

**IN THE HIGH COURT OF THE GAMBIA**  
**SPECIAL CRIMINAL DIVISION**

**HOLDEN AT BANJUL**

**CRIMINAL CASE No: HC/182/11/CR/055/AO**

**BETWEEN:**

**THE STATE**

**COMPLAINANT**

**AND**

**LANDING SANNEH**

**ACCUSED PERSON**

**MONDAY 6 AUGUST 2012**

**BEFORE HON. JUSTICE EMMANUEL A. NKEA**

**ACCUSED PERSON PRESENT**

**MR. S. SEMALEMBAFOR THE STATE PRESENT**

**MRS. N. GBUJI FOR THE ACCUSED PRESENT**

**JUDGMENT**

By Information filed the 18 April 2011, the prosecution has alleged that on or about the 12 March 2011 at Kerr Serign, in the Kanifing Municipality of The Gambia, the accused person herein had unlawful carnal knowledge of one FATOUMATTA KANUTEH, 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.

The Prosecution's evidence was led through five (5) witnesses and three (3) exhibits were tendered in support of its case. The accused gave sworn evidence but did not call any witness or tender any exhibit in support of his defence.

The prosecution's case is that on or about the 13/03/2011, the prosecutrix was sent to Kerr Serign to serve food. She was invited by the accused person into his room. While in the room, the accused tied both of hands together. Her legs were also bound together while the accused laid on her and ravished her. She bled and was taken to the hospital where she was examined and a medical report issued to that effect. The report is in evidence as exhibit "A". When the matter was reported to the police, it was the prosecutrix that led the police to the residence of the accused whereupon he was arrested. Two undated cautionary statements were recorded from the accused person. These statements were jointly admitted in evidence as exhibit B-B1. In her testimony before the Court, the prosecutrix identified the accused as the person that raped her.

In his brief defence, the accused denied the charged and stated that he first saw the prosecutrix at the police station. He denied the statements as his.

In their addresses to this Court both sides referred the Court to the case of POSU v THE STATE. Mrs. Oduma however went further to urge the Court not to act on the exaggerated evidence of the prosecution which she submitted was based entirely on mere suspicion.

As I have stated in a plethora of cases before, the law on rape requires the prosecution to establish beyond reasonable doubt that (a) there was carnal knowledge of the prosecutrix; (b) that the act was that of the accused person; and (c) that the prosecutrix did not give her consent.

The prosecutrix has alleged in her testimony that the accused was the one that raped her. After warning myself of the need to deal with evidence of the prosecutrix; a child of six (6) years with caution, I am however satisfied from her evidence that the prosecutrix understood why she was in court, and positively identified the accused as the man that raped her.

However, section 80(2) of the Evidence Act requires corroborative evidence to support the evidence of the prosecutrix and such corroborative evidence must show that there was sexual intercourse, that prosecutrix did not consent, and identify the accused as the perpetrator.

The prosecutrix testified that there was blood when the accused laid on her. This fact is corroborated by the evidence of both PW2 and PW3 who testified that the accused had blood stains on her when she returned from Ker Serign. These pieces of evidence suggest that the prosecutrix sustained some injuries on her private part. However, the evidence of PW2, PW3 and the prosecutrix in this regard were badly damaged by the content of the medical report - exhibit "A". Although the prosecutrix was examined on the very day of the incident, that is, the 13/03/2011, no injuries were recorded on her.

I am at a lost, as I cannot possibly imagine how the accused could have had penile penetration of the prosecutrix when her legs were bound up together. Exhibits B1 and C are most inconsistent with the testimony of the prosecutrix before this Court; I do not believe the evidence contained in them, I will therefore not attach any weight to them as they are

uncorroborated and not capable of being proved as the truth (*R. v. SYKES*). The conclusion which I am bound to reach in this case is that there was no penile penetration of the prosecutrix by the accused and this I must hold as a fact.

Having held that there was no sexual intercourse between the accused and the prosecutrix, I do not find it necessary to determine the issues of consent or the lack of it.

From the foregoing, it seems that the prosecution failed to prove the offence of rape with the certainty required by law. I should have proceeded at this stage to discharge and acquit the accused person, but I have seen credible evidence on record, that the accused man-handled the prosecutrix apparently in an attempt to rape her. Not only did the prosecutrix testify that she was bounded up on both legs and hands, but the accused admitted in exhibit "B" that he tried but did not succeed to penetrate her. A clear case of an attempted rape was borne out by the evidence on record.

I have referred myself to section 149 of the Criminal Procedure Code and find it fit to convict the accused under section 123 of the Criminal Code with Attempted Rape. In view of the above, I find the accused guilty and convict him under section 123 of the Criminal Code for the offence of Attempted Rape.

**EMMANUEL A. NKEA**  
**JUDGE**

**PREVIOUS CONVICTION:**

**COURT:** You have now been found guilty of the offences of Attempted Rape pursuant under section 123 of the Criminal Code. Before sentence is passed on you, the Court would like to know if you or Counsel on your behalf will like to say anything in mitigation.

**ALLOCUTUS:**

**Mrs Gbuji:** My Lord the convict is a first time offender. He is 32 years old and has shown sufficient remorse. He is the sole breadwinner of his family. We urge the court to invoke section 29(2) of the Criminal Code in favour of the convict. We urge the court to temper justice with mercy.

**SENTENCE**

I have listened to the plea for leniency on your behalf. I consider the fact that you are a young man and a first time offender as mitigating factors in your favour. I also observed your deep remorse for the offence you have committed. These are extenuating circumstances that I will hold I your favour.

However, when I consider that your act would have amounted to a very serious offence, I immediately feel that even if I should temper justice with mercy, I should in the same breath give a sentence that is commensurate to your actions. The law requires that you be imprisoned for up to seven (7) years, but in view of the mitigating factors I have found in your favour, I

shall accede to the request of your counsel to invoke the provisions of section 29(2) of the Criminal Code in your favour.

In view of the foregoing, I sentence you **LANDING SANNEH** to 5 years imprisonment to run from the 13/03/11 being the date you were first taken into custody.

**EMMANUEL A. NKEA**  
**JUDGE**

**ISSUED AT BANJUL, UNDER THE SEAL OF THE COURT AND THE  
HAND OF THE PRESIDING JUDGE THIS 6 DAY OF AUGUST 2012**

.....  
**REGISTRAR**