=]=IN THE HIGH CURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

V

OSMAN KAMARA

COUNSEL

J.A.K. Sesay State Counsel for The State

E.T. Jalloh State Counsel for The State &

A.T. Rogers State Counsel or The State

O.C. Spencer-Coker for The Accused

JUDGEMENT DELIVERED ON THE 19TH DAY OF MAY, 2020 BY

HONOURABLE MR. JUSTICE MONFRED MOMOH SESAY – JA

INTRODUCTION

The Accused, Osman Kamara is charged on a one-count Indictment with the offence of sexual penetration contrary to Section 19 of The Sexual Offences Act, 2012, Act No. 12 of 2012. The Prosecution alleges that on the 19th day of April, 2018 at Freetown in the Western Area of the Republic of Sierra Leone the Accused engaged in an act of sexual penetration with Adamsay Kamara, a child.

The Accused first appeared before me on Tuesday, the 29th January, 2019 and he was arraigned and pleaded NOT GUILTY.

The Prosecution then applied for his trial by a judge alone instead of by a judge and jury pursuant to Section 144(2) of The Criminal Procedure Act, 1965 Act No. 32 of 1965 (i.e. The CPA) as repealed an replaced by Section 3 of The Criminal Procedure (Amendment) Act, 1981 Act No. 11 of 1981. I

accordingly ordered that the Accused be tried by a judge alone instead of by judge and jury.

By virtue of the order for trial by judge alone, I became the judge of both facts and law and I must therefore keep in mind and direct myself that in all criminal cases including this one, it is the duty of the Prosecution to prove the guilt of the Accused beyond reasonable doubt. It means therefore that I can only find the Accused guilty of the offence charged if the Prosecution leads evidence proving beyond reasonable doubt every element of the offence charged.

The leading case on the burden and standard of proof is Woolmington v DPP (1935) AC 481 at 482, a House of Lords of England decision in which Lord Sankey enunciated the rule when he said,

> "Throughout the web of English Criminal Law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject to any other statutory exception .... No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained." (emphasis mine).

Denning J (as he then was and now deceased) explained the meaning of the phrase "beyond reasonable doubt" in the case of Miller v Minister of Pensions (1947) 2AER 372 at 373-374 in the following terms:

> "The degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If

> the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved be yond reasonable doubt; but nothing short of that will suffice."

This rule of law has been adopted, affirmed and applied in this jurisdiction which is a common law country and there is countless number of local cases (reported and unreported) in which the rules on the burden and standard of proof have been applied.

One such case is Koroma v R (1964 – 1966) ALRSL 424 at 548 CA in which Bankole-Jones said:

> "This Court is concerned with the question whether whatever form of words was used, it was made quite clear to the jury that it was for the prosecution to establish the guilt of the prisoner and, if the guilt of the prisoner was not established, the prisoner must as of right and not by way of favour, be found not guilty. If that is done, that is enough" (emphasis mine)

Another local reported case is that of Labour-Jones v R (1964 – 1966) ALRSL 471 at 473 CA in which Bankole-Jones, in delivering the judgment of the Court of Appeal of Sierra Leone, quoted with approval the dictum of Goddard, Lord Chief Justice, in the case of R v Hepworth (1955) 2 AER 920 in the following terms:

> "The point is that the jury should be directed first, that the onus is always on the prosecution; secondly, that before they convict they must feel sure of the Accused's guilt. If that is done, that is enough."

In an unreported Court of Appeal Case, Cr. App. 7/2000 Between Soluku Jermil Bockarie v The State, Honourable Justice N.C. Browne-Marke JA(as he then was now Justice of the Supreme Court of Sierra Leone) in delivering the majority judgment of the Court in April, 2008, had this to say:

> "The principle enshrined in Woolmington's case applied to all criminal cases is without doubt. It applied more strongly where the judge is both Judge of law and fact … the legal burden of proof in criminal case always rests on the prosecution, and that it never shifts; and that the burden lies on the prosecution to prove every element of the offence with which an accused has been charged beyond reasonable doubt" (emphasis mine).

Other local cases in which these principles have been applied include Bob-Jones v R (1967 – 1968) ALRSL 276; Amara v R (1968 – 1969) ALRSL 220;

The State v Moses Alieu Lansana (unreported) in which I delivered judgment on the 30th January, 2020 after trial by this Court etc.

