

**IN THE HIGH COURT OF THE GAMBIA.**

**CRIM. CASE NO. 24/2002.**

**THE STATE**

**VS.**

**ABDOULIE BAHOUM.**

**JUDGEMENT**

The Accused by an indictment dated the 23<sup>rd</sup> day of September, 2002 was charged with the offence of defiling a girl under the age of 16 now amended to 18 years contrary to Section 127 (1) of The Criminal Procedure Code, Cap. 10 Vol. 111 of The Laws of The Gambia, 1990.

Section 127 (1) provides:-

**“Any person who unlawfully and carnally knows any girl under the age of sixteen years is guilty of a felony, and is liable to imprisonment for a term of fourteen years.”**

The particulars of the offence were that the accused, a male adult on or about the 3<sup>rd</sup> day of August, 2002 at Bakau Sanchaba in the Kombo Saint Mary Division of The Republic of The Gambia, unlawfully and carnally knew one Ya Nyima Jeng of Bakau Sanchaba aged 10 years old.

The Prosecution in proof of their case called 7 (seven) witnesses and tendered two exhibits namely a birth certificate and a medical certificate marked Exhibits 1 and 2 respectively.

At the close of the Prosecution's case, the Defence made a no case submission which after arguments by both sides, was over-ruled and ordered to enter their defence. The Defence however elected to remain silent and did not call any witness including the Accused himself which is well within their right to do so. However, both sides filed written briefs of arguments.

I now proceed to summarise the evidence of the Prosecution witnesses.

**PW 1 YA NYIMA JENG.** She testified that her name is Ya Nyima Jeng aged 10 years old. That she attends Bakau New Town Primary School. She said that her mother's name is Marget Faal and Alieu Keita is her father. That the accused's name is Abdoulie Bahoum and that she knows where he lives in Bakau. She testified further that the accused person invited her to his house but she refused to go. On refusing, the accused subsequently sent four people to bring her to his house who though not clear from the records of proceedings, presumably did so. On reaching the house, the accused person requested her to remove her clothes but she refused to do so. What followed next was that the accused person himself removed her clothes and that of his own whilst he held a knife. He thereafter climbed on top of her and said that should she shout, he would kill her. At this point, she said that the accused took his private part and put it into hers. Upon finishing, the accused dressed her up and warned her not to tell her mother and threatened to kill her should she do so. That the accused told her to say that it was his brother, Samba Jallow who did it. That in an attempt to shout, the accused held her mouth and threatened to kill her.

On reaching home, PW 1 told her mother that her virgina was paining. On checking, the mother asked her who did it and she said that it was her brother Samba Jallow which she said was a lie.

Still under evidence-in-chief, PW 1 said that her aunt and mother went with her to the police where she finally mentioned the name of the accused. She said that the police took her to the Bakau Health Centre where she was subsequently referred to the Royal Victoria Teaching Hospital. She was therein examined. That before they went to the hospital the next day, the accused was arrested and put in the cells.

PW 1 stated under cross-examination that she did not know the people who took her to the accused's house but at the time there was nobody in the house. She described the knife as a small one and had a black handle. That the accused was in his house when the police came. Still under cross-examination, PW 1 said that it was the accused who told her not to say anything or else he would kill her. That she could not recall the time when the incident took place. That she was never aware of her father ever threatening the accused if he did not confess.

## **PW 2 MARIAMA MANGA JALLOW.**

A police woman stationed at Bakau Police Station, testified that she was instructed to escort PW 1 to the Bakau Health Centre and thereafter to the Royal Victoria Hospital where she was examined by a doctor in her presence. That the Doctor said that there were wounds on the girl's virgina but was treated and discharged. On the 12<sup>th</sup> day of August, 2002, she went back to the RVTH with PW 1 and her parents and collected the medical certificate which was tendered in evidence, admitted and marked as Exhibit 1. PW 2 was not cross-examined.

### **PW 3 MAGET FAAL.**

She is the mother of PW1 who testified that she lives in Bakau and is a business woman. That she knows the accused and is her neighbour. That on 4<sup>th</sup> of August 2002, between 5:00 and 6:00 pm, her daughter complained of pains in her private part and so she asked her to go and wash herself properly since she does not do so when she urinates. She did so. A couple of days after, the daughter complained of the same. She asked her guest to check for her and on checking, the guest said that somebody had sex with her. On being asked, the daughter did not say anything but was crying. PW 3 further testified that when her sister closed from work, she informed her. The sister took PW 1 to her house and questioned her. PW 3 said that the accused was arrested because he had sex with her daughter. That the daughter was born on March 1, 1992 and that she applied for the daughter's birth certificate in April 1994. The birth certificate was admitted in evidence without objection and marked Exhibit 2.

