

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

IBRAHIM SESAY

Counsel:

For the State: V.E.A. Kabia (Ms), C.F. Sesay Esq., D.Sawyer (Ms) and P. Hastings-Spaine (Ms)

For the Accused: M. Bawoh Esq., J.T. Deen-Tarawally Esq., M. Kallon (Ms), C. Tucker Ms)

JUDGMENT DELIVERED ON 30TH DAY OF AUGUST 2021 BY HON. MRS. JUSTICE JAMESINA E. L. KING J.A

I. Background

1. The Accused Ibrahim Sesay who was 37 years in 2017, was arraigned in the High Court on 26th September 2018 and he pleaded not guilty to the offence of sexual penetration contrary to section 19 of the Sexual offences Act 2012, Act No. 12 of 2012. The particulars of the allegation was that the Accused on a date unknown between 1st day of June 2017 and the 30th day of June 2017 at Freetown in the Western Area of the Republic of Sierra Leone, engaged in an act of sexual penetration with M.D.J. a child. The court granted the prosecution's application for the Accused to be tried by judge alone instead of by a jury pursuant to section 144(2) of the Criminal Procedure Act 1965 as repealed and replaced by section 3 of the Criminal Procedure Amendment Act 1981 Act No. 11 of 1981. The victim was alleged to be 12 years old, living with her guardian who was a landlord of the Accused person. The application for bail for the Accused was refused because he lived with the victim in the same residence. Bail was deferred until after the testimony of the victim. At the close of the prosecution's case, the Accused was granted bail on terms.

II. The Evidence

Prosecution's case

2. Five witnesses testified in court and were cross-examined. The first witness was **Balla Marrah**, PW1, a nurse, the uncle of the victim and a landlord of the Accused. He recognized the Accused as his tenant and MDJ, the victim who is his niece. He recalled between 1st - 30th June 2017, he was at his site when he was called, he rushed to his house, and his wife told him there was a problem at home. His wife told him that the victim MDJ was pregnant. He called MDJ and asked her what had happened to her. She pretended not to know what had happened to her. He took her to the elders and Mammy

Queen and a pregnancy test was done on MDJ also referred to as the victim by the Mammy Queen and it was positive. The matter was taken to the police and himself, his wife and the victim made statements. The victim was asked who was responsible for the pregnancy and she said the accused person was responsible. The Accused was not available as he was in the village but he was summoned to Freetown and informed about the allegation MDJ had made against him. He denied that he was responsible for the pregnancy. MDJ was then handed over to Don Bosco.

3. The Accused returned and was told by Balla to report to the police station. Balla and the Accused both went to the station and the matter was later sent to court. During cross-examination, Balla confirmed that he lived with the victim in the same house, that the victim was 12 years old, the incident took place from 1st -30th June 2017 and he made the report on 1st June 2017. He also stated that there were other tenants living in his compound including two male tenants. He only acted on what he was told by his niece. He never said he suspected that the Accused is having an affair with the victim. He did state that when he confronted the victim about the pregnancy she was in doubt. The Accused denied the allegation when he called him. He came to him regarding the issue and both of them went to the police station. Since he was not present at the time of the intercourse that led to the pregnancy, he will not be able to state to the court exactly who was responsible for the pregnancy because he was not there.
4. The second prosecution witness was the victim or survivor MDJ PW2 who took the oath as she seemed to the court to have understood the nature of the oath and the importance of speaking the truth. Sylvia the Court Registrar also took an oath to assist the court with interpretation. In her testimony, MDJ said she lived at Don Bosco Fort Street. Before residing at Don Bosco she used to live at Kondi Farm Lumley. She is a student and in Class 6. She was 12 years at the time of the alleged incident. She knew the Accused. He impregnated her. She knew where he was living. He was a tenant of her Uncle. She remember diverse dates in 2017 and what happened between herself and the Accused. It was during Ramadan and her uncle came home to sleep with her aunt. He asked her to sleep at Accused place as there was not sufficient room in their house. She called her friends who accompanied her to sleep at the Accused place of residence. The three of them got up to take "Socoli" to eat. The Accused then asked her friends to go home and they left.
5. The Accused then told her not to reveal to her uncle whatever he told her. He then asked her to climb on top of the bed. He told her to remove her pants. She told him she was afraid and he told her that she should not be afraid. He removed her pants and "he lied down on top of her". He put his private inside her private. After that time her aunt bought her a piece of material. The Accused told her aunt and herself that he will sew the material for her for the "pray day" (the Muslim Holiday). The Accused also told her aunt that he will teach her friends and herself the Koran. On another day her friends and herself went to sleep at the Accused house. The Accused drove her friends away and he removed her

