

IN THE HIGH COURT OF SIERRA LEONE
CRIMINAL JURISDICTION

THE STATE

Vs.

MOHAMED BANGURA

Presiding: THE HON MR. JUSTICE REGUNALD SYDNEY FYNN JA

Counsel :

KZ Bangura for the State

C. Tucker and Bobanie-Browne for the Defence

JUDGEMENT

Introduction & Background

1. The Accused Mohamed Bangura is charged on a one count indictment of Sexual penetration contrary to section 19 of the Sexual Offences Act 2012. The particulars of offence allege that on “a date unknown between 1st June 2015 and 30th June 2015” the accused engaged “in an act of sexual penetration with a child XY.
2. The indictment follows preliminary investigations which ended in the Magistrate Court with committal for trial on 22nd January 2016. The trial in the High Court Commenced on 29th June 2016. The indictment was read to the accused and he pleaded “Not Guilty”. The accused was represented by counsel provided by the Legal Aid Board.
3. On the same day after arraignment the prosecution applied pursuant to S 144 of the Criminal Procedure Act that the trial be proceeded with by Judge alone. The application was granted.

The Prosecution's Case

4. PW1 was Augustine John Bull and he took the oath on the Holy Koran. He testified that the mother of the child one Cecilia is now deceased and he tendered her burial certificate (Exhibit A). Cecilia was his sister. He recalled that on a certain date within the indictment period Cecilia and XY had come crying to his home in the morning. They met him there and Cecilia invited him to go with them to Cecilia's place. He did so. Cecilia told him she had observed that XY was bleeding from her private parts. The witness testified that he asked XY what the matter was and she told him it was the accused. The witness testified that he immediately went to the accused place to confront him. The accused at that time denied the allegation when confronted. PW1 then went with the accused, Cecilia and XY. At the Police the accused was detained and later released on bail. XY was examined by a Woman Police Officer. The accused went to see the witness later and begged for forgiveness.
5. During cross examination by defence counsel the PW1 stated that his testimony is based on things his sister and XY told him. He said he made a statement at the police but it was not recorded. He said at the material time the accused and his Sister, Cecilia lived close to one another. He also lived in the same vicinity. He confirmed that the accused approached him when he was released from detention and that the witness' brother one Johannes was present.
6. PW2 was the victim XY her testimony was unsworn. The court confirmed she understood the importance of telling the truth. She was eleven years old her twelfth birthday approaching on 10th September 2016. She attends primary school. She used to live in Freetown but after the demise of her mother she now stayed in the provinces with her father.
7. XY testified that she knows the accused. They lived in the same compound in Freetown. She remembers sometime in June her brother had an injury and her mother took him to the hospital. She was alone at home. She came out to ease herself. The accused took her into her parent's room. He removed her panties. He removed his pants. He raped her and she bled

from her vagina. The accused left the house. The witness felt pain in her stomach. On another occasion the witness said she had gone to buy pampers for her brother. The accused took her into an unfinished building, He raped her there. He lay upon her. He rubbed Vaseline on himself. On this occasion XY told her mum who then went to the police.

8. PW2 said she would remember the unfinished building and pictures of the building were tendered for identification marked **Z1** and **Z2**. The witness said her uncles got hold of the accused and took him to the police station. She said she was referred to and subsequently was treated at the hospital. She was given a medical certificate.
9. Cross Examined by defence counsel PW2 said the accused was her Dads friend at the time. Her Dad was not staying with them. She was living with her mum. Her Dad was staying at a nearby village. She said there are many people in the compound where she lived. She confirmed that she was going to buy something for her mum. It was at night and could have been by ten o'clock. It was dark. There were people selling close by. The accused held her mouth. She did not alert anyone. No one came to her aid. He did have sexual intercourse with her.
10. PW3 was Rosaline Sia Fillie Detective Police Constable 10005 attached to the Family Support Unit Adonkia Police Station. She recognized both XY and the accused. She had received the report and had issued XY and her mother the Police Medical Request Form for treatment at a Rainbow Center. She had received from them the filled out form after treatment. She also received statements from XY and other persons.
11. Together with one Lansana Augustine Roberts the witness obtained Voluntary Caution statement from the accused. He was cautioned and he made his statement in Krio. This was recorded in English later read over and explained in krio to the accused who signed it by affixing his right hand thumb print to the statement. The statement is signed by the witness as recorder and her colleague Lansana Augustine Roberts signed it as witness. The voluntary Caution Statement of the accused was produced tendered and marked **B 1-8**.