In cross examination she stated that PW 1 was crying all the time. She admitted that when PW1 was first asked who had defiled her she mentioned the name of Samba Jallow but subsequently said it was the accused. There was no material difference between her evidence-in-chief and the cross-examination.

### **PW 4 1033 YUSUPHA BOJANG.**

He testified that he is a police officer and at the time of his testimony, he was attached at the Farrafeni Police Station but at the time of the incident, he was attached at the Bakau Police Station. That on the 8<sup>th</sup> of August, 2002 whilst he was in the charge office at the Bakau Police Station, he recalled that PW 6 Adama Faal who is the aunt of PW 1 arrived in the charge office at 11:00 am and reported that she saw the accused in their compound.

Upon the receipt of the complaint, he went with PC Jallow to the residence of the accused where they found him in his house where he was arrested and brought to the Police Station. At the police station, cautionary and voluntary statements were obtained from him. That the said statements were eventually abandoned by the prosecution in view of the fact that the independent witness could not be traced.

### **PW 5 ALIEU KEITA.**

The stepfather of PW 1, testified that he knows PW 1, 2, and 3 as well as the accused. That the accused was always in his compound and had always regarded him as his son. That in the evening of August 4, 2002, her daughter PW 1 had been crying. He said that he asked his wife as to what was wrong with PW 1? The wife told him that she (PW 1) had an injury. He further asked how she sustained the injury. The wife told him that PW 1 had been raped. He asked his wife to find somebody to inspect the daughter (PW 1). That one Nyanga was invited to do so who upon the inspection confirmed that PW 1 was indeed raped and in the process had been disvirgined.

On being informed of the results, PW 5 asked PW 1 as to who was responsible but out of fear, she would not speak. He told him not to fear as she would not be beaten. PW 1 stated that it was one Samba Jallow. That he called the said Samba Jallow and confronted him with the allegation. Samba Jallow denied any responsibility. PW 5 then instructed his wife to take PW 1 to the Doctor but to go to the Police first. PW 5 in his testimony said and I quote:-

“I left everything in the hands of the women. I told them that when the accused comes, I would ask him. On August 7, 2002 at about 3:00 am, we were in the compound, I told my wife to prepare food for the accused. He came and I told him to take his food to eat. I was sitting on a chair. After he took his food, we conversed as

usual as if nothing had happened. He was very close to me. I trusted him with my money. I used to send him on errands. I asked him to take a walk with me. Because of my love for him, I did not want to ask him anything in public which was why I asked him to come with me. We went and sat at the garage and I asked him if it was true that he had raped PW 1? He denied having raped PW 1 and I said ok it was not a problem.

I said to him that he is my friend and that before I took the matter to the police, he should tell me the truth so that the matter would be solved in the family. He kept quiet. We went to a restaurant called Lama Lama where we usually sit and drink ATAYA (Chinese Tea). The people at Lama Lama were myself, the accused, Babacar Mbaye, Yusuf Ndoeye and one Mamadou Keita, the watchman at Lama Lama. The accused and I found the other people at Lama Lama. After a while, I told Babacar Mbaye to ask the accused to tell him the truth about this matter. Babacar Mbaye agreed and the two stood aside and spoke. I did not hear what they were saying. They then came back and joined us and Babacar Mbaye told me that the accused agreed that he committed the act but I said that I did not believe it unless the accused told me that himself. The two men then sat down and Babacar Mbaye told the accused to tell the group what he had told him whilst they were outside. The accused then said that he had done the act to PW 1 and asked for forgiveness since he was driven by SATAN. I requested the whole group to go and inform Adama Faal about the accused's confession since they had already reported the matter to the police.

