

IN THE HIGH COURT OF SIERRA LEONE  
(HOLDEN AT FREETOWN)

THE STATE

VS

FAYIA MUSA

**BEFORE THE HON. MR. JUSTICE JOHN BOSCO ALLIEU, J.A.**

**JUDGMENT DELIVERED THIS DAY OF 2021**

COUNSEL:

K. CONTEH AND A. KARGBO - FOR THE STATE  
C. TUCKER - FOR THE ACCUSED

**JUDGMENT**

**I**

By Indictment dated 25<sup>th</sup> October 2018, the Accused pleaded NOT GUILTY on a 1 (one) Count Charge as follows:

**STATEMENT OF OFFENCE**

SEXUAL PENETRATION contrary to Section 19 of the Sexual Offences Act 2012.

**PARTICULARS OF OFFENCE**

FAYIA MUSA on the 20<sup>th</sup> June 2018 at Freetown in the Western Area of the Republic of Sierra Leone sexually penetrated ISHIATU KAINE, a child.

**II**

The Prosecution called 5 (five) witnesses in support of its case. P.W.1 is Alice Magsay- D/Sgt 9928 attached at the Deep Eye Water, F.S.U., Waterloo Police Station, Freetown but formerly attached at the F.S.U., Harbour Police Station, Freetown.

She recalled 20<sup>th</sup> June 2018. She was on duty at the F.S.U., Harbour Police Station, Freetown, when the victim, Ishiatu Kaine was brought in by her Aunt and reported a case of Sexual Assault. Statement was obtained from the victim and all relevant witnesses. Police Medical Request Form was issued to the victim for examination at the Rainbow Centre, Cottage Hospital, Freetown, which was returned, endorsed by the Medical Doctor.

On 25<sup>th</sup> June 2018, the Accused was arrested and brought to the Police Station. Contemporaneous interview statement was obtained from him by this witness together with D/Sgt 8298 Bangura M. The Judges' Rule was followed in obtaining the Statement which is tendered as "Ex. A". No objections by Defence Counsel. During the investigations, this witness ascertained that the victim was 15 (fifteen) years old.

On 4<sup>th</sup> July 2018, the Accused was charged with the offence of Sexual Penetration. The Judges' Rule was followed in obtaining the said statement which is tendered as "Ex B". No objections by Defence Counsel. This witness testified that before charging the Accused with the said offence, she visited the scene of crime. Although she could not recall the date, she visited the scene of crime together with the victim, the Accused and two (2) Police Officers namely Lamin Bundor and D/Sgt 8298 Bangura M. The scene of crime was an unfinished building with no windows and the front view was blocked by old and rotten zinc. The back view was open, and the scene of crime located at Main Savage Square junction with a zinc structure located at the back thereof. There were no occupants therein. The building is divided into rooms and the victim identified the room where she was sexually penetrated by the Accused.

This witness was Cross-Examined by Defence Counsel. She answered that statement was obtained from the Accused five (5) days after the report had been made and that was when the Accused was arrested and brought to the Police Station. She further answered that 3 (three) Police officers and herself brought the Accused to the Police Station after he had already been arrested by the parents of the victim and a group of people. The witness didn't know whether the Accused had already been beaten up by the group of people. The group of people did not follow them to the Police Station. The witness answered that it was D/Sgt 8298 Bangura M. who recorded the statement.

There was no questions for this witness in Re-Examination.

### III

P.W.2. is Ishiatu Kaine, who lives at Haggan Street, Fourah Bay Road, Freetown. She is the victim in this matter. She lives with her Aunt. She is a house help but formerly a Pupil. She recognized the Accused in this matter.

She recalled 20<sup>th</sup> June 2018. The Accused met her on the street and enquired for her name which she willingly made known to him. At that time she was together with her sister. The Accused told her that he is in love with her and asked her to go with him to Savage Square. She went with him together with her sister. The Accused told her sister to stand by the door and if somebody else come by, she should inform him. The house where the Accused took her at Savage Square was an unfinished structure. The Accused undressed himself and forcefully undressed her. In the process, she fell down, the Accused laid on top of her and inserted his penis into her vagina. She felt pain and blood oozed out. The Accused then gave her the sum of Le3,000/00 (Three Thousand Leones), demanded further sex and again had sexual intercourse with her. She told him that she wanted to go to the toilet and he got up from her. Blood still oozed out from her vagina. The Accused then gave her the sum of Le2,000/00 (Two Thousand Leones) and they parted in their different ways. On her way back together with her sister, they met their Aunt at Savage Square who enquired as to where they had been and they told her. She told them to accompany her to the unfinished house at Savage Square which they did. She also enquired about the Accused but they told her that he had gone his own way.