- pants and he put his private inside her private. Afterwards the Accused provided her with lunch money when she was going to school.
6. On a particular day her Aunt sent her to buy potatoes to cook "Ebe". She then called her into her room and told her that she had observed something about her. She called the other tenants to listen to what she had to say to her. She told her that she was pregnant and she responded she was not pregnant. Later she told her that the Accused had put his private in her private. Her Uncle was not home and her Aunt later told him she was pregnant. She told her Uncle that she had told her that the Accused had impregnated her. At that time the Accused had travelled to his Mum. Her uncle and aunt called and asked him if he was the one responsible for her pregnancy. He said no. Her uncle took her to the Police Station and after making the report he was asked to explain what happened. He told the Police what had happened. She was later taken to Don Bosco. At the Police Station her uncle was given a document. She was taken to Cottage with the document for treatment. After Cottage (Rainbo Centre) she was taken to Don Bosco. At the Police Station she made a statement.
 7. MDJ was cross-examined and confirmed that the incident happened in the month of Ramaddan, that the Accused was a tenant to her uncle and knew he is a Muslim. She knew the Accused was fasting during the month of Ramaddan. When the Accused was asked he denied having sexual relations with her. She was not at the Police Station when the Accused was questioned. On the night in question four of them slept in the room including the Accused. The other two friends did not make a statement to the Police. They did not testify at the Magistrate Court. She was not re-examined.
 8. The next witness for the prosecution was **Habibatu Kamara, PW3**, a housewife who knew the Accused and the victim in this matter. The victim is her husband's niece. She recalled on diverse dates in June 2017, the victim lived with her and her family and they all slept in the same house until the Islamic month of fasting. There were two other children of the same age as the victim and they were all fasting. The other two children are the children of another tenant. She further stated that the two children and the victim were first time "fasters" and the Accused said he needed to teach them how to pray and do ablution. The 3 children including the victim used to be at the Accused room where they will break the fast and sleep. They sometimes used to sleep at the Accused room until the end of the month of fasting.
 9. At the end of 'fast' month the Accused informed her that he had lost his Aunt and was travelling to the provinces. As soon as he left the victim's pregnancy became visible. People living in the area had knowledge that the victim was pregnant. Her friend called her and told her that the victim was pregnant. She immediately came home and invited the victim to her room. Her husband is a medical person and keeps pregnancy test kits at home. She asked the victim whether she had started to have sex. She took out the test kit and told her she was going to conduct the test. She did the pregnancy test on the victim which confirmed that she was pregnant. She asked her who is responsible for the pregnancy. She called her husband and he came home and herself her husband and the

victim went to the "Mammy Queen" who confirmed the pregnancy and advised that they report at the FSU. They went to FSU and all three of them made a statement to the Police. On that very day the Officer called Don Bosco and they took the victim to Don Bosco. They later went home and went to the Magistrate Court.