The line of cases (local and foreign) is endless on these principles of law on the burden and standard of proof and I shall apply them in this matter in which I sit as a judge of both facts and law.

THE ELEMENTS OF THE OFFENCE

As stated earlier in this judgment, the Accused is charged with the offence of sexual penetration contrary to Section 19 of The Sexual Offences Act, 2012 Act No. 12 of 2012. Section 19 provides as follows:

> "A person who engages in an act of sexual penetration with a child commits an offence and imprisonment not exceeding fifteen years." (emphasis mine)

"Sexual penetration" is defined in Section 1 of that Act as, "Any act which causes penetration of any extent of the Virginia, anus or mouth of a person by the penis or any other part of the body of another person, or by an object.

"Penetration" is defined at page 861 of the Sixth Edition of Oxford Advanced Learner's Dictionary of Current English by A.S. Hornby as. "the act or process of making a way into or through something."

It is my considered opinion that the definition of "sexual penetration" in the Act is wide enough to include penetration by the penis or other parts of the body such as finger or objects such as stick, pen or candle into the virgina, anus or mouth of another person.

Also the victim of the penetration should be a child and "child" is defined in Section 1 of the Act as "a person under the age of eighteen years."

There are therefore two elements of the offence from the definition which are:

(i) act of sexual penetration; and

(ii) the victim of the penetration should be a child.

Another element which the Prosecution should prove in this case as in all criminal cases is the mens rea which, I hold, should be the intention to engage in an act of sexual penetration. Intention however, cannot be proved directly but indirectly from what the Accused said or did at the time of engaging in the unlawful actus reus i.e. the act of sexual penetration.

I rely on the law as stated by the Learned Authors of Archbold: Pleading. Evidence and Practice, 36th Edition at paragraph 1010 page 364, where they wrote as follows:

"The intention of the party at the time when he commits an offence is often an essential ingredient in it, and, in such a case, it is as necessary to be proved as any other fact or circumstances laid in the indictment.

Intention, however is not capable of positive proof, it can only be implied from overt acts". (emphasis mine)

Another element which the Prosecution must prove in a sexual offence like this one is corroboration. The same learned Authors of the same edition of Archbold (supra) wrote at paragraph 1299 as follows:

> "Corroboration is looked for, and the jury should be warned of the danger of acting without it, in all cases of sexual offences, irrespective of the age or sex of the complainant or other party involved and even if the only issue is that of the identity of the person alleged to have committed the offence ... and failure to give such warning will be fatal to the conviction." (emphasis mine)

What then is corroboration in law?

The issue of what constitutes corroboration was considered and resolved by the Court of Criminal Appeal of England in the leading case of R v Baskerville (1916 – 1917) AER 38 at 43 in which Viscount Reading, CJ, in delivering the judgment of the Court made a pronouncement on the nature of corroborative evidence of general application. He said:

"We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him – that is, which confirms in some material particular not only evidence that the crime has been committed, but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offence for which corroboration is required by statute. The nature of corroboration will necessarily vary according to the particular circumstances of the offence charged. It would be in a high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration … The corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime."

From this dictum of Viscount Reading, CJ, for evidence to be corroborative, it should meet the following requirements, namely:

i. it must come from a source independent of the witness to be corroborated;

ii. it must implicate the Accused in material particular i.e. that the crime was not only committed but that it was committed by the Accused; and

iii. it can be either direct (or positive) or indirect (or circumstantial).

Corroborative evidence may also consist of a single piece of evidence or pieces of evidence taken together and their cumulative effect implicates the Accused in material particular (See Thomas v Jones (1921) KB 22)

Corroborative evidence has been held to take different forms including:

1. Admissions or confessions of guilt by the Accused (See R v Dossi (1918) 13 Cr. App. 158).
2. Lies or false statement by the Accused (See Credland v Knowler 35 Cr. App. Rep.48 and R v Lucas (1981) 2 AER 1008)

For a lie to be corroborative, it ,must meet the following conditions:

(i) it must be deliberate;

(ii) it must relate to a material issue;

(iii) the motive for the lie should be the realization of guilt and fear of the truth;

(iv) it should be shown by evidence that the statement is clearly a lie (see R v Lucas (supra). Mere denials without more do not constitute a lie.

