

IN THE SEXUAL OFFENCES (GENERAL CRIMINAL) DIVISION OF THE HIGH COURT OF SIERRA LEONE HOLDEN AT THE SEXUAL OFFENCES MODEL COURT SIKA STEVENS STREET FREETOWN SIERRA LEONE

## JUDGMENT

### THE STATE VS UMAR BAI KAMARA

AG'S NO: 044/2021 CR NO:6457/20

DATE: 1<sup>st</sup> JUNE 2022

#### OFFENCE CHARGED

Sexual Penetration contrary to section 19 of the sexual offences Act Act No12 of 2012 as repealed and replaced by section 4 a (ii) of the Sexual Offences Amendment Act Act NO: 8 Of 2019

PROSECUTING: O V ROBIN MASON ESQ (STATE COUNSEL FROM THE LAW OFFICERS' DEPARTMENT OFFICE OF THE ATTORNEY GENERAL AND MINISTER OF JUSTICE

DEFENDING: M BARATAY ESQ (A Private Legal Practitioner) Later he was defended by R S Bangura Esq (Defence Counsel from the Legal Aid Board of Sierra Leone)

Plea in Mitigation by K Khanu Esq (Defence Counsel from the Legal Aid Board of Sierra Leone)

**DELIVERED BY HON JUSTICE MANUELA. A. J HARDING JUDGE OF THE HIGH COURT OF SIERRA LEONE** (Sitting at the Ross Road High Court East End of Freetown and the Sexual Offences Model Court at Siaka Stevens Street Central Freetown Sierra Leone).

Application filed by the Prosecution:

Application for trial by Judge alone instead of by Judge and jury.



## **FACTS OF THIS CASE:**

The Prosecution called four witnesses.

The Accused Umar Bai Kamara elected to rely on his Voluntary Caution Statement made at the police station and not to call any witnesses.

The accused was twenty seven years old at the time of the incident.

The victim ZZ was eleven years old at the time of the incident.

PW 1 The victim herein (ZZ)( as I will call her in this judgment) was (Eleven years old at the time of the incident) testified as follows;

That on a day in 2020 she and her sister were watching television when the accused entered their house and joined them in the parlour but since her father doesn't usually allow strangers to sit in the parlour with them. She, ZZ asked the accused to leave but he told her she was unable to drive him away.

As soon as her sister left to go on their Grandmother's errands the accused asked her to lie down on the same chair on which she was lying. She had answered the accused that there were two other long chairs in the parlour and he should go lie there but the accused said that he was going to lie down on the same chair where she was and he lay on top of her and put his finger into her vagina she then resisted and asked the accused to stop but he refused but as her sister walked into the parlour the accused quickly removed his fingers from her vagina and left the parlour.

P W 1 recounted that another incident happened between the accused and her. She told the court that some time during the year 2020 the accused had come again into the parlour. He had met some children in the victim's parlour and he had handed them his phone and asked them to go outside and use his phone to watch a movie. Which the children did.

As the children left the parlour the accused lay on the parlour chair and pretended to be sleeping. When she (ZZ) finished cleaning the veranda she told her sister that she wanted to leave as she was tired from cleaning the veranda and as she moved near the chair where the accused was lying he grabbed her saying 'now I have got you, you are all alone, with all the noise that you have been making'. As he spoke he threw her on the chair removed her pants and had sexual intercourse with her. After the incident she had reported the accused to her

parents. She was taken to hospital and medically examined and the medical report endorsed. She identified the medical report marked Z 1-3 1.

During cross examination by the defence the victim told the court that the accused was not a stranger in her house. That her Grand mother was in the kitchen when the incident happened.

PW 2 one Ibrahim Badara Koroma testified as follows;

That he is a Customs Broker and an electronics technician. That the accused use to be his apprentice in his electronics technician business.

