

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

GIBRILLA SESAY

Counsel:

For the State: V.E.A. Kabia (Ms), D.Sawyer (Ms) & P. Hastings-Spaine (Ms)

For the Accused: C. Campbell Esq.

JUDGMENT DELIVERED ON 15TH DAY OF DECEMBER 2022 BY HON. MRS. JUSTICE JAMESINA E. L. KING J.A

I. Background

1. Gibrilla Sesay, the Accused was arraigned on 15th December 2020 charged with the offence of sexual penetration contrary to section 19 of the Sexual Offences Act 2012, Act No. 12 of 2012 as repealed and replaced by section 4 (a) (iii) of the Sexual Offences (Amendment) Act 2019, Act No. 8 of 2019. The particulars of the allegation are that Gibrilla Sesay on a date unknown between the 1st day of August, 2020 and the 13th day of September, 2020 at Freetown in the Western Area of the Republic of Sierra Leone, engaged in an act of sexual penetration with, a child named in the indictment whom I will refer to as MK or the Victim.
2. Gibrilla Sesay pleaded not guilty to the offence. The indictment dated 20th November 2020, summary of witness statement and extract of findings were duly signed by the Attorney-General.
3. The court granted the prosecution's application for the Accused, to be tried by judge alone instead of by a jury pursuant to section 144(2) of the Criminal Procedure Act 1965 as repealed and replaced by section 3 of the Criminal Procedure Amendment Act 1981 Act No. 11 of 1981 in the interest of justice and for the speedy determination of the case.
4. The Accused is a masoner and was 31 years on the date of the report of sexual penetration against him. The victim was 7 years at the time of the incident and lived in the same neighborhood with the Accused.

5. An application for bail by the Accused Counsel was denied after consideration of an affidavit in opposition filed in accordance with the provisions of Regulations 3(2) of the Bail Regulations 2018.

II. Summary of the Evidence

Prosecution's Case

6. Five witnesses testified in court for the prosecution and were cross-examined. They were the victim's mum, the victim, the investigator, a friend of the victim and the medical doctor.
7. PW1 was Ruth Lansana mother of the victim. She stated that the victim was born on 4th June 2013 and lived with her grandmother. She knew the Accused who lived in the same community with the victim. On 12th September 2020 she was home with the victim and observed she was using the toilet very frequently and her husband asked her to find out why this was happening. She asked the victim about whether her friends had tampered with her and she responded in the negative. She told victim that if she failed to tell her what happened to her she will take her to the hospital for examination by a machine which will explain everything.
8. She made a report at the Congo Cross Police Station and reported that the victim lived with her grandmother who was out of town and was now staying with her on holidays at the back of President Lodge Hill station. She was referred to New England Police Station as it was the area where the incident happened. Before going to New England Police Station, she went to King Harman Road Hospital at the One Stop Centre. The victim was examined and treated and she was given a brown envelope which she took to the New England Police Station. She made a statement to the police and told them that the victim told her that it was the Accused who put his hand on her and threatened her. She did not have any relationship with the Accused except they were all living in the same community.
9. Under cross-examination she said she was a petty trader moving around selling soap. She recalled 1st August 2020 – 13th September 2020 that it was the time the victim her child told her about what the Accused did to her. It was in August that the victim told her about it. She denied that in August the victim was with her grandmother. She denied that she told the police that it was 12th September that the child told her about it and insisted that she went to the Police on this matter in August, however she cannot remember the day in August. In answer to the question where was the victim when Accused met her and penetrated her, she said that the victim was in the field with her friends when the Accused penetrated her. She agreed that it was in the afternoon during broad daylight at an unfenced field and people moved unrestricted. She stated that it was an empty land and they named it the field.
10. She did not tell the hospital staff that the victim was unwell, they treated her and gave her a document for New England Ville Police Station. She knew that the Accused was a masoner and she has seen him assisting in the building of houses. She did not know that

when the Accused goes to work he only returns at night. She denied that she had suggested to the victim that she was interfered with. She said that the victim told her about it. She maintained that it was the victim who told her that Gibo did it to her and nobody showed her the name of the person who did it to her.