Her Aunt took her to the Police Station and made a report. She made statement to the Police and was given a Medical Request Form to visit a clinic. At the time of the incident, she testified that she was 15 (fifteen) years old. The witness was cross examined by Defence Counsel. She could not recall the year of the incident but that the incident occurred in the afternoon. There was one young man in the unfinished house who the Accused told that he should excuse him. She maintained that she went together with her sister and that it was the first time that she had seen the Accused.

She maintained that the Accused had sexual intercourse with her.

She answered that the Police Station where the report was made is located in Freetown and that a Medical Request Form was given to her Aunt but the clinic which they visited is located in Bonthe. She was taken to the clinic in Bonthe days after the incident had occurred. She reiterated that the Accused had sexual intercourse with her. There were no questions for this witness in Re-Examination.

#### IV

P.W.3. is Miniratu Fuller who lives at 12 Haggan Street, Freetown. She is a Pupil of Jemilatu Ark Primary School, Haggan Street, Freetown. She lives together with her Grandma, Uncle and Sister. She knows one Ishiatu Kaine, the victim in this matter, who is also her sister. She also recognized the Accused who is called Fayia Musa. She recalled 20<sup>th</sup> June 2018. She was fetching stones together with the victim, Ishiatu Kaine, when the Accused came along and greeted them. The Accused said he is in love with the victim and that he wanted to talk with her. They went along but she followed them to Fourah Bay Road where they entered an unfinished building. The Accused told her to stand outside and he blocked the door with a piece of board. The Accused told her to be on the look out for him. Some children attempted to enter the building and the Accused told her that if she failed to keep a proper look out, he will beat her up. She saw the Accused giving his sister the sum of Le3,000/00 (Three Thousand Leones). The Accused and the victim re-entered the house and after they came out, he gave her sister the sum of Le2,000/00 (Two Thousand Leones) whilst he gave her the sum of Le1,000/00 (One Thousand Leones). Thereafter, they went on their different ways. On her way together with the victim, they encountered their Grandmother who enquired from them where they had been and they indicated the place to her. When they went to the unfinished building together with their Grandmother she enquired for the Accused but they told her that he had gone away. Her grandmother took her to the Police Station where she made statement.

This witness was cross examined by Defence Counsel.

She recalled 20<sup>th</sup> June 2018 but she had not known the Accused before that date. From 20<sup>th</sup> June 2018, she had seen the Accused only twice and she didn't know his place of abode. She maintained that she is a pupil and that the victim, P.W.2, Ishiatu Kaine, is a pupil as well. On that date both of them went to school and it was after school that they saw the accused. It was when the Accused greeted them that she knew him. The Accused visited their home at a later date and enquired for Ishiatu Kaine, the victim and P.W.2. in this matter. It was at that time that her Aunt identified him to their Grandmother who went to the Police Station and called the Police. The Police arrived and took the Accused away.

There were no questions for this witness in Re-examination

#### V

P.W.4. is Lucy Gibrill, a caterer and housewife who lives at 12 Haggan Street, Freetown. She recognized the Accused in the dock. She also know the victim in this case called Ishaiatu Kaine, P.W.2. She recalled 20<sup>th</sup> June 2018. On that day, she went to work at "The Tree of Life" Ministry. When she was off work, she saw Miniratu, her grandchild, who was called and identified as P.W.3. She saw her uniform hanging outside and as a result went to look out for her and the victim, Ishiatu Kaine, P.W.2. She did not find them but saw the containers which they used for fetching stones. Going down Canteen Street, she saw both the victim, P.W.2. Ishiatu Kaine and P.W.3., Miniratu Fuller. She held on to them and enquired where they had been. They told her that it was one man who had lured them away. They

