

IN THE HIGH COURT OF SIERRA LEONE
CRIMINAL JURISDICTION

THE STATE

Vs.

IBRAHIM LAHAI (AKA Somalia)

Presiding: THE HON MR. JUSTICE REGUNALD SYDNEY FYNN JA

Counsel :

KZ Bangura & VE Kabia for the State

C. Tucker and Bobanie-Browne for the Defence

JUDGEMENT

The Indictment and Plea

1. The accused Ibrahim Lahai (alias Somalia) is charged with one count of sexual penetration pursuant to Section 19 of the Sexual Offences Act 2012. Before the charge was put to the accused the prosecution applied for an amendment to change the name "Hassan" on the indictment to "Ibrahim". This was granted and the charge was put to the accused and he pleaded "Not Guilty".

The Case for the Prosecution

2. PW1 was PQ the victim of the alleged offence. She gave unsworn testimony. She lives in Freetown and attends Nursery and is in Nursery 3. She lives with her Mum and sisters. PQ know the accused and he lives close to her family. The witness recalled sometime in August 2015 her mother had gone to the market and had asked the accused to wait for her with the witness.
3. Whilst they were alone in the house the witness says the accused asked her for them (she and he) to go behind the house and do "finger finger". The witness said she told him "No". The accused told her that he would give her biscuits if she cooperated. She still said no. The accused told her that he would give her Le5,000 (five thousand leones). She still said

“no” her Mum will beat her. He then held her and put his hand on her and put his private in her. He then lifted her and took her back to the veranda. He gave her biscuits but she said she did not want. He gave the biscuits to the witness’ little sister. The accused then told the witness that if she told anyone what had happened she would die. PQ said he also told her that if she told it was she who would get beaten not him.

4. PW1 told the court that when her mum returned home she PQ told her Mum she wanted to sleep and her mum put her to bed. In the morning she bled from her private part and there was “poss” too. It was then that her mum asked her what was the matter and she explained what the accused had done. PQ said her father then went and arrested the accused and took him to the police station. She also went to the police station and made a statement. She was examined at the hospital.
5. Under cross examination the witness said she lives with her Mum and Dad. There are five of them at home. A stream divides them from their nearest neighbours. The witness said her brother and sister were with one Iye at the material time. She was alone at home with the accused on the day of the incident. At the material time her Dad was out down the road at ‘Cane Tik’
6. PW2 Mamusu is the mother of PQ. She testified that she lives in Freetown and she sells cookery. The accused lives close by. He is her customer. PQ is 6 years old. She recalls the day of the incident 4th August 2015. She was about going to do her purchases when the accused arrived to buy rice. She told him there was no more rice for the day. She also told the accused she was waiting for her husband to return home before she goes to make her purchases. She then asked him to look after PQ whilst she went to make the purchases. She then left with her younger child but left PQ with the accused. She was hoping to meet her husband on the way but she did not meet him. PW2 therefore did not go to the market as she had intended she instead bought her things from Iye a neighbour who does “fanna market” close by.
7. PW2 testified that she then returned home. When she arrived she noticed PQ was looking sad. She asked her what the matter was, PQ said nothing was. The accused was there. PW2 said the accused then bought some biscuits from her which he offered PQ who said she did not want it. The accused then gave the biscuits to the other child, the younger sister. PW2 said she put PQ to bed. In the morning it rained so the witness did not bathe PQ and the other children as it was cold - PQ, she stayed in bed late. PQ also complained about being unwell. The witness said she was going to finish selling and then take PQ to the hospital. After selling they went to the doctor but he was not in. She did not bathe the children it was still cold. The next morning, the witness said she was about to bathe PQ when she noticed PQ was messed with blood and “puss”. She went to check the bed and there was blood there too. The witness said it was then that PQ told her what the accused had done. They went to the police and to the Rainbow Center. The witness said

she recalled that on the day of the incident she had observed that the accused had been reluctant to leave her place even when his friends had come to get him.