11. The next witness was PW2 the victim who testified on 10th February 2021. She gave her full names to the court, she lived at Red Pump and was 7 years old. Special measures were adopted to have the victim and another witness who was a child to testify behind a screen pursuant to an application made under section 40 of the Sexual Offences Act of 2012. Because the victim was 7 years old she was examined by the court and she seemed to the court to understand the nature of the oath and took the oath. She attended Christ United International Academy School and was in class 2. She lived at home with her grandmother, her mother and sister. She knew the Accused Gibo and knew him at the field. It is downfield where they normally play near her house.
12. She remembered the dates between 1st August and 13th September. They were in the field and Gibo called her and put his hand on her and gave her Le1,000 and told her that if she spoke she would not see her mother and father. He put his hand on my "bifo" (in our local parlance her private part). She was in the field when he did that to her and the incident happened at the field behind her house. There was nobody around when the incident happened. When she told her mother she took her to the hospital where she was examined. She made a statement to the police.
13. The Court provided the witness two teddy bears to demonstrate what the Accused did to her. She put the teddy bear representing Gibo on top of her body. When the Court asked her what Gibo did to her she said it was his hand that he put on her.
14. Under cross examination she said she did not know how many people are called Gibrilla or Gibo. She confirmed she was in class 2 and she stayed with her grandmother and during holidays she stayed with her. She was living with her mum when she asked her about the incident. She stated that the field was a big field and Christiana, Hawa, Sata, Julie and Fatou were with her at the field. It was in the afternoon and she was playing with her friend. When asked whether her mother and father shouted at her to talk she said no. She recalled being at the police station and it was a woman who recorded her statement and her mother was seated near the woman.
15. The next witness was PW3 Tania Fergusson D. Sgt.8660 attached to the FSU New England Police Station. She is an investigator, recorded matters and took statements from complainants, victims and accused persons. She told the court she knew the victim in this matter and also knew the Accused. On 14th September 2020 whilst on duty with DPC 13198 Conteh M. and DPC 13298 W. Nicol, victim together with her father arrived at the station with an endorsed medical report form. She referred them to the line manager Madam Robert who allocated the matter to her colleague Winstona Nicol for investigation. The witness identified the endorsed medical request form.
16. On 18th September Accused was arrested and brought to the station for investigation. The witness and Winstona Nicol obtained a statement from the Accused, cautioned and

questioned him. The statement was obtained in Krio, recorded in English, read over and explained to the Accused in Krio which he accepted to be true and correct. The witness signed as recorder and Winstona Nicol signed as a witness. The Accused signed by affixing his right hand thumb print. The Voluntary Caution Statement (VCS) of the Accused is signed, dated and complete and is the original. The Defence did not object to its production and was tendered as Exhibit A1 – 8.

17. Under cross examination, the witness agreed that she obtained the VCS from the Accused. The Defence suggested to her that she was the key investigator and took an important role and the witness responded that she just recorded the VCS as the lead investigator. She said that the statement was contemporaneous as she posed the questions. Asked whether she realized that the alleged scene of crime is an open field she said yes. Asked whether it was done during the day and not during the night as alleged, the witness said she could not recall because she was not the sole investigator. She recalled that the complainant said it was during the day. Asked whether she spoke to the alleged victim, she said she did not. She said she was told that the child or victim was among her peers during that time. Asked whether she had seen the charge statement she said no. Asked whether she was surprised that the matter was charged to court, she said she was surprised. Asked whether she was able to understand what were the findings in the medical request form, the witness said that she did not go through it. She took them to her line Manager and the matter was allocated to the sole investigator W. Nicol.
18. She was re-examined and stated that W. Nicol was the lead investigator. The witness said that she received the medical report.
19. The next witness PW4 was 7 years old, she gave her full names to the Court and will be referred to as JAK. She took the oath after the court questioned her to ascertain whether she understood the nature of the oath and the importance of telling the truth. Testifying behind a screen, she told the court that she recalled 1st August - 13th September 2020. She was playing at the field near her house, Gibo called MK the victim (she explained that the victim had another name but was known in school as MK). She said that Gibo the Accused put his hand on the victim and when asked what she meant she said Gibo put his hand on the victim's "bifo" (vagina). He then gave her Le1,000 with "diamint" (a sweet). She also said he took out a knife and threatened the victim that if she said anything he will kill her. Asked whether she was present when Gibo threatened the victim she said no. Asked how she knew about it, she said the victim told her.
20. Under cross examination she said that nobody explained to her the incident at the field. She also said that the incident occurred a long time ago. She said that there were a lot of people using the field and at that time there were people in the field and it was during the day. She was not near the victim when the incident happened.
21. The next witness PW5 was the medical doctor, Dr. Satu Issa attached to the King Harman Road Hospital. Some of her duties were to look after victim of sexual and gender based violence, examine them, do lab examination, give medication and produce a report every month on sexual and reproductive health services as the Deputy Programme Manager for

reproductive health and family planning Ministry of Health. The witness has worked at the One Stop Centre at King Harman Road Hospital for about 11 months to one year. Before working at the said Centre she used to work at the Obs & Gyn Department at the PCMH before going to do a Masters in public health.