10. The witness was cross-examined and confirmed that she discovered that the victim was pregnant in June 2017. This was at the end of June after the end of the fasting period in 2017. She told the court that the victim gave birth in February 2018 and she pointed to the child of the victim who was in court. They have not done a medical test to verify who the father of the child is. She called the Accused to ask him whether he had sex with the victim. He denied. One Aunty Kumba also called him and he said he will be in Freetown with his Mum. Her husband did not call the Accused. The victim used to sleep at the Accused room during "fast" month. She told the court that the Accused is guilty because the victim told her that the Accused penetrated her. The victim only had girls as friends who are all living in the same house. There is no boy as her friend. At the house and compound there are boys and men. There are boys and men in the area. The Accused has continuously denied that he had sex with the victim. She was not re-examined.
11. The next witnesses was **Foday Maligie Bangura**, Detective P.C. 13372 PW4, attached at the FSU Lumley Police Station who received a report from Balla accompanied by his 12 years old niece MDJ, of an alleged case of sexual penetration against the Accused. He investigated the matter with Det.Sgt 7892, issued police medical form for examination and treatment, obtained statement from the victim and other relevant witness and sent the victim to the Don Bosco Fambul Organization for safe custody. The Accused was arrested and taken to the police station by the complainant, obtained a statement from him and he visited the alleged crime scene together with both parties, and on 12th October 2017 the Accused was charged with the offence of sexual penetration of a child. He produced both the Voluntary Caution Statement and the Charge Statement. During cross-examination he told the court that the Accused denied the allegation.
12. The final witness for the prosecution was **Dr. Olabisi Cole** PW5, a medical doctor with 31 years' experience and works with sexual assault survivors since 2003. She recalled examining one MDJ on 9th August 2017. She did reach a conclusion which she reduced into a report on the medical certificate. She told the court that MDJ whom she referred to as the survivor was a 12 year old and presented with a history that she had been abused twice and she was pregnant. Once they took her history they did an examination, medication was provided and because she was pregnant she referred her for ante-natal care. The medical Certificate was produced and tendered and marked Exhibit C1-4.
13. She was cross examined by Defence Counsel and told the court that the survivor told her she was pregnant even before she examined her. She filled the medical certificate in respect of the survivor. She signed it and can see the third line of the medical certificate which reads "9th August 2017". That was the date she examined the survivor. She also signed the last page of the said form which is dated 8th August 2017. This is just an error. She made the error. She realized she made the error just looking at the document now.

She would not know that the error is very grave. She hopes she will not discover other errors in the certificate. As far as she is concerned this is probably the only error in the medical certificate. She denied that the entire medical report is faulty. She was not re-examined.

14. Counsel for the prosecution closed its case on 8th February 2019 and tendered the committal warrant from the Magistrate Court dated 30th October 2017, duly signed by the Committing Magistrate and the Accused which was produced and tendered in court.

The Case for the Defence

15. The Accused was put to his election which he changed several times causing delay in the trial. His final election was to testify on oath and call one witness. **Ibrahim Sesay**, DW1, who is the Accused testified on oath. He told the Court that he used to be a tailor and he knew the victim one MDJ who is the niece of his landlord. He knew one Balla Marrah who was his landlord. He said that 1st June 2017 – 30th June 2017, something happened. He is aware that he had been accused of sexual penetration of MDJ. It was during fast month Ramaddan, 1st June 2017 he had “cut fast” and prayed, at 8pm he was in his room and Abie Balla the Landlord’s wife knocked on his room door and he asked who was at the door and she answered. He opened the door and saw her standing at the door. She then told him that she wanted the victim MDJ the victim to sleep in his room. He asked her why must she sleep in his room and she pleaded that her husband Balla was sleeping over in her room.
16. He initially refused but later agreed on the condition that all those whom they “cut fast together” will also sleep in the room so that they can all wake up to eat “socoli” to continue the fast. Abie sent MDJ to call Kadiatu a child of the tenant and Isata her sister to join them to sleep in his room. All three of them, MDJ, Kadiatu and Isatu slept in his single room. He took the pillow and bedspread and slept on the floor and the three of them slept on his bed. At about 4am he woke them up for “socoli” and prepared the food and invited them to eat. They all then did ablution in preparation for the mosque between 4am – 5.30am. After a week Abie made the same request for MDJ to sleep in his room and all three of them slept in his room.
17. At the end of the month of fasting, he travelled to Makeni for a funeral. Abie called him and told him that MDJ called her name that he had tampered with her. He told her that was why she asked him to allow MDJ the victim to sleep in her room so she can accuse her. She then advised him to return to Freetown to defend himself. He came to Freetown and went to Mr. Balla, Abie’s husband at his second wife’s house at Regent Road Lumley. Mr. Balla told him he had reported the matter to the police so they should be at the police station to defend himself. He went with him to the Lumley Police Station and made a report. He was detained for 14 days and was granted bail. Later he was charged to court. During fast month the children including MDJ slept in his room only twice. He denied sexually penetrating MDJ.
18. He was cross examined by the prosecuting Counsel and his response to questions were as follows; Before Ramaddan 2017, he had been living at Kondi Farm Lumley where he

