

**IN THE HIGH COURT OF SIERRA LEONE**  
**HOLDEN AT FREETOWN**

**BETWEEN:**

**THE STATE**

**VS**

- 1. MOHAMED KAMARAINBA MANSARAY**
- 2. MARION AROUNI**



**U. SUMARAY(MS.)**

**-**

**PROSECUTING**

**E.S. ABDULAI ESQ**

**- 1<sup>ST</sup> ACCUSED PERSON'S COUNSEL**

**J.M. JENGO ESQ**

**- 2<sup>ND</sup>**

**ACCUSED PERSON'S COUNSEL**

**THE HON- MR. JUSTICE S.O.M. TAYLOR JA.**

**-**

**PRESIDING**

**BACKGROUND:**

By indictment dated the 14<sup>th</sup> day of August 2020, the Prosecution proffered an Eight Count Charge against the Accused Persons to wit:

On count one: The Statement of Offence reads Conspiracy contrary to Section 43(b) of the Sexual Offences Act No. 12 of 2012. The Particulars of Offence reads ... Mohamed Kamarainba Mansaray and Marion Arouni on diverse dates between that day the 31<sup>st</sup> day to March 2020 at Freetown.... To commit the Offence of Sexual Penetration.

On count two: The 1<sup>st</sup> Accused Person was charged with Sexual Penetration contrary to Section 19 of the Sexual Offences Act of 2012, as repealed and replaced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 No. 8 of 2019). The Particulars of Offence reads: Mohamed Kamarainba Mansaray on the 14<sup>th</sup> day of February 2020 at Kono... engaged in an act of Sexual Penetration with the Victim - A Child.

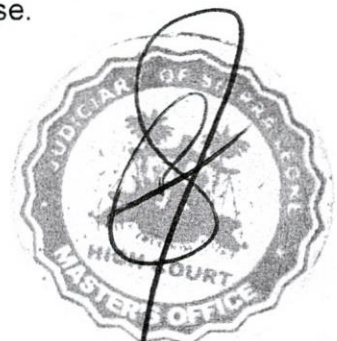
On count 3 the charge was Sexual Penetration contrary to Section 19 of the Sexual Offences Act No. 12 of 2012 as repealed and replaced by Section 4 (a) (iii) of the Sexual Offences (Amendment) Act No. 8 of 2019. Particulars of Offence reads: Mohamed Kamarainba Mansaray on a date unknown between the 21<sup>st</sup> day of February 2020 and the 28<sup>th</sup> day of February 2020 at Kono ... engaged in an Act of Sexual Penetration with the Victim – a child.

On count 4 the statement of Offence reads: Sexual Penetration contrary to Section 19 of the Sexual Offences Act of 2012 as repealed and replaced by Section 4(a) (iii) of the Sexual Offences (Amendment) Act of 2019. Particulars of Offence reads: Mohamed Kamarainba Mansaray on a date unknown between the 1<sup>st</sup> day of March 2020 and the 31<sup>st</sup> day of March 2020 at Kono ... engaged in an act of Sexual Penetration with the Victim – A Child.

On count 5 the statement of Offence reads: 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 of 2019. Particulars of Offence reads: Mohamed Kamarainba Mansaray on a date unknown between the 1<sup>st</sup> day of March 2020 and the 31<sup>st</sup> day of March 2020 at Freetown... engaged in an act of Sexual Penetration with the victim – a child.

On count six the statement of Offence reads meeting a child for sexual purposes contrary to Section 23(1)(a) of the Sexual Offences Act No. 12 of 2012. Particulars of Offence reads: Mohamed Kamarainba Mansaray on a date unknown between the 14<sup>th</sup> day of February 2020 and the 31<sup>st</sup> day of March 2020 at Kono ... intentionally met with the victim - a Child for Sexual Purposes.

On Count 7 the statement of Offence reads: Meeting a Child for sexual purposes contrary to Section 23(1)(a) of the Sexual Offences Act No. 12 of 2012. Particulars of Offence reads: Mohamed Kamarainba Mansaray on a dated unknown between the 1<sup>st</sup> day of March 2020 and the 31<sup>st</sup> day of March 2020 at Freetown, ... intentionally met with Mariama Sannoh – a Child for Sexual Purpose.





On Count 8 the statement of Offence reads: Conspiracy contrary to Section 43 c of Act No. 12 of 2012. Particulars of Offence reads: Marion Arouni on the 7<sup>th</sup> day of February 2020 and on diverse dates between that day and the 31<sup>st</sup> day of March 2020 at Kono ... conspired with other persons unknown by Aiding and Abetting Mohamed Kamarainba Mansaray to commit an act of Sexual Penetration with the victim - a Child.

U. Sumary (Ms.) Prosecuting Counsel then applied to the Court pursuant to Section 144(2) of the Criminal Procedure Act No. 32 of 1965 for the matter to be tried by Judge alone and the Counsels for the Accused Persons objected to same but their objections were overruled and the matter proceeded thus. Upon their arraignments the 1<sup>st</sup> Accused Pleaded not guilty to all the charges, whilst the 2<sup>nd</sup> Pleaded not guilty to Counts 1 and 8 respectively. To bring it into a clear perspective, the two Accused Persons were jointly charged in Counts 1 and 8 respectively, whilst on the other counts the 1<sup>st</sup> was the only one charged.

### **BACKGROUND**

The short fact of the case is that the Prosecution alleges that between the period in question -that is the 14<sup>th</sup> of February 2020 to the 28<sup>th</sup> of February 2020 and the 1<sup>st</sup> of March 2020 to the 31<sup>st</sup> March 2020 the wrongful acts complained of were perpetrated on the Victim by the 1<sup>st</sup> Accused Person aided and abetted by the 2<sup>nd</sup> Accused Person. The allegation is that the acts Complained of – Sexual Penetrations and Meeting a child for Sexual purposes plus Aiding and Abetting/Conspiracy took place in Kono and Freetown.

It is clear that these offences are very grave and the onus is on the Prosecution to prove every one of the allegations contained in those offences; and that the Standard of Proof required is Proof beyond reasonable doubt - as was espoused in **WOOLMINGTON V DPP (1935) AC, 462**, where Lord Sankey Stated that '**...one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt...beyond reasonable doubt.**' This court cannot help but borrow from Counsel for the 1<sup>st</sup> Accused Person when he submitted in his closing argument that an Accused Person generally does not bear any burden whatsoever of proving his/her innocence. Therefore, however grave the offences may be or however heinous they are, they remain mere allegations until they are clothed and



fleshed up with evidence. Let me also hasten to say that I also borrow from the Defence Counsel's submission that the Offences charged fall within the species that always requires corroboration as a matter of Law. This falls outside the sphere of the general Common Law principle that a court can convict on the uncorroborated testimony of a witness. Corroboration being defined as independent evidence that implicates the Accused Persons in a material Particular. It is clear that some other pieces of evidence can be used in inferring the Accused Persons' guilt and that for it to pass the test it must be independent in nature. Like the Defence Counsel states, it should not be a narration of the victim's story or retelling of it – but it should be an independent rendition of events that does implicate the Accused Persons in a material Particular. I am also aware that in cases of such nature where, corroboration is required as a matter of Law, if the trial is conducted by a Judge alone as in this present case, the Judge must advise himself of the dangers of convicting the Accused Persons on the uncorroborated evidence given by the victim alone. According to counsel for the 1<sup>st</sup> Accused Person, if at the end of the day I found out that the victim's rendition of events had not been corroborated, or does not meet the required threshold, the Court should acquit and discharge the Accused Persons. He is assured that I would avert my mind to the dangers of proceeding to convict the Accused Persons on such pieces of Evidence and how same is unsafe so to do, without the requisite warning. He is also assured that I would avert my mind to the requisite warning. However, if after the completion of the analysis of the evidence, I am convinced that the victim's story had been corroborated, I would make the necessary call.

The offences with which the accused persons are charged aforesaid, are offences under the Sexual Offence Act, 2012 and as amended in 2019 and does relate to Sexual Penetration of a child and its kindred offences. Therefore, before going into the evidence adduced by the Prosecution in support of the said charges, and that of the Accused Persons in their Defences, I have deemed it necessary to give the definitions of the various Offences they are charged with - Sexual Penetration, Meeting a Child for Sexual Purpose, Conspiracy and Aiding and Abetting, under the Act Aforementioned.

Firstly, in digression, it is very important that there be no doubt as to the age of the Victim. The Defence Counsels for the 1<sup>st</sup> Accused Person in their closing arguments





made heavy weather of the issue of the Victim's Age and the fact that there seemingly is a strike through/alteration on the face of the birth certificate of the Victim identified as Z by the victim herself, and later tendered herein as exhibit R1 and the documents from the National Civil Registration Authority Official in the Person of PW11 – Mohamed Samuka Konuwa who is the Deputy Director of the said Authority. A fact that they claimed rendered the said piece of document questionable in the highest extreme. It seemed as if Counsels for the 1<sup>st</sup> Accused Person have drawn the conclusion that only an unblemished birth certificate and or an "MRI Scan" (apart according to them) can prove the victim's age. It seemed that their argument is that short of the either of two processes or all two of them combined, one cannot ascertain the victim's age. Assuming but not conceding that what they (the Defence Counsels for the 1<sup>st</sup> Accused) alluded to was the truth, the court finds that their argument pales in comparison when viewed against the backdrop of PW 1, 2, 4, and 5' testimony in the court. This court is also aware that other extra pieces of evidence abounds from the Voluntary Caution Statements of both Accused Persons, that shows they had knowledge that the Victim was 15 Years Old as at the time of the allegation – that is at 14<sup>th</sup> February 2020. See page N55 of Exhibit N1-71 – which happens to be the 1<sup>st</sup> Accused Person's Voluntary Caution Statement that is already part of the Evidence and the cross examination of the 2<sup>nd</sup> Accused Person by U. Sumaray Ms. in the Court Records. It amazes the court that the 2<sup>nd</sup> Accused tried to hide her knowledge of the victim's age behind the claim that this was what the victim told her – "that she was 15 years of Age". That being said, the court is of the view that it was faced with other confirmatory pieces of evidence that clearly shows that the Victim was how old she claimed to be as at the occurrence of the alleged offence. The incidents to which these documents where relating to came way before the 14<sup>th</sup> day of February 2020 – which happened to be the day these wrongful acts commenced (according to the allegations). Expect the Defence Counsels would want the court to believe that the Victim was such a sophisticated thinker and planner that in anticipation of her plot she staged it so that there can be no doubt that she was 15 years of age as at the date of the first allegation; in the absence of any evidence of such plot, the court holds that there is sufficient proof before it that the Victim is indeed a Child as define by Section 1 of the Sexual Offences Act of 2012 as "A person under the age of 18 years."



The court notes that the Act also defines Sexual Penetration as meaning "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". A look at the Long title of the act indicates that it is an Act to consolidate with amendments the Law relating to Sexual Offences. Therefore, if a person is charged with the offence of sexual penetration of a child, the elements to be proven are the age and the penetration itself inter alia. Once the prosecution proves these two elements inter alia – that is that indeed the victim is below the age of 18 years and that penetration of the vagina, anus or mouth also occurred, then the evidential burden has been discharged by the Prosecution. It matters not in fact, whether the victim was a virgin or not. Section 19 of the Sexual Offences Act specifically describes that section in the marginal notes 'sexual Penetration of a child' and not sexual penetration of a virgin to borrow from the Prosecution's submission in their Closing Argument. This is a kind of a strict liability offence, as long as the victim is below the age of 18 and she is sexually penetrated in the vagina, anus or mouth, the offence is complete.

**CONSPIRACY:** I hold with that for the offence of conspiracy, what the Prosecution must prove is the existence of an agreement between two or more persons to do an unlawful act by unlawful means or a lawful act by unlawful means - the conduct of the Accused Persons consisting of both overt and covert acts. They must act in concert with a common design. The existence of the agreement can be inferred from surrounding circumstances of each particular case. In this present case, the Prosecution must prove that an agreement exists on the part of the Accused Persons to commit the offences with which they are charged.

Their different conducts are the actus reus - in other words they must prove that the 1<sup>st</sup> Accused had the intention to sexually penetrate the victim, and that the Second Accused did acts that facilitated the act of sexually penetrating the victim and by the modalities put in place by the Second Accused, so that unwanted circumstances might not raise their heads in the alleged relationship being created – could all go to show that they both conspired.