22. The witness told the court that she knew the victim on the day of examination when she was brought to the Centre on 14th September 2020 at around 2pm. She received a medical request form from the police station, examined the victim and signed the medical certificate. She counselled the victim as she was a minor of about 7 years. She counselled both the Mum and the victim. She took a medical history of the victim, examined her and prescribed medication for her. She examined the victim to ascertain that what she had said was true. After examination she prepared the medical report which she signed. She was not alone during the examination, she had a midwife and nurse with her. Original Medical report signed by the witness tendered as Exhibit B1 -5. The report was read by the witness. A portion of the report was that the Accused sexually penetrated the victim more than 4 times by inserting his fingers into her vagina and gave her Le1,000 and threatened to kill her if she told anyone about what had happened and that she will not see her parents again.
23. The witness told the Court that the victim was not walking properly, and she had called the name of the perpetrator who inserted his fingers into her vagina. The witness observed that the victim was alert, oriented and not in any respiratory distress or life threatening condition at that time. She did not see any fresh wounds. The witness said that for the genital findings, the hymen was completely ruptured in all four ends, 3, 6, 9 & 12 as could be seen on the face of the clock and there were only remains of hymen seen. She also saw scanty blood and lacerations on the labia minora. It was the victim's mum Ruth Lansana who accompanied the victim to the Centre. The witness stated that for the hymen to completely rupture it can be as a result of object, finger, pen, penis and vigorous exercise like riding a bicycle.
24. She further stated that the scanty blood and lacerations on the labia minora (inside) can be caused by a force concentrating on that part. If the wound was the majora or outside it could be as a result of a bigger blunt object. But according to her since this wound was on the inside i.e. the minora it could have been caused by a smaller object and something concentrated or penetrated toward that area.
25. Under cross examination, she stated that the request form was from the FSU as the victim went to the police station before coming to the One Stop Centre. She stated that on the report Gibrilla Sesay's name was boldly written. She further stated that when the victim was talking to her she was saying Gibo and she was strictly going by what the victim was telling her and not what the police wrote. Asked how long the examination took, she responded that the victim was a minor and in order to get information she had to be cajoled. As a result, the examination took about 2 ½ hours.
26. Asked whether laceration is something that had to do with physical injury, the witness said yes and with an object. Asked if there are no incident of laceration devoid from physical,

the witness said you have to get an external force for a bruise to get a laceration. The Defence Counsel referred the witness to the report where it was written no physical injury seen at the time of the examination. He then asked the witness whether she would be surprised that the victim told the court that it was only once that the accused allegedly sexually abused her. The witness said she was not surprised at all as she is a minor. For the medical person what the victim says it what is written down they do not change what the victim said.

27. Defence Counsel put it to the witness that it was inconsistent for her having stated that there were no physical injuries seen to say there were lacerations in the labia minora. The witness explained that the genital findings were different from the physical injury. The physical injury is what she can see when the victim removes her dress, it is just the outside and different from the genital area when it is examined. She was asked to show where was outside written in the report. She further explained that in the document they only write physical examination i.e. what is seen outside and this is the form of the report set up by the Centre. Asked whether she wanted readers to understand that genital is not related to physical, the witness responded that genital is not physical, particularly the labia minora and that it is unlikely to be seen because it is inside.
28. Asked whether she indicated that scientific instruments were used to conduct the examination, the witness said that they do use equipment in the examination. She used aneroid light to aid her vision during the examination, disposable gloves, masks and face shields for protection. Asked whether the mother named the accused as responsible the witness said that at the close of the interview with the victim the mother just emphasized what the victim said. Asked whether the back of the report is part of the report, she responded that it was part of the report as she always wrote the medication at the back of the 4th page. Asked whether her examination and findings were assisted by the Mum who accompanied the victim, her response was yes.
29. The prosecution Counsel closed the prosecution's case by producing the original copy of the summary of witness statement attached to the indictment as Exhibit C1-4 pursuant to section 42(3) of the Sexual Offence Act No. 12 as repealed and replaced by section 4 of the Sexual Offences Act 2019 Act No. 18 of 2019.

The Case for the Defence

30. The Accused was put to his election pursuant to section 194 of the Criminal Procedure Act of 1965. He elected to testify on oath and called witnesses. The Accused DW1 Gibrilla Sesay told the court that he lived at Angola Town, Goderich before the incident. He is a masoner and recalled the police officer Fergusson who took a statement from him at New England Ville Police Station. The Officer told him that he had been accused of the offence of sexual penetration between 1st August – 13th September of the child who testified in court.
31. He denied sexually penetrating the child as alleged. He had a contract at Angola Town to build a three-bedroom house in June 2020. He was there in June, July August and

September at the site. His boss gave him some money and he took it home for his child. On his way home he met the Police Officer waiting for him at the field.