12. A charge statement for the offence of sexual penetration was later obtained from the accused after he had been duly cautioned. This was similarly read over to him and explained in krio after which he affixed his right hand thumb print to the statement. This too was signed by the witness and Lansana A Roberts as the recorder and witness respectively. The charge statement was tendered as exhibit **C 1-2**.
13. PW3 tendered the endorsed medical report which was returned to her by XY. This was received for identification and marked **W 1-4**.
14. Under cross examination PW3 said the incident was reported on 27th June 2015. The voluntary statements were recorded on the 30th. She does not recall when the photographs were taken nor does she know whether there are dates on the photos. She said a charge statement was taken on 24th September 2016. The accused was in custody when the statements were taken from him. He denied the allegation. He said he was asleep in his room on the night in question and that he did not see the victim. PW3 said the victim showed the police the unfinished house.
15. The state now applied pursuant to S 65 of the CPA 1965 for the deposition of Cecilia John Bull deceased by admitted into the records. The defence had no objection. The court received the deposition through the court Registrar and this is marked Exhibit **D**.
16. PW4 was Dr Matilda King. She is a medical doctor with the Rainbow Center. She recalls treating XY. She found XY's hymen was completely ruptured. A girl of 11 is expected to have her hymen intact but in the case of XY there was no hymen. PW4 did a medical report which she dated and signed. The medical report was received into evidence and marked **E 1-3**.
17. Cross examined by defence counsel PW4 said she examined the victim on the 29th June. The victim had told her the incident had occurred on the 26th June. The victim was not bleeding at the time of the examination. The witness said the rupture was older and possibly older than three days.
18. This is the prosecution's case.

The Accused Person's Election & Addresses

19. The court then proceeded to put the accused to his election. After adjournments to consider his election the accused with the aid of counsel elected that he will rely on his statement to the police and that he will not be calling any witnesses.
20. The court then gave directions for counsel to file written address. Counsel both obliged. The court is grateful for the addresses filed. Counsel have both been very helpful and I take this opportunity to thank both sides for their effort and assistance.

The Law: Sexual Penetration

21. I will reproduce S.19 of the Sexual Offences Act of 2012. It provides as follows

“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.”

22. The section is very straight forward and needs no resort to interpretation nor has there been any such request in this case. If a person engages in an act of sexual penetration with a child that person immediately commits an offence.

23. The ingredients of the offence which need to be proved therefore it would appear to me are as follows; firstly that some act of sexual penetration has occurred and secondly that it was between the accused and a child.

24. The act provides clearly that

“sexual penetration” means any act which causes the penetration to any extent of the vagina, anus or mouth of a person by the penis or any other part of the body of another person, or by an object”

25. The burden of proving sexual penetration is on the prosecution. And this is proof as is well established to a standard beyond reasonable doubt. This position is well settled and can be traced back to the well-known and much cited case of Woolmington v DPP 1935. I see no need to set out in full the principles relating to the burden and standard of proof. Suffice it to say am

fully aware of where the burden lies and to the standard to which it must be discharged as already stated.

26. A further important matter of law and or practice that should not be lost sight of in a case like this one is whether in fact there is any need for corroboration or not.

27. My understanding of the law in our jurisdiction is that a conviction can in fact be founded upon the uncorroborated account of a juvenile or any victim of a sexual offence. Such a conviction will be sound if the court (where it is by Judge alone) had warned itself of the dangers and possible unreliability of such testimony.