resided as a neighbor to the victim for a year and during this time Abie was staying there. His relationship with Abie Balla is that she was his temne sister, who left her twins with him when she was going out and trusted him with them. MDJ was the niece of Abie's husband. Mr. Ballah took care of MDJ when he was living at Kondi Farm. MDJ was not there when he went to rent his house at Kondi Farm. It was after some time that she came to live with her uncle. He cannot remember how long MDJ was brought to Kondi Farm before Ramadan 2017. MDJ was living at Kondi Farm before Ramadan. He never knew MDJ before Ramadan 2017. He only knew her when she was brought to the compound. Normally he slept alone at the beginning of fast month. Abie used to prepare his food for the socoli during Ramaddan. Abie was his landlord's wife. It was not normal that the Landlord's wife prepared food for him. There are 10 rooms at the residence including Abie's room. There was a room between his room and Abie's room. The three rooms upstairs were occupied by himself, Abie and Isha. The other 5 rooms downstairs were all occupied. Kadiatu and Isatu are children of another tenant Musu, and their apartment was downstairs.

19. He told the court that he woke up at 4am prepare socoli, woke the children and they all partook in the socoli before doing ablution for prayers. On how he prepares ablution with the girls, he said it was done outside but he did not do it together with the 3 girls. He said it was true that after the socoli the three children left his home. He knew that MDJ was a child who had been entrusted to him for the night, between 4 – 5.30am after MDJ had socoli she went to Abie after she left his room. He knew that because there is only one room between his room and Abie's room and when he is outside he can see her. Responding to the question that MDJ never left his room after Isatu and Kadiatu left, he told the court that MDJ does not stay in his room she departs with Kadiatu and Isatu. He denied that when Kadiatu and Isatu leaves MDJ returned to his room. MDJ was not her friend.
20. During the period of Ramadan 2017 he sewed uniforms for Isata and Kadiatu but did not prepare "pray day" clothes for them nor did he give them money at any point in time. He sewed "June 16" clothes for MDJ with the permission of Mr. Balla. He would be surprised if Mr. Balla did not mention that he was aware of this. He never gave MDJ money. He never quarreled with Abie. He insisted that he went to the mosque every day at 5.30 during Ramaddan 2017.
21. The witness for the Accused was Isatu Kamara DW2 who is 16 years 10 months. She is a student and is in JSS3. She knew the Accused. They all lived together at Kondi Farm by Malamah. She knew MDJ whose uncle is their landlord. She recalled 1st June – 30th June 2017. They were home and one day MDJ called her and her younger sister Kadiatu Kamara, and asked them to go with her to sleep at Ibrahim's room as requested by Abie. Since her mother was not home she told her grandmother Fatu that they were going to sleep at the Accused place so that they can eat socoli. They met Abie at the entrance of the Accused room and Abie left for her room. The Accused closed the room, he took a pillow and a bedsheet and slept on the floor. The three of them i.e. MDJ, Kadiatu and

herself slept on the bed of Ibrahim. He woke them up and they all partook of the socoli. They left Ibrahim in the room and they departed for prayers. This happened twice, i.e. their sleeping at Ibrahim's room. She does not know if MDJ was going to sleep at Ibrahim's room but what she knew was that the three of them slept twice in Ibrahim's room. At that time she was a muslim. During the two occasions she ate socoli at Ibrahim's, they ate, rice, bread and tea. After they ate they all departed from Ibrahim's room. She went home and sometimes she went to pray.