32. He knew Aruna and James whom he worked with. James Momoh Stevens is nicknamed "Kosobo". On September 14, he came to drop money for his child and was told by the Police Officer that a report had been made against him. His Mum was not at home and when she returned was surprised at the allegation and the fact that she did not know about it. He was taken to the police behind the counter and made a statement after 3 days. He was arrested in the evening. The police told him that the report had been made against him in August.
33. During cross-examination, the witness agreed that in his neighbourhood most people called him Gibo. He stated that prior to moving to Angola Town he was staying at Red Pump Tengbeh Town and had been living there for 19 years. He agreed that the victim was in his neighbourhood. He denied having a cordial relationship with the victim and said that he had a cordial relationship with her father who normally gave him contracts. He knew the victim's grandmother and had a cordial relationship with her as he worked for them and built their house. He did not have access to the house and was not visiting the house. At the time he was building the house the victim was not yet born.
34. The witness said he lived with his mother wife and kids and is the breadwinner. His wife is unemployed and his mother is engaged in petty trading and is a cook at the U.N. building. He went to live at Angola Town in June 2020 when he started the job. He spent 4 months at Angola Town before he was arrested. He was arrested in September. He stated that during the 4 months, he was supporting his family but not always as he received payment of his monies by stages. He supported his mother and the home. He received advance payments. He was supposed to receive the 2nd half instalment and got arrested. The first payment was in June. He received the money at Red Pump and not Angola Town.
35. His child is not going to school as she is 2 but he also takes care of his deceased brother's children who are boys and going to school. He agreed that most times he visited the children to check on them. At the construction site he is in charge and approve materials, collects them from the caretaker at the site and signs for them. He does not leave the site to collect the materials. The other workers are his subordinates. He is the one who purchases foodstuff for them. He agreed that on 18th September 2020 he left the site to purchase food at Angola Town junction. He knew Sal who is his boss. He is a diamond dealer and lives at Red Pump. He agreed that he normally collected money from his boss at Red Pump. He received the first money from his boss on the site. At the site he does not work on Sunday but work on the other days. He had 2 workers working under him and hired 3 from Angola Town as labourers and including himself they are 6 workers on site. Whether every worker had assigned tasks for the day the witness responded that no, not all of them can lay blocks and only the 3 of them can do so. He agreed that there was division of labour and work by panel and every worker works on their share of work.
36. The witness was referred to his evidence in chief that he only left the site on 14th September 2020 and he said yes that was the only time he left the site to give financial

support to his child. Counsel for the prosecution also referred him to the statement to the police when he said he only left the site on 18th November 2020 and the witness confirmed that was what he said. He agreed making a statement to the police and signed it and confirmed he could read. Counsel read from pages 3 – 4 of his statement lines 13 -21 which stated that on the 18th he left the site to collect money from his boss to buy food. The witness agree that was correct. He said he did not know whether the 18th was a Thursday or Friday. He also did not know what day was the 14th September when he said it was the only day he left the site. He did not know as it was a long time.

37. Asked whether it was the victim who identified him when he was arrested, the witness said no as he met the Police at his house waiting for him. He said that the victim was not with the Police. Counsel for the Prosecution read page 4, line 5 – 10 of the witness statement which said “when I noticed 2 police officers and victim”. Counsel put it to the witness that in his statement he said the victim was with the police when he was arrested. The witness said no, the victim was not with the police at the time of his arrest and that he had never seen the victim and only heard her voice when she was giving evidence in court. When asked whether he knew Juliana Campbell he said no. He further denied that it was the victim who identified him when he was arrested and maintained he met the Police waiting for him at his house and they told his Mum that it was Kaday who made a report against him.
38. DW2 Adama Kargbo was the next witness for the Defence. She lived at No. 21 Red Pump and is unemployed. She knew the Accused in the dock who was her son. They all lived at Red Pump. She knew that the Accused worked at Angola Town from 2020. The Accused is a masoner. He worked at Angola Town for 8 months. In June last year (2020) she was asked to cook for a wedding. At the wedding Kaday the mother of the victim asked for the Accused and she told her he had gone to work. In August, Kaday the mother of the victim asked for the Accused. She said she had some work for him at Lungi. She told her that Gibrilla the Accused had been away from home and was working for over a year.
39. In September the Accused came home. Everybody was happy to see him. She told him that he does not come home to see his child and wife. He promised to come. Kaday and police officers and her brother came to her house. The witness said she asked Kaday what her son the Accused had done and reminded her that was the work she was asking about. The witness said she lived in a big compound and said that when the Accused was arrested, Kadi the mother of the victim started abusing when the people around said that the Accused was not home.
40. Under cross examination when asked whether before the Accused started working at Angola Town he was living with her she said no. She knew the child allegedly penetrated by the Accused, she resides at Red Pump community. She agreed that the Accused is married and has one child, and that his wife is not working. Both his wife and children are living with her and she is taking care of them. When asked whether before leaving for Angola Town the Accused, his wife and child were leaving in the same address, the witness said that the Accused never lived with his wife and child as they both lived with her. She