3. Distressed conditions of the victim, in certain circumstances, can be corroborative of the evidence of the victim if observed by another person (See R v Redpath (1962) 40 Cr. App. Rep. 319: From hold v From hold (1952) TLR 1522)

Distressed conditions of victims have been held to include stressed and frightened looks, trembling, crying, injury from the alleged sexual assault such as bruises, wounds etc, looking or appearing dishevelled, torn clothes etc (see Moses Kamau Waweru v Republic (1988) eKLR Court of Appeal of the Republic of Kenya)

4. Testimony of an eye witness or somebody who caught (or saw) the Accused and the victim red-handed in the act or in compromising situations such as being found in a room or other isolated places and either or both Accused and victim were naked or half naked.

Whatever the nature of the corroborative evidence, it should be bourne in mind that it is required (particularly in sexual offences) to "minimize the possibility of fabrication and maximize the implication of the Accused"(see Crosscon Evidence, 6th Edition by Colin Tapper at page 248)

It should be noted that corroboration is not however required as a matter of law under The Sexual Offences Act, 2012 because there is no provision in the said Act for corroboration. This is unlike the predecessor Act i.e. The Prevention of Cruelty to Children Act, Cap 31 of The Laws of Sierra Leone, 1960 as amended which had unlawful carnal knowledge created by Section 6 and 7 of the said Act and indecent assault created by Section 9 of same. Under Cap 31 and particularly by Section 14, there was an expressed provision and requirement for corroboration of the victim's evidence without which no Accused should be found guilty and convicted for the offences of unlawful carnal knowledge, indecent assault and procuration created therein.

Corroboration would therefore be required under the Sexual Offences Act, 2012 as a matter of practice (See paragraph 1299 of Archbold (supra)).

I am persuaded by these rules on intention and proof thereof and on corroboration, and I shall apply them in this matter.

From the above review of the law on sexual penetration, I hold the considered view that for the Prosecution to prove the guilt of the Accused beyond reasonable doubt, they must prove each of the following elements:

(i) That the Accused engaged in an act of sexual penetration with the victim, Karina Kadija Haja Hamzie;

(ii) That at the time the offence was committed, the victim was a child i.e. a person below the age of eighteen (18) years;

(iii) That the Accused had the intention, at the time of the offence, to engage in an act of sexual penetration with the victim; and

(iv) Corroborative evidence conforming the story of the victim.

THE EVIDENCE

I shall now proceed to consider the evidence of both The Prosecution and The Defence.

(a) The Case For The Prosecution

The Prosecution called four (4) witnesses, namely:

(i) DPC 13335 Sorie Sesay attached at the Family Support Unit (FSU) Tombo Police Station who testified on Tuesday, the 19th February, 2019 as Prosecution Witness (PW) 1;

(ii) Adamsay Kamara, victim who testified on Tuesday, the 26th February, 2019 as PW 2;

(iii) Mariatu Kargbo, mother of victim who testified on Tuesday, the 26th February, 2019 as PW 3; and

(iv) Dr. Olabisi Claudius-Cole who testified on Friday, the 20th December, 2019 as PW 4.

The Prosecution also tendered four (4) exhibits including:

(i) The endorsed police medical request form as Exhibit A^{1-4};

(ii) The Voluntary Cautioned Statement (VCS) of the Accused as Exhibit B^{1-5};

(iii) The Charge Statement (CS) of the Accused as Exhibit C^{1-3}; and

(iv) The Committal Warrant of the Accused as Exhibit D^{1-3}.

PW 1: DPC 13335 Sorie Sesay

He is one of the investigators of this matter and attached at the FSU, Tombo Police Station, Tombo. He told the Court that he recognised the Accused and that he knew Adamsay Kamara, the victim in this matter and that he recalled the 19th April, 2018 he was on duty when one Mariatu Kargbo of Creole Town, Tombo and one Abu Kamara arrested and brought the Accused and the victim to the station and reported a case of sexual penetration; that he issued a police medical request form to victim's mother for victim to be examined and treated at the Rainbow Centre, Freetown and that the endorsed medical request form was later returned to the police.

He identified and tendered the said police medical request form which was admitted as Exhibit A^{1-4}.

That he recalled the 20th April, 2018 when himself and a Social Worker, one Paul Ibrahim Mansaray obtained a Child Log Interview from victim in the presence of her mother and that on the same date, himself and his colleague, 14016 Barrie, A obtained a VCS from the Accused which he tendered and was admitted as Exhibit B^{1-5}.

That on the 23rd April, 2018, himself and his colleague, DPC 14016 Barrie, A, and the Accused visited the scene of the alleged crime and that on the 6th July, 2018, himself and his said colleague obtained a CS from the Accused which he tendered sand was admitted as Exhibit C^{1-3}.