22. This witness was cross-examined by Prosecuting Counsel and responded that she only fasted for 2 days in Ramaddan 2017 and those were the days she slept at Ibrahim's room. When she entered into the room she only slept. When Ibrahim woke them up they went to wash their faces, ate and she went to her house with her younger sister. She can't remember the time she left the room but the sun was out, the place was now bright. The room MDJ was staying was not close to her own room as her room was downstairs and MDJ's room was upstairs. They do not use the same path when leaving as MDJ gets to her room as soon as she leaves Ibrahim's room and they have to use the steps. MDJ's room was very close to the Accused room. After Ibrahim's room you pass one room before you get to MDJ's room. So when she left Ibrahim's room, MDJ goes one way and herself and Kadiatu go the other way. On whether she will be surprised that Ibrahim told the court that at the time they slept they will all eat and do ablution before they depart, the witness said they did ablution but not with Ibrahim the Accused. She agreed that she did ablution at Accused room before she left to go downstairs to her room.
23. She also agreed that MDJ did her ablution at Ibrahim's place before she left for her Aunt's room. She told the court that on the 2 occasions she slept at Ibrahim's room, MDJ did not take the ablution at Ibrahim's place. But she did not know why. She said she was speaking the truth and not taking sides. She said she did not see MDJ do ablution at Ibrahim's place. She would not know whether or not she did the ablution. She did not see MDJ & Ibrahim go back to the room after eating socoli. She cannot tell whether MDJ and Ibrahim went back to the room after she had done ablution and had left Ibrahim's room. She would not know whether Ibrahim & MDJ went back to the room. She was re-examined and she responded that the directions or path she took when leaving Ibrahim's room is not the same as MDJ, who used the left path and she used the right path.

III. Submission by Counsel for the parties

24. The case of the Defence was closed on 21st October 2020 and the Defence Counsel made an oral closing address on 24th February 2021. She stated that the Accused denied the allegation in his statement to the police. In her address she pointed out inconsistencies in the evidence of PW1, 2 & 3. The evidence of PW3 she said is quite different to that of the victim & PW1. PW3 said she conducted the pregnancy test on the victim which was never testified to by the victim herself. The date of the alleged incident she said is questionable because of the inconsistencies in all the evidence, PW1 told the court he made report at the police 1st June 2017, PW3 who reported the incident to PW1, said she discovered the pregnancy at the end of June and the report at the police was made thereafter. She also

stated that PW1 said he called the Accused, but PW3 told the court it was one Auntie Kumba who called the Accused and not her husband. Counsel referred to the cross examination of the medical doctor when she told the court that she recalled examining on 9th August and that she was the one who prepared the certificate but she said she signed it on the last page on 8th. When asked about that anomaly she said it was an error. Counsel submitted that error at criminal trials were not admissible as it was a serious error and questioned the authenticity of the witness testimony in this case. As regards the inconsistency of the factual witnesses she said that the doubt created must be resolved in favour of the Accused person. She stated that the evidence of PW1, 3 & 5 did not corroborate the evidence of PW2 the victim. Finally she submitted that the prosecution had failed to prove its case against the Accused person beyond reasonable doubt and asked the court to acquit and discharge the accused person.

25. A written address was filed by the State Counsel who also addressed the court. She submitted that it had led evidence to satisfy the burden of proof and the elements of the offence. Counsel highlighted the evidence adduced for each element of the offence. She submitted that the evidence of the prosecution witnesses namely PW1, PW2 and PW3 and even the Accused himself at pages 3 & 6 of his Statement Exhibit A1 -11 was that the victim slept in the Accused person's apartment several times within the course of the Ramaddan period which was in the month of June 2017, sometimes alone with him, sometimes accompanied by 2 other children. She referred to the evidence of sexual penetration of the victim by the Accused and submitted that the Accused had ample, unhindered opportunity to perpetrate the act of sexual penetration of the victim and corroborated the evidence that the sexual penetration occurred in June 2017.