said that the wife had her child when she was living with her. When asked what was the Accused's address before he left for Angola Town, the witness responded that it was at 21 Red Pump. The witness confirmed that she was residing at 21 Red Pump. She said she was unemployed. She denied that the Accused left Angola Town in June 2020, she said he left in February 2020. Again the witness said that the Accused left in February 2020 and it was in June that Kaday's father told her that Kaday was getting married and wanted her to prepare the food.

41. She agreed that the Accused spent 8 months at Angola Town, that the breadwinner of the family was the Accused as he was her only child and that during the time he was at Angola Town from February 2020 – September 2020 the Accused was the person supporting the family. When he failed to come home she will go to him at Angola Town. When suggested that there were days when Accused slept at home at Red Pump from February – September 2020 the witness said he was not coming home.
42. When asked whether she saw Accused before his arrest, she said she was present when he was arrested in September 2020 as he had come home to visit her. She said that the victim was not present when he was arrested and could not remember the date of the arrest. She stated that Kade the victim's Mum only met her once in August not twice to ask for the Accused. When asked whether Kade met her in July, the witness responded that she met her for her marriage in July. She confirmed that the Accused did some work for the victim's father a long time ago.
43. Counsel made reference to the witness evidence in chief when she said that the victim's mother met her and told her she wanted to do some construction work in July. The witness responded that in July's Kade's mum Nyawo asked her to cook for Kade's upcoming wedding. Asked whether the relationship between the victim and Accused was cordial the witness said yes it was very cordial. The witness in response to Counsel stated that in July it was the victim's step father who asked for the Accused as he had worked for him a long time ago. She confirmed that Kade the victim's mother is married to Pa James. Counsel put it to her that she had stated that the Accused constructed a house for the victim's father not step father, she responded yes but it was a long time ago.

Summary of Submission by Counsel for the parties

44. Both Counsel made oral submissions to the Court. Counsel for the Defence referred to the evidence of the alleged victim which purported that the Accused in broad daylight and in an open field in a community which the population is dense where other children were playing and market women passing by was where it was alleged that the Accused penetrated the victim. He submitted that this was not only confirmed by the victim but also the police officer investigating. He submitted that it was not a matter of law but a reasonable tribunal should look into the circumstances of the case. He submitted that there was no evidence to render unreliable the testimony of the Accused when he raised the issue of alibi that in fact at such

- time and on most occasions he was at Adonkia, a town in Goderich area to do masonry work as he is a masoner.
45. He referred to the allegation on the medical report that the Accused sexually penetrated the victim over 4 different occasions whenever she goes out to play not alone but with other children in broad daylight in the afternoon. Counsel submitted that the testimonies of the prosecution witnesses were rendered unreliable as a result of cross examination and the Court cannot rely on them to convict the Accused for the offence alleged. He concluded that the prosecution's attempt to send an innocent man to prison has failed because of lack of evidence that will warrant a conviction and asked the Court to acquit and discharge the Accused person.
 46. Prosecuting Counsel referred to the standard and burden of proof which was beyond reasonable doubt as enshrined by Woolmington V DPP and the elements of sexual offence of a child which the accused is charged with which were the age of the victim, sexual penetration of the victim and the mental element of the Accused.
 47. She referred to the evidence of the victim's mother as the date of birth of the child; 14th June 2013 page 12 line 4 of the Court records (CR), corroborated by the victim and the medical history in the report when it was indicated that at the time of examination the victim was 7. On sexual penetration, on the dates unknown between 1st August 2020 – 17th September 2020, she submitted that the victim was sexually penetrated by the Accused and referred to the evidence of PW2 the victim that "Gibo called me and put his hand on me and gave me Le1,000 and said if I speak I would not see my mother and father. He put his hand on my "bifo".
 48. She submitted that this testimony satisfies the element of sexual penetration and was corroborated by the evidence of the medical doctor PW5 who testified that victim was not walking properly when the examination was done, that her hymen was ruptured in all 4 ends at 3, 6, 9, and 12 O'clock and scant remains of hymen, (page 31 lines 18-20 CR), complete rupture of membrane, scanty blood and laceration, small wounds and bruises on minora. She further referred to PW5's testimony at page 32 which revealed diverse ways the hymen could be ruptured and that in the instant case the scanty blood and lacerations were caused by a force concentrating, sharp object and since the wound was inside it could have been caused by a smaller object and something concentrated and penetrated towards that area (page 33 lines 14 – 18 of CR). She referred to the victim's mother's testimony that she was curious when she saw victim not walking properly and frequently urinating and interrogated her and to victim's response that it was Gibo who penetrated her.
 49. On the mental element she submitted that there is no dispute that the Accused did penetrate the victim. She submitted that out of desperation to gratify himself, lured the victim to a secluded area in the field and executed his vicious intention. She also submitted that the Accused in the execution of his unlawful act employed psychological intimidation and threats of physical harm to the victim. She further submitted that the Accused failed to consider the disparity between himself and the victim with respect to age and physique being aware that the victim was a child of 7 years who reposed trust in him referring to him as Uncle Gibo and