**Aiding and Abetting** according to the Sexually Offences Act of 2012 and the Accessories and Abettors Act, highlighted hereunder for ease of reference,

Section 43 c of the Sexual Offences Act of 2012 reads thus:





"A person who –

Aids abets, induces, incites, instigates, instructs..., to commit an offence under this act, commits an offence and is liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable.

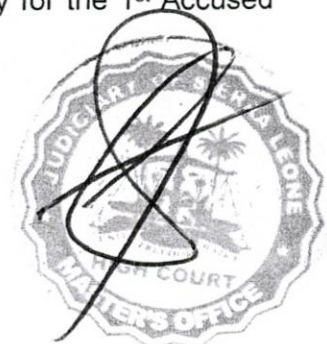
The said provision tallies with Section 8 of the Accessories and Abettors Act 1861 provides whosoever shall aid, abet counsel or procure the commission of any indictable offence, whether the same be an offence at Common Law or by virtue of any act passed or to be passed, shall be liable to be tried, indicted and punished as a Principal Offender. This offence in the light of the evidence adduced by the prosecutions vis a vis its definition; vividly describes the role played by the 2<sup>nd</sup> Accused thus creating the enabling environment for the Offences to be allegedly perpetrated against the victim. Indeed, the 2<sup>nd</sup> accused person was the kingpin in this whole saga. She more or less played the role of a pimp from the evidence adduced before the court.

#### **Meeting a child for Sexual Purpose:**

This offence speaks for itself: it is intentionally meeting with a child for or with sexual intent.

#### **THE CASE FOR THE PROSECUTION:-**

In proof of the Prosecution's case 11 witnesses testified. PW1 in her Evidence-in-Chief inter alia had this to say: that she was sexually penetrated by she got to know the 1<sup>st</sup> Accused sometime in January 2020 when he was introduced to her by the 2<sup>nd</sup> Accused Person in the presence of her husband and children. She informed the court that she came to be with the 2<sup>nd</sup> Accused Person sometime in 2019 and got to talk with the 1<sup>st</sup> Accused Person when he paid a visit to them at their home then. She also said that she is a pupil and gave her date of birth, the name of the school she was attending and gave a detailed account of what allegedly took place subsequently – when the 1<sup>st</sup> Accused Person visited them again on the 14<sup>th</sup> of February 2020. According to the victim, the 1<sup>st</sup> Accused Person made the request to the 2<sup>nd</sup> Accused asking for permission to take the victim out later and that he would be coming to pick her up later. In fact, she said it was the 2<sup>nd</sup> Accused Person who aided her in picking out a dress and who urged her to get ready for the 1<sup>st</sup> Accused



Person. She even plaited the victim's hair – according to the victim. She said that the later proceeded to the Diamond Lodge Hotel, and that upon arrival they waited in the parking lot whilst the 1<sup>st</sup> Accused Person made a phone call that saw a lady come out and handed over keys to a room and a parlour apartment, where they later had intercourse. She indicated that even though she was hesitant at first yet the 1<sup>st</sup> Accused forced her to come into the room and later have sex with him. She later got dressed and the 1<sup>st</sup> accompanied the Accused person to his vehicle and was later driven home and handed over to the 2<sup>nd</sup> Accused Person. She further explained four other incidents of sexual penetrations that took place in Kono – another at the Diamond Lodge Hotel and his unfinished building in Kono and two more of such incidents at the 1<sup>st</sup> Accused Person's house in Freetown. According to the PW1, the incidents in the house allegedly occurred sometime in March of 2020.

She narrated how she ended up at the 1<sup>st</sup> Accused Person's house during that period in March and the comments made by the 2<sup>nd</sup> Accused upon discovery that the phone that the 1<sup>st</sup> gave the victim was not will commensurate to the sexual favours the 1<sup>st</sup> was getting the victim to give to him. This she said led to certain utterances by the 2<sup>nd</sup> Accused Person from the point she collected the victim at Youyi Building unto their lodging place that it even got the Accused Person's sisters' ears.

Under cross-examination by the Counsels for the 1<sup>st</sup> and 2<sup>nd</sup> Accused Persons, the victim confirmed her names, Parents' names and his occupation and maintained that she was 15 years of age. She also narrated what transpired during the Locus Visit by the Police. The Defence Counsel elicited certain facts from the victim in order to catch her out as one of their allegation is – that the victim is no longer a minor when the alleged acts were done against her, but the Victim's testimony as at that time was not controverted. The issue of the number of rooms within that flat, the Location of the bathroom in the room in question was also raised, as was certain things that she said when the Police were taking down statements the victim and her rendition of events in court relating to the allegations made in a bid to discredit the victim. She confirmed knowing the 1<sup>st</sup> Accused Person prior to the January 2020 date initially given but also confirmed that it is only on that day of (January 2020) that they actually spoke. She also maintained that she was 15 years of age at the time and that the 1<sup>st</sup> Accused Person had slept with her severally and that it started on the 14<sup>th</sup>





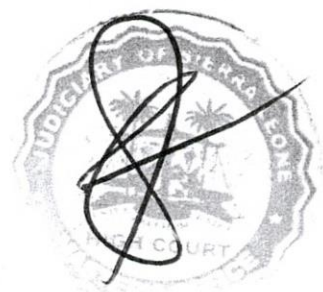
of February 2020 at the Diamond Lodge Hotel in Kono and the number of times she had allegedly been penetrated by the 1<sup>st</sup> Accused Person.

Under Re-examination, she elucidated on what she meant by "ar don tire" as being fed up and tired of being used by the Accused Persons and not being able to take an action as the Aunt Accused Person who supposedly should protect her in in the midst of the wrong that was been perpetrated against her. She denied being late to the point that the 2<sup>nd</sup> Accused Person's landlady had to plead with them to let the victim in.

Mary Sia Tommy inter alia informed the court in her examination-in-chief that she was a nurse and had been a nurse for a long time now. She gave her credentials and her duties and informed the court that on a certain date in February 2020, she received a phone call from the 2<sup>nd</sup> Accused Person informing her about the victim and the fact that she is going come to the hospital with the victim for Jadele – a form of contraceptive to be inserted into the upper arm of the victim. She told the court that the process is only completed when the victim's/patient's details are entered into the ledger kept for such purposes.

Upon being cross-examined by Counsel for the 1<sup>st</sup> Accused Person S.M. Konteh Esq, she confirmed to have worked for 17 years for the family planning department of her organization. When counsel for the 2<sup>nd</sup> Accused Person was cross examining the witness, she tendered her statement made to the police during the course of their investigations as exhibit C, insisted that the contraceptive was to last for three years and that it was the 2<sup>nd</sup> Accused Person who took the victim to the hospital to have the contraceptive inserted into her arm. However, the victim in her Evidence-in-Chief informed the court that the 2<sup>nd</sup> Accused Person made a call in her presence and instructed her to proceed to the Hospital and meet with a nurse called Mary who happened to be PW2 for the insertion of the contraceptive in her arm.

PW3 Dr. Daniel Lavalie in his Testimony informed the court about his duties and credentials and confirmed that the victim was brought to him on the 17<sup>th</sup> day pf July 2020 for examination and treatment as a result of an allegation of Sexual Penetration. Inter alia, he informed the court of the examination he carried out and the that his findings were reduced into writing. This was tendered marked exhibit D1-5 and he informed the court that upon examination nothing of significance was



found. He said there were no recent trauma, no hymen present and that same was ruptured a long time ago. In fact, according to him there had been multiple coitus. He concluded that from his findings, it shows that the hymen had been ruptured a long time ago and that the victim was sexually active, and confirmed that the contraceptive was to prevent pregnancy.

Under cross examination, he confirmed that his instructions came from the Police Medical Request form which also contained the fact of the allegations, that there has been great advancement in medicine, and that they did not receive any blood samples from any man and only dealt with what was before them. He also confirmed that he did not do nay DNA tests nor did he take any sample(s) of same. He also confirmed telling the court that the hymen was completely ruptured and that he could not tell who sexually penetrated the victim but that all he said was that there was indeed signs of Sexual penetration though it was not recent at all.

Under re-examination, he confirmed that he was asked to ascertain whether sexual penetration had occurred and not to conduct a test for DNA. He also confirmed that there is no definite time within which a Doctor can get hold from specimen from sexual penetration stating that several factors could militate against one successfully getting same.

PW IV M'balu Sillah inter alia had this to say, that she came to know the 1<sup>st</sup> Accused through the 2<sup>nd</sup> Accused Person when she received a call on her phone summoning herself and the victim's parents to the house of the 2<sup>nd</sup> Accused Person. She said upon her arrival she met the 1<sup>st</sup> and 2<sup>nd</sup> Accused Person in the presence of the victim and her mother and the 2<sup>nd</sup> Accused Person's Husband and that it was then that the 1<sup>st</sup> Accused Person was introduced to her. She said that she was informed that the 1<sup>st</sup> Accused Person:

**“had come for the Victim and I asked which man and the 1<sup>st</sup> Accused was  
out.”**

She continued testifying that the 1<sup>st</sup> Accused said that he had seen the victim, he wanted to take care of her and help her with her education and promised to even send the victim overseas and marry her later. She said that the victim's mum





promised to relay same to her husband and that she also knew the husband. She also stated that the 2<sup>nd</sup> Accused Person informed her that it was the 1<sup>st</sup> Accused Person who had been helping them and that it was he who helped them to make a birthday for their child and the victim who celebrated her 15<sup>th</sup> birthday. She also talked about the mediation role she played to reconcile the 2<sup>nd</sup> Accused Person and the victim's mother when they had a falling out, and that she was later called to the police to make a statement showing what she knew in this entire saga.

Under cross examination, inter alia her statement she made to the police was tendered through her as exhibit E 1-12. She further attested that what she told the Police and the Court were the truth and that she only got to know the 1<sup>st</sup> Accused during the course of the meeting they were summoned to, whilst insisting that the meeting took place bad that she was present during the course of the said meeting. She claimed that she was an illiterate and cannot tell about dates etc but that she got to know that her daughter was born on the 23<sup>rd</sup> day of June 2020 because her husband told her so. She confirmed that she knew that in her statement she told the police that the meeting was held in November 2019 and that in court she had just said that the meeting was held sometime in 2020; but continue to insist that she is being truthful to the court.

PW5 Tigidankay Sannoh inter alia informed the court that she was the victim's mother and that the victim was 15 Years Old, and even gave her date of birth. She produced and tendered the victim's under 5's card as exhibit F1. She informed the court that she got to know the 1<sup>st</sup> Accused Person through the 2<sup>nd</sup> Accused Person. She also confirmed that she knew PW4 and that she was very instrumental in getting them to leave victim with the 2<sup>nd</sup> Accused Person when they were relocating to another area. She said one day she received a call from her friend M'balu Sillah asking her to come to the 2<sup>nd</sup> Accused Person's house but being tired that she only got there on the next day and M'balu asked her to proceed to the house and that she will join them later. She said upon her arrival, she met the two Accused Persons, the 2<sup>nd</sup> Accused Person's husband and the victim. She said that M'balu later joined them and the 1<sup>st</sup> Accused enquired about the victim's mother and she was introduced to him. She said the 1<sup>st</sup> Accused Person said

**“...he had gotten to like the victim because she is brilliant and serious.**



**...he will help her with the victim's education and even send her out of**

**The country and that he would marry her when she is matured."**

Upon which according to her, PW4 turned and enquired from her about her view of the situation was and she promised to get back to them upon consultations with her husband. She said they were to receive a call from the 2<sup>nd</sup> Accused after which the husband informed her of their visit to their house for the 1<sup>st</sup> to "know the victim's father". She claimed that upon their arrival the 1<sup>st</sup> Accused repeated the same words he had done before – helping the victim out with her education, taking her out of the country and marrying her when she is matured.

