and fourteen years of age;
- c. indecent assault and attempt to have carnal knowledge;
- d. procuration.

11.1. Section 45 of the Sexual Offences Act No. 12 of 2012 amended and repealed Section 6, 7, 8, 9, 10, 11, 12, 13 and 15 of Cap 31 but not Section 14 of same which means that an offence allegedly committed under section 6, for the purposes of this judgment, must be corroborated in a material particular as a matter of law. Section 6 of the said Cap 31 reads:

*11.1.2. Whosoever shall unlawfully and carnally know and abuse any child under the age of thirteen, whether with or without her consent, shall be guilty of felony, and shall be liable on conviction before the supreme court to imprisonment with or without hard labour, for a period not exceeding two years.*

11.1.3. I refer to Section 14 of Cap 31, Prevention of Cruelty to Children's Act, 1960 which states as follows:

*11.1.4. No person shall be convicted of any offence under Section 6, 7, 9 or 10 of this Ordinance upon the evidence of one witness unless such witness be corroborated in some material particular by evidence implicating the accused.*

11.1.5. The VCS of the accused was a complete denial of the allegation against him. I refer to the testimony of PW 1 Ibrahim Sorie who said in chief and in cross

that he saw the victim jump off the accused in bed as he approached the bedroom of the victim's father; that the victim had no clothes on save her chemise; that the victim, being a child ran away when she realized her uncle, PW1 must have seen what herself and the accused were up to.

11.1.6. Why would the victim be lying in the bed of the victim's father? Why would the victim be found in that uncompromising position with no panties on in the room with the accused? The accused said at page 3 of his Voluntary Caution Statement that the victim had removed her dress albeit for prayers which was not confirmed by the victim, X. The accused confirms the victim's running out of the room upon hearing her uncle's (PW1) voice. It is my holding that this testimony corroborates the victim's testimony in a material particular for which I find the accused Ibrahim Dumbuya guilty of the offence of sexual penetration of X as charged.

I hold that the Prosecution has proven its case beyond all reasonable doubt that the accused, Ibrahim Dumbuya, did sexually penetrate a child. I find Ibrahim Dumbuya guilty of the offence of Sexual Penetration contrary to Section 19 of the Sexual Offences Act, 2012 as charged in the indictment dated 24<sup>th</sup> day of February 2016.



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Hon. Jst. Miatta Maria Samba