the accused betrayed that trust. She submitted that the Accused skillfully lured the victim away from her peers whilst playing in the field to a hideout behind the victim's house which is close to the field see page 17 lines 21 -24 when the victim said that the incident happened at the field behind my house. She submitted that the prosecution therefore inferred from the act and behavior of the Accused that he had the requisite mens rea at the time he committed the act.

50. On the issue of identification of the Accused, Counsel submitted that the victim identified the Accused as someone she knew, a neighbour and whom she is familiar with and positively linked him to the offence and her identification remained intact. She referred to him as Gibo and as the perpetrator to her mother, her friend Juliana PW3 and the medical doctor PW5. She submitted that assuming the name Gibo was suggested to the victim, a child of such tender age of 7, she would not have been able to maintain such consistency in her identification of the Accused.
51. On the defence of the Accused Counsel submitted that being the breadwinner of his family he could not spend 4 months from his unemployed wife, aged mother who makes meagre earnings from petty trading and his 2-year-old child and deceased brother's school going children. She submitted that it is clear that the Accused paid regular visits to give financial support and check on their well-being, which Accused confirmed during cross examination (see page 48 lines 19 – 21). This she submitted countered his statement that he only left Angola Town once on 18th September 2020 in his VCS. In examination in chief he said he left Angola Town for Red Pump on 14th September 2020 and noted that when he was confronted about the disparity regarding the dates he stated that on 18th September 2020 he left the site to buy food at Angola Junction. She pointed that the Accused was arrested on 18th September 2020 at Red Pump at his premises.
52. On the testimony of the Accused's mother, Counsel submitted that it was fabricated as she failed woefully to corroborate the Accused person's testimony. She pointed out that in her testimony she stated that she resided at No. 21 Red Pump and prior to the Accused's departure for Angola Town he was not residing with her. However, she referred to her cross examination of Accused mother when asked the address of the Accused before the alleged incident she stated No21 Red Pump similar to her address. She also referred to the Accused statement which debunked his mother's testimony when he stated that prior to the incident he lived with his wife, mother and child at the same address at Red Pump. She submitted that the testimonies of DW1 the Accused and DW2 his mother were inconsistent and contradictory and the motive for the lies and inconsistencies was the realization of guilt and fear of the truth.
53. She also submitted that from the testimonies of DW1 and DW2, it is apparent that neither the victim nor her parents had a desire to act out of revenge or malice against the Accused. Counsel concluded that the prosecution had led evidence beyond reasonable doubt on the charges of sexual penetration that would warrant the conviction of the Accused as charged. Counsel therefore urged the Court to find the Accused guilty and to convict and sentence him accordingly.

Review of the law and evidence

The Law

54. The Accused is charged with the offence of sexual penetration contrary to section 19 of the Sexual Offences Act 2012 Act No. 12 of 2012 as repealed and replaced by Section 4(a)(iii) of the Sexual Offences (Amendment) Act, 2019 act No. 8 of 2019. The said section 4 (a)(iii) in the 2019 Act provides as follows;

"A person above the age of a youth who engages in sexual penetration or rape on another person commits an offence and is liable on conviction to a term of imprisonment of not less than fifteen (15) years to life imprisonment"

55. It is alleged that the Accused on a date unknown between 1st day of August, 2020 and the 13th day of September 2020 at Freetown in the Western Area of the Republic of Sierra Leone engaged in an act of sexual penetration with MK (not her full name), a child. The Accused pleaded not guilty to the offence.

56. Section 1 of the Sexual Offences Act 2019 state that

"sexual penetration" means "any act which causes 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" and

a "child" "means "a person under the age of eighteen".