Under cross examination, she inter alia confirmed that the under 5's card was given to her in Bo and that she is illiterate. She also confirmed that they had several meetings with both Accused Persons. And claimed that the first meeting was in February 2020, but that she would not be in a position to know if the 14<sup>th</sup> of February 2020 was the first time the victim met with the 1<sup>st</sup> Accused Person. Whilst confirming the following; that she made statement to the Police and expressing her surprise that she was been informed that Mbalu said she was the one who summoned her to the meeting with the 1<sup>st</sup> Accused Person and others. She also tendered the statement as exhibit G1-16 and G4 lines 13 onwards and G5 lines 10 – 14 were read and explained to her. She confirmed that her husband, after the meeting with the 2<sup>nd</sup> Accused, confirmed that he had received the exact information about the 1<sup>st</sup> Accused Person's intention towards their daughter – the victim. G6 lines 9 – 16 of exhibit G was also referred to by the Defence Counsel. She insisted that the she had always told the police about the 1<sup>st</sup> Accused's intentions for their daughter as communicated to them during the meetings but since she is an illiterate she would not be in a position to know if what she said was written down or not, and that she had said so during her examination in chief and continues to say so. She claimed that she was saying the truth and revealed that the Accused Persons, the 2<sup>nd</sup> Accused Person's husband and their kids and the victim were all present during the second meeting. She attributed any omission during the Police interview to inadvertence as she was not in the right frame of mind then but claimed to be in the right frame of mind now as she was testifying. She confirmed the year she gave birth to the victim and her siblings. She insisted that she only met the 1<sup>st</sup> Accused Person twice throughout this





encounter and that in the birthday party thrown for the 2<sup>nd</sup> Accused Person's daughter sometime in January 2020, she did not recall meeting with the 1<sup>st</sup> Accused Person even though she was invited and she went to the party. She also claimed that both of them went to the victim's birthday and that she saw the 1<sup>st</sup> Accused Person then from afar but never knew that he was the one who made the party on their daughter's behalf. And insisted that she had never gone to the 1<sup>st</sup> Accused Person's house personally.

When she being cross-examined by the Counsel for the 2<sup>nd</sup> Accused Person. She insisted that she was the one who gave the names to be inserted in the Under 5's Card and the Birth Certificate, that she was already married to Vandí Sannoh and that they did not prepare the said documents for the purpose of the case. She denied ever been summoned by the 2<sup>nd</sup> Accused Person to make a complaint about the victim always coming in late from errands. Confirming that she wanted her child to be properly educated and denying ever giving an injection in the form of contraception to the victim. She also said that the 2<sup>nd</sup> Accused Person and herself had an amicable relationship and that they were "good Neighbours."

PW6 Vandí Sannoh inter alia had this to say that he is the father of the victim and that the victim was born in 2005 and confirmed same by identifying document identified previously as Z – which was the birth certificate of the victim. He said the 2<sup>nd</sup> Accused Person was their neighbour whilst they were living at John Kelly Street and it was during that period he was approached to by the Accused seeking his permission to have the victim help out with the 2<sup>nd</sup> Accused Person's kids. He said that he gradually gave in but insisted that the victim should be sleeping in his house and not the Accused Person's and that later upon being approached by the 2<sup>nd</sup> Accused Person to allow the victim to be sleeping over again accepted. He however said upon the intervention of PW4 Mbalu Sillah, he finally gave in and moved out of the premises without the victim – leaving her under the care of the 2<sup>nd</sup> Accused Person.

He informed the court that sometime in 2020, the 2<sup>nd</sup> Accused Person called him to see her at her house and he went and met the Accused Person, her husband, the victim, and the Accused Person's kids where according to him the 2<sup>nd</sup> Accused person said:



**“big man don comot for you pikin, he lek am.”**

Again according to PW6, the exact words of the 1<sup>st</sup> Accused Person's intentions communicated to the others during their numerous meetings were relayed to him. He said that he asked 2<sup>nd</sup> Person whether she trusted the 1<sup>st</sup> Accused Person who he had named as the interested “Big Man.” And according to the witness, the 2<sup>nd</sup> Accused Person's husband even asked him to trust him as he is far older to them, upon which he still sounded his caution and asked them to ensure that they protect the victim. The witness said that the 1<sup>st</sup> and 2<sup>nd</sup> visited him one day with the victim and the 2<sup>nd</sup> Accused Person's kids. The PW6 informed the court that the information given by his wife PW5 and confirmed by the 2<sup>nd</sup> Accused Person was now reiterated by the 1<sup>st</sup> Accused Person himself. He said that he told them that he had heard but that he should be allowed to leave as he is out of time and almost late for work and claimed that the 1<sup>st</sup> Accused called him again and give the sum of Le. 100,000 to him.

He claimed that one day he got to know about the 2<sup>nd</sup> Accused's plan to travel to Freetown with the kids to visit her sick mother-in-law and according to him he insisted that the victim must not go but remain, but that he was prevailed upon by the 2<sup>nd</sup> Accused Person and Mbalu, and that he allowed them to make the trip with the understanding that it was going to be a short trip. He said they ended up spending almost two weeks in town and he had to call the 2<sup>nd</sup> Accused asking the reason for the delay whilst informing her that this was the reason why he was reluctant to let the victim to go in the first place. He said the 1<sup>st</sup> Accused called to inform him that he had sent Le. 300,000 to the 2<sup>nd</sup> Accused Person for the victim and the 2<sup>nd</sup> Accused confirm same and informed him that they would be in Kono on Saturday. After their return he claimed that they took another trip to Freetown for a burial ceremony.

PW6 said upon their return some 3 to 4 days later, she was summoned by the 2<sup>nd</sup> Accused Person to come and take the victim from her house as she no longer is interested in keeping her. He said he whilst playing with the victim one day became aware of the contraceptive and when he asked her what it was she told him that it was the 2<sup>nd</sup> Accused Person who took her to the Government Hospital in Kono to have it inserted and that after that information was made known to him he got his sister involved and further disclosures were made which led to him reporting this





matter to the Police, who cautioned him to be careful whilst speaking with the 1<sup>st</sup> Accused Person.

Under cross examination by the Counsel for the 1<sup>st</sup> Accused Person, he inter alia said that it was only once that the Accused Person gave him an aid of Le. 100,000 and denied knowing that the 1<sup>st</sup> Accused Person normally renders help to other children and reiterated what the victim's mum, 2<sup>nd</sup> Accused Person had said in the presence of others. He confirmed that no one had told him that they had seen the victim with the Accused Person before. And also confirmed that e was present in the meeting when the 1<sup>st</sup> Accused reiterated his intention to help, educate, modernize and marry the victim upon her reaching maturity; denying that he has an intention to destroy the Political career of the 1<sup>st</sup> Accused Person.

When He was cross examined by the Counsel for the 2<sup>nd</sup> Accused Person, he said inter alia that he cannot recall the length of time of their marriage. And claiming that the victim was born in Bo and that he had already contracted a traditional wedding before giving birth to the victim. He further stated that had the Accused Persons not done anything bad to him he would not be in court testifying and that he has not told lies against them.

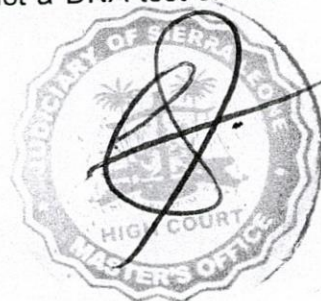
PW7 – Detective Sergeant 13168 Sesay I.K. inter alia informed the court that he was one of the investigators in the matter. He gave his designation, his duties and exactly what he did during the course of this investigation and tendered Voluntary Caution Statements of the Accused Persons as exhibits N1-71 and O1-42, J1 – 16, k1 – 25, O1 - 42, respectively and talked exhaustively of what they did during the course of their investigations. Interestingly he inter alia said that before February 14<sup>th</sup> 2020, which was the targeted date of the allegation they discovered during their investigations that the ledger recording the details of the guests they were receiving for that month had been tampered with. He said this change occurred on the 8<sup>th</sup> of February 2020. He also claimed that there were pages torn between the 21<sup>st</sup> to the 2<sup>nd</sup> of February 2020, 7<sup>th</sup> to 10<sup>th</sup> March 2020 as was on the 22<sup>nd</sup> and 23<sup>rd</sup> March 2020. Of immense importance also was the Locus in quos conducted by the Police during the course of their investigations. He informed the court that they conducted several Locus in quos conducted in the presence of the Accused Person and his Solicitor(s) and again informed the court of what transpired during the said visits. He





gave detailed renditions of what transpired in both of the scenes and informed the court that several snapshots were taken of the different scenes of crime. From his testimony, which was largely not controverted by the Defence Counsels, the witness presented a grim picture of the 1<sup>st</sup> Accused Person or Persons under his charge, moving pieces of furniture and certain equipment in the house in an attempt to distort the scene of the alleged crime.

Thereafter, under cross examination he confirmed that he was not the lead investigator and that the accused denied penetrating the victim vehemently but that the victim continued insisting that he was the one who sexually penetrated the victim and that he would not be in the position to say whether he believed the victim or the Accused Person, and that he had no authority to say whether sexual intercourse took place or not. He also confirmed their inability to confirm what the 1<sup>st</sup> Accused Person had been saying regarding none being able to say that they saw him with the victim; saying that he cannot recall the statements of all the witnesses thus, he cannot even say whether any said so in their statements. Claiming that it was the 1<sup>st</sup> Accused who said he only took the victim in his vehicle when they were going in search for a private school that can accommodate the victim - when they were on a school hunting spree. He informed the court that all he did in the course of the investigation was to visit the 3 scenes of crime and do related work thereto but that he did not interview the victim. He also confirmed that the 1<sup>st</sup> Accused Person said throughout the course of the investigation that his practice was not to give children he is helping money directly but to do so through their parents. He confirmed that entries for the 14<sup>th</sup> of February 2020 there were no names of the guests that patronized the establishment though there were entries. He also highlighted the discrepancies in the said exhibit. He confirmed that from the exhibits in their custody none had the 1<sup>st</sup> Accused person's name on them. When an allegation was put to him that he had made advances on an individual who was been investigated for her to confirm that she saw the Accused Person on the day in question in turn for charges against her to be dropped, the witness vehemently denied. He confirmed visiting the crime scene at John Kelly Street but informed the court that they were denied access into the unfinished structure thus they were unable to access same. He also denied several allegations levied against the Police and the investigation team. He confirmed that he had not asked the Doctor to conduct a DNA test on the





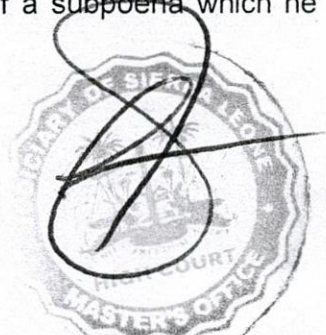
victim and said it was not to his knowledge that the Accused Person saying he was not in Kono at the time of the incident was investigated by his colleague. He further clarified that he was only here for the tendering of the 1<sup>st</sup> Accused Person's statement and that he was part of the time who went to Gbangadu to investigate about exhibit F1 – the birth certificate.

PW8 Detective Inspector Joseph Saio Kamara informed the court that he and his team arrested the 2<sup>nd</sup> Accused Person and her husband and took statements from them. The witness was not cross-examined by Counsel for the 1<sup>st</sup> Accused. J. M. Jengo Esq. whilst cross-examining the witness was informed by the witness that he was not the sole nor the lead investigator in the matter and that was all he did. He continued to insist that he was impartial throughout the investigation and that the facts were within his grasp as an investigator.

PW9 was Hassan Bangura – who was the scene of crime officer. He said he recalled the 28<sup>th</sup> day of July 2020 when he accompanied the victim and the 1<sup>st</sup> Accused Person to a Scene of crime at No. 7 Tucker Drive Marjay Town, Freetown. He told the court about the gadget used to take the photos that he tendered in court. Under cross-examination he confirmed that he had only worked for a year in the said position. He said he went with his colleagues to the said scene of crime and gave details of what he did. He also confirmed that some of the photos he took were not clear and that they were not included in the album.

PW10 Mohamed Maruwan Conteh inter alia told the court that he is a Police Officer attached CID as a scene of crime Officer. That he was in a team of Officers who went to Diamond Lodge with the Victim and took snapshots upon her representations. He said they also visited John Kelly Street but that they were unable to gain access to same. He tendered the catalogue as exhibit Q 1 – 13. Under cross examination, he inter alia insisted that the camera he used was not the wrong camera even though the Defence Counsel J.M. Jengo Esq challenged him on the indication to the contrary.

PW11 was Mohamed Samuka Konowa – who was the Deputy Director of the National Civil Registration Authority in Freetown. He gave his credentials and duties and he confirmed that he was here (in court) as a result of a subpoena which he





received and that he is in custody of certain documents. Though the Defence Counsels objected to him tendering the tendering of Exhibits S1 and S2, yet they were overruled by the court. The witness under cross examination conceded that someone had over written on the document but that it was not an erasure and insisted that same was not fatal and that they were having the same information on their Civil Registration data base relating to the victim. That was also received into evidence by the Court. He further inter alia stated that his Organization has subsumed numerous others and is now the present creature – the National Civil Registration Authority responsible for even Births and Deaths. The Prosecution then closed its Case. The Defence Counsel made a no case submission but the court ruled that there was sufficient evidence led so far by the Prosecution warranting us to proceed with the trial.