I called one Alpha to accompany the group as a witness. We went back to my compound and sat. This was when I called Alpha. The accused confessed and asked for forgiveness. Adama Faal asked if she should inform the accused's boss or his father. The accused said he wanted his boss, Alhagie Mendy to be informed. Since it was night time, I told them to wait until the next morning to inform

the boss. In the morning, I went to Alhagie Mendy. Before I went to him, I called Alieu Njie and we went to Alhagie Mendy and informed him. Alhagie Mendy thereafter called the accused and confronted him with the information. He initially denied the allegation. I told him to tell the truth as the witnesses knew it. He confessed to Alhagie Mendy which Mendy acknowledged. I told Mendy that I had brought Alieu Njie as a witness. Alhagie Mendy and some people came to me to plead that the matter be settled amicably. I told them to talk to PW 1's mother and that if she decides to finalise the matter, it was alright with me. The women said the matter was with the police and they could not do anything. The accused was taken to the police station where he gave his statement and I also gave a statement. I was present when the accused gave his statement. We went to the court in Kanifing. That was the end of the evidence-in-chief.”

Under cross-examination the witness PW 5 said and I quote the relevant portions of his testimony:-

“I called the accused and we all went to the garage. The garage is near the Bakau market. The garage is not far from the beach. The day we went to the garage was the day after the incident. This was around 9 pm and 10 pm on a Wednesday and I talk to him. I talk to him the second time at my compound at 3 am. This was the same Sunday. There were three of us with Mamadou at the garage. When I first asked the accused at around 9:00 it was only the two of us. He denied it. This was at the garage. I did not witness the incident when it happened. This is the alleged rape. When I told the accused to tell the truth, he said no. The first time I asked him was at the garage at around 9 pm. I asked him the second time at Lama Lama restaurant. When he first said he had not done it, I felt that he was not telling the truth so I disbelieved him. I am an elder and so something inside me told me that he was not telling the truth. I did not leave the matter there because I did not believe him.”

Put:- The only reason you asked the accused to accompany you to the garage was to put him aside and threaten him into confession.

Answer:- This is not true. I did not threaten him. At that time, I believed that he raped PW 1.

Put:- You were already convinced so you wanted him to confess.

Answer:- PW 1 had told me that he had raped her.

Put:- When he told you what you did not want to hear, you threatened him.

Answer:- I never threatened him.

Put:- At the time you left the garage with him to go back, the accused still told you that he had not done it.

Answer:- From the garage to Lama Lama we were not talking to each other.

Continuing his evidence under cross-examination, he said that at the time we were leaving the garage, the accused was denying that he committed the offence. The accused was taken to the police station on Monday morning. Two police officers from Bakau Police Station arrested him. I was pointing out the place. When the two officers went to arrest the accused, I was with them. This was on Monday. It was on that day that I went back with them and gave my statement. When he was arrested, he was at his garage where he works. I accompanied the police from the police station to the garage where the accused was arrested.

Put:- It is not true that after denying the offence, the accused confessed in the presence of other people and you.



Answer:- He did confess to me and other people. When my daughter told me that she was raped, it hurt me so much that I wanted to find the person who did it. I would have done anything to find that person.

### **PW 6 ADAMA FAAL.**

In her testimony narrated that she lives in Bakau and is a business woman. She said that she knows PW 1 who is her elder sister's daughter. That she also knows PW 3 who is her elder sister of the same mother and father and shares the same compound with. That she also knows Alieu Keita (PW 3) who is her elder sister's husband. She also knows the accused person.

PW 6 testified that sometime in August 2002 whilst she was in her house, she heard the voice of PW 3. She came to find out what was going on. She asked her sister what had happened? The sister told her to take PW1 to her house and ask her. That she went to PW1's room and found her on the floor crying. She took her to her house and sat her down. She was still crying and would not say anything as she feared being beaten. PW 6 further narrated that she encouraged her not to fear and that if anything she will protect her. At that point, PW 1 said that one Samba Jallow took her to the toilet and asked her to undress. She asked what for and the said Samba Jallow told her that he would slap her if she did not undress. That she undressed. That having undressed, the said Samba Jallow asked her to lie down and she did so. That someone was passing by who heard her saying "leave me, leave me". That the said person asked who it was when Samba Jallow ran away but never got on top of her.

That they invited Samba Jallow and confronted him but he denied ever doing so. On account of Samba Jallow's denial, she called PW 1 again and asked her to tell the truth. PW 6 further told PW 1

that she was going to work and would not be around to save her from being beaten. She encouraged her to tell the truth. At that point PW 1 told her (PW 6) that she went to play at the next compound where the accused invited her into his house as he wanted to send her. That she got into the room and the accused closed the door and asked her to undress. She asked the accused why. That at that point the accused pulled out a knife and told her that if she did not undress, he would kill her.