took her to the place where the man had taken them to which was an unfinished building at Savage Square, Fourah Bay Road Junction. She enquired from them who the man was and they replied that they did not know him around the area. She also enquired from them if they can identify the man if seen and they replied in the affirmative and said that he uses a walking stick. Upon further enquiries, Miniratu, P.W.3, told her that it was the man and Ishaiatu who went inside the house whilst she was standing at the door. The witness said that she was taking the matter to the Harbour Police Station. The witness enquired from the victim, P.W.2, Ishiatu Kaine, whether the man they were referring to did anything to her and she told her that the man had sexual intercourse with her on two occasions. On the first occasion, the man gave her the sum of Le2,000/00 (Two Thousand Leones) and the sum of Le1,000/00 (One Thousand Leones) to Miniratu P.W.3. When she enquired from them if they knew the man who gave them the money, they replied in the affirmative. They told her that the money was received from the man who had sexual intercourse with Ishiatu, P.W.2. The witness testified that she went with both P.W.2. and P.W.3 to the Harbour Police Station together with the money, which they received where statements were obtained from all of them. Two (2) days thereafter, a Police Medical Request Form was issued to the victim, P.W.2, Ishiatu in order for her to go to the Rainbow Centre. At the Rainbow Centre, Fourah Bay Road, the victim, P.W.2. Ishiatu Kaine was examined and treated with the Medical Form endorsed which was returned to the Police.

On Monday 25<sup>th</sup> June 2018, she was at home when one child went and informed her inside the house that one man with a walking stick is outside and was enquiring for P.W.2, Ishaiatu. Together with P.W.3, they went outside to the street in order to see who the man was. When they went outside, both Miniratu, P.W.3. and Ishiatu P.W.2., identified the Accused as the man who took them to the unfinished house. The man identified by P.W.2. is the Accused in the dock.

This witness further testified that she had the phone number of the Police and she called them and immediately they responded and came to the scene. The Police then arrested the Accused and took him to the Police Station. She later went to the Police Station and was able to know that the name of the Accused is Fayia Musa. When the Police Officers came to the scene around their house, after she had made the phone call to them, the Accused started pleading with them. She seriously admonished the Accused about the way girls are handled in society. The Police Officers took the victim away. She indicated that at the time of the reported incident, the victim, P.W.2., Ishiatu Kaine was 15 (fifteen) years old.

This witness was cross examined by Defence Counsel. She answered that the area where Ishaiatu, P.W.2. and Miniratu, P.W.3. showed them, that is, the unfinished building at Savage Square and Fourah Bay Road is located in a populated area. People were living around that building and there were no doors, windows and even locks on the unfinished building. When she was taken to the building by Ishiatu, P.W.2. and Miniratu, P.W.3., she did not see the Accused. Rather, she saw one boy who was sitting down on the steps. The witness further answered that she took the victim, P.W.2., Ishiatu out of Freetown to Bonthe after 20<sup>th</sup> June 2018. It was after the case was committed that the victim, P.W.2., Ishiatu, came back to Freetown as she was on holidays in Bonthe. She knew about this by what she witnessed and what Ishaiatu, P.W.2, told her.

There were no questions for this witness in Re-examination.

## VI

P.W.5. is Dr. Olabisi Claudius Cole, a Medical Doctor who also works at the Rainbow Centre, Fourah Bay Road, Freetown. She had been working at the Rainbow Centre since 2003. She recalled 27<sup>th</sup> June

2018. She was at the Rainbow Centre where she had cause to examine Ishiatu Kaine, the victim and P.W.2. in this matter. She was referred to the Rainbow Centre by the Police. This witness testified that her findings upon examining the victim, P.W.2., Ishiatu Kaine, were reduced in writing in a Medical Certificate which she stamped, signed and dated and tendered in this Hon. Court as "Ex C". There were no objections by Defence Counsel to its tendering thereof and the contents were read in evidence. This witness further testified that the hymen is a tissue surrounding the vagina opening and is usually with a smooth edge but if ruptured, the tissue cannot be seen. The witness indicated that the discharge from the victim, P.W.2., Ishiatu, had a bad smell and that the hymen suggests that there was some form of penetration. According to her, at the time the victim was examined, she was 15 (fifteen) years old. She testified that the victim was treated based on their findings and a follow up visit was recommended. This witness was cross examined by Defence Counsel. She answered that there are other ways in which the hymen can be ruptured and that at the age of 15 (fifteen), the victim, P.W.2. Ishiatu, had already reached puberty.

There were no questions for this witness in re-examination.