IV. Review of the law and evidence

The Law

26. 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 is liable on conviction to a term of imprisonment not exceeding fifteen years"
27. It is alleged that the Accused on a date unknown between 1st June – 30th June 2017 at Freetown in the Western Area of the Republic of Sierra Leone engaged in an act of sexual penetration with MDJ, a child. The Accused pleaded not guilty to the offence. Section 1 of the Act states that *"sexual penetration"* means *"any act which causes penetration to any extent of the vagina, anus or mouth of a person by the penis or any other part of the body of another person, or by an object"* and a *"child"* means *"a person under the age of eighteen"*.
28. This is a trial by judge alone and as a judge of the facts and the law, I can only find the Accused guilty if the prosecution leads evidence proving beyond reasonable doubt every element of the offence charged. Each one of these elements should be proved beyond

reasonable doubt as required by law a principle enunciated in *Woolmington v. DPP* (1935) AC 481 at 482, adopted and confirmed by many cases within our jurisdiction. Section 19 of the Sexual Offences Act creates the offence of sexual penetration of a child and punishment for such an offence is a term of imprisonment not exceeding 15 years. The prosecution must prove all of the elements of the crime, namely age of victim; sexual penetration of the victim by the Accused and the intention of the Accused at the time he committed the offence. In proving intention, paragraph 1010 of the 36th Edition of *Archbold Pleading, Evidence and Practice in Criminal Cases* states as follows: "The intention of the party at the time when he commits an offence is often an essential ingredient in it, and, in such case, it is necessary to be proved as any other fact or circumstance laid in the indictment. Intention, however, is not capable of positive proof it can only be implied from overt acts".

29. Corroboration is not provided for in the Sexual Offences Act of 2012 but it has been the practice under common law to look for corroboration in sexual offences. However the court can convict on the uncorroborated evidence provided a caution is given and the court is satisfied beyond reasonable doubt about the guilt of the Accused. I therefore caution myself accordingly as I proceed to review the evidence.
30. The issue before me is whether the prosecution or the State has discharged the burden of proving their case. Whilst the prosecution must prove the guilt of the Accused, there is no such burden laid on the Accused to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the court of his innocence.
31. I have reviewed the evidence of the five witnesses of the prosecution, the 4 exhibits tendered to determine whether the prosecution has discharged the burden of proof in respect of the offence. I have also considered the evidence led by the Defence as well as the closing addresses of both Counsel for the parties.

(a) Age of the victim

32. Section 1 of the Act defines a child as a person under the age of 18 years. The facts of the offence as charged and the testimonies of the uncle and guardian of the victim, the investigating officer and the medical practitioner, are to the effect that the age of the victim is 12 years and this corroborated the victim's evidence that she was 12 years old at the time of the incident. The victim also stated that she was a student and in class 6. The age of the child or the fact that the victim was a child was never disputed by the Defence but was confirmed by the Accused in his testimony when he referred to the victim as a child. Whilst testifying in court, I also observed her physical appearance and demeanor and concluded without any doubt in my mind that she was definitely a child even when she was giving evidence and that she was under 18 years and I so hold.

(b) Sexual Penetration of the Victim by the Accused

33. MDJ's testimony of sexual penetration in June 2017 by the Accused was as follows:

"I know the Accused. He impregnated me. I know where he was living. He was a tenant to my uncle.The Accused then told me not to reveal to my Uncle whatever he told me.

He then asked me to climb on top of the bed. He told me to remove my pants. I told him I was afraid and he told me that I should not be afraid. He removed my pants and he lied down on top of me. He put his private inside of my private..... On another day my friends and myself went to sleep at the Accused house. The Accused drove my friends away and he removed his pants and he put his private inside my private."