57. This is a trial by judge alone and as a judge of the facts and the law, I can only find the Accused guilty if the prosecution leads evidence proving beyond reasonable doubt every element of the offence charged. Each one of these elements should be proved beyond reasonable doubt as required by law a principle enunciated in *Woolmington v. DPP (1935)* AC 481 at 482, adopted and confirmed by many cases within our jurisdiction.
58. The prosecution must prove all of the elements of the crime, namely age of victim; sexual penetration of the victim by the Accused and the intention of the Accused at the time he committed the offence. In proving intention, paragraph 1010 of the 36th Edition of *Archbold Pleading, Evidence and Practice in Criminal Cases* states as follows: "The intention of the party at the time when he commits an offence is often an essential ingredient in it, and, in such case, it is necessary to be proved as any other fact or circumstance laid in the indictment. Intention, however, is not capable of positive proof it can only be implied from overt acts".
59. Corroboration is not provided for in the Sexual Offences Act of 2012 clearly indicating that it was not the intention of Parliament when they created the offence of sexual penetration that it should be required, a marked departure from the Prevention of Cruelty to Children Act Cap 31 of the Laws of Sierra Leone 1960. Section 14 of Cap 31 expressly stated that no person shall be convicted of any offence of unlawful carnal knowledge and indecent assault of children under sections 6, 7, 9 or 10 upon the evidence of one witness unless such witness be corroborated in some material particular by evidence implicating the

accused. Section 14 prohibited conviction of the aforesaid offences upon the evidence of one witness unless it is corroborated. I have in earlier judgments expressed my view that it was an oversight by Parliament to have repealed the said sections 6, 7, 9 and 10 without repealing section 14.

60. Be that as it may, as a common law jurisdiction, it has been the practice under common law to look for corroboration in sexual offences. However, the court can convict on the uncorroborated evidence provided a caution is given and the court is satisfied beyond reasonable doubt about the guilt of the Accused. I therefore caution myself accordingly as I proceed to review the evidence. Corroborative evidence has been held to take different forms including lies or false statement by the Accused (see *Creditland v Knowler* 35 Cr. App. Rep. 48 & *R v Lucas* (1981) 2 AER 1008) For a lie to be corroborative, it must be deliberate, relate to a material issue and the motive for the lie should be the realization of guilt and fear of the truth; and it should be shown by evidence that the statement is clearly a lie (see *R v Lucas*) supra. Mere denials without more do not constitute a lie.

61. The issue for determination is whether the prosecution or the State has discharged the burden of proving their case that the Accused committed the offence. Whilst the prosecution must prove the guilt of the Accused, there is no such burden laid on the Accused to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the court of his innocence.

62. I have reviewed the evidence of the witnesses of the prosecution, and exhibits tendered to determine whether the prosecution has discharged the burden of proof in respect of the offence. I have also considered the evidence led by the Defence as well as the closing addresses of both Counsel for the parties.

(a) Age of the victim

63. Section 1 of the Act defines a child as a person under the age of 18 years. The facts of the offence as charged and the testimonies of the Victim and her mum and, the investigating officer and the medical practitioner, are to the effect that the age of the victim was 7 years and this was corroborated by the victim's evidence that she was 7 years old when she testified in court. The Victim also stated that she was a class 2 pupil. The age of the child or the fact that the victim was a child was never disputed by the Defence but was confirmed by the Accused in his testimony as well his mother's testimony when they referred to the Victim as a child. Whilst testifying in court, I also observed the Victim's physical appearance and demeanor and concluded without any doubt in my mind that she was definitely a child and under 18 years and I so hold.

(b) Sexual Penetration of the Victim by the Accused

64. The Victim's testimony as set out in paragraphs 12 & 13 above is proof of sexual penetration by the Accused. She was composed and her evidence was very convincing. The evidence of penetration was that the Accused had put his hand in her vagina penetrating it consistent with the meaning of sexual penetration in the Act set out above.

She was cross examined and her evidence was unshaken during cross-examination. She was consistent about the identity of the person who had sexually penetrated her, that it was the Accused. He threatened her that if she spoke she would not see her mother and father. Her evidence about penetration was corroborated by the medical doctor PW5 in her medical report examining victim and in her evidence in court.

65. The report under genital findings stated that there was a complete rupture of the hymen and in her evidence this was in all four positions 3, 6, 9, 12 as seen on the face of the clock. Her evidence was that there were only remains of hymen seen. (see page 32 of CR). The report also stated that there was scanty blood and laceration of the labia minora. In her evidence she explained that laceration was a small wound and bruise and elaborated that the ruptured hymen can be as a result of object one of which was the finger. I do recall that in her testimony the victim consistently said that the Accused had put his hand in her vagina. I also note from the evidence of the doctor PW5 that the victim had difficulty walking and from her mother that she was urinating frequently which was unusual and led to the interrogation when she told her Mum what the Accused had done to her.