#### **CASE FOR THE 1<sup>ST</sup> ACCUSED PERSON:**

The Accused Persons were placed on their election respectively and both choose to testify on oath and call witnesses. 12 witnesses testified on behalf of the 1<sup>st</sup> Accused Person including himself. Strangely the 1<sup>st</sup> Accused did not open his case by testifying personally, but choose to let one Isha Mansaray open the case for him. He subsequently testified upon the completion of the said Isha Mansaray' s Testimony.

DW1 Isha Mansaray had this to say inter alia that she was a nurse and that the 1<sup>st</sup> Accused Person was his boyfriend and that the 14<sup>th</sup> of February 2020 the Accused Person was down with running stomach as a result of his consumption of a concoction called "Black Lockhurst" and was therefore unable to travel all of that day as he was lying down in Makeni and she was with him, having left freetown for Makeni and Kono in the night of the 13<sup>th</sup> of February 2020. She said that as a result of the state she met the 1<sup>st</sup> Accused Person in, she had to cancel her trip to Kono to be with the 1<sup>st</sup> Accused Person and stated further that she prepared food for him and acted upon his instructions to provide funds to throw a party for his workers and that the workers were there in his compound enjoying themselves well into the night and that she left for Kono on the next day after the 14<sup>th</sup> of February 2020.

Under cross examination, she admitted that though she is a nurse, she never administered any drugs or medication on the Accused Person and confirmed that depending on the vehicle and the driver in control of it the distance between Kono to





Makeni either way could be covered in 2 to 2 and the half hour and vowed that she knew the 1<sup>st</sup> Accused Person and that she was sure he could not have done the acts that the allegations contained. She expressed surprise that the 1<sup>st</sup> Accused Person never mentioned his illness of the 14<sup>th</sup> of February 2020 to the Police during the course of their investigations and that though she loves the accused person she would not tell lies for him. She also stated that the 1<sup>st</sup> Accused Person had been her boyfriend for four years now but that she had known him some 10 years ago.

DW2 Mohamed Kamarainba Mansaray inter alia told the court that he is a Politician and Entrepreneur and that he is also a philanthropist helping out children in his community, and went on to give the names of some that he had helped and the details and nature of the help he had granted to them so far. He confirmed that he knew the victim through the 2<sup>nd</sup> Accused who he also came to know through her husband. According to the 1<sup>st</sup> Accused Person, he got to know the 1<sup>st</sup> Accused sometime in 2019 and the victim sometime in January 2020 when the 2<sup>nd</sup> Accused Person made an introduction to him whilst he visited them at home. He said that on the day in question relating to the first allegation, he was in Makeni with a bad stomach and that he only came to Kono on the 16<sup>th</sup> of February 2020 and returned to Makeni on the 19<sup>th</sup> of February. That piece of evidence was also supported by DW1 whilst she was testifying in Chief – that of the 1<sup>st</sup> Accused Person being in Makeni on the 14<sup>th</sup> of February 2020. He claimed that he had alibis for all of the dates of the said allegations and the said alibis would be looked at later. Interestingly he confirmed giving phones and other form of help to the victim but denied having any sex with the victim at all. He made several statements which to the court's mind can only be self-serving statement. He also talked about the charitable work he is doing in and around his community. Furthermore, the Accused Person told the Court that he visited the biological parents of the victim after he was implored by the 2<sup>nd</sup> Accused Person and her Children to pay the said visit. He claimed that he left Kono on the 2<sup>nd</sup> of February 2020 – according to him the same day the 2<sup>nd</sup> Accused person was having a birthday party for the victim – whose exact birthday both Accused Persons strangely claimed not to know, yet they were making a birthday for her. He said that he returned to Makeni on the 11<sup>th</sup> of February 2020 and that he was there almost throughout the month of February. He informed the court that it was his tradition to throw a party for his workers and that he did that on that day of the





alleged occurrence of the first incident of Sexual Penetration by the victim – the 14<sup>th</sup> of February 2020. He confirmed that from Makeni, he went to Bo and was there till the 7<sup>th</sup> day of March 2020 when he left Bo for Kono and that he was there till the 18<sup>th</sup> of March 2020 in the company of one Johnny Josiah and others and that he was in Makeni till the declaration of the lock down by the President. Claiming that since he left Freetown on the 11<sup>th</sup> of February 2020 he only returned on the 3<sup>rd</sup> of April 2020. He claimed that nobody had taken the victim to his house before – not even the Co-Accused, and that he is not residing on the Freetown premises alone – being there with two others at any given time. He insisted that he was not even in Kono on the date the victim alleged that he sexually penetrated her. He declared two things whilst he was still testifying in Chief; Firstly, if any person in the whole Koidu Town was to disclose that they saw him in Kono on the 14<sup>th</sup> of February 2020 then he would declare his guilt and that if anyone can say that they saw him with the victim in any given place or car or wherever he would declare his guilt. He also alluded that he knew for a fact that an enquiry to any of the given mobile services providers he is linked with can easily pinpoint his locations at the given timeframes of the periods under the Investigations as well as provides pieces of evidence of his call activities or chats history etc. The 1<sup>st</sup> Accused Person started making claims of the Police being biased during the course of the trial. But the court hasten to say that these claims were not been pursued with the due diligence it ought to have been pursued with.

When he was led further in chief, the 1<sup>st</sup> Accused Person insisted that he was with DW1 – Isha Mansaray and others who were working for him at the time in Makeni, where he was to oversee his project and that he only left for Kono on the 19<sup>th</sup> day of February 2020 and that he arrived in Kono at 3 p.m. of the day in question – the 19<sup>th</sup> February 2020, with his workers and the electrical materials that he had purchased. He stated that he left for Bo on the 19<sup>th</sup> of February 2020 upon his return from Kono and that he was in Bo till the 7<sup>th</sup> of March when he travelled to Kono again. That he was in Kono till the 18<sup>th</sup> of March 2020 and returned to Makeni on the 19<sup>th</sup> of March 2020. The 1<sup>st</sup> Accused Person claimed that it was on the 3<sup>rd</sup> day of April 2020 that he proceeded to Freetown. He also denied taking the Victim to his unfinished house, where, according to the victim, they had sex again. He stated that there were other workers around and that it was impossible for that to happen because of the





numerous people that were around and would have found them out. He denied vehemently that he had never made any proposal of marriage to the victim before. He claimed to have volunteered and made himself available to the Police in aid of their investigations. Furthermore, the 1<sup>st</sup> Accused Person informed the court in his testimony that the account of the PW7 Ibrahim Khalil Sesay was not true. This refers to the testimony that the 1<sup>st</sup> Accused had moved certain things in the house as a way of distorting the crime scene. However, the court note that that piece of the said Prosecution witness's testimony was not controverted or shaken by cross examination. It remained largely intact. The 1<sup>st</sup> Accused Person claimed that he knew the victim's father (PW6) well and that at no point in time did he accuse him of sleeping with the victim during the course of the last interaction.

Under cross examination, the Accused confirmed the date the Police took his Voluntary Cautioned Statement and that he knew the victim, though he said he got to know her fairly in January 2020. He confirmed that he was present when the 2<sup>nd</sup> Accused Person threw a party for the victim but that he subsequently Kono on the day in question – which he indicated was the 2<sup>nd</sup> of February 2020. He confirmed leaving Freetown on the 11<sup>th</sup> of February 2020 and returning only on the 3<sup>rd</sup> of April. He confirmed telling the police that he was criss crossing the country and specifically said that he informed then in the Voluntary Cautioned Statement that on the day the Victim alleged that he sexually penetrated her he was not in Kono at the point in time. When he was confronted with the Voluntary Caution Statement made to the Police he recanted and informed the court that he told the Police but the Police did not write the information relating to his Alibi that he gave to them. Without belabouring the point let me hasten to point out that the law is clear relating to Alibi; when same is raised by an Accused Person. It is settled law that an Alibi is a defence, but it is unlike those Common Law or Statutory Defences. When an Alibi is timely raised it does not shift the evidential burden on the Accused Person raising it. All the law requires is that it is raised and raised in a timely manner and that it is not done in a vague manner but specifically. If that it done, then the Prosecution (in this case the Police) are bound to investigate it, if the Police do not Investigate it and there is conviction, the whole conviction could be overturned or in this instance the trial Judge is bound to dismiss the case if the alibi promptly and duly raised is not investigated by the Police. It means the substance of it must not be vague. In this





instance, it is clear from his response under cross examination that there is nowhere in his Voluntary Cautioned Statement exhibited as N1-71, where he gave an alibi clearly and distinctly, and in the earliest opportunity, thus since it was not given, same was not investigated by the Police. He confirmed that he had not seen any vestiges of his alibis in his statement that he made to the police. That he is raising series of Alibis now late in the course of the trial takes it outside the purview of immediacy demanded for such to be accepted as being properly raised by any court of law. Could same be deemed haven been timely done as required by the law? The answer is a resounding no. In fact, the 1<sup>st</sup> Accused Person confirmed that the house pictured in exhibit P1 – 34 – which was an Album of photographs of his house at No. 7 Tucker Drive, Goderich, was indeed his and that the items deposited there were his also. He disagreed with the State Counsel when she confronted him that all what he had told the Court was not what he told the Police, even though he confirmed that he had not seen anywhere in the Voluntary Cautioned Statement that he had signed where there was any mention of the Alibis raised. He claimed that the process under which the statement was been made was long and excruciating that was why he signed the statement without reading same.

Under Re-examination, he maintained that the Police never asked him specifically where he was on the 14<sup>th</sup> day of February 2020.

DW3 Mohamed Bangura inter alia confirmed that he is a contractor and that he knew the 1<sup>st</sup> Accused Person in this matter – who happened to be his boss. But that he does not know the 2<sup>nd</sup> Accused Person or the victim in this matter. He claimed that the 1<sup>st</sup> Accused Person came to the site on the Tuesday before the Valentine's day. If valentine's day in 2020 was a Friday, then by estimation the day he was referring to was 11<sup>th</sup> day of February 2020. He said that DW1 joined the 1<sup>st</sup> Accused Person on Thursday and that on the 14<sup>th</sup> they approached the 1<sup>st</sup> Accused Person and informed him about their desire to celebrate the day and that the 1<sup>st</sup> Accused Person gave his cook instructions to prepare food and that funds were given to get them drinks for the party. According to him, the DW! Then left for Kono on the Saturday, leaving them with the 1<sup>st</sup> Accused Person in Kono. He said that they left for Kono with the 1<sup>st</sup> Accused Person on Sunday. That they were there for a number of days and returned to Makeni later, were they resumed work.





Under cross examination, he confirmed being in Makeni on Valentine's day, throwing a party during the said day and that he had knowledge why the Accused Person was now in court and it related to an allegation of sexual penetration and that he had gotten the information for about a year now.

DW4 Ibrahim Fofanah informed the court that he was the 1<sup>st</sup> Accused Person's caretaker and that he knew him as a Politician. He claimed to recall the dates 14<sup>th</sup> February 2020 to 31<sup>st</sup> March 2020. He said that he does not know the victim in this matter. He said they were constructing a swimming pool for the Accused Person at his site in Makeni. He said that on the morning of the 14<sup>th</sup> February 2020, he did not see the 1<sup>st</sup> Accused Person, and was only informed by the DW1 of the Accused Person's ailment. He furthered that he was the one who informed the cook about what the DW1 had informed him about the Accused Person. He said that he was sent on an errand and that upon his return, the DW1 later left for Kono on the 15<sup>th</sup> February 2020. The court notes that he did not make any mention of the party that was allegedly thrown for the workers, nor did he claim to have seen the 1<sup>st</sup> Accused Person on the 14<sup>th</sup> of February 2020. In fact, the Prosecution did not cross examine him at all.

DW5 Sulay Bangura inter alia said he knew the 1<sup>st</sup> Accused Person and that he was Mason, but that he did not know the 2<sup>nd</sup> Accused Person and the Victim. again he confirmed being able to recall the dates of the allegations. On one hand he said the first Accused Person was with them on the site and on the other hand he said he informed about the Accused Person's state of health by the DW1 Isha Mansaray. He informed the court that the DW1 was the one who gave him transport fare on the day in question and of note again is the fact that he never talked about the party that was allegedly thrown for them by the 1<sup>st</sup> Accused through the DW1 on the day in question. Again he was not cross examined.