Having undressed, the accused threw himself on her and got into her and raped her. Thereafter, the accused threatened that if she mentioned his name he would kill her. Rather she should say it was Samba Jallow which she did. With that information, PW 6 informed PW 1's parents and thereafter reported the matter to the Bakau Police Station whereupon the accused was arrested. That PW 1 was taken to the Bakau Health Centre and on being examined, she was referred to the Royal Victoria Teaching Hospital. After PW 1 and those that accompanied her returned from Banjul and were explaining what had transpired, the accused person's boss with two others arrived and pleaded with them on a settlement of the issue. In response, PW 6 told them that he (the Boss) had several girls in his compound but the accused did not rape them. One of the people that came with the accused person's boss told PW 6 that since the accused had admitted to have committed the offence, she (PW 6) should accept their plea. PW 6 told them to leave her compound failing which she would call the police which they did.

PW 6 further testified that a few days later, the accused person's boss led a similar delegation to them which was witnessed by one of their neighbours. PW 6 told them that the matter was in the hands of the police. PW 6 and the said neighbour asked the accused whether he in fact raped PW1 and he admitted doing so. That on the night of the day in question, the brother-in-law to PW 6 and a neighbour brought the accused to their compound where he

the accused was asked in the presence of PW 6 and he admitted to raping PW 1 but pleaded with them for mercy.

Despite rigorous and intensive cross-examination by the Defence Counsel, PW 6 narrated virtually the same. There was no material difference between the evidence-in-chief and the cross-examination.

### **PW 7 ALIEU NJIE.**

He testified that he is a business man and lives at Bakau. That he knows Maget Faal, Alieu Keita, Adama Faal, Ya Nyima Jeng and Alhagie Mendy. He recognizes the accused person. That on August 8, 2002 whilst in Bakau, he was called by Alieu Keita (PW 5) who informed him that her daughter had been raped and wanted him to go with him to one Alhagie Mendy, the boss of the accused. That on arrival, they explained their mission to Alhagie Mandy who called the accused in their presence and told him that PW 1 had accused him of raping her. The accused denied ever doing so. That Alhagie Mendy told the accused to tell the truth since that was the third time that he committed the same offence. At that point, the accused accepted having committed it. Thereupon they left.

Under cross-examination, he reiterated that he knows the accused and that they are neighbours. That the said meeting was held in Alhagie Mendy's house but could not remember what time of the day as it was a long time ago. That at the meeting they were three in number but Alhagie Mendy later called the accused who joined them. That he admitted to have committed the offence and was not forced.

I must pause to state that the offence was committed in August 2002 which I have inherited at the judgement stage. I did not have the opportunity to have heard and seen any of the witnesses. I am

however surprised and shocked on how an offence of such a magnitude had been handled in the way it was done for so long a period. It is incomprehensible to so imagine. Be it as it may, I say so on the following grounds namely:-

1. Firstly, the evidence of the charge points to the offence of rape and not defilement which ties the court's hand to that issue before it.
2. Where it is a charge of rape and the evidence tilts to defilement or a lower offence, then the court can invoke its inherent jurisdiction and convict on that offence and not vice versa.
3. Several names such as Samba Jallow, Alhagie Mendy, Babacar Mbaye, Yusuf Ndoye, Momodou Keita, Alpha and Nyanga were called and referred to in the trial. These people are certainly material witnesses more particularly on the issue of corroboration but were never called to testified. No reasons had been given. The defence never bothered to call any of these people to testify on their behalf if infact what had been said was not true.
4. That Babacar Mbaye was said to have been the first person to whom the accused had confessed to, but was never called as witness by either side
5. The cautionary and voluntary statements obtained from the accused and witnessed by an independent witness was subsequently abandoned because the police could not trace the said independent witness on grounds that there was no identifiable address or number to trace him.

At the end of the case for the prosecution and defence, the defence submitted a no case to answer which was overruled. The defence

was to open its defence but chose not to call any witness. On account of that both parties filled written addresses and the case was adjourned for judgement which I now deliver.

The prosecution in its address submitted that the burden of proving its case beyond reasonable doubt lies on them. In doing so the prosecution referred to Section 127 (1) of the Criminal Code Cap 10 Vol. III Laws of The Gambia 1990.

In her submission, Mrs Woods submitted that in order to ground a conviction, the prosecution has to prove the following ingredients of the offence charged:-

1. That there was carnal knowledge of a girl;
2. That the act was unlawful;
3. That the girl was under sixteen years; and
4. That the act was that of the accused person.

