

IN THE HIGH COURT OF THE GAMBIA

CRIMINAL CASE No: HC/577/10/CR/161/AO

BETWEEN:

THE STATE

COMPLAINANT

AND

MALANG BOJANG

ACCUSED PERSON

TUESDAY 15th NOVEMBER 2011

BEFORE HON. JUSTICE EMMANUEL A. NKEA

ACCUSED PERSON PRESENT

MRS. A. D BWALA FOR THE STATE PRESENT

MRS. N GBUJI FOR THE ACCUSED PRESENT

JUDGMENT

The accused person herein is charged before this Court for having on the 25th day of February 2010 at Daranka Village, in the Western Region of The Gambia had unlawful carnal knowledge of one BINTA FOFANA a girl of 12 years without her consent contrary to Section 121 and punishable under Section 122 of the Criminal Code. The accused person pleaded not guilty to the offence.

I must observe straight away that although the prosecution called 4 witnesses to buttress their case, the victim was never called as one of them. The Court was therefore not given the opportunity to see and hear the evidence of the alleged victim. The Court did not also get the opportunity to see the victim identify the accused as the man who raped her. There is no evidence of any eye witness who said he saw

the accused rape the victim. The victim is supposed to be the star witness for the prosecution. All the exhibits tendered in this case were supposed to be in corroboration of her evidence. In the absence of her evidence, there was therefore nothing to be corroborated. The need and duty of the prosecution to call all material witnesses or make them available to the defence was emphasized in the Gambian Court of Appeal case of *MARENA V. THE STATE (1960-1993) GLR 396*. These lapses have proved fatal to the prosecution as they have created serious doubts in my mind whether the accused can be said to be the person that defiled the victim.

I will not border myself to address the other issues as it would be an exercise in futility.

Having already held that the available evidence raises serious doubts in my mind, I shall proceed in line with the settled position of the law to resolve these doubts in favour of the accused person. The accused person is accordingly discharge and acquitted.

EMMANUEL A. NKEA
JUDGE

ISSUED AT BANJUL, UNDER THE SEAL OF THE COURT AND THE HAND
OF THE PRESIDING JUDGE THIS 15th DAY OF NOVEMBER 2011

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REGISTRAR