DW6 Isatu Kamara inter alia said that she was a business woman who lived in Makeni. She said that she knew the 1<sup>st</sup> but did not know the 2<sup>nd</sup> Accused Person nor the victim in this matter. She said that she normally cooked his food when his "woman" is not around; and that she recalled the 14<sup>th</sup> day of February 2020. She said she went to the site to collect the money for cooking from the 1<sup>st</sup> Accused but that she was unable to see him but instead talked with the DW1. She said she acted

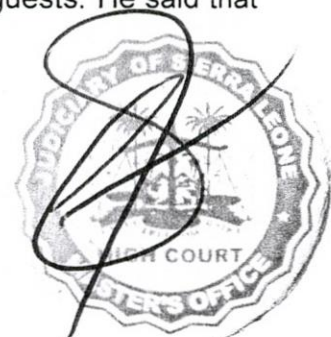


upon the instructions of the 1<sup>st</sup> Accused and did a meal for the workers. Again she never mentioned that a party was thrown for the workers. She was not cross examined by the Prosecution.

DW7 John Junior Josiah inter alia said that he lives in Gloucester Village in Freetown and that he was employed by the 1<sup>st</sup> Accused Person to work on his various construction sites. He said he did not know the 2<sup>nd</sup> Accused Person and the victim in this matter. Again he informed the court that he can recall the dates of the allegations. According to him on the 14<sup>th</sup> of February 2020, he greeted the 1<sup>st</sup> Accused Person in the morning and he informed him that he was not feeling "bright." He went on to say on the day in question, the Accused Person before 4 p.m. approached them and informed them that he had some refreshments for them and that they ate and drank in the evening hours and that he was given the sum of Le. 50,000 by the 1<sup>st</sup> Accused Person – who some of the Defence witnesses have mentioned they did not see on the day in question. He succeeded in bungling the dates and only later confessed that the 1<sup>st</sup> lockdown because of the corona pandemic was declared in April and not March as indicated by the witness when he was testifying earlier on. In fact, he claimed that the lockdown he referred to in his evidence-in-chief was the 1<sup>st</sup> one declared by the President and only for him to recant when he was confronted with facts that the 1<sup>st</sup> lockdown was declared in April and not March of 2020.

DW8 Lamin Kaloko had this to say inter alia, that he is a security and care taker of the 1<sup>st</sup> Accused Person and that he recalled the dates of the allegations. He denied knowing the 2<sup>nd</sup> Accused Person and the victim. He said he was with the 1<sup>st</sup> Accused Person and his co-workers on the 14<sup>th</sup> of February 2020 and that the Accused Person caused them to celebrate Valentine's day on the day in question. According to him the 1<sup>st</sup> Accused Person was with them on that day and was there till almost all the workers had left the compound at 8 p.m. It is worthy to note that the witness never alluded to the 1<sup>st</sup> Accused Person being sick at all on the day in question. His testimony is manifestly different from the rest of the witnesses for the 1<sup>st</sup> Accused Person.

Under cross examination, he confirmed that the party was thrown for them, and that claimed that he would not be able to recall the names of all the guests. He said that



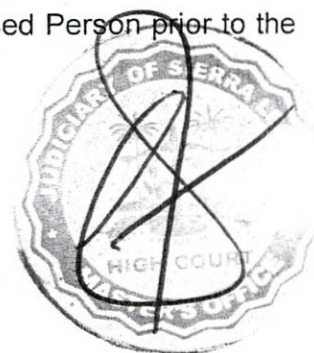


they came to Freetown before the Lock down and that he was informed by the 1<sup>st</sup> Accused Person that the lock down was on Sunday. He also said that the 1<sup>st</sup> Accused Person and DW7 contrary to what he said did not leave for Freetown on a Friday but did leave on a Sunday.

DW9 Henry Fomba's testimony was a disaster from the onset. It turned out that he heavily perjured himself under oath as he was not working yet in the said establishment for the period which his testimony related to. He tendered his statement and it was marked exhibit V1 – 20. In the said statement it became clear that he informed the Police that he started work in the establishment on in April 2020 not before February 2020 as he led the court to believe. Thus, he had falsely testified to incidents that he was not even seised of. Despite an attempt by the Prosecution counsel to get him for the Perjury he had committed, the court magnanimously let him go with a stern warning,

DW10 Aminata Sellu had this to say inter alia that she was the receptionist working in the hotel during the period of the allegations but that she was now unemployed. She said she also doubles and sells drinks during her tenure at the hotel, and went on to identify the various forms guests used when they are staying in the establishment. She gave detailed explanations of the procedures of the establishment and identified various forms that were used daily in running the affairs of the hotel. In fact, from the entire testimony of the said witness, it seemed as if the Defence Counsels were attempting to discredit the Prosecution (the Police) and are questioning the way the Police handled the investigative process. However, the court notes that they were making self-serving statements geared towards discrediting the Prosecution without proffering concrete proof of the discrepancies they were complaining about.

Under cross examination, the witness inter alia confirmed that she informed the Police that she had not known the 1<sup>st</sup> Accused Person prior to the allegations and her been invited to the Police Station and that this drew exclamations and indignation from the Police who were investigating the matter. When her statement was read to her, she confirmed that there is no reference made in it of the Police attempting to force her to confess that she knew the 1<sup>st</sup> Accused Person prior to the



allegations of Sexual Penetration etc. The witness and the Counsels for the 1<sup>st</sup> Accused Person were cautioned and reminded of the possibility of the witnesses losing their shield if they continue to attempt to impugn the Prosecution witnesses' character. She confirmed that because of the discrepancies encountered in the ledger where the details given in the cards prepared for the guests were transferred that led to them being investigated by the Police. She reluctantly agreed that on the 14<sup>th</sup> of February 2020, they worked in shift and that till her got off from her shift she did not see the 1<sup>st</sup> Accused Person and the victim in the hotel. She also confirmed that they had resorted to the pattern used in the months of December 2019 to January 2020. When the witness was confronted with the torn pages in the ledger, she said that she tore them as a result of the mistake and recanted from what she had said earlier – that it her manager who told her to lie to the police during the course of their investigations. She also confirmed that on the day in question no one else handled the keys relating to the rooms in the hotel whilst she was on duty till she got off from work on that day.

PW11 Alima Sia Nyandemoh-Quee inter alia had this to say; that she was the care taker of the 1<sup>st</sup> Accused Person on the property at John Kelly Street. She went on to give details of her other duties as a caretaker and the names of some of the workers on the building site. She said that she normally gets to work at 6 a.m. on a daily basis and gets off at 7 p.m. She said that she knew the victim and used to live with her at John Kelly Street but that the victim had relocated since. She confirmed that she is not on speaking terms with the victim and confirmed that the photograph she was shown is of the 1<sup>st</sup> Accused Person's house at John Kelly Street. She also confirmed that the 1<sup>st</sup> Accused Person is free to come and leave the site as he pleases as the property belongs to him and that it is true that since she gets off from work at 7p.m. she would not be in a position to tell if anything transpired in the site since she would already be at home.

DW12 Kadiatu Musa Kamara inter alia informed the court that she was a pupil aged 16 years. She confirmed that she knew the 1<sup>st</sup> Accused Person. She gave details of the help that the Accused Person had been rendering to her and others that she said she was aware of. She also said that she knew the victim but that she was not on speaking terms with the victim. She further stated that she is aware that she is not the only one whom the 1<sup>st</sup> Accused Person had been giving a helping hand to and





that she had heard about this case on the radio. She said that the 1<sup>st</sup> Accused Person had never acted inappropriately towards her and had always given her pieces of advice relating to her schooling etc.

This was the last witness that testified on behalf of the 1<sup>st</sup> Accused Person and the testimony was taken on the 12<sup>th</sup> day of August 2021 – though the 1<sup>st</sup> Accused Person initially informed the court that he had 62 witnesses to testify on his behalf but later reduced it to 26 and later to 22, and lastly to 19 witnesses. On the 7<sup>th</sup> day of September 2021, E.S. Abdulai Esq. informed the court of their constraints in accessing the rest of their witnesses (which as at that time amounted to 7 more witnesses) and applied for bail on behalf of both Accused Persons. The matter came up on the 22<sup>nd</sup> of September 2021 but the Accused Persons and their Counsels were absent. The matter was adjourned to the 27<sup>th</sup> day of September 2021. This state of affairs continued till the 10<sup>th</sup> of March 2022 when the court had to order that the 1<sup>st</sup> Accused Person be forcefully brought to court as he had been continually absent with one excuse of ailment after another. His Solicitor E.S. Abdulai Esq. came to court and informed the court that he was ill prepared to continue with the case and the matter was adjourned to the 29<sup>th</sup> of March 2022. After incessant adjournments at the Defence counsels' behests, the matter came up on the 7<sup>th</sup> day of July 2022 and again the Defence Counsels of both Accused Persons were absent, even though the adjournment was at their behest. Upon the application made by the Prosecuting Counsel and in confirmation of her fears that there was a likelihood that the Accused Persons having being placed on bail would see no reason for the matter to be expedited, the Court deemed the case for the 1<sup>st</sup> Accused Person Closed – some 11 months after the testimony of DW12.

#### **CASE FOR THE 2<sup>ND</sup> ACCUSED PERSON:**

MARION AROUNI: After series of adjournments waiting for the 2<sup>nd</sup> Accused Person's Solicitor to make his representation on her behalf, the court was forced to get the 2<sup>nd</sup> Accused Person to testify without her Solicitor on the 6<sup>th</sup> of September 2022. She had this to say inter alia – that she knew the victim and the 1<sup>st</sup> Accused Person and that she got to know the latter through her husband. She recalled the 14<sup>th</sup> day of February 2020 to 28<sup>th</sup> February 2020 and 1<sup>st</sup> March to 31<sup>st</sup> March 2020 respectively. She said that on the 14<sup>th</sup> of February 2020 she was at home and that it was a Friday.





That she had just been told that her grandfather was dead and that her husband's mother was very sick in Freetown. She said that she acted upon her husband's instructions to seek permission from the school to take her kids with her take her to Freetown for the funeral rites of her grandfather and that she met with the victim's mother and informed her of her decision to leave the victim with her during her trip to Freetown. According to the 2<sup>nd</sup> Accused, the victim pleaded with her to take the victim with her as she had given the victim to her and she should treat the victim as she would her own children. She said upon the insistence of the victim's mother she gave in and agreed to take the victim with her on the journey to Freetown.

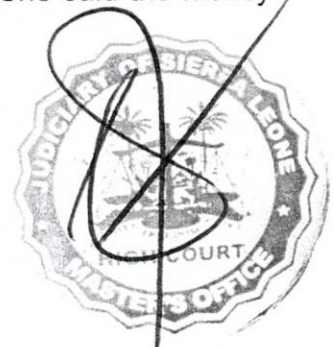
She said they left for Freetown, arrived, attended the Funeral and that she later visited her mother-in-law at the Hospital and that upon the instructions of her husband went back to Kono not too long after. She said that on the day of their return she received an information from her husband of his mother's death but that he told her not to make the trip to Freetown again as the Corona Cases were on the increase and that she had just returned to Kono with the Children and that she should be with them and take care of them till he returned from burying his mother. She said that upon the return of her husband and after the completion of the holy month of Ramadan, she prepared food for some friends amongst which were the victim's parents and asked the victim to wash and deliver the food to her parents but that she never came back to the house on time and upon her return she started sulking when she was chastised. She said that when her husband asked the victim to tell them whether she is unwilling to live with them any longer. The victim expressed her desire to return to her biological Parents according to the 2<sup>nd</sup> Accused Person and her husband then instructed her to ensure that she called the victim's parents to come and take her home again. This according to her was done but that she was later surprised when the victim's mother came and made allegations against her that she had withheld all the decent clothes and things purchased by the 1<sup>st</sup> Accused for the victim in the process of packing for her. She informed the court that in the presence of others, certain facts were clarified about the role the 1<sup>st</sup> Accused Person had played so far in the victim's life and his proposals for the victim and according to her this revelation led to the victim's mother being rebuked by the witnesses. She talked about the role the 1<sup>st</sup> Accused Person played for the victim and informed the court that the victim approached her one day and revealed that she





had been having frequent menstrual flows and that upon the advice of her husband she took the victim to the hospital along with her children for examination and treatment, and the nurse discovered that she was on contraceptive injections and advice that they revert to the jadelle contraceptive commonly known as "captain band" but that she cautioned and asked the nurse to wait until she has discussions with the victim's mother and seek her approval to do so. She claimed that upon her return, she informed the victim mother of her discovery and reminded her of the time the victim's mother sought her permission to commence giving the victim the said contraceptive injections. The 2<sup>nd</sup> Accused Person stated that the victim's mother's explanation was not satisfactory but upon her insistence, confessed that the injections were family planning devices as she would not want the victim to suffer the same fate she did by getting pregnant at an early age. The Accused Person said as this disclosure was made to her without witnesses being present, she had to seek out her landlady's daughter to witness the said confession and that the victim's mother repeated same in the presence of the witness called Mahawa. She said that she called her nurse and handed the phone over to the victim's mother who spoke to the nurse and gave her consent for the insertion of the contraceptive on the victim in the presence of Mahawa. She also informed the court that the 1<sup>st</sup> Accused Person upon visiting them had cause to intervene when she was addressing the victim and telling her to desist from the habit of using her phone to play games. She said the 1<sup>st</sup> Accused promised to get phones for her daughter Bintu and the victim and did get the said phones for them and that it was she who distributed the phones to the recipients. The Accused Person claimed that the victim attempted to call the 1<sup>st</sup> to express her thanks but he did not answer and that she got to know that in her absence the victim called the 1<sup>st</sup> and spoke to him expressing her thanks for the phone and told her upon her return from the market. This rendition she said related to the 1<sup>st</sup> Count only.