That the victim is his second daughter. On the 27<sup>th</sup> August he was home preparing to leave for work when he heard his wife interrogating his daughter that his five year old niece 'M' had raised an alarm that the accused had sexually penetrated her. That this happened when one Aminata was bathing 'M' a five year old child who had screamed in pain, when the said Aminata poured water on her private area. As a result she had said the accused had sexually penetrated her that is why she had felt pain when water touched her private area.

As his daughters were close to the accused that was why his wife had interrogated them.

He also told the court that the accused had been questioned by him as to whether he had sexually penetrated a five year old girl who had accused him The accused had denied sexually penetrating the five year old but told them he had sexually penetrated the victim. As a result he had reported the accused at the Approved school police station The victim was examined and treated by the medical doctor He identified the endorsed Medical Report marked Y 1-3. During cross examination PW2 had said he didn't encourage the accused to admit his guilt.

P W3 Dr Olabisi Claudius Cole testified as follows;

That she is a medical doctor attached to the Rainbo Medical Centre at the Cottage Hospital in Freetown. That in her line of duty she normally works on sexual assault victims. That she examined and treated the victim ZZ.

That the victim in her brief history of the incident had told her that the accused had sexually assaulted her on several occasions when her parents and her family were not home.

She tendered in evidence the endorsed medical report of the victim as **Exhibit A 1-3** The Genital Findings was 'A complete rupture of the hymen'.

PW 4 one DPC 10483 Aminata Bangura testified as follows;

She is attached to the Approved School Police Post, Freetown Sierra Leone. She investigated this matter. On the 27<sup>th</sup> August 2020 she was on duty at the Approved School Police Post when a report of sexual penetration was reported to her against Umar Bai Kamara the accused herein. On the 28<sup>th</sup> August 2020 one D Segt 10520 James Kanu and herself obtained statement from the accused person. She tendered the accused's Voluntary Caution Statement as Exhibit B The victim's Birth Certificate as Exhibit C and six photographs of the scene of the crime as Exhibits D 1-6

#### THE DEFENCE'S CASE:

The accused Umar Bai Kamara elected to rely on his Voluntary Caution Statement made at the police station and not to call any witnesses.

In his Voluntary Caution Statement the accused states that he is twenty seven years old. He stated as follows;

That he sexually penetrated 'ZZ' the victim herein who was eleven years old at the time of the incident. The accused said in his Voluntary Caution Statement that he did not sexually penetrate three other juveniles namely 'Z' the ten year old girl, 'Y' the five year old girl and 'W' the five year old girl whom he was accused of sexually penetrating. He said as follows that on the 25<sup>th</sup> August 2020 at about 1700 hours he was with the victim and one Aminata when their Grand mother sent the said Aminata on an errand. Kadiatu alias Yayo was not there. Aminata was cleaning the veranda before she went on that errand and which she was cleaning the veranda and he was in then in the parlour with ZZ the victim herein. He said he wanted to leave when the victim pushed him and he fell on the chair and the victim climbed on top of him. He pulled the victim's pants half way and used his finger to penetrate the victim's vagina. E

During the Prosecution's closing address, extract of findings and summary of the witness statements was tendered as Exhibit E 1-2

## **ANALYSIS OF THE LAW AND THE EVIDENCE:**

Umar Bai Kamara the accused was charged to court pursuant to section 42 of the Sexual Offences Amendment Act Act NO: 8 Of 2019

Where it states that if the Attorney General is of the opinion that the findings of any investigation warrants prosecution under this Act the Attorney General shall do so in the High Court.

Furthermore section 42 (2) of the said Act states that the extract of the findings of the police or investigator signed by the Attorney General to the effect that a particular person/s are implicated in any offence under this Act shall without more be sufficient authority to prefer charges.

In fulfillment of this provision the extract of findings has been tendered by the Prosecution as Exhibit E 1-2

On Exhibit B the accused's voluntary caution statement he said he didn't sexually penetrate the victim using his penis but his fingers, it seems that the accused's defence is that he used his fingers to sexually penetrate the victim and not his penis. For the sake of argument if I should throw some credibility on what the accused has told this court. The question to answer would be,

Does the accused want the court to let him walk free because he used his fingers and not his penis?.