## VII

The prosecution closed its case after tendering in evidence "Ex D", the Committal Warrant.

## VIII

At this stage, I am to refer to the Statement made by the Accused to the Police. That statement forms part of the Prosecutions' case as well as the Defence. In his statement made to the Police on the 25<sup>th</sup> June 2018 and tendered as "Ex A" in this Hon. Court, the Accused admitted to the allegations made against him. The accused told the Police that he is a beggar. One day, after begging, he saw the victim, P.W.2. and her sister, P.W.3. along Fourah bay Road, by Savage Square. He greeted the victim, P.W.2., who responded and he asked her to be his friend. The victim P.W.2 told him that she is hungry and he gave her some money and went on his way. However, he continued to be friendly with the victim, P.W.2. and on a later date invited her to walk along with him. The victim P.W.2. followed him to an unfinished house where she asked him to have sexual intercourse with her in return for money. The Accused had sexual intercourse with her and gave her some money and they dispersed in different ways. On Monday 25<sup>th</sup> June 2018, he was passing along Fourah Bay Road where the victim P.W.2. resides and was arrested by the parents of the victim P.W.2., who called on the Police.

The police arrived at the scene and arrested him. In the question and answer session that followed the interview, the Accused admitted, inter alia, that he had sexual intercourse with the victim on two (2) occasions in an unfinished building around Fourah Bay Road and Savage Square. He described the unfinished building, how they had sexual intercourse and the amount of money he gave to both the victim, P.W.2. and her sister P.W.3. He told the Police the role, P.W.3. the younger sister of P.W.2. the victim was asked to play that is by standing outside and keeping a look out for any intruder whilst he, the accused, was having sexual intercourse with the victim, P.W.2.. He further admitted having sexual intercourse with the victim, P.W.2., in the unfinished house and pleaded with the Police not to charge the matter to court.

## IX

In his case, after the options were put to the accused, he choosed to testify from the witness box and did not call any witnesses in support of his case. The testimony of the accused from the witness box

was done on Wednesday 4<sup>th</sup> March 2020. The accused testified that he is a cripple and lives together with his colleagues in the central part of Freetown. He denied the allegations of sexual penetration against Ishiatu Kaine levied against him. He testified that he had not known the victim before and only knew her on the day he was arrested. He said that he was begging in the streets and when he arrived around Fourah bay Road one woman who was sitting outside a zinc structure came forward and arrested him alleging that he has had sexual intercourse with her daughter, the victim P.W.2.. The woman took him to the Harbour Police Station where he was detained. He was in cells for more than 10(ten) days before he was charged to court. The police obtained statements from him whilst he was in custody at the Harbour Police Station. The allegations were put to him and he denied. He had not known the mother of the victim, the sister of the victim and the victim prior to the day of his arrest.

He didn't recall the day and date he was arrested. He denied having sexual intercourse with the victim, P.W.2.

The accused was cross examined by the State Counsel.

He denied having told the Police in his VCS, "Ex A" obtained on 25<sup>th</sup> June 2018 that he had sexual intercourse with the victim on two (2) occasions. He also denied telling the Police in his said VCS "Ex A", that he gave the victim the sum of Le5,000/00 (Five thousand Leones) after having sexual intercourse with her.

He further denied in his VCS, "Ex A", made to the Police, that he took the victim, P.W.2., to an unfinished house where he had sexual intercourse with her and later gave some money to her sister who had accompanied her to the said unfinished house.

The accused maintained that he is a truthful witness.

## X

Both the State Counsel and the Defence Counsel informed this Hon. Court that they are waiving their respective rights to closing addresses.

This case was therefore withdrawn for judgment.

## XI

Where the Accused pleads "NOT GUILTY" to an offence as charged, the Prosecution is obliged to prove at the trial every fact or circumstances stated in the indictment which is material and necessary to constitute the offence charged. The burden of proof of guilt lies upon the prosecution, and it is not for the Defence to prove innocence - *see the observations of Sankey L.C. in Woolmington Vs. DPP (1935) AC 462.*

If there is a real state of doubt, the prosecution has failed to satisfy the onus of proof which lies upon him - *R.V. Stoddart 2 Cr. App. R. 217.* For the above principles as enunciated, see paragraph 1001 page 361, Archbold Pleading, Evidence and Practice in Criminal Cases, 36<sup>th</sup> Edition, Butler and Garsia, 1995 Reprint WMW Gaunt & Sons Inc. In the instant case, the Accused made a confession statement to the Police which said statement was not objected to by the Defence Counsel and the same is tendered as "Ex A". The Accused gave a detailed explanation of what transpired on the 20<sup>th</sup> day of June 2018 between the victim, P.W.2. and himself.