She continued that on the 4<sup>th</sup> of January 2020, she had cause to organize her daughter's birthday party at the 1<sup>st</sup> Accused Person's premises at John Kelly Street. She said that the victim reminded her that hers is also forth coming and that she promised to throw a party on her behalf also. In a bid to make good on her promise, she said that she approached the victim's parents on the issue and her father promised to give the sum of Le. 150,000 towards the venture. She said the money

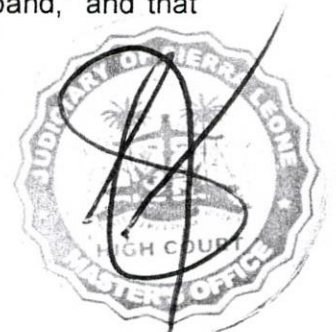




the victim's father promised was collected by the victim at the end of the month and that she also approached the 1<sup>st</sup> Accused Person who also made donation and consented that they used the 1<sup>st</sup> Accused Person's premises for the party and that the victim's parents were all present during the birthday's celebration.

Under cross-examination, she inter alia said that the victim came to stay with her in 2019 but that she cannot tell the exact dates when she came or when she initially introduced the 1<sup>st</sup> Accused Person to the victim upon his visit to her house. When she was confronted with her Voluntary Cautioned Statement, she claimed not to be able to read and write and thus cannot tell what was written in the said statement. Even when the portion was read to her where she indicated that the introduction between the 1<sup>st</sup> and the victim took place in January 2020, she still claimed not to remembering telling the Police that the initial introduction took place in January 2020, and she continues to deny even when she was confronted with portions of her statement bearing the above-mentioned dates. It turned out that the Accused Person denied all issues relating to her Voluntary Caution Statement even when she was confronted with the facts. She either answered that she could not recall giving the police the information she was been asked about or claimed that she had never told them what the Prosecuting Counsel is challenging her that she told the Police in the said Statement. She confirmed that the 1<sup>st</sup> Accused started visiting her in 2019 but that she cannot recall the exact date he started. She confirmed the birthday Parties of her child and the victim and their respective dates but insisted that it was the victim who told her that she was 15 years old as at the birthday. She confirmed that she told the court that she was the one who threw the birthday party for the victim but said she could not recall telling the Police that it was the 1<sup>st</sup> Accused Person who facilitated same. Even when she was confronted with that fact in her statement to the Police, she insisted that she cannot recall telling the Police that.

She confirmed receiving the sum of Le. 300,000 from the 1<sup>st</sup> Accused Person for ostensibly the victim's schooling but said she used same to purchase clothes for the child and the victim. She also confirmed that she recalled telling the court that it was the nurse who suggested that they have a change of the contraceptive method being used, and when confronted with her statement to the Police where she indicated that it was she who suggested the change to the nurse she denied telling the nurse that, and also denied telling the Police anything relating to the "captain band," and that





she cannot recall the time the captain band was inserted on the victim's arm. The Accused Person confirmed whilst her Voluntary Caution Statement was been taken her Solicitors were present, but that she can't recalled whether the statement was read over and explained to her upon its completion.

Upon completion of her testimony one Mahawa Koroma testified on her behalf. She said that she knew the victim and the 2<sup>nd</sup> Accused Person but that she does not know the 1<sup>st</sup> Accused Person. She said that she cannot recall none of the dates contained in the allegations, but that the 2<sup>nd</sup> Accused Person is like a mother to her. She said that she was in her kiosk one morning when she was summoned by the 2<sup>nd</sup> Accused Person. Upon her arrival, she said she met the victim's mother and the 2<sup>nd</sup> Accused Person who informed her that the victim approached her and informed her that she had been bleeding and that this caused her to seek help from her husband for funds to take the victim to the hospital where the nurse discovered upon examination that she had been using injections as a form of contraceptive and that the bleeding was the reaction to the contraceptive. She said that the 2<sup>nd</sup> in the presence of the victim's mother went on to say that the nurse then advised them to change the method to the captain band and that the victim's mother pleaded with the 2<sup>nd</sup> and asked her to take the victim as her own child and that the 2<sup>nd</sup> should call the nurse so that she can talk to her. Upon making the call the victim's mother instructed the nurse to go ahead with the insertion of the said contraceptive on the victim indicating that she would instruct the victim to pass through the hospital on her way home from school. The witness said that the victim's mother further begged the 2<sup>nd</sup> not to inform her husband or the victim's father in her presence.

Under cross-examination, she inter alia said that the 2<sup>nd</sup> is like a mother to her and that she would not want her to be in trouble. She further said that she cannot recall the date of the incident she had just narrated and that she would not be in a position to tell what might have transpired between the 2<sup>nd</sup> and the victim's mother before she was summoned by the 2<sup>nd</sup>. She claimed that it was the victim's mother who gave instructions for the insertion of the captain band into the arm of the victim and said that she would not be surprised to learn that the 2<sup>nd</sup> told the court that she was the one who gave the instructions for the insertion of the captain band to the nurse. She said she cannot recollect the date the victim came to stay with the 2<sup>nd</sup> Accused Person, but confirmed that the issue of the implant came about after the





victim had started living with the 2<sup>nd</sup>. She insisted that she did not know the 1<sup>st</sup> Accused Person and said that she would not be able to tell the court the time frame between the victim coming to stay with the 2<sup>nd</sup> Accused Person and the incident relating to the implant. The matter was again adjourned for the 2<sup>nd</sup> Accused Person's Solicitor but he failed to turn up despite being aware of the adjourned date. The court closed the 2<sup>nd</sup> Accused Person's case after standing the matter down till 1 p.m. and waiting over the period of the stand down for her Counsel to no avail. This occurred on the 3<sup>rd</sup> of November 2022.

The court gave directions to all the counsels representing the various parties for the submission of their closing addresses; the Defence Counsels were to submit theirs on the 17<sup>th</sup> of November 2022 and the Prosecution thereafter and the matter was accordingly adjourned to the 17<sup>th</sup> of November 2022. But as usual, the adjourned arrived and the Defence team were unable to submit same. This led to series of adjournment when they finally submitted on the 29<sup>th</sup> day of November 2022.

#### **ANALYSIS OF BOTH CLOSING ARGUMENTS.**

In the closing submissions for both Accused Persons, Counsels rightly cited the requisites that should be present before the Prosecution could be deemed to have succeeded in proving its case. The Defence Counsels so far were right in their submissions relating to the burden and standard of proof required in criminal trials whether of such nature – that is by Judge alone and by Judge and Jury. However, their reference to R v Galbraith is of no moment as that stage in the trial had been done away with a long time ago. The court had already ruled that there is sufficiency of evidence and that the trial is to proceed. Therefore, their reference to Galbraith in the present circumstance is not applicable. The court begs to differ from counsel's submission that: **"... the medical evidence needed to connect the act is missing..."** (see page 3 of the closing submission at Paragraph 7).

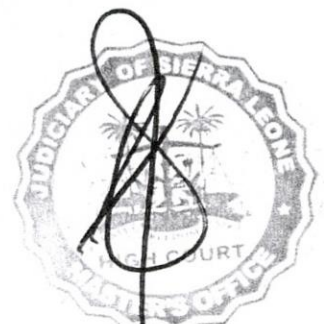
There is enough evidence before the court that firstly, the victim is sexually active, that the hymen had ruptured a long time ago, that there are no longer any vestiges of the hymen any longer all synonymous of series of coitus (as per Dr. Lavalie). It has never been the Prosecution's emphasis that the victim was deflowered. The evidence before the court was that the 1<sup>st</sup> Accused had series of intercourses with the victim. the timeline of the allegations is between 14<sup>th</sup> February 2020 and 31<sup>st</sup>





March 2020 and agrees with it in relation to his submissions in paragraphs 2, 3 and 4, 5, of pages 4 and 5 of the closing submission. However, counsel distorted the importance of the Medical Doctor's testimony – Dr. Lavalie. Among other things, the Doctor pointed out that it is impossible for him to have discovered anything connecting the incident when he examined and treated the victim because of the length of time between the alleged occurrences and the time same was reported and the victim sent to him for treatment and examination. In fact, the witness gave several intervening factors that would render such a task impossible. He however insisted that from his examination, *inter alia* showed that the victim is sexually active and had been involved in series of coitus. He confirmed that he would not be able to tell whether it was the 1<sup>st</sup> Accused who actually penetrated the victim. In fact, he categorically confirmed that he has no doubt that the victim had been penetrated severally. From Counsel's submission, he seemed to be of the view that only when the examination conducted shows the presence of sperm and a ruptured hymen amongst other things, that a court can convict for the offence of sexual penetration. This is not the case. As convictions have been handed by courts even when events which was been prosecuted occurred several years ago – when all hopes of retrieving medically viable evidence would have been lost. In fact, to the court's mind, it independently corroborated the victim claims that she was severally penetrated. The fact that semen was absent is not a debilitating factor on the Prosecution's case (contrary to what he suggested in paragraph 5 of page 5 of his closing submission. The question by whom the penetration was done is supplied by other corroborative pieces of evidence that would be addressed later.

Again I reiterate that penetration was undoubtedly proven and proven by the Doctor's testimony and the medical report. This Court takes with the utmost seriousness counsel's E.S. Abdulai's statement that *inter alia* identification the Scene of Crime can be an aspect amongst the corroborative evidence needed by the Prosecution if they are to succeed in proving their case (see paragraph 4 of page 3 of the closing submissions). The court notes that as much as there has been no witness telling this court that on the dates of the said allegations, they saw the victim with the 1<sup>st</sup> Accused, yet the court could not turn a blind eye to the victim's descriptions of both of the scenes or crime at Diamond Lodge and 7 Tucker Drive – which said testimonies even though tested under cross-examination, was never





discredited. That the victim was able to give detailed descriptions of the two scenes – when according to the Defence Counsels and the 1<sup>st</sup> Accused Person she had never been there is a feat beyond the court's imagination. In fact, even more astounding is the fact that the victim who has never been to Freetown was able to not only locate the 1<sup>st</sup> Accused's house but to describe it and navigate her way through with the ease and confidence with which she does. It is interesting to note that these pieces of evidence were in no way controverted by the Defence Counsels. As was the testimony of the attempts made to distort the scene of crime at No. 7 Tucker Drive, Marjay Town, Goderich.

