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IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS.

SAMUEL TURAY (ALIAS PAPA)

INDICTMENT NO: DPP/2016/302

PROSECUTION: A SHEKU ESQ. M. LANSANA ESQ. MS E.T.JALLOH

DEFENCE: J.M .JENJO ESQ. MS C.TUCKER

BEFORE THE HON. MR. JUSTICE ALHAJI MOMOH-JAH STEVENS

JUDGEMENT DATED THE 4th Day of April 2017

The Accused Person is indicted by the State for the Offence of Sexual Penetration contrary to Section 19 of the Sexual Offences Act 2012. The Prosecution alleged that the Accused Person herein, Samuel Turay aka Papa on the 11th day of April 2015 in the Western Area engaged in an act of sexual penetration with the victim, a girl child.

The Charge was read and explained to the Accused Person, the Accused person pleaded not guilty. The Prosecution in furtherance of its case made an application pursuant to Section 144(2) of the Criminal Procedure Act no .32 of 1965 as repealed and replaced by Section 3 of the Criminal Procedure (Amendment) Act 1981, Act No.11, seeking an Order for the Accused Person be tried by a Judge alone instead of a Judge and Jury. The Defence did not object to the said application and so it was granted by the Bench.

In the case of the Prosecution, three witnesses testified. The first Prosecution witness was the victim (named withheld), a girl child, a school pupil, twelve years of age on the date of the allegation, that is the 11th April 2015. According to the victim, she went to fetch water at a riverside at New England Ville where she came across the Accused person and a man she was unable to recognize. The PW1 further alleged that the Accused person and the other unidentified man grabbed her and took her to the room of the Accused Person and in the process; the Accused person undressed her whilst the other man held her and the Accused Person penetrated his penis into the vagina of the Victim. The victim said, the other unidentified man fled whilst the Accused person continued to penetrate her vagina. After the Accused person released her, the victim said, she was threatened by the Accused person. The Victim thereafter went home and passed on the information to her relatives. The case was thereafter reported at the New England Ville Police Station where the victim was referred to the Rainbow Centre for Medical Examination and Treatment. In Cross Examination, the Defence Counsel, J.M Jengo, put it to the victim that she was not saying the truth, but testified to what she has been guided by her relatives. The Victim insisted it was the Accused Person who penetrated his penis into her vagina and she knew him very well as a friend of her dad.

The second Prosecution witness is the mum of the victim who acted on the information received and reported the matter at the New England Ville Police Station and took the victim to the Rainbow Centre for treatment.

The PW3, Detective Police Constable 1677 Ibrahim Sorie Conteh, who is now on transfer to Lunsar Police Station was formally of the Family

Support Unit, New England Ville Police Station, told the Court he was on duty when a report of Sexual Penetration was made to the Police. The Police obtained Statements from the Victim and witnesses. The Police later visited the scene and following the arrest of the Accused Person a Contemporaneous interview Cautioned Statement was obtained from the Accused Person. The said Voluntary Cautioned Statement was produced and tendered as Exhibit A 1 to 10. In the said Exhibit A, the Voluntary Cautioned Statement, the Accused person herein dismissed the allegation as false and instead claimed the defence of alibi that is he was not at the scene of the crime. But the Accused person said he knew the Victim through her late father, and this knowledge of the Accused Person was confirmed by the Victim in her testimony in Chief. The Accused Person in his Voluntary Cautioned Statement accepted the description given by the Victim of his room, that is 'a single room, pan body not painted, it has a torn mat on the floor, the bed is brown in colour'. This confirmation by the Accused Person will certainly have a far -reaching consequence, because there is nothing suggesting from the Voluntary Cautioned Statement made by the Accused Person that even though the Accused person knew the father of the victim as a former friend, the Victim was a regular visitor to his room.

The Endorsed Medical report is produced and tendered as Exhibit C1 to 3.

