

By an indictment dated the 7th day of November 2019 the accused person (Sheku Collier (Tapo) was charged with one count of sexual penetration Contrary to section 19 of the Sexual Offences Active 2012 Act No 12 of 2012. The particulars of the offence reads that the accused person on the 20 August 2019 at Freetown in the western area of the Republic of Sierra Leone sexually penetrated Aminata Sesay a child.

Burden and standard of proof: In line with the criminal principle that a person is innocent until proved guilty, the onus of proving each lies squarely on the prosecution and the standard must be beyond all reasonable doubt. This principle is subject to the defence of insanity and statutory defences.

The accused in sexual penetration cases has no duty to prove his innocence even if his defence is disbelieved. Where he puts up an alibi, he does not assume the duty of proving it. It suffice if he manages to raise some doubt in the Court's mind.

STATUTORY PROVISION : Section 19 of the Sexual Offences Act No 12 of 2012 reads

"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. Sexual penetration mean any act which cause penetration to any extent of the vagina, any or mouth of a person by the penis or any other part of the body of another person, or by an object ".

A child mean a person under the age of 18. Section 4 of the said Act says that a person below the age of 18 is not capable of giving consent and it shall not be a defence to show that the child consented to the act that forms the subject matter of the charge. This provision however is subject to the provision of section 24 of the Act.

Elements of the offence : The prove that either the vagina, anus was penetrated or penetration of the mouth by the use of penis or any part of the body of another person or by the use of an object.

the aforementioned can be done by testimony of the victim, testimony of other witnesses i.e who saw the act, who the child reported the assault to and medical evidence. It is not part of the element of sexual penetration that the victim should have injuries. What is necessary is proof of penetration and lack of consent. In this present case consent is not an essential element because of the age of the victim (Aminata Sesay) subject..... However, identification of the accused person is very vital of the prosecution is to succeed. In ascertaining whether or not the accused person was properly identify, the Court is required to take into account such factor as whether the witness knew the accused before the incident, the time when the incident is alleged to have taken place, the length of time and opportunity the witness took observing the accused and the distance between the two. (See the case of Uganda vs Wilson Simbwa Supreme Court Criminal Appeal No 37, see also the case of N'tambi Francis Vs Uganda Criminal Appeal No 19/98, Court of Appeal.

The test for accepting evidence of identification is therefore freedom from possibility of error. The reason why this is important is because the accused may possibly put up a defence of alibi. In other words the accused person may completely deny..... offence and say he was not even at the scene at the alleged scene at the relevant time. This is what exactly the accused person in

this present case has done. According to him he was with his boss one Ishmael at the time the alleged crime occurred.

It is, however, important to note that in the present case the victim (Aminata Sesay) PW2 sufficiently identified the accused person and stated further that he had known accused person before the incident. The victim PW2 told the Court about her knowing the accused person before the alleged incident in Cross Examination. See page 4 of the Records. In fact the victim went further to give her answer in Cross Examination as follows:- "I had known the accused person before now but never knew that he possesses such habit of raping children. It was indeed the accused person that sexually penetrated me on the day in question".

However, it is trite law that where an accused person put forward an alibi as in the present case, to answer a charge, he does not assume any burden of proving that answer. The burden to disprove the alibi is on the prosecution by placing the accused at the scene of the crime. Eventhough the prosecution partially did so in their evidence in chief, the defence in Cross Examination asserted the prosecution in placing the accused person at the alleged scene of crime. See Supra. In the case of Remegious Kiwanuka Vs Uganda Criminal Appeal No 41/95 Supreme Court. In this case, a teacher a teacher was alleged to have defiled his student. The teacher denied the offence and put forward an alibi. The Supreme Court Stated

"The appellant was a teacher at the school where the complainant was a pupil. she knew him well and the incident took place broad daylight. There conditions were therefore favourable to to correct identification. The testimony contained a detail account of what happened from time to time when the appellant sent her to buy sugar and how she was ravaged by the Appellant".