This court is also in agreement with the Defence Counsels and prosecution on the issues relating to Alibi – viz when raised, how raised and the burden of proof of same, if raised. In Criminal Law, a Defence of an Alibi is raised by an Accused Person in proof of an argument that he could not have committed the Offence with which he was charged because he was in another location far removed from where the Crime was allegedly perpetrated. It is defined as a Defence based on the Physical impossibility of proving the Accused Person's guilt by placing him or her in a location other than the scene of crime at the relevant time. In other words, since it is impossible for someone to be in two places at the same time, the logical and actual inference to be drawn is that the Accused Person could not have committed the said Crime as is being alleged. This court borrows from the submission of the Defence Counsel under the second rubric found in Page 6 of the closing argument for the 1<sup>st</sup> Accused Person. "...The Defence of Alibi would succeed if at the earliest opportunity after his arrest he gives to the Police sufficient particulars of where he was at the time the Offence was committed, and the Police's investigation of his Alibi turns out to the true..." (see pages 6 and 7 of the closing argument of the Accused Persons). In fact; nothing can be more true than this assertion above. If it is to succeed, the Accused Person must ensure that the issue of the Alibi is timely brought to the Police, who then have the burden of investigating same and proving the veracity of same or disproving same. Counsel had claimed that the 1<sup>st</sup> Accused Person raised an Alibi. I have perused the whole of exhibit N 1 – 74, which is the Accused Person's Voluntary Caution Statement (which I hasten to point out was taken in the presence of his Solicitors representing him then as is evident in the notification on the face of the said statement); I have not seen anywhere in that statement where the 1<sup>st</sup> Accused Person gave a definite indication of his whereabouts on the days in question. This is contrary to the assertion of Counsel for the 1<sup>st</sup> Accused Person as contained in his closing argument. What the 1<sup>st</sup> Accused Person did could be tantamount to an exercise in futility. In fact, from the authority he is relying on, he had





succeeded in defeating his own submissions. What the Accused Person (1<sup>st</sup>) and his Defence Counsels did was to attempt to do what he should have done a long time ago in the Police Station. An attempt to raise an alibi in the present instance whilst they were already in court, investigators have testified and they were not confronted with facts or questions that the Accused Person raised alibis but that they were never investigated or their deliberate avoidance to investigate them when they were raised, can the Defence Counsels say that raising them during this stage could be deemed that they were timely raised? The answer is a resounding no.

In fact, even the Defence' attempt to do so in court failed woefully in several fronts. The 1<sup>st</sup> Accused Person's alibi was not raised by himself personally. It had to be raised by his witness whom his counsel chose to have testified before him. The court notes that he was in court during DW1's testimony. That notwithstanding, the court takes a look at the witnesses presented by the Defence counsels to corroborate the alibi. Most of them told the court that they did not set eyes on the 1<sup>st</sup> Accused person on the 14<sup>th</sup> of February 2020, but that they were informed by the DW1 that he was sick. They generally spoke about the 1<sup>st</sup> instructing that a party should be thrown on that day in celebration of the day and alluded to eating and drinking. Yet strangely, some of them did not even mention that there was a party on that day or that they saw the 1<sup>st</sup> Accused on the day in question – that is 14<sup>th</sup> of February 2020. It is also against the backdrop that under cross-examination the DW1 confirmed that the distance between Kono and Makeni is a 2 or 2 and the half hour drive. This court is not holding the 1<sup>st</sup> Accused Person to proving his alibis. What the court is saying is that there is nothing before it showing that the Accused Person raised an Alibi in the Police. The Accused Person was given his statement and after reading exhibit N 1 - 71 was on record confirming that no alibi was raised in the entire statement. In fact, evasively he said that he had read same and confirmed that nothing of such was in the statement he had read but in Defence of that said he categorically said so but that it must have been that the Police refused to put same in the statement. He confirmed to the Prosecution that the statement had his signature but that he signed the pages without reading them and that he did so because he sat for long gruelling hours when the statement was being taken. Under cross examination, he confirmed that his Solicitors were present when the statement was being taken but insisted that he did not read same before signing. The Court wonders why the Solicitors never cautioned him from doing so, assuming it did indeed turn out as he had said. In any, this court has nothing before it in proof of the 1<sup>st</sup> Accused Person's allegations against the Police. Of noted importance also is the fact that DW9 who put himself out as a manager at the Diamond Lodge Hotel during the period of the first sets of allegations of the 14<sup>th</sup> to 28<sup>th</sup> of February 2020, blatantly told lies to the court. A story was concocted and played out in court





only for him to be confronted and for him to later confess that he told lies and was testifying to a period when he was not even a worker in the said establishment – Diamond Lodge hotel. This was all geared towards proving one aspect of the 1<sup>st</sup> Accused Person's Alibi – his absence in Kono on the 14<sup>th</sup> of February 2020.

The court notes the attempt made by the Defence Counsels in their submission to paint the victim as an incoherent, blundering witness that was all over the place when she was testifying, (see paragraph C under the rubric Prosecution Witness 1 at page 9 in paragraphs 1 and 2 of their closing submissions) falls far from the truth of what actually transpired in court. There is no evidence before this court that during the visitation the PW1 missed the house. What is before the court is that she missed the turning into Femi Turner Drive. There was no controversy however that she later got her bearing and led the team unaided to the 1<sup>st</sup> Accused Person's house and that she was able to point out the entrance to the house, his room, which the 1<sup>st</sup> Accused Person himself confirmed was one of the ones he used to sleep in, and what was in the Parlour amongst others. Signs which were visible in the album of the scene of crime tendered as exhibit. The victim also handled herself very well under cross-examination and was able to calculate her age even when she was asked indirect questions as to her age, her schooling etc. The court finds it interesting that the victim a minor was so composed during her testimony and did recall vital pieces of information whilst the Accused Persons being adults were struggling to recall important dates, and incidents relating to the case. To the court's mind, counsel's submission that the PW1 was an incoherent, blundering witness is not true. Her testimony was in no way discredited nor were there material inconsistencies that would render it unreliable or unsafe to convict the Accused Persons on it alone (though in this instance there are numerous other pieces of corroborative evidence). As to the point raised by counsel of the absence of proof that the victim was at Diamond Lodge, because none of the staff could place her on the scene, the court reminds Counsel that the victim did not testify that they followed the laid down norms that guests do follow or ought to follow upon arrival. She said the 1<sup>st</sup> Accused Person would drive in, sit in the car park, make a phone call and a lady would come out to meet them and hand keys over to the Accused who would then proceed to open the room and the rest follows. If there is anything to be gleaned from this testimony is the fact that according to it, the norm was bypassed by the Accused Person, it therefore suggests that there would be no formal record of such a visit as the normal channels were supposedly bypassed.

On the issue of the age of the victim, in tandem with the birth certificate and the alleged tampering with same, this court refers the Accused Person's Counsel of the existence of the





under 5's card and the fact that it forms part of the evidence and the fact that at no point in time did the Defence Counsel challenge its tendering into evidence. The court notes that the information on same tallies with the information on the birth certificate and also with the PW1, 5, 6, and even the Voluntary Caution Statements of both Accused Persons where they confirmed that it was the victim's 15<sup>th</sup> birthday party that was celebrated on the 2<sup>nd</sup> day of February 2020. As a result of the immediacy with which the under 5's card is issued as opposed to the birth certificate, the court hereby chose to emphasize its importance in proof of age and in this instance the age of the victim and makes the necessary inference, concluding that this is corroboration of the fact that the Victim is indeed 15 years old as at the 14<sup>th</sup> of February 2020. This court had made it known a long time ago that the Defence Counsels were wrongly assuming that it is relying on the birth certificate alone as proof of the victim's age, and that it would be relying on several factors chief of which are the victim's testimony and that of her parents and the Under 5's card and the documents tendered by the Deputy Director of the National Civil Registration Authority. The court does not even countenance the submissions of counsel relating to Paragraph E under the rubric PWIII. (see Paragraphs 1 and 2 thereof). This court is amazed as to how would the Defence Counsel want evidence of something that allegedly occurred on the 14<sup>th</sup> of February 2020 to be present up till sometime in July 2020 when the investigation was still active – and in an environment where guest frequents and where ideally the sheets should be changed during every such visit. This is against the backdrop of the fact that the victim said in her testimony that after the first encounter, upon getting up to wash herself, she noticed blood on the bedspread but that after she had finished cleaning up herself and upon coming out from the bathroom, she discovered that the bedspread had been removed from the bed.

It is true that PW1 claimed that she was deflowered by the 1<sup>st</sup> Accused but taking into consideration the time frame of the alleged occurrence, it bothers on the ridiculous that counsel is making a heavy weather of the absence of semen as an issue. According to the medical doctor, it is impossible for such to be present considering the length of time between the alleged occurrence and the report being made. This court lends solace in what the medical doctor had said in his testimony.

The assertion that PWIII confirmed that the 1<sup>st</sup> Accused told him upon being confronted that he was not in Kono is not before this court.

From counsel's analysis of the Defence's case, this court is made aware of the Defence counsels' misconception that the Prosecution relied on the Medical report in proof of the fact in issue - that is proof that it was the 1<sup>st</sup> Accused Person Who Penetrated the victim. To the Court's mind, this is a misstatement of the Prosecution's case. What the prosecution did with





that piece of evidence is to show that penetration took place severally to the point that no trace of the hymen remains; and by circumstantial evidence, tying various other pieces of evidence together, proved that it was carried by the 1<sup>st</sup> Accused Person as aided and abetted by the 2<sup>nd</sup> Accused Person. Counsel is fully aware that it is not through direct evidence alone that an accused person's guilt could be established and that there is great difficulty involved most of the time obtaining such a proof. Counsel should also be aware that such could be done via circumstantial evidence - which is defined as indirect evidence that relies on an inference to connect it to a conclusion of fact. It is defined in the 36<sup>th</sup> Edition of Archbold's Pleading, Evidence, and Practice in Criminal Cases at Page 424 Paragraph 1141 under the rubric Circumstantial Evidence in General as "... evidence of surrounding circumstances which, by undesigned coincidence, is capable of proving a proposition with the accuracy of mathematics."

Contrary to what the Defence Counsels postulated in paragraph 1 – 8 of page 12 of their closing submissions, firstly, counsel cannot expect that there would be signs of trauma injuries on the PW1 when the incident allegedly occurred on the 14<sup>th</sup> of February 2020 and the report was made in July 2020 nor would there be presence of semen or trauma in and around the genitalia. Except he would want to tell the court that the victim should not wash herself at all. The Doctor was very clear as to what eliminates trace evidence and he says the victim washing immediately after the encounter could be one of the ways trace evidence is mistakenly and inadvertently gotten rid of. Secondly; the court is aware that was never the evidence before it that on the 14<sup>th</sup> of February 2020 when this offence allegedly and initially occurred a report was made. This is a deliberate distortion of the evidence before the court. As is his assertion in paragraph 8 also on page 12 of his closing argument. Thirdly; it is true that no other witness came before the court that told it that they saw the 1<sup>st</sup> Accused with the victim on the first day of this allegation - the 14<sup>th</sup> of February 2020. But counsel is reminded of the 1<sup>st</sup> Accused Person's woefully failed attempt to raise an alibi in court that was not raised when the Police took him into custody for questioning during the course of their investigation. As to the numerous lies told by his witnesses in a bid to place him somewhere else other than the scene of crime. This can be juxtaposed against the inconsistencies relating to the Alibi and the rendition of certain common event to the day in question by the different witnesses who testified on his behalf; and even the fact that the Accused Person's own very testimony during cross examination was so unbelievable, that it left court with the question why the Accused Person was so desperate to place himself out of the scene of crime in all the instances contained in the allegations. PW1 never told the court that the norm – that is entering through the reception area and making reservations was what was done on the day in question. She testified to an unorthodox method being used by the 1<sup>st</sup>





Accused Person to gain access on both of the days of the Allegations. Where then does counsel expect there be a record of the activities of those two days, when the victim did not tell the court that their visit was duly recorded?

As has been their modus, this court is aware of the serious allegations levied by the Accused Persons' counsels in page 13 of the submission – under the rubric Lack of sufficient time and opportunity to prepare and found contained in paragraphs 2 – 5 thereof. They not only accused the Prosecution of witness tampering and intimidation but also of preventing the Accused Person access to a proper Defence because he has not been granted bail – a fact that is blatantly untrue, as the records could show that bail has not only been granted to him a long time ago but that his co-accused had been benefiting from the same bail conditions granted to him. As officers of the court they ought to know better and what they should do, instead of going about casting aspersions against their Colleague. All the Defence Counsels displayed a completely lack of respect for the court and for proceedings. Not only were there incessant adjournments at their behest, they would ask for adjournments and be granted only for them not to come to court on the adjourned dates or even show the courtesy of informing the court of their absence. Of importance also was the 1<sup>st</sup> Accused Person's tantrums which he would always pull in the court. At given times the 1<sup>st</sup> Accused Person would deliberately insist that he would not come to court. Other times, the 1<sup>st</sup> Accused Person would not come to court, only for his solicitors to inform the court after waiting endlessly, that the Accused Person is admitted and would not be coming to court. As a result of this pattern, the accused person ended up spending some 11 weeks at the hospital without due reference to the court until an order for him to be brought forcefully was executed. The court is taken aback by the allegations made by counsel for the Accused Persons' in their closing submissions. Same was baseless and a totally fabrication of the actual events.