In this regard certain issues must be discussed for the court to be able to determine that. They are as follows

What is sexual penetration?.

As required by law to determine whether sexually penetration took place or not

The section for which the accused is charged to court states that penetration required to convict is penetration being the slightest and between the sexual organs..

...or any part of the body having the slightest penetration with the sexual organ of the victim or the victim's anus or an object having sexually penetrated the victim's sexual organ anus or mouth...

Therefore using finger to penetrate the victim's sexual organ would not stand as a defence in this case

The case of Paresh Mondal V The State of West Bengal & Ors and the case of Kanubhai Dhirubhai Rajput Parmar V State of Gujarat both accused persons in these cases were convicted due to committing an act of sexual penetration of the victim using their finger.

Had the accused not admitted to having sexually penetrated the victim my work in determining the accused's guilt would have been much lighter but in this case there are certain elements of the offence to discuss. I wish to do so in question form.

To start with the question as to whether the identity of the accused was established in evidence.

To answer this question the accused told this court in his voluntary caution statement that he sexually penetrated the victim herein.

This poses no doubt that it was him who committed the offence his confession does corroborates the prosecution's case when the victim told the court that it was the accused who had sexually penetrated her. Another very important point to note is that it is clear that the accused is known to the victim. The evidence of the victim establishes that the accused usually visits her house.

Ibrahim Bardara Koroma, PW 2 herein and also the victim's father testified that the accused is his apprentice in his electronics business. The accused himself has told the court that in his voluntary caution statement, which he relies on for his defence, that he is an apprentice to the victim's father.

The accused also states in his Voluntary Caution Statement that it was the victim who first sat on his lap, then it was the victim who pushed him onto the bed.

For the sake of further argument. I believe that in so saying the accused is attempting at getting the court to believe that the victim gave him the green light for the act to be committed therefore he did the act on her with her consent.

Clearly the accused is raising consent from the victim as a defence to having committed the offence of sexual penetration on the victim.

This takes me to the next question. 'What is consent as used in this context'.

Section 2 of the Sexual Offences Act Act NO12 of 2012 as amended states; ...that consent is an agreement by choice and with the freedom and capacity to make that choice...

To be able to analyse what is consent as used in this context the age of the victim must be considered.

PW4 one DPC 10483 Aminata Bangura tendered in evidence the victim's Birth certificate as Exhibit C. Exhibit C clearly proves that the victim ZZ was eleven years old at the time of the incident.

She told the court during cross examination that the victim was born on the 25<sup>th</sup> August 2009. This has also been confirmed by Exhibit C the Birth Certificate of the victim.

Exhibit A 1-3 which is the Endorsed medical Report of the victim 'ZZ' that was tendered in evidence by Dr Olabisi Claudius Cole, the medical doctor who examined her after the incident also states her age as being eleven years old at the time of the incident.

The law is very clear Section 2 of the Sexual Offences Act Act NO12 of 2012 as amended states; ...that consent is an agreement by choice and with the freedom and capacity to make that choice...

In this case the victim's age is eleven, therefore a child and lacks the capacity to give consent to be sexually penetrated Therefore the accused's defence of consent from the victim will not stand.

The Sierra Leonean case S V Sheku Collier 1 of 2020 states that a child does not have the capacity to give consent to sexual penetration or intercourse.

Furthermore ,certain questions always flow in my mind when writing Sexual Offences Judgments among which are as follows;

Was the offence of sexual penetration committed?.

Was it the accused who committed the offence?.

What was the victim's age

What does the endorsed medical report say

Does the endorsement on the endorsed medical report corroborates what the victim and witnesses told the court?.

Exhibit C which is the Endorsed Medical Report of the victim clearly states under the genital findings that the victim's hymen was completely ruptured.