The Supreme Court found that the trial court and the Court of Appeal was justified in accepting the complainant's evidence as truthful and rejecting the Appellant's defence of alibi as having been negated by the complainant's evidence.

Corroboration : Under the common law the evidence of a complainant in a sexual offence must be corroborated with either direct or indirect or circumstantial evidence. I have therefore worn myself of the danger of convicting this accused person on the uncorroborated evidence of the victim. Corroboration in this context is adduced independent evidence which connects the accused to the crime, confirming in some material particularly not only the evidence that the crime has been committed but also that it was the accused person who committed it. I have therefore directed myself to this question of corroboration.

Failure to make a prompt report not necessarily fatal to prosecution case. In this present case the victim after the Sexual assault did not immediately informed her mother (PW3) but few hours after the alleged incident the victim (PW2) returned home and PW3 saw PW2 walked abnormally. Under interrogation, PW2 told PW3 that she has a "boil". She was asked by PW3 to lie down so that butter would be applied on the boil. When PW2 lied down, PW3 observed the vagina of PW2 swollen up and also observed which substance that resembles sperm. PW3 also observed blood coming out of her vagina area had been vaginated. (See 1st paragraph at page 3 of the records). According to her the vagina was ruptured and disfigured. upon these observation PW3 shouted and called a neighbour who advised PW3 to report to the police which she did. This in my opinion is corroboration of the evidence of PW1. See the case of Eria Ngobi Vs R (1953) 20 EACA 154 Court of Appeal for Eastern Africa.

Medical evidence can be used to corroborate the allegation that the complainant had sexual intercourse was without her consent and that it was the accused person who had intercourse with the complainant. The evidence of PW1 is that the accused person grabbed her and removed her pant and inserted his penis into her vagina. PW4 Dr Olabisi Claudius Cole. According to the Doctor the area between the vagina and anus (perineum) was tendered painful to touch. The hymen was partially ruptured with a tear of 7 There was a deep laceration extending from the hymen tear down labia. Minoria. mejora. There was a sore oozing with purple. The vagina was red, inflamed and copious offensive to now rush discharge.

..... adduced evidence that the injuries found in PW2's vagina is consistent with traumatic sexual assault. In the absence of another expert opinion evidence, I found the evidence of PW4 reliable and corroborate the evidence of PW2.

Evidence of the Defence : The accused person relied on his statement he made to the police and called one witness DW1 (Ishmael Dauda Kamara). The accused person claimed that he does not know the victim (PW2) and that raised the defence of alibi. As I have stated earlier, the accused person was sufficiently identified by PW2 and besides she had known the accused person before the incident. I will therefore conclude that the prosecution has negated the alibi raised by the defence.

Conclusion

In the light of the legal principles cited Court of Appeal and Supreme Court authorities cited above and with due consideration of the evidence adduce, the prosecution has proved its case beyond reasonable doubt and I will therefore find the accused person guilty of this offence of sexual penetration of PW2 a child whose age was ten (10) at the time of the alleged crime.

Allocatus

Accused Person ÷ I ask for mercy.

Defence Counsel: I join the accused person in asking the Court for mercy. The accused person is a young man. He is a father of a 4 year boy. I plead with you to temper justice with mercy.

The prosecution says he knows of no antecedents with regards the accused person. Reference was made to section 35 paragraph g of the Sexual Penetration Act, 2012 which tailored in age of the child as one of Aggravating Factor that warrants a maximum punishment.

Sentence : In light of the plea, in mitigation put forward by the accused and his defence Counsel and also with due deference to Section 35 paragraph g of the Sexual Penetration Act 2012, the accused person (Sheku Collier (Tapo) is sentenced to fourteen (14) years imprisonment. Sentence start to run from the day of incarceration.

The accused person has been informed of his right to appeal the judgment within twenty-one (21) days from today's date.

8/7/2020.