8. When cross examined by defence counsel PW 2 confirmed that she has three children. She said the accused was a friendly customer. The accused had told her he had a sister who was her namesake. She did not know him very well. She had stayed longer at Iye's as there were other shoppers. She said the accused had come to her house around 5pm. Her neighbours are a bit far off across the stream.
9. PW3 was Dr Matilda King a medical Doctor attached to the Rainbow Center. She testified that it was on 6th August that she treated PQ. She examined the patient she found PQ had bruises on her vulva and the hymen was completely ruptured. It is not usual for a seven year old girl to have a ruptured hymen. She reduced her finding into a report which she tendered as "A".
10. Under cross examination PW3 confirmed that at the time of examination PQ was not bleeding. She also confirmed that the hymen rupture was about four days old.
11. PW4 is Millicent Lassayo of Rokel village. She is Detective Police Constable 9861 she recognized the accused as well as the PW1. PQ had had been brought in by her father to make the report against the accused. She had issued police medical form to them. Statements were received from the victim and her witnesses. The accused was cautioned and a voluntary statement taken from him. The statement was witnessed by DPC 19720 Kargbo ST. The statement of the accused was tendered as Exhibit B. A charge statement was also taken from the accused this too was signed by the witness as recorder and DPC 19720 Kargbo ST signed as witness. The charge statement is tendered and marked exhibit C.
12. PW4 during cross examination by the defence confirmed that she had taken the accused person's statement.
13. This was the prosecution's case.

The Defense

14. The Accused was put to his election. The accused elects to rely on his statement. He will call no witnesses. The accused's statement is exhibit B. Exhibit B begins with a statement in which the accused recounts the evening of the incident. In the beginning of his statement the accused denies having sex with PQ. As the statement progresses he is asked specific questions and some of his later answers are worth reproducing:

Q: PQ told me that you had sexual intercourse with her what have you got to say

A : Yes it is true

Q: Where did you get sexual intercourse with PQ?

A: In their Veranda

Q: How many times did you get sexual intercourse with PQ

A: One time.....

Q: Why did you get sexual Intercourse with PQ when you fully know that it is an offence

A: It is the works of Satan

The Law and the Burden of Proof

15. Section 19 of the Sexual Offences Act of 2012 is a straightforward provision which does not require any interpretation. The section makes it an offence for a person to engage in sexual penetration with a child. Sexual penetration is defined by the act and there is little room for misunderstanding what that means. At least no such question arises in this case.
16. An issue that often arises in these circumstances is the question of whether or not it is safe to convict on the unsworn testimony of a child. This issue is usually of greater importance where there is an issue of identity. Generally the testimony of one witness is sufficient to found a conviction. However the practice has arisen and grown stronger and expected for a court to look for corroboration in sexual offences. This is especially so when the victim is a child.
17. The court is now also expected to give a warning that it would be unsafe to found a conviction on the uncorroborated testimony of a child. Sitting as Judge alone I am similarly bound to incline my mind to this risk and to caution myself accordingly. I hereby avert my mind to the said risk and caution myself.
18. As in every criminal case the burden of proving the case rests squarely on the prosecution. This is keeping in line with that golden thread to which Lord Sackey referred in the case of Woolmington v DPP. This position is trite and requires no further literature to demonstrate it.
19. The standard to which the prosecution must prove its case is "Proof beyond reasonable doubt".
20. To prove this crime the prosecution has to establish that the Actus Reus is present namely that the accused sexually penetrated a child below the age of consent once this fact is proved the court is at liberty to infer in the absence of evidence to the contrary that the penetration was done with the necessary mens re.
21. The Act provides that

"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."