The accused's confessionary statement made at the police station also corroborates the endorsement on the Endorsed Medical report, as the ruptured hymen was as a result of the act of sexual penetration committed by the accused herein.

Notwithstanding the Defence of consent raised by the accused herein.

I must also consider whether the Prosecution in this case has proven the accused's guilt beyond reasonable doubt.

In so doing, the case ...Woolington V DPP 1935 UKHL 1... states that the burden to prove the accused's guilty rests on the prosecution to prove the accused's guilt beyond reasonable doubt...

In this regard I must conclude that taking the totality of the prosecution's case, the prosecution in this case has established the accused's guilt beyond reasonable doubt and to support the prosecution's case the accused admitted to having committed the offence charged. Therefore I find the accused Umar Bai Kamara Guilty of the offence of Sexual Penetration contrary to section 19 of the sexual offences Act as repealed and replaced by section 4 a (ii) of the Sexual Offences Amendment Act Act NO: 8 of 2019.

#### ALLOCUTUS:

The accused Umar Bai Kamara pleads for mercy

#### PLEA IN MITIGATION:

Defence Counsel K Khanu Esq (Defence Counsel from the Legal Aid Board of Sierra Leone) pleads that justice be tempered with mercy, States in convicting the accused I as the presiding Judge must consider the time spent in custody and reflect it in my conviction of the accused.

#### RATIONALE FOR CONVICTION:

The aggravating circumstances in this case outweighs the mitigating circumstances

In my view the mitigating circumstances is the accused's age and the time spent in custody

The aggravating circumstances is the age of the victim when juxtaposed with the age of the accused The accused is twenty seven years old and the victim is a minor who is eleven years old.

Exposing a child at that tender age of eleven to sexual intercourse has damaging circumstances to name a few

The Psycho social effect it would have on the victim

In an African Society as ours a child who has been known to be sexually abused is exposed to stigma and or ridicule by the Society.

She will also lack the confidence a child ought to have when mingling with her peers in the Community.

The trauma and health dangers the accused herein has exposed this victim to.



The potential health risk that having sexual intercourse with a child of that age is exposed to.

Sierra Leone like many African Countries used to be known as a Country where child were being raised not only by their parents but by the Communities they live. In the absence of parents or guardiands the neighbours took care of the children until the parents returned but due to sexual predators that beauty of the African Society is lost. Furthermore exposing children to sexual intercourse at an early age exposes them to teenage pregnancy leading them to be drop outs and thus impacting the growth and development of Society. The defence Counsel states justice must be tempered with mercy in my view he wants me to substitute mercy for justice which I won't due to the reasons I have stated above.

Therefore the sentence am about to hand down on the accused Umar Bai Kamara would serve as a deterrent not only to Umar Bai Kamara the accused herein but to future potential offenders. Yet in it all I flowed with the milk of human nature and have considered the defence's plea on behalf of the accused herein and I sentence the accused Umar Bai Kamara to Life Imprisonment (Which gives the Correctional Centre the opportunity to implement the Prison Ordinance and compute the time the accused should serve the imprisonment term as a term of life imprisonment).

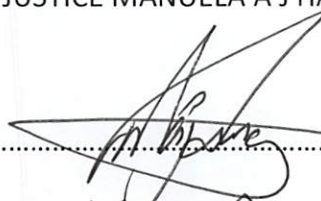
#### COMPENSATION:

I hereby order the accused Umar Bai Kamara to compensate the victim herein in the sum of thirty million Leones pursuant to section 37 of the Sexual Offences Amendment Act Act NO: 12 of 2012 as amended for

- (i) Cost of necessary transportation temporary housing and child care. And
- (ii) Emotional distress pain and suffering incurred by the victim of the sexual penetration.

SIGN: HON JUSTICE MANUELA A J HARDING JUDGE OF THE HIGH COURT OF SIERRA LEONE

DATE:

  
1<sup>st</sup> June 2022