Under cross-examination, the witness said he did not visit the Accused's residence at No. 18 Tombo and that the Accused told him that on the 18th April, 2018, he was watching film.

The witness was not re-examined.

Under cross-examination by the Court, the witness said that on their visit to the scene of the alleged crime, the victim identified the place but that nothing of police interest was found.

PW2: Adamsay Kamara

She said she lived with her mother at Tombo and that she recognised the Accused as her neighbour.

That something happened between her and the Accused; that the Accused called her and sent her to buy garrie for him and that she went and bought it and took it to him; that he then asked her to lie on the bed which she did and that the Accused removed her pants and removed his trousers and lay on top of her and that he threatened to kill her if she told anybody what he had done to her.

That in the evening, she saw victim with "Achekeh" and she explained that the Accused gave it to her and that she asked victim to say thanks to the Accused for the gift.

That at night whilst they were in bed, she woke up and found victim sleeping with legs wide open and blood stains on her pants; that she woke her up and asked her what was wrong with her and the victim was afraid and victim said if she told her she would beat her; that she assured her that she would not beat her and victim then told her that it was the Accused who had tempered with her; that she asked victim why did she not shout when Accused tampered with her and that victim explained that the Accused had threatened to kill her if she told anybody.

That she then informed her step-father who advised that she report the matter to the police which she said she did and that victim was referred to Cottage Hospital for examination and treatment where victim was examined and that it was confirmed that victim had been tampered with; that victim was treated and that they returned the endorsed police medical request form to the police.

Under cross-examination, the witness said that the Accused used to send victim but that she was not related to the Accused; that she did not asked Accused why he sent her daughter because they were co-tenants and that she did not bathe the victim that night; that there was no conflict between herself and the Accused and that all what she had told the Court was the truth; that she did not tell her daughter what to say in Court.

The witness was not re-examined.

PW4: Dr. Olabisi Claudius-Cole

She said she was a medical doctor attached to the Western Clinic and the Rainbow Centre, Freetown and that her duties included to take the history from survivors of sexual assaults and do complete physical examination, tests if necessary and collect any forensic evidence and treat the survivors based on their findings; that she also issues reports;

That she recalled the 23rd April, 2018 when she had cause to examine and treat victim and issued a medical report which report she identified i.e. Exhibit A^{1-4} which had been tendered by PW 1. She said hymen was a covering of the vagina opening and when it was ruptured, it was absent and that she found that victim's hymen was completely ruptured; that hymen can be ruptured by sexual intercourse, riding bicycle or horse, astride injury, surgical intervention or through athletics.

That some of the causes of virginal discharged which was yellowish in the victim and in a victim of eight years old could be some form of sexual penetration and that the discharge was evidence of infection.

That she has been a medical doctor for over 32 years during which she has done over 10,000 of such examinations.

Under cross-examination, the witness said the victim was taken to her a few days after the incident and that she did not collect any blood or sperm specimen; that the victim was not in coma but walked to the clinic herself.

The witness was not re-examined.

Under cross-examination by the Court, the witness said she did not find out who sexually assaulted victim.

The Prosecuting State Counsel, J.A.K. Sesay, then tendered the Committal Warrant of the Accused which was admitted as Exhibit D^{1-3} and closed the case for the Prosecution. This was on Friday, the 20th December, 2019.

Before I proceed to consider the case for the Defence, let me pause and consider the VCS and CS of the Accused tendered by the Prosecution as Exhibits B^{1-5} and C^{1-3} respectively as part of their case.

In Exhibit B^{1-5}, the Accused denied the allegation and explained that he was a fisherman at Tombo village and that he knew both victim and her mother and that he used to do good to victim's mother.

That on Thursday, the 19th April, 2018 he was watching film at No. 18 Tombo when one Nancy and a man told him he had committed an offence of having sexual intercourse with victim a few days before and that he was very surprised to hear such allegation.

In answering questions put to him by the police after his free narrative, he said he lived in the same compound with both victim and her mother and that he used to send victim to buy things for him in the evenings and denied having had sexual intercourse with victim; that he used to send victim because of the good relationship he had with victim's mother.

That he knew victim was below 18 years of age and that he was not the only man in the compound.

He pleaded with the police not to charge matter to Court because he said he did not want to go to Court.