34. MDJ was consistent about the incident and that it was the Accused who had sexually penetrated her in her report to her uncle and aunt, the police and the medical doctor. Her evidence about penetration was corroborated by the medical doctor who examined and treated her, revealing that she had a ruptured hymen consistent with sexual penetration that had occurred and who also confirmed that she was pregnant giving details about the pregnancy as revealed by the ultra-scan. She stated in the said medical certificate that *"An ultrasound scan done confirmed a singleton pregnancy of 9 weeks gestation and no abnormalities"*. She further testified that both the ruptured hymen and pregnancy were consistent with sexual penetration. The Doctor's evidence was very convincing and the Accused did not discredit or disprove this evidence. I also take due note of the fact testified by Abie the aunt, that the victim gave birth in February to a child who was pointed out in court as it corroborates the evidence that sexual penetration had occurred and the victim had been pregnant.
35. MDJ said that she was sexually penetrated on the two occasion she slept in the Accused room and happened on the Accused bed. She was quite composed and very convincing when she gave her evidence which remained unshaken during cross examination and I believed her story. Isatu confirmed that they all slept at the Accused room on those two occasions during Ramaddan. In fact those were the only two days she fasted. Accused did not deny that MDJ slept in his room. He however denied sexually penetrating her and he lied when he gave the impression that throughout the time MDJ slept in his room he was not alone with her. The evidence of MDJ that she was alone with the Accused when the incident occurred as Isatu and Kadiatu had left the room remained uncontroverted. Isatu confirmed that they were not with MDJ all the time as they left the Accused room in opposite direction from MDJ as her room was upstairs and theirs was downstairs. Why did the Accused falsely create the impression that he was never alone with MDJ. I believe that this was to hide the fact that he had an opportunity to sexually assault her and to cover up what he had done.
36. The evidence is to the effect that Accused found a way to be with MDJ alone and had the opportunity to sexually violate her. Both guardians of the victims have asked the Accused to house MDJ for two nights, never monitored the victim to make sure that she was always in the company of Kadiatu and Isatu. Their silence about when the victim returned to her room was very apparent. They did not require the victim to return at a particular time or that she was to be in the company of Isatu and Kadiatu. I find that the victim was unsupervised and was free to be on her own with the Accused person and she did say

that she was on her own with him on both occasions and that it was during those times Accused sexually abused her.

37. Corroborative evidence has been held to take different forms including lies or false statement by the Accused (see *Creditland v Knowler* 35 Cr. App. Rep. 48 & *R v Lucas* (1981) 2 AER 1008) For a lie to be corroborative, it must be deliberate, relate to a material issue and the motive for the lie should be the realization of guilt and fear of the truth; and it should be shown by evidence that the statement is clearly a lie (see *R v Lucas*) supra. Mere denials without more do not constitute a lie I therefore find that the Accused lied when testifying creating the impression that he was never alone with the victim, however the evidence in this court is to the effect that he was in fact alone with the victim.
38. Isatu in her testimony also could not give a proper account of the victim to convince the court that the Accused was not alone with the victim as stated by the victim. When they woke up they went their way downstairs and MDJ went to her room located upstairs close to Accused room. The date both incidents of sexual penetration occurred was during the Ramaddan period in June 2017.
39. On the issue of the identity of the Accused, MDJ knew the Accused very well as a tenant, a muslim, having slept in his room and had no reason to have told lies on him. She even told the Accused she was afraid when the Accused lied down on top of her and he told her not to be afraid. The Accused groomed her to get his trust and sexually abused her according to the evidence on the two occasions MDJ slept in the room and afterwards he showered her with gifts, namely by sewing clothes for her for the Muslim holiday at the end of the fasting period and giving her money for lunch when she is going to school.
40. I find that the victim had no grounds to act out of a desire for revenge, malice or shame to accuse the Accused and to state he was responsible for her pregnancy. There was a very good relationship between the victim and her guardian on the one hand and the Accused on the other.