Accordingly, in paragraph 1128 page 423, EFFECT of CONFESSIONS, Archbold, Pleading, Evidence & Practice in Criminal Cases, thirty sixth edition, Butler and Garsia, 1995 Reprint WMW Gaunt & Sons Inc. it is stated as follows:-

“A free and voluntary confession of guilt by a prisoner, whether under Examination before Magistrates or otherwise, if it is direct and positive, and is duly made and satisfactorily proved, is sufficient to warrant a conviction, without any corroborative evidence.”

From the above mentioned provision, what more evidence would the prosecution need to adduce in order to prove its case against the Accused beyond reasonable doubt?

But the Accused testified on oath and denied the allegations. I note that the confession statement was made on the 25<sup>th</sup> June 2018, when the Accused had the earliest opportunity to respond to the allegations made against him and he admitted. Two (2) years thereafter, that is, Wednesday 4<sup>th</sup> March 2020, when the Accused was in gaol he gave a sworn statement from the witness stand denying the allegations. Why didn't he deny the allegations when they were put to him at the earliest time, immediately after the incident? Why didn't he narrate all what he has said in this Hon. Court denying the allegations when he had the earliest opportunity to do so? But again, it is not for the accused to prove his innocence. It is still for the prosecution to prove its case against the Accused beyond reasonable doubt.

## XII

However, with the Accused's testimony under oath denying the allegations, I am to reiterate that the accused is charged under Section 19 of the Sexual Offences act 2012, Act No. 12 of 2012 which states 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”.

In the interpretation Section of the said Act, that is Section 1 thereof:-

“Child” means a person under the age of 18

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

In relation to the statute and the aforesaid definitions, it is imperative for the prosecution to prove the following :

1. That the victim is a child
2. That there was an act of sexual penetration
3. That the act was perpetrated by the Accused.

According to the evidence of P.W.2., the victim in this case, proof of the respective above elements were clearly illustrated. She was a girl of 15 (fifteen) years old who positively identified the accused as the perpetrator. Although the accused denied the allegations under oath, the medical findings “Ex C”, indicated that the victim, P.W.2, was tampered with and she was able to link the sexual assault with

the accused. Could a 15 (fifteen) year old girl told a lie against the accused with whom no animosity existed prior to the incident? I do not think so. No doubt existed in the proof of the Prosecutions' case against the Accused.

I will now advert my mind to the issue of Corroboration. The principle of law is that in all cases of sexual offences, Corroboration is required - see paragraph 1299 page 484 Archbold Pleading, Evidence and Practice in Criminal cases, 36<sup>th</sup> Edition, Butler & Garsia, 1995 Reprint, WMW Gaunt & Sons Inc. What is required is independent testimony which affects the Accused by tending to connect him with the crime, that is, evidence direct or circumstantial, which implicates the Accused, which confirms in some material particular that the Accused committed the offence - see paragraph 1296 page 482, Archbold Pleading, Evidence & Practice in Criminal Cases, 36<sup>th</sup> Edition, Butler & Garsia, 1995 Reprint, WMW Gaunt & sons Inc.

In the instant case, the evidence of P.W.3., Miniratu Fuller, clearly corroborated the evidence of P.W.2., the victim Ishiatu Kaine

### XIII

Based on the totality of the evidence adduced in this Hon. Court and whichever angle it is looked at, it is my considered view that the prosecution has proved its case against the Accused beyond reasonable doubt. The Prosecution has thereby discharged the relevant burden and standard of proof placed on its shoulders.

AND THE ACCUSED is hereby FOUND GUILTY of the offence as charged.

Having taken into consideration the plea in mitigation made for and on behalf of the Accused by his counsel and further taking into consideration the impairment of the Accused, he is HEREBY SENTENCED TO A TERM OF IMPRISONMENT OF 7 (SEVEN) YEARS with the time already spent in prison to be deducted from the said term of imprisonment.

.....  
HON. MR. JUSTICE JOHN BOSCO ALLIEU J.A.