66. I believe the evidence of the victim about the act of sexual penetration by the Accused as well as the evidence of the doctor and victim's mother who as a result of what they observed pointed to injuries this victim sustained in her vagina. The only explanation before this court about that forceful and calculated penetration which led to the injury was that the Accused was responsible and that he even gave the victim Le1,000 after the said act of penetration. The testimonies of the victim, her mother and the doctor were convincing and credible, and were not discredited during cross examination or by the testimonies of Accused and his mother.

(c) The Intention of the Accused

67. The intention of the Accused refers to his guilty mind which is incapable of positive proof but by inference from his overt acts. The evidence is that the Accused had a plan which he put into action, he had access to Victim who was his neighbour, he waited for an opportune time when she was out playing with her friends and he lured her to be alone and penetrated her giving her money thereafter and threatening her. This disclosed his mental element that he intended to sexually assault the victim knowing fully well that she was a child yet he took advantage of the fact that she knew and trusted him.

68. On the issue of the identity of the Accused, I find that the Victim knew the Accused very well as a neighbour which is not controverted and referred to him as "Gibo or Uncle Gibo" which showed some amount of familiarity with the Accused.

Defence's case

69. Accused denied sexually penetrating the Victim. He did not deny knowing the victim and her family, he confirmed that he had worked for the family and had a cordial relationship with the victim's father. They were neighbours at the Red Pump area where the incident occurred. The Accused admitted that his house was at Red Pump with his mother wife child and nephews yet his defence was that during the relevant dates he is alleged to have

penetrated the victim, he was at Angola Town working and only came home once. This was contradicted by his evidence during cross examination and that of his mother who admitted that he did pay visits home. It is without any doubt that periodically the Accused visited the area of the scene of crime to visit his family to give them financial support and check on them, to also see his boss whose site he was working on at Angola Town and who lived in the Red Pump area.

70. I do not believe the evidence of the Accused when he denied committing the offence. The defence of alibi the Accused raised therefore failed as he was not always at Angola Town working but visited Red Pump on a number of times and was even arrested there when he paid such visits. This gave him an opportunity to have committed the unlawful act against the victim. Counsel for the Accused challenged how such an incident can occur in a field in broad day light with passersby and whilst the victim was with her friends. The evidence of the victim was that *"she was in the field when he did that to her and the incident happened at the field behind her house. There was nobody around when the incident happened"*.
71. I have cautioned myself on relying on the evidence of the victim earlier, however I believe and I am convinced that she was telling the truth. The evidence by the Accused that he only was at that location once which was the day he was arrested and the testimonies of the victim, her mother and even the Accused testimony in cross examination when he was at the location a number of times during the relevant period proved that he was lying. Further corroboration of his whereabouts can be found in the evidence of PW4 the victim's friend who said they were in the field playing and Gibo called the victim. This evidence confirms the victim's story that Gibo was at the scene of crime the field which is an empty land. PW4 also confirmed that she was not near the victim when the victim was violated as the victim narrated the incident to her. This also confirms the victim's account that she was alone with the Accused when Accused sexually assaulted her and I so find. The Accused's only reason for lying was clearly to cover his guilt regarding the crime he perpetrated against the victim and I so find.

Conclusion

72. Having regard to the above, I find that the prosecution has proved all the elements of the offence, beyond all reasonable doubt, that the Victim a 7-year-old was sexually penetrated by the Accused Gibrilla Sesay also known as "Gibo" on a date unknown between the 1st August 2020 and 13th September 2020 and as charged. I therefore find the Accused Gibrilla Sesay guilty of the offence of sexual penetration contrary to section 19 of the Sexual Offences Act of 2012 as repealed and replaced by Section 4(a) (iii) of the Sexual Offences (Amendment) Act 2019, Act No. 8 of 2019 and convict him accordingly.

V1. Sentencing

73. Allocutus/Plea in mitigation. See Court file.

74. I have taken into account the allocutus and plea in mitigation, the pain, injuries and trauma as a result of Accused crime against the victim of 7 years and his accompanying violent threats. The victim trusted the Accused as a neighbour but the Accused who was 21 years older than the victim breached that trust violating her which injured her not only physically but certainly such an act no doubt will have caused emotional and psychological trauma to the victim. There are no mitigating factors on the contrary there are aggravating factors. Girls and women must feel safe in their communities and be protected from violence particularly by those whom they know and trust who are living in their communities.

75. I therefore sentence the Accused to (twenty) 20 years imprisonment which shall include time spent since his arrest in September 2020.



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HON. MRS. JUSTICE JAMESINA E. L. KING J. A