(c) The Intention of the Accused

41. The intention of the Accused refers to his guilty mind which is incapable of positive proof but by inference from his overt acts. This offence occurred within the holy month of Ramaddan when practicing Muslims set themselves apart for fasting and prayer. The Accused held out himself to the guardians of the victim that he was agreeable to accommodate the victim in his room so he would tutor and guide her during this period alongside other children who like victim were observing the fast. However the evidence is that he made sure he was alone with the victim, asked her to lie on the bed, removed her pants, pacified her when she was afraid and had sex with her. He indeed drove away the other children to ensure he accomplished his unlawful and unjustified plan He did this on two separate occasions. This disclosed his mental element that he intended to have sex with the victim who was a child. The Accused was fully aware that the victim was a child and going to school yet he took advantage of the fact that she was entrusted to him to sleep in his room. These calculated actions of the Accused point to the fact that he

intended to sexually penetrate the victim, he quickly had a plan when the opportunity arose and he successfully executed this plan.

Accused Denial

42. The Accused in his testimony continued to deny the allegation. However I do not believe his denial. He was not truthful as to what really happened to himself and the victim when she was in his room. He tried to give the impression that the victim was always in the company of Kadiatu and Isatu but this was not true as reflected in his witness Isatu's testimony. Both of their testimonies as to what happened after they all ate socoli were conflicting and I find that it was after socoli after the other two girls had left that sexual penetration occurred as stated by the victim. During cross examination, Isatu said she could not tell whether MDK and Ibrahim went back to the room after she had done her ablution and had left Ibrahim's room, and she would not know whether Ibrahim & MDJ went back to the room.
43. It is worth stating that the uncle and aunt of the victim MDJ were very reckless as adults who had the responsibility for caring and protecting MDJ to have entrusted her to the Accused person, a single man prioritizing their own interest over her safety. They did not give strict orders to MDJ that she should not be alone with the Accused and that all three children should leave Accused room and drop MDJ off at her room before going to their room. The fact that two other children slept in the room was not enough protection for MDJ.

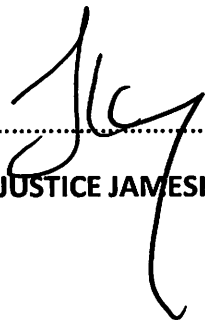
V. Conclusion

44. Based on the testimonies of the prosecution witnesses I find that the prosecution has proved all the elements of the offence both direct and circumstantial beyond all reasonable doubt, that the victim MDJ a 12 year old was sexually penetrated by the Accused Ibrahim Sesay on two different dates in June 2017. I therefore find the Accused Ibrahim Sesay guilty of the offence of sexual penetration of MDJ contrary to section 19 of the Sexual Offences Act of 2012 and convict him accordingly.
45. Allocutus/Plea in mitigation. See Court file.

V1. Sentencing

46. I have taken into account the allocutus and plea in mitigation, the trauma the victim had to go through during and after the incident, becoming pregnant and delivering a child at such tender age as well as having to answer uncomfortable questions, make statements about her ordeal several times as well as in court. This was a cruel act of a 37 years old on a 12 years old girl who deprived the girl of her childhood. This is a menace in this society and the punishment of this Accused should serve as a deterrent that children should be allowed to grow and should not be forced to be wives or mothers.
47. I have also noted two aggravating factors provided in section 35 of the Sexual Offences Act 2012, which are present in this case, the victim was a child at the time the offence was committed, and the Accused abused a position of trust as he held himself out to provide religious nurturing to the 12 year old during a holy period in the Muslim calendar.

48. I therefore sentence the Accused to the maximum punishment under the said Act of 15 years imprisonment. The time of imprisonment should take into account the time Accused spent in detention from the date of his arrest on 12th October 2017 – 11th February 2019, the date he fulfilled the bail conditions.
49. Pursuant to section 37 of the said Act, in addition to the punishment set out above, I order that the Accused pay the victim compensation in the sum of Le10,000,000 (Ten Million Leones) to be paid immediately or within a period of five years after he is released.
50. I also order the State specifically the Minister of Social Welfare and the Minister of Gender and Children's Affairs to take concrete steps for the survival, development, education and well-being of the victim and her child.
51. I direct the State Counsel to serve this judgment on both Ministers and the Head of Don Bosco if the victim is still in their care and order that the victim and her child's identity be protected at all times.



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