In Exhibit C^{1-3}, the Accused said he was asking for mercy for the matter not to be charged to Court.

My initial reaction to these statements is that even though the Accused denied the allegation, he pleaded with the police not to charge the matter to Court. Why would he not want the matter to be charged to Court? I would have thought that he should be happy to avail himself with the opportunity to clear his name.

I shall return to this issue shortly in this judgment.

(b) **The Case for The Defence**

At the close of the case for the Prosecution, I put the Accused **to** his election and he elected to make an unsworn statement from the dock and that he was not calling any witness.

In his said unsworn statement, the Accused said he lived at Creole Town at Tombo village and that he knew Adamsay Kamara as they lived in the same area at Tombo village; that the allegation against him that he had had sexual intercourse with victim was not true.

That he was a fisherman and that one Nancy and victim's mother conspired with others to falsely accuse him.

That in his statement to the police, he denied the allegations several times and that one of the investigators called Sesay, victim's grandfather and one Pa Alhaji are part of the conspiracy to falsely accuse him.

The Accused then closed his case.

I then gave directions for the writing and filing of Closing Addresses. The Prosecuting Counsel was to file and serve his on or before the 1st January, 2020 whilst the Defence Counsel was to file and serve hers on or before the 4th February, 2020. I am pleased to note that the Prosecuting Counsel, J.A.K. Sesay complied with my said directions but that the Defence Counsel, O.C. Spencer-Coker did not. I have expressed by dissatisfaction in several judgments now on O.C. Spencer-Coker's failure to comply with the directions of this Court in respect of writing and filing Closing Address for the defence but she continues to flout the directions. This failure has contributed to the delay in writing and delivering this judgment. Defence

Counsel is advised to wake up to her duties which he owes this Court and her client. Writing Closing Address would also contribute to Counsel's professional growth.

REVIEW OF THE EV IDENCE AND THE LAW

I shall now proceed to evaluate the evidence before me and relate it to the relevant law on the issues raised and to see whether or not the prosecution has made out a case against the Accused.

But before I do so, I wish to remind and direct myself sitting as tribunal of both facts and law that it is the duty of the Prosecution to prove the case against the Accused and they must do so beyond reasonable doubt. If they succeed, I am bound by law to find the Accused guilty and convict him but if they fail, I am equally bound by law to find the Accused not guilty and consequently acquit and discharge him. If, after considering the totality of the evidence led before me, there is reasonable doubt in my mind that the Accused committed the offence charged, I must resolve that doubt in favour of the Accused and find him not guilty and accordingly acquit and discharge him. This is what the law says or provides.

Let me emphasise here that by this burden of proof put on the Prosecution, the Accused can therefore properly choose to remain silent throughout the trial as he is not under any obligation to prove his innocence. However, if he chooses to say anything, I must consider it in reaching any decision either in his favour or against him.

I shall proceed in this exercise by considering the elements of the offence charged each of which the Prosecution must prove. I have held earlier in this judgment that the Prosecution must prove four (4) elements, namely:

(i) that the Accused engaged in an act of sexual penetration with Adamsay Kamara;

(ii) that at the time the Accused engaged in the act of sexual penetration with the victim, she was a child i.e. a person below the age of eighteen (18) years;

(iii) that the Accused had the intention, at the time of the offence, to engage in the act of sexual penetration with the victim; and

(iv) corroborative evidence confirming the story of the victim.

(i) **That the Accused engaged in an act of sexual penetration with the victim, Adamsay Kamara.**

The evidence the Prosecution led and relied on in support of this element included the story of the victim, Adamsay Kamara (i.e. PW 2), her mother, Mariatu Kargbo (i.e. PW 3) and Dr. Olabisi Claudius-Cole (i.e. PW 4).

Let me start with the evidence of Dr. Olabisi Claudius-Cole who testified as PW 4. She told the Court that she had cause to examine the victim, Adamsay Kamara and found her hymen was ruptured and that for a child of eight years old as the victim was, such rupture could have been caused by some form of sexual penetration and that she also found a yellowish virginal discharge which was evidence of infection.

She said she did not however find out who sexually penetrated victim.

Her endorsed medical report which had been tendered by the police investigator contained similar information as her testimony.

The gap in the testimony of the doctor was filled by the testimony of the victim herself, Adamsay Kamara who told the Court that the Accused lived in the same compound where she lived with her parents and that the Accused used to send her to buy things for him and bought her food such as garrie, "Achekeh" etc.

