

IN THE HIGH COURT OF THE GAMBIA

CRIMINAL CASE No: HC/038/10/CR/020/AO

BETWEEN:

THE STATE

COMPLAINANT

AND

SAIKOU AMADOU JALLOW

ACCUSED PERSON

MONDAY 17th OCTOBER 2011

BEFORE HON. JUSTICE EMMANUEL A. NKEA

ACCUSED PERSON PRESENT

Mr. A. MIKAILU (DPP) FOR THE STATE PRESENT

Mrs. N GBUJI FOR THE ACCUSED PRESENT

JUDGMENT

The accused person SAIKOU AMADOU JALLOW was charged on an information containing a one Count charge of defilement contrary to Section 127 (1) of the Criminal Code. The prosecution has alleged that on or about the 23rd day of November 2009, at Pipeline, the accused had unlawful carnal knowledge of one OUMIE CEESAY. The accused person pleaded not guilty to the charge. The Prosecution called evidence through seven (7) witnesses and tendered five (5) exhibits in support of its case while the accused led evidence in his defense and called two witnesses to support his case.

The case of the prosecution is that on the 23rd of November 2009, the accused took the prosecutrix a three (3) old child into a room in the

school compound where he sexually assaulted her on a mattress that was lying on the floor. The prosecutrix later reported to her mother who observed her, took her to the hospital and then to the police. All the medical reports alleged to have been issued were rejected in evidence by this Court on the 13/12/2010 and the 11/01/2011 respectively. The prosecutrix subsequently took the police to the room where she was sexually assaulted and also identified the accused both to her teacher and the police as the man who sexually assaulted her. Suffice to say that at all times material to this alleged offence, the accused worked as caretaker of ROSATOU nursery school where the prosecutrix schooled at the time.

The accused person denied the charge both in his statements to the police and in his testimony before this court. Perhaps it is important to state that at the close of the trial both sides were given the opportunity to file written addresses. While the defense filed and adopted a four page written address, the prosecution decided to waive their right to address me thus paving the way for this judgment.

In her written submission Counsel for the defense harped on the lack of corroboration of the evidence of the prosecutrix and concluded that the requirements of Section 180 (2) (a) of the Evidence Act have not been satisfied by the evidence of the prosecution witnesses. She framed the lone issue for determination as follows:

- Whether the prosecution has proved the case of defilement against the accused beyond reasonable doubts in this case?

I have carefully looked at Section 127 (1) of the Criminal Code, and it appears to me that the prosecution is required to establish that:

- (a) There was carnal knowledge of a girl,
- (b) The act was unlawful,
- (c) The girl was under the age of eighteen years, and
- (d) The act was that of the accused person.

The law allows the prosecution to establish the above either by direct positive evidence of eye witnesses or by circumstantial evidence. From the evidence on record, there is no evidence of any eye witness who said he saw the accused sexually assault the prosecutrix. The accused has also denied the allegations.

The evidence of the prosecutrix is categorical to the fact that the accused sexually assaulted her. However, Section 180 (2) (a) and the proviso to Section 185 (2) of the Evidence Act make it mandatory for the evidence of the prosecutrix to be corroborated. It is good law that in cases of a sexual character it is eminently desirable that the evidence of the complainant be strengthened by other evidence implicating the accused person in some material particular. Any evidence tending to confirm, support and strengthen other evidence sought to be corroborated would be sufficient for this purpose. See the case of *D.P.P V. KILBOURNE (1973) A.C. 729 @ 758*. Also settled, is that corroboration need not consist of direct evidence that the accused person committed the offence, nor need it amount to a confirmation of the whole account given by the witness, provided that

it corroborates the evidence in some respects material to the charge. See the case of *R. V. GOLDSTEIN (1914) 11 CAR 27*.

In *POSU V. THE STATE (2011) LPELR-SC, 134/2010* the Court held that the nature of corroboration must depend on the particular circumstances of each case and that in sexual offence cases, where the accused has denied the allegation, the evidence of corroboration that the Court must look for, is for instance (a) medical evidence showing injury to the private part or to other parts of her body and (b) semen stains on her clothes or the clothes of the accused person on the place where the offence is alleged to have been committed. Although PW3 the mother of the victim testified how she examined the prosecutrix and found that she had been sexually assaulted, there is no medical evidence in support of this fact.

The issue of corroboration is central to a Section 127 offence. The medical report of the prosecutrix to support the allegation of sexual assault was rejected by this Court. I have warned myself of the severe punishment of fourteen (14) years associated with this offence and, it immediately seems to me that oral evidence as to the medical condition of the prosecutrix does not suffice.

The available evidence on record therefore falls short of the mandatory requirements of Sections 180 (2) (a) and 185 (2) of the Evidence Act. The issue of carnal knowledge has in my view not been established with the certainty required by law. In view of this finding, I will not belabor myself with trying to address the other issues. Doing

so will amount to a mere academic exercise in futility. This trial must therefore be brought to an end at this stage.

Having held that the prosecution has failed to establish a vital element of the offence under charge, a doubt automatically arises whether or not the offence was committed by the accused. It is trite that once there is a doubt in criminal matters, such doubts must be resolved in favor of the accused. I shall accordingly resolve this doubt in favor of the accused herein and in doing so I shall find him not guilty of the offence charged. In view of the above, I have no other option than to proceed with the acquittal of the accused. The accused person SAIKOU AMADOU JALLOW is accordingly discharged and acquitted.

EMMANUEL A. NKEA
JUDGE

DPP: My Lord, as a matter of policy, we are giving oral notice of our intention to appeal the acquittal of the accused. We rely on *Section 285E of the Criminal Procedure Code*.

Mrs. GBUJI: My Lord, we rely under *Section 285E (2)* of the same law cited by my learned friend to apply for bail and urge the Court to make the necessary orders pursuant to *Section 285E (4) of the Criminal Procedure Code*.

ORDER

Having listened to the learned DPP and having also listened to learned defense Counsel,

EMMANUEL A. NKEA
JUDGE

IT IS HEREBY ORDERED AS FOLLOWS:

- (a) That SAIKOU AMADOU JALLOW shall be remanded in custody pending the Notice and Grounds of Appeal to be filed by the State, pursuant to Section 285E of the Criminal Procedure Code.
- (b) That pursuant to Section 285E (4) of the Criminal Procedure Code the above order shall be deemed quashed if the Petitioner fails to file their Notice and Grounds of Appeal within 30 days.

ISSUED AT BANJUL, UNDER THE SEAL OF THE COURT AND THE HAND OF THE PRESIDING JUDGE THIS 17th DAY OF OCTOBER 2011

.....
REGISTRAR