

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT BO

(CRIMINAL JURISDICTION)

THE STATE

VS

KHALIFER ANDERSON

INDICTMENT NO. DPP/BO/2017/06

COUNSELS:

PROSECUTION: A. S. ALLIEU ESQ

DEFENCE: MS. M. S. KALLON

BEFORE THE HONOURABLE MR. JUSTICE ALHAJI MOMOH-JAH
STEVENS J.

JUDGMENT DATED THE 1st DAY OF DECEMBER 2017

The Accused Person, Khalifer Anderson, is indicted on a Count Charge of Sexual Penetration contrary to Section 19 of the Sexual Offences Act, No. 12 of 2012. The Prosecution alleged that the Accused Person, on a date unknown between the 1st day of February 2017 and the 28th day of February 2017 at Bo in the Southern Province of the Republic of Sierra Leone sexually penetrated the victim, a child under the age of 18 years to wit, 12 years.

The Accused Person pleaded not guilty to the Charge. The Prosecution filed a trial by a Judge alone application pursuant to Section 144(2) of the Criminal Procedure Act, No.32 of 1965. The Defence Counsel did

not object to the said application. The Court in turn granted the said application for the Trial to be presided by a Judge alone instead of a Judge and Jury.

The Prosecution produced three witnesses but the Defence has no witness, the Accused Person instead relied on his Voluntary Cautioned Statement made to the Police.

The First Prosecution Witness, Sheku Samura, a Detective Police constable 12051 attached at the Family Support Unit Bo West. This witness recognized the Accused Person in Court. The Prosecution Witness 1, told the Court that he recalled the 2nd day of March 2017 when a case of Sexual Penetration was reported at the Bo West Police Station. The PW1 told the Court that he issued a Police Medical request form to the victim and the victim was accompanied by a Detective Police Constable 7101 Bayoh I.K to the Bo Government Hospital where the victim was treated and an endorsed Medical report was prepared by the said Medical Practitioner. The Endorsed Medical Form was produced and tendered in Court as Exhibit A. The PW1 thereafter obtained Statements from the victim and available witnesses.

A Voluntary Cautioned Statement was obtained from the Accused Person after the Accused Person was duly cautioned by the First Prosecution Witness. Voluntary Cautioned Statement was tendered as Exhibit B, the Accused Person denied the allegation and said that there is no existing love relationship.

The Accused Person was charged by the PW1 and said Charge Statement produced and tendered as Exhibit C.

In Cross Examination, the PW1 told the Court that, the Accused Person denied the allegation of Sexual Penetration and instead mainly said that the victim is a Towns mate.

The Second Prosecution Witness was Jonathan Edward Barnett, a Police Sergeant No.1731 attached at the Law Officers' Department and the Bo High Court. According to the PW2, he went to effect service on the Victim and other witnesses but the Victim and the other witnesses were not found.

In the light of this development; the Principal State Counsel, A. S. Allieu Esq. made an application to this Court, pursuant to Section 65 of the Criminal Procedure Act no 32 of 1965 for Depositions of witnesses who cannot be found to be tendered in Evidence.

This Honourable Court, granted the application for the Depositions to be produced and tendered in Court,

The Third Prosecution Witness was Sylvanus Eustace Adekunle Wilson, the District Registrar Bo High Court. The PW3, as part of his functions, produced and tendered Depositional Evidences of Witnesses as Exhibit E, which bears the following witnesses: PW1- Jilo Misalie, PW2 Matha Misalie, and PW3 Sheku Samura, in a Preliminary Investigation entitled INSPECTOR GENERAL OF POLICE VS. KHALIFER ANDERSON, which was committed to the High Court on the 26th day of April 2017 on C/S 258/17.