That on one such occasion when the Accused sent her to buy something for him, the Accused asked her to lie on his bed which she did and Accused removed her pants, removed his trousers and lay on top of her and had sex with her and afterwards threatened to kill her if she told anybody.

That she went home and went to bed and whilst sleeping, her mother observed blood stains in her pants and woke her up and asked her how she came by blood in her pants; that she then explained that it was the Accused who had had sex with her.

The mother confirmed the story of her daughter that as co-tenant, the Accused was close with her family and used to send victim on errands and bought food for her. That one evening when Accused had sent for victim to send her buy something for him, victim went to Accused and later returned and went to bed and that whilst victim was asleep with legs wide open, she observed bloodstains on victim's pants and that she woke her up and asked her how she came by the blood stains in her pants; that victim then explained that it was the Accused who had had sex with her.

The Accused both in his statements to the police (*i.e. Exhibits B^{1-5} & C^{1-3}) and his unsworn statement from the dock, did not only deny the allegation but also said that it was a malicious allegation made against him by one Nancy, one of the investigating officer called Sesay and victim's grandfather, Pa Alhaji.

I must direct myself sitting as both a judge of facts and law, that the Accused is not under any obligation to prove his innocence and so he can properly choose to remain silent throughout the trial. But if he chooses to say something in his defence, I must consider it before reaching any decision either against him or in his favour. I must therefore consider the unsworn statement by the Accused even though it was not subjected to cross-examination. The Learned Authors of Archbold (supra) quoting with approval the dictum of the Lord Chief Justice in the Court of Criminal Appeal of England case of R v Freest & Hale (1964) 48 Cr. App. 284 wrote on this issue as follows at paragraph 555 page 158 as follows:

> "Where a defendant makes an unsworn statement from the dock, the judge need not read out the statement to the jury, but he should remind them of it and tell them that though it is not sworn evidence which can be the subject of cross-examination, nevertheless they can attach to it such weight as they think fit and should take it into consideration in deciding whether the prosecution have proved their case."

I have considered both his statements to the police and the unsworn statement from the dock and I do not believe him. I think he was telling a lie to enable him keep a straight face to victim's family, particularly the mother who had considered him a family friend.

I therefore attach little or no weight to the said statements. Instead, I believe the stories of both the girl and her mother. They were credible witnesses I am therefore satisfied that the Prosecution has proven this element beyond reasonable doubt .

(ii) **That the at the time the Accused engaged in the sexual penetration with the victim, she was a child i.e a person below the age of eighteen (18) years**

The victim's mother, Mariatu Kargbo told the Court that victim was born on the 10th March, 2010. This would mean that on the date of the incident i.e. the 19th April, 2018, the victim was eight (8) years old.

Also the endorsed police medical request form tendered by DPC 13335 Sorie Sesay (i.e PW 1) as Exhibit A^{1-4}, has endorsed on it the age of victim as eight (8) years. This document was initially issued to victim and mother by PW 1 and he must have been told the said age either by the victim and/or her mother.

The Prosecution has therefore led evidence beyond reasonable doubt on the age of the victim. I therefore hold that the Prosecution has proven this element.

(iii) **That the Accused had the intention, at the time of the offence, to engage in an act of sexual penetration with the victim.**.

As stated earlier in this judgment, the intention of an Accused cannot be proved directly but indirectly i.e. it can only be implied from the overt acts of the Accused i.e. the things the Accused said and/or did.

The evidence before the Court on this element is that the Accused used to send victim on errands for him and bought her food after such errands; That on one such occasion when he send victim to buy garrie for him at night, he called her into his room, told her to lie down on his bed which she did and he removed her pants and his trousers and lay on top of her. Why would the Accused call victim in his room, tell her to lie down, remove her pants and his trousers and lie on top of her? The only

logical inference to draw from these acts of the Accused is that he had the intention to have sexual penetration with her. I so hold.

I am therefore satisfied that the Prosecution has as proven this element beyond reasonable doubt.

(iv) **Corroborative evidence confirming the Story of the victim**

I have held earlier in this judgment that corroborative evidence can take different forms including admissions or confessions of guilt by the Accused, distressed conditions of the victim as observed by another person, lies told by the Accused, testimony of an eye witness who caught the Accused and victim red-handed in the act or in compromising circumstances such as being found in a room or other isolated places half-naked or naked etc.