Mrs Woods formulated the following issues for determination:-

1. Whether there was carnal knowledge of PW1;
2. Whether the act of carnal knowledge was by the accused person;
3. Whether the act was unlawful;
4. Whether the victim was under sixteen years of age;
5. Whether the prosecution has proved its case beyond reasonable doubt; and

6. Whether the accused raised a defence.

On ISSUE 1, whether there was carnal knowledge, the prosecution submits that PW 2 Mariama Manga Jallow a police woman stationed at Bakau Police station testified that she was instructed to escort PW1 to the Bakau Health Centre and thereafter to the Royal Victoria Teaching Hospital (RVTH) where she was examined by a doctor in her presence. A few days later, she returned to the RVTH and collected the medical certificate which was issued on behalf of PW1. The said certificate was tendered and admitted in evidence through her and marked Exhibit NO. 1.

She further submitted that exhibit 1 clearly indicated that there was penetration resulting to fresh bruised hymeneal tear of PW 1's virgina which infact confirms the carnal knowledge of PW 1.

The Defence Counsel in her reply merely narrated almost the same as the prosecution. She did not deny or challenge the content of Exhibit 1.

One cannot find a better evidence on the issue of penetration or carnal knowledge of PW 1 than the medical evidence.

**In the Privy Council case of JAMES V. R** from Jamaica (1970) 55 Cr App. R 299 on a charge of rape, it was held that the medical evidence showing that the complainant had had sexual intercourse at about a time consistent with her allegation was incapable of affording corroboration of her evidence of the rape, because it did not confirm anymore than an act of sexual intercourse.

It is clear from this authority that the medical evidence exhibit 1 did confirm that there was an act of sexual intercourse or in other words, there was an act of carnal knowledge of PW 1. Extending the issue a little further, it can be said that the slightest penetration will suffice and it is not necessary to prove that the hymen was

ruptured. It shall not be necessary to prove the completion of the intercourse by an emission of seed, but the intercourse shall be deemed to complete upon prove of penetration only. That prove had been established by the medical certificate and I so believe it as being authentic and conclusive prove of the carnal knowledge of PW 1.

However, I would also look beyond to see what the other witnesses say about the carnal knowledge.

PW 1, the victim testified that the accused undressed her whilst he held a knife in his hand and took off his own clothes, covered her mouth and thereafter climbed on top of her. He thereafter inserted his private part into hers.

PW 3 Maget Faal in her testimony stated that on account of her daughter's complaint of virginal pains and persistent cries, she asked her guest to check the daughter for her and on checking, the guest said that somebody had sex with her.

On account of the foregoing, I therefore resolve issue 1 in favour of the prosecution and I so hold that based on the medical evidence, there was carnal knowledge or penetration which resulted to fresh bruised hymeneal tear of PW 1's virgina.

I now proceed to issues 3 and 4 and ask whether the act was unlawful and that the victim is indeed under the age of sixteen years of age.

PW 3 Maget Faal testified that her daughter was born on March 1, 1992 and that she applied for the daughter's birth certificate in April 1994. The birth certificate was admitted in evidence without objection and marked Exhibit 2. It is therefore correct and indisputable that as at the date of the offence, the victim was ten years old or thereabout and certainly below the age of sixteen years

of age. Assuming without conceding that she had consented, the question then would be, could she have legally consented to sex? Emphatically, I say no. In any event, since the accused had threatened her with a knife that he would kill her should she refuse to undress, is in itself sufficient evidence to prove that she did not consent even if she could have legally done so.

Again, I resolve issues 3 and 4 in favour of the prosecution as having proved beyond reasonable doubt that the act is unlawful and that the victim is under the age of sixteen years now amended to eighteen years of age and I so hold.

Having resolved as above, I now proceed to issues 2, 5 and 6 formulated by the prosecution namely:-

- ❖ Whether the act of carnal knowledge was by the accused person;
- ❖ Whether the prosecution has proved its case beyond reasonable doubt; and
- ❖ Whether the accused raised any defence?

In order to resolve the issue as to whether the accused had carnal knowledge of the victim (PW 1), it is pertinent to look at the law on corroboration or otherwise to determine whether the evidence of PW 1 has or had in anyway been corroborated by the evidence of any of the witnesses.