In Exhibit E, the victim, testified as the First Prosecution Witness at the Magistrate Court where the Preliminary Investigation was conducted. The victim further told the Magistrate Court that she is a Class 1V pupil, and she recognized the Accused person as a towns mate. The Victim

recalled sometime in February 2017 at Gibima Village, Kakua Chiefdom, she was on her way to the garden when the Accused Person called on her. The Victim said, she responded to the call and when she got to the house of the Accused Person, the Accused Person demanded from her to have sex, but the victim said she refused, but the Accused Person forcefully grabbed her, undressed her, laid her on the parlour and penetrated his penis into her virgina. The Victim further told the Magistrate Court that blood was coming out of her virgina in consequence of the penetration of the penis of the Accused Person into her virgina. The matter according to the victim was reported to the Police and she was referred to Bo Government Hospital for treatment.

The Accused Person crossed examined the Victim; the victim mainly affirmed that the Accused Person forcefully penetrated his penis into her virgina.

The Second Prosecution Witness at the Magistrate Court was Martha Misalie, the mother of the victim, who recognized the Accused Person herein as her Brother-in- Law. This witness further told the Court below that she recalled sometimes in the month of February 2017 when the victim became seriously ill and the victim disclosed ~~to~~ that it was the Accused Person who sexually penetrated her virgina. This Witness said it was at this stage she reported the matter to the Police Station.

The Accused Person did not cross examine this witness,

The Prosecution thereafter closed its case.

COMMENCEMENT OF DEFENCE CASE:

5

As I stated earlier the Accused Person herein relied on Voluntary Cautioned Statement he made to Police which was purely denial and he does not have any witness to testify in his Defence

The Defence Counsel however submitted a written address. In the said address, the Defence argued that the Prosecution's case as presented is weak, evasive, unreliable and inconsistently uncorroborated.

The Prosecution on the other hand, made a viva voce address to the Court. The Prosecution made a graphic presentation of its case from the Depositional evidences adduced and to that of its witnesses in this Honourable Court, as being corroborated and consistent.

The LAW:

The Accused Person stand charged for the offence of Sexual Penetration contrary to Section 19 of the Sexual Offences Act no. 12 of 2012 which states '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 imprisonment'

According to the victim the Accused Person penetrated her virgina with his penis. The Sexual Offences Act no. 12 of 2012 defines 'Sexual Penetration' as 'any act which causes the penetration in extent of the virgina, anus or mouth of the person by the person or any other part of the body of another person; or by an object'

The Accused Person has mainly denied without even raising a defence of alibi and any other solid defence. I found it extremely untenable to rely on a mere denial.

A careful perusal of the case of the Prosecution, it is indeed corroborated. The testimony of the victim and the PW2 at the Court below is in my humble legal view consistent and corroborative as required by the court in the cases of R V Lucas and R V Baskerville. In fact every aspect of the Prosecution's case is reliable. For instance, Exhibit A which is the endorsed Medical Report clearly states that the victim was penetrated. The victim made a positive recognition of the Accused Person as the only person who sexually penetrated her vagina.

It is very clear to me that the Accused Person has done a complete act of wickedness to the victim. The Accused Person ought to have realized that as an adult, the victim just twelve years was not the kind of person for sexual penetration.

It is also very obvious to me that, members of the Civil Society and other Community workers have a lot to do in sensitizing members of our various communities countrywide that engaging in any act of sexual penetration with a child or juvenile is a naked act of aggression and complete wickedness considering the health implications for the girl child.

It is therefore clear to me that the Prosecution has proved its case beyond reasonable doubt as it was required in the case of Woolmington Vs DPP (1935) AC 462. The Prosecution's case is in place and very reliable, The Accused Person mainly relied on his denial Statement which in my view made to suit his convenience.

I therefore submit that the Accused Person is guilty of the Offence of Sexual Penetration contrary to Section 19 of the Sexual Offences Act, no. 12 of 2012.

ALLOCUTUS:

T. P. M. SOWA Esq:
The Accused Person is a
time offender. I ask
for mercy for the
Accused Person.

Sentence

The Accused Person
is sentenced to
Seven Years Six
Months Imprison.

Time — Time spent
in Remand must
be included.

15 1-12-19
Stevens J.