In the present matter, the Prosecution led and relied on the distressed condition of the victim as observed by another person (in this case the mother) after the sexual assault and lies told by the Accused.

The mother of the victim, Mariatu Kargbo told the Court that on the night of the incident, she was in bed with victim and as victim slept, she observed her legs wide open with bloodstains on her pants; that she woke her up and asked her how come she had blood stains on her pants and that victim told her that it was the Accused who had had sex with her.

It is therefore the blood stains as observed by the mother that is the distress condition which the Prosecution is relying on for corroborative evidence.

Distressed conditions of the victim relied on by the Prosecution for corroborations should be handled with care as it can simulated or feigned.

I am aware of and persuaded by the caution of the Lord Chief Justice in the case of R v Redpath (1962) 46 Cr. App. 319 in the following terms:

> "It seems to this Court that the distressed condition of a complainant is quite clearly capable of amounting to corroboration. Of course, the circumstances will vary enormously, and in some circumstances quite

clearly no weight, or little weight could be attached to such evidence as corroboration. Thus, if a girl goes in a distressed condition to her mother and makes a complaint while the mother's evidence as to the girl's condition may in law be capable of amounting to corroboration, quite clearly the jury should be told that they should attach little, if any, weight to that evidence, because it is all part and parcel of the complaint. The girl making the complaint might well put on an act and simulate distress." (emphasis mine)

In this matter, I am of the view that the distressed condition of the eight (8) - year old girl was neither simulated nor feigned by the victim and therefore not part and parcel of her complaint. After the sexual assault on her by the Accused, she went home and went to bed and fell asleep. It was when she was sleeping and therefore unconscious that her mother saw her legs wide open and observed blood stains on her pants. So the distressed conditions were first observed by her mother when she was sleeping and afterwards the mother woke her and asked her about the cause of the blood on her pants and then she told her story connecting the Accused. The victim did not volunteer the complaint.

I am satisfied that the said distressed condition were independently observed by her mother and therefore constitute good and weighty corroborative evidence of the victim's story. I so hold.

Also, the Prosecution led evidence of lies told by the Accused as corroborative evidence. As held earlier in this judgment, the Accused, in his defence, in both his VCS & CS and his unsworn statement did not only deny the allegation but told lies that the allegation was maliciously cooked up against him by one Nancy, one of the investigators and victim's Grandmother. This lie is deliberate, relates to a material issue and the motive is the realization of guilty and the fear of the truth. It relates to the issue of the unlawful sexual penetration he had with the victim and was ashamed of his act to particularly victim's mother who had held him as a good co-tenant and allowed him to send her daughter as and when he deserved. The lie meets the Lucas criteria.

I am therefore satisfied and hold that the Prosecution has proven this forth and last element of the offence charged.

CONCLUSION

I have taken the pains to analyse the totality of the evidence before me and the relevant law relating to the issues raised and from this analysis, I find as follows:

(i) that the victim, Adamsay Kamara, was an eight (8) year old child who lived with her parents at Creole Town Section, Tombo village in the Western Area of the Republic of Sierra Leone;

(ii) that the Accused, Osman Kamara, was a fisherman who lived in the same house with victim and her parents as co-tenants at Creole Town Section, Tombo village aforesaid;

(iii) that the Accused and the family of victim were friends such that the Accused usually sent victim to run errands for him with the knowledge and approval of her parents particularly the mother;

(iv) that on the 19th day of April, 2018, the Accused called and sent victim to buy garrie for him and when victim brought the garrie to him into his room and the Accused then told the victim to lie down which she did and he removed her pants, removed his trousers and had sex with the victim.

(v) that after the sexual assault, victim went home and went to bed and as she slept, her mother saw her legs wide open and observed blood stains in her pants and when she woke victim up and asked her the cause of the blood in her pants, victim explained that it was the Accused who had had sex with her causing the blood on her pants from her vagina.

(vi) that indeed the Accused engaged in an act of sexual penetration with the victim who is a child;

Based on the above findings, I am satisfied that the Prosecution has successfully proven the guilt of the Accused beyond reasonable doubt. Consequently, I find the Accused, Osman Kamara, guilty of the offence of sexual penetration of a child contrary to Section 19 of The Sexual Offences Act, 2012 Act No. 12 of 2012 and I accordingly convict him of the said offence.

Allocutus and Sentence

See my minutes/notes in the file

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Hon. Mr. Justice Monfred Momoh Sesay

Justice of the Court of Appeal.

19/5/2020