The Act provides further and 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"

The Facts as found & Decision-

22. The accused is known by the juvenile and her mother. Sufficiently for the mother to leave the daughter with the accused. The significance of this evidence is that there are therefore no issues relating to a possible mistaken identity. The accused is known.
23. The juvenile is a precocious and undoubtedly talented child with much promise. She articulated herself very well remembering and recounting the incident with such resolve that she is readily lends her telling to believability and truth. She did not waver under cross examination. She said the accused first invited her to withdraw to the back to “finger finger”. She was clear that the accused got hold of her and put his private part into hers. This surely is penetration. I accept her testimony without any reservation.
24. The testimony of the mother PW2 tells of her observing the juvenile in the aftermath of the incident as being withdrawn and sad. This demeanour was sufficiently manifest in the juvenile for the PW2 to enquire about her health and if anything was the matter. This was immediately after the PW2 had returned to the house and whilst the accused was still present.
25. The juvenile’s detailed recollection of other details including the promise purchase and offer of biscuits underscores the accuracy of her recollection especially so considering that these are corroborated in every particular by PW2 regarding the details which happened in her presence.
26. I have noted that since PW2 returned home and observed the juvenile’s sad disposition there is no evidence to suggest that Juvenile was not from then on continuously under the eye and supervision of her parents right through the rain and her illness the next day up on to the third day when she was examined at the rainbow centre. The significance of this would be that it was only after the accused had had care of the juvenile that she went into the withdrawn seemingly sad state which her mother observed. No person else is known to have had contact with the juvenile or could have had the opportunity to tamper with the juvenile. These circumstances in my opinion lend further credence to the juvenile’s recollection.
27. The medical report from Rainbow Center is in evidence and in her testimony Dr. King told the court that hymen rupture was of a recent date no more than four days. I accept this to be corroborative of the juvenile’s account that she was penetrated by the accused. The juvenile has told the court of the penetration and the doctor has found that indeed she was penetrated. The outstanding question would have been by who but then the juvenile has in a believable manner answered this pointing the accusing finger at the accused with nothing whatsoever to undermine or in any way detract from the strength of her testimony.

28. I also find that the accused her lured the mother into a false sense of security. This came out during cross examination. PW2 testified that the accused had told her she and the accused sister were namesakes. PW2 thought he was a friendlier customer than the others he lingered behind and appeared to be helpful. As it turned out his motivation was not genuine he was merely on the hunt. To prey sexually on the innocent girl child of the house.
29. The accused person's statement is also crucial to my conclusion. Whilst it does contain a denial. The passage I have quoted from it above appears to sit very well with the evidence led by the prosecution. It is very much in consonance with an attitude of guilty. It is not uncommon for a person who has faltered fallen short or committed a crime to lay the blame at the foot of "the devil" or "satan". This is exactly what this accused has done in his statement to the police. Whilst this is in my opinion evidence of his guilty it is not on it alone that I base my conclusion, rather I rely for my conclusion on PW1s testimony the medical report and the observations of PW2 in the immediate after math of the incidence.
30. Before I conclude let me sound the much sounded note of caution here. It is no excuse that a mother may have been careless or taken something of a risk with her child for the accused to tamper with that child. It is certainly no excuse. However mothers called upon to be doubly careful. They must be less trusting and must prod on with love when they notice a change in a child any child but especially a girl child. That extra care may in many a case of this kind avert the completion of the crime by depriving the would-be-perpetrator of the opportunity in which to commit this heinous crime.

Based on the evidence before me and the forgoing considerations I find that the prosecution has proved its case beyond reasonable doubt. I therefore find the accused guilty of Sexual Penetration of the juvenile as charged contrary Section 19 of the sexual Offences Act.

Sentencing

I have listened carefully to Counsel's plea in mitigation and to the convict's personal plea for mercy. The following matters have remained paramount in my mind as I consider an appropriate sentence for this offence which is punishable by a maximum of fifteen years in prison; the tender age of the juvenile not being more than seven years old, the fact that she was violated in the sanctity of her home the place where she should be safe, the trauma physical, psychological and emotional that this crime has caused the juvenile to suffer. It is also ever present in my mind that punishment is geared towards rehabilitation and correction. I am aware that the convict is a young man (though an adult and much older than the juvenile) and should have the opportunity to return to society as a useful citizen.

With these various considerations in mind I consider ten years in prison a fitting punishment for the crime.

I therefore sentence the accused to ten (10) years in prison.