28. This is not unlike other jurisdictions in Africa as the following passage from a High Court in Kenya demonstrates

“It is not a rule of law that a person charged with a sexual offence cannot be convicted on the uncorroborated evidence of a complainant, but it has long been the custom to look for and require corroboration before a conviction for such an offence is recorded. There are many cases in the reports saying so, such as *Njuguna s/o Wangurimu v R* (1953) 20 EACA 196. Nonetheless, there are certain cases where convictions may yet be entered even though there is no corroboration of the complainant’s evidence. The law of East Africa on corroboration in sexual cases is as follows: The judge should warn the assessors and himself of the danger of acting on the uncorroborated testimony of the complainant, but having done so he may convict in the absence of corroboration if he is satisfied that her evidence is truthful. If no such warning is given, then the conviction will normally be set aside unless the appellate court is satisfied that there has been no failure of justice.

29. I reiterate that I have cautioned myself about the dangers associated with the uncorroborated testimony of a victim of an alleged sexual offence

The Facts as found

30. The medical Report Exhibit E 1-5 and the testimony of Dr. Matilda King, PW4 leave me in no doubt that this juvenile has been involved in sexual

activity. Such activity because of the juvenile's age must necessarily be criminal in nature. PW4's testimony was that the victim, who was only 11 years old at the material time, had no hymen when she was examined by the doctor. Whilst this is not conclusive that it was the accused who was necessarily responsible for the victim's condition it does in some measure corroborate the victim's own testimony about what the accused did to her.

31. The juvenile testified. She had no doubts and was very steady and direct in her testimony. She was sure of the events which occurred sometime in June in an unfinished building when she was on her way to get pampers for her mum. She told the court that the accused had raped her. I have no reason to doubt the accuracy of the juvenile's account. There are not alleged any conditions which would make her testimony unreliable. There is no issue of mistaken identity as the juvenile's testimony is that she knew the accused very well he being her father's friend. In fact she knows him beyond that friendship with her father. She knows he had had sexual relations with her before and that this incident was not the first and only time the accused had penetrated her.
32. The victim's statement was clear and believable. I refer in particular to her testimony that "this accused took me into an unfinished building and he raped me there. He lay on top of me, he rubbed Vaseline on himself" I find the facts she has alleged as proved and sufficient to satisfy the requirement of penetration. I note that the use of the Vaseline was to aid said penetration and the resultant bleeding and pain which the witness recounted are evidence that the said penetration did in fact occur. I find that penetration has been proved and I so hold.
33. The testimony of PW1 shows how promptly that witness and the victim's mother (who is now deceased) had acted upon finding out about the assault on the victim. There was little room for the facts or the issues to have become clouded in the mind of the victim. The victim was able to recount the facts of what had happened to her very soon after the events and whilst the details were still fresh in her mind. She was similarly at that early and fresh moment had been able to point out who was responsible

for her condition. As already mentioned it turned out to be a person the victim knew very well ie the accused.

34. Additionally I have read the accused person's statement on which he relies for his defence. The statement is an outright denial which I find unbelievable in the face of the testimony of the prosecution witnesses. Especially PW1 whom the accused went to beg for mercy. I have found no possible reason why the prosecution witnesses may have chosen to select this particular accused person and make such a heinous accusation against him. Neither has the defense proffered any reason why the prosecution witness may have chosen this accused and put him at the offending end of this set of facts. I am of the opinion that there is no such reason and that the prosecution witnesses have all been truthful. It is the accused person on the contrary who has significant reason to falsely deny the charges. That reason being the age old attempt to escape the punishment which befits the crime he has committed.

35. I do not accept the accused person's denial. I find his statement unbelievable and an attempt to avoid punishment and I so hold.

In the foregoing circumstances and for the reasons stated I find the accused guilty of Sexual Penetration contrary to section 19 of the Sexual Offences Act 2012.

SENTENCING

Having heard and considered the plea in mitigation by counsel and the convict's personal appeal for mercy, the court has also considered the tender age of the accused person and the psychological, physical and emotional trauma that the victim has been subjected to, Noting also that the prosecution proffers no antecedents the court resolves that the accused person must receive a sentence that reflects the serious nature of the crime:

The Accused is therefore sentenced to eight ***(8) years in prison (inclusive of time already spent in detention)***

Reginald Sydney Fynn JA.....