Finally, the court is seised of their submissions relating to the offence of Conspiracy. In fact, it is agreement with them on the authority they are relying on – *R v Aspinall*, per the dictum of Brett JA. However, this court distance itself from the Defence Counsels' reasoning and confirms the Prosecution's submission wholly as found in pages 2 to 5 (the Second Paragraph thereon – that is of page 5) in relation to what constitutes conspiracy and the ingredients that should be present for the crime to be fully constituted. It is the Prosecution's submission that both Accused Persons conspired as on the face of the indictment to commit the offence of Sexual Penetration and that the 1<sup>st</sup> Accused Person met the victim severally – from which meeting intercourse was initiated for about 5 different times as is contained in the allegation. The court also refers to the





36<sup>th</sup> Edition of ARCHBOLD Criminal Pleading Evidence and Practice, at page 1466 paragraph 4051 where it stated that conspiracy at common is 'an indictable misdemeanour consisting in the agreement of two or more persons to do an unlawful act or to do a lawful act through an unlawful means' (1 Hawk. C. 72, s.8). Better still, it is an agreement between two or more people to commit a crime at some future date, as was held in the case of DPP V DOOT (1973) ALL ER 940 HL or (1973) AC 807. Agreement is the essence of conspiracy. This agreement does not have to be formal or in writing, all that is necessary is that the parties had a mutual understanding to undertake an unlawful plan. (Mulcahy v. R.L.R. 3 H.L, 306, 317) Conspiracy can be inferred from overt acts done in furtherance of the crime and needs not be tangible. The overt act does not have to be the crime itself, nor does it have to be an act that is illegal; rather, the act must merely be a step taken in furtherance of the criminal objective, just as we have heard from PW1 (victim in this matter), where she testified that upon the instructions of the 2<sup>nd</sup> Accused Person, she was administered a contraceptive commonly known as 'captain band' on the 7<sup>th</sup> day of February 2020 and this was corroborated by PW2 (Mary Sia Tommy-the nurse) who administered the said captain band. PW2 (Nurse) tendered in evidence Exhibit B (The Family Planning Register which was later withdrawn after a certified copy was tendered as Exhibit B1. This Exhibit says that the age of the victim is recorded as 15 years and the date of the 'captain band' was administered is recorded as the 7<sup>th</sup> day of February 2020. This happened exactly a week before the first alleged sexual penetration act of the first accused person on the victim. During cross-examination PW2 was told: 'I put it to you that the second accused was not present while the captain band was inserted' her answer was 'she took the child to the clinic'. Moreover, PW1 (victim), throughout her testimony maintained that all the five sexual encounters between herself and the first accused were aided by the second accused person, because according to her, first accused would always take permission from the second accused person whenever he wants to go out with her and the second accused would now begin to urge her to hurry up as first accused will be coming soon to pick her (victim) up. PW1 also alleged that on the 14<sup>th</sup> day of February 2020, it was the second accused person that permitted first accused to go out with her and that in fact it was the second accused who chose the dress she wore on that day and also gave her a nice hairstyle and later dressed her up; first accused later came and picked the victim up and they drove to Diamond Lodge Hotel. See also to Exhibit A1-





21 from line 26 of page 2 unto line 13 of page 3 where the role played by the Second Accused in so far as the event of 14<sup>th</sup> February 2020 is concerned was explained. When PW1 (victim) was asked in examination-in-chief as to why she never made a complaint to the second accused for the sexual penetration acts of first accused on her, her response was that she didn't report to the second accused because she was the very person permitting the first accused acts against her PW1 (victim). Throughout PW1's (Victim) testimony, the 2<sup>nd</sup> accused person name resonates. Please see Exhibit A1-21 from page 5 line 8 to the end of page 5.

Still on the overt acts of the second accused insofar as the offence of conspiracy is concerned after the contraceptive was administered, second accused instructed the victim that in the event her husband Mr Arouni sees the plaster on her arm, she should tell him, she was injured in school. This begs the question why would second accused hide this fact from her husband, if what she was doing was right? The timing of the suspected bleeding incident that led to the insertion of the "Captain Band" also comes to mind. It is not controverted that the victim came to dwell with the 2<sup>nd</sup> Accused Person sometime in 2019; it is also not controverted that the 1<sup>st</sup> Accused was introduced to the victim in one such of his visits to them sometime in January 2020. It was not controverted that during the said introduction and subsequently in other meetings, and in the testimonies PW4, 5, and 6 and their Statements taken by the Police which was tendered through them by the Defence counsels, they referenced the statement made by the 1<sup>st</sup> Accused: that; ***"the victim is bright, he would see her through her secondary and tertiary education, sponsor her for a trip abroad, and marry her when she gets matured,"*** that statement resonated throughout the said exhibits – the statements taken by the Police of PW4,5, and 6. In fact, in exhibit O 1- 42, the 2<sup>nd</sup> Accused was made to listen to an audio and asked by the police if she could identify the voices on it and she confirmed being able to identify two of the voices and claimed that they belonged to the victim's father and the 1<sup>st</sup> Accused Person. She confirmed what she was always denying – that the 1<sup>st</sup> Accused Person did say in the said conversation that he would amongst other things marry the victim. Even the 1<sup>st</sup> Accused Person later reluctantly confirmed that he made the said statements though he deemed them to be **"motivational statements" that were exact replicas of those made by the mother.** Reference is also made to page 6 from line 3 on the end of page 6





Exhibit A1-21, statement of PW1 (victim) dated 17/7/20. It was also the 2<sup>nd</sup> accused that instructed PW1 (victim) to call the first accused and inform him that there is not much schooling going on, so he (first accused) should send them transport fare to travel to Freetown, in order to meet with the first accused through the input of the 2<sup>nd</sup> accused person. PW1 ended up in freetown and spent the night, that day in March 2020, when she was again sexually penetrated by the 1<sup>st</sup> accused; this time not once but twice at his home in Goderich (see line 25 of page 6 unto line 2 of page 9 of Exhibit A1-21) all indicative of the acts of the 2<sup>nd</sup> accused- and her ultimate statement **'she told me the said mobile phone was not of any value compared to the number of times that the perpetrator has had sexual intercourse with me.'** Therefore, suffice it to say from the above that the second accused person knew that the 1<sup>st</sup> accused person had been sexually penetrating victim (PW1); even though victim had never complained or reported the matter to 2<sup>nd</sup> accused. No wonder she arranged for contraceptive to be administered to victim (PW1). Of interest also is the fact that after the introduction in January 2020, the Accused Persons jointly facilitated the celebration of the victim's birthday on the 2<sup>nd</sup> day of February 2020, and under one pretext or the other got the contraceptive inserted into the arm of the victim on the 7<sup>th</sup> day of February 2020; and the victim alleged that the 1<sup>st</sup> Accused Person came for her and asked permission of the 2<sup>nd</sup> to go out with her on the day in question and that it was the 2<sup>nd</sup> who got her prepared for the tryst, which led to her being penetrated are all overt acts and goes towards strengthening the strings of circumstantial evidence against both accused Persons. As is the uncontroverted pieces of evidence relating to what transpired during the various visits paid to the scenes of crime by the Police in the presence of the 1<sup>st</sup> Accused Person, his Solicitors and the victim among others; and the accuracy with which someone coming from the provinces and who had never darken the doors of the said establishment and the accused person's house in freetown was able to locate same and not only do so but also the point of entry, the description of the room in which it allegedly occurred, the previous layout of the parlour and what equipment there was in the parlour etc. The failed attempts at creating the Alibis of the 1<sup>st</sup> Accused Person done in court confounded the situation. Even though this court is not seised of direct evidence before it that, yet the court is aware of all of these indirect ones and makes the inference that they are so strong that it points to only one fact alone, that the Accused Persons conspired to bring about the commission of the various offences,





and that in their commission, the 1<sup>st</sup> Accused Person was aided and abetted by the 2<sup>nd</sup>. It was the Accused Person who picked the victim up from the 2<sup>nd</sup> Accused Person. The evidence of the preparation of the victim for this day that abounds in the records could lead and thus lead this court to only one conclusion that the meetings had only one purpose in mind – the penetration of the victim sexually by the 1<sup>st</sup> Accused Person.

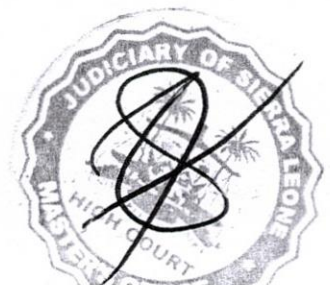
It is interesting to note that these facts as testified by the victim were never controverted in cross examination and that throughout the said cross examination, the prosecution case vis-a-Viz the testimony of the victim (PW1), bears no material inconsistency to make the prosecution's case so manifestly unreliable. In fact, some of the questions in cross examination only confirms the prosecution's case. (this is confirmed in the entirety of the evidence before the court).

### **MEETING A CHILD FOR SEXUAL PURPOSES**

This offence speaks for itself: it is intentional meeting with a child for or with sexual intent. The evidence of the victim (PW1) clearly explains this and it is clear from her evidence that the 1<sup>st</sup> Accused did meet with her on several occasions for sexual purposes and did sexually penetrate her on these occasions. Reference is made to 'Exhibit A1-21' statement of victim (PW1) tendered by the defence, with particular emphasis on the last paragraph of page 7 unto page 9

### **AIDING AND ABETTING**

Section 8 of the Accessories and Abettors Act 1861 provides whosoever shall aid, abet counsel or procure the commission of any indictable offence, whether the same be an offence at common law or by virtue of any act passed or to be passed, shall be liable to be tried, indicted and punished as a principal offender. This offence in the light of the evidence adduced by the prosecutions vis a vis its definition; vividly describes the role played by the 2<sup>nd</sup> accused which created the enabling environment for the 1<sup>st</sup> accused to be complacent in his acts of sexual penetration against the victim. Indeed, the 2<sup>nd</sup> accused person was the kingpin in this whole saga. She more or less played the role of a pimp. Reference is made again to Exhibit A1-21 in entirety its entirety. Therefore, the court will discountenance the testimonies of all the 1<sup>st</sup> Accused Person's witnesses as their attempts at verifying the 1<sup>st</sup> Accused Person's alibis is rather late in the day. Even in the hasty attempts made to cover up, some of the 1<sup>st</sup> Accused Person's witnesses testified and made no reference to meeting the 1<sup>st</sup> Accused Person on the day in question. All they said was that it was Isha Mansaray





who informed them about DW2's illness The court is also concerned that the 1<sup>st</sup> Accused Person would want the court to believe that in the presence of his legal Counsels, a man of his calibre not only made a statement to the police without reading it but that he signed same? The court is also aware of the revelation in exhibit O 1 - 42 where the 2<sup>nd</sup> Accused Person confirmed a voice recording played for her as the voice of the 1<sup>st</sup> Accused Person.

It comes to the conclusion that the Prosecution had proven its case against both accused persons beyond reasonable doubt and below is the verdict of this court:

On count One: both Accused Persons are hereby found guilty.

On count Two: the 1<sup>st</sup> Accused Person is hereby found guilty.

On Count Three: the 1<sup>st</sup> Accused Person is hereby found guilty.

On Count Four: the 1<sup>st</sup> Accused Person is hereby found guilty.

On Count Five: the 1<sup>st</sup> Accused Person is hereby found guilty.

On Count Six: the 1<sup>st</sup> Accused Person is hereby found guilty.

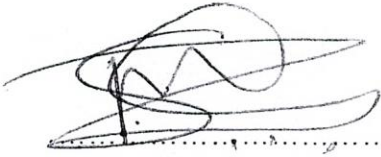
On count Seven: the 1<sup>st</sup> Accused Person is hereby found guilty.

On Count Eight: both Accused Persons are hereby found guilty.

DATED THIS 17<sup>TH</sup> DAY OF FEBRUARY 2023







S.O. TAYLOR JA.

PRESIDING JUDGE