In Cross, the PW3 told the Court that the Accused person denied knowledge of Sexual Penetration and also raised the defence of alibi.

The Prosecution closed its case and the Committal Certificate produced and tendered as Exhibit D.

The Defence commences its case. The Accused Person relied on his Voluntary Cautioned Statement made to the Police. Two witnesses testified in his defence. The First Defence witness Saidu Sesay referred to the Accused Person as his supervisor at a construction site and went further to inform the Court that he was in the company of the Accused person throughout the day the incident was alleged to have occurred, that is 6am to 7^{pm}.

The second Defence Witness, Martin Karama, a neighbour of the Accused Person, testified that his premise to that of the room of the Accused Person is approximately ten yards distance and that on the date the incident was alleged he did not see the Accused Person for the rest of the day. The Defence closed its case.

As a matter of procedure in our jurisprudence, this Hounorable Court directed the Prosecution and Defence to submit written addresses. The Prosecution submitted its written Address in which ^adetail description was given regarding the offence in issue and at the ⁿsame time, in the view of the Prosecution corroboration of the offence has been done adequately to link the Accused Person to the Offence Charge.

The Defence on the other made a written submission that the Defence of alibi has ^{not} been established and the evidence of then DW1 and DW2 corroborated same. The Defence further submits that the very failure of the Police to investigate the alibi raised by the Accused Person has defeated the case of the Prosecution.

The offence for which the Accused Person is Charge is a Sexual Offence under Section 19 of the Sexual Offences Act 2012. The nature of this type of offence when committed is invariable between the victim and the perpetrator or perpetrators. So most times the revelations made by

the Victim are subject to judicial consideration and determination. Granted there is no eye witness who witnessed what the victim alleged, but the victim gave the Police a graphic description of the room of the Accused Person to which the Accused Person did accept. For me this is very crucial in determining the outcome of this case. Neither the Accused Person before the Court, nor the victim, has any stage hinted that the Victim is a usual visitor to the premise of the Accused Person prior to the commission of this offence allegedly by the Accused Person. It is also significant to note that the victim at the time of the allegation was twelve years of age, a human being at an early stage of her life who can be able to distinguish what is right from what is wrong.

Upon a careful perusal of the entirety of the evidence before the Court, I hold that the existence of corroboration is well in place since the victim was able to give a clear description of the room of the Accused Person. A similar position in the Law was established in the cases that have to do with Corroboration, R.V. Lucas and R. V. Baskerville. The Endorsed Medical report form is also substantiating that the victim was sexually penetrated in her virgina.

The point at issue of grave concern is that Sexual Offences are on a very great increase and there is no letting off in the attempt by some whickered people to deprave and frustrate these little girls from attaining their values and potentials. If a girl of tender age is deflowered then what lies ahead, no hopes save for the intervention of Divine Providence. Both the Holy Bible and the Holy Quran condemn in no uncertain term these types of naked act of aggression against a girl child. The Defence of alibi raised by the Accused Person, I humbly submit is defeated by the testimony of the DW2. The DW2 said he is a close neighbour to the Accused Person and that he did not see the

Accused Person throughout the day the allegation was alleged to have been committed. It must be noted that the DW2 did not tell the Court that he has any activity in common with the Accused Person on that faithful day.

I hold that the Prosecution has certainly proved its case beyond reasonable doubt as was seen in the case of Woolington v. DPP. I therefore in the circumstances found the Accused Person guilty for the offence of Sexual Penetration which is contrary to section 19 of the Sexual Offences Act of 2012. The Accused Person has presented himself as a dangerous person who can stop at nothing in his lust to penetrate sexually a girl child as the victim herein. To me it is a cowardly act and a lesson must be thought.

Allocutus:

The Defence made
a plea in mitigation and ask
for mercy.

Court :- ~~that~~ is
Sentence

The Accused Person is
Sentence to Seven years

Empire Government.

Ms. 15

6-4-2017

Steven J.