Section 179 of the Evidence Act, 1994 provides:-

**“Corroboration consists of independent evidence from which a reasonable inference can be drawn which confirms and supports in some material particular the**



**evidence to be corroborated and connects the relevant person with the offence, claim or defence.”**

**“180 (1) Unless otherwise provided in this Act or any other Act, a court may, in any proceedings, act on the admitted evidence of a single witness, or a single document properly proved”**

**(2) Without prejudice to the generality of subsection (1) a court shall not, in the following cases act upon the uncorroborated evidence, except in a criminal case upon an accused person’s own plea of guilty:-**

- (a) cases of rape and other sexual offences against complainants;**
- (b) claims against the estate of a deceased person;**
- (c) cases of sexual misconduct in matrimonial causes;**
- (d) cases of perjury; and**
- (e) cases of exceeding speed limit under the Motor Traffic Act.**

Having quoted as above, I now look at the evidence of the witnesses.

- a) **PW 1**, the victim testified that the accused undressed her whilst he held a knife in his hand and took off his own clothes, covered her mouth and thereafter climbed on top of her. He thereafter inserted his private part into hers.

- b) **PW 5 ALIEU KEITA** testified that he and the accused, found the other people at Lama Lama. After a while, he told Babacar Mbaye to ask the accused to tell him the truth about this matter. Babacar Mbaye agreed and the two stood aside and spoke. I did not hear what they were saying. When they returned, Babacar Mbaye told me that the accused admitted that he committed the act. I said that I did not believe it unless the accused told me that himself. The two men then sat down and Babacar Mbaye told the accused to tell the group what he had told him whilst they were outside. The accused then said that he had done the act to PW 1 and asked for forgiveness since he was driven by SATAN.
- c) He PW 5 told the group that they would have to go and inform Adama about the accused's confession since she Adama had reported the matter to the police.
- d) PW 5 called one Alpha to accompany the group as a witness. They went back to his compound and sat. The accused confessed and asked for forgiveness.
- e) PW 5 said that he and Alieu Njie, PW 7 went to Alhagie Mendy, the accused boss and informed him. Alhagie Mendy thereafter called the accused and asked him, he initially denied it. That he PW 5 told the accused to tell the truth as the witnesses knew it. He confessed to Alhagie Mendy.
- f) Under cross-examination the witness PW 5 said that the accused had confessed to him and other people.
- g) **PW 7 Alieu Njie** was the witness who accompanied PW 5 to the house of Alhaji Mendy to inform him of what had transpired. On informing Alhaji Mendy of their mission, the accused person was called in and he confessed that he committed the offence.

- h) **PW 6** in her testimony narrated that the accused boss Alhagie Mendy led a delegation to their house on two occasions to plead with them. On one such occasion when the accused was with them and on being questioned, yet again confessed to have raped the victim in her presence.
- i) **PW 6** and the said neighbour asked the accused whether he infact raped PW1 and he admitted doing so.
- j) That on the night of the day in question, the brother-in-law to **PW 6** and a neighbour brought the accused to the victim's compound where he the accused was asked in the presence of **PW 6** and he admitted to raping **PW 1** but pleaded with them for mercy.

It is clear and indisputable from the above testimonies that the evidence of the witnesses clearly corroborates the evidence of **PW 1** in all material particulars. I say so on the following grounds namely:-

- a) The evidence of the above witnesses are independent in nature and I can reasonably infer that they confirm and support in all material particular the evidence of **PW 1** and thereby corroborated and connected the accused person herein with the offence with which he has been charged.
- b) I find as a fact that my contention is supported by the provisions of Section 179 of the Evidence Act 1994 and the provisions of 180 (1) and (2) of the same Act.
- c) I hold as a fact and further to the authority of **CHRISTIE (1914) AC 545** that the evidence of the witnesses as numerated above are capable of constituting corroboration in law on the following premises:-

- I. They are and were admissible in themselves and were neither discredited or shaken in cross-examination.
- II. Having been so admissible in themselves, they certainly originated from sources independent of the evidence of PW 1 that required corroboration and I so hold.
- III. They have shown by confirmation of material particulars not only that the offence charged was committed but that it was committed by the accused through his own confessions which were never discredited or shaken under cross-examination.

I find support of the above contention in the case of **BASKERVILLE (1916) 2 KB 658 AT 667** wherein **LORD READING CJ** expressed the requirements in the following terms:-

**“.....evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is which confirms in some material particular not only the evidence that a crime has been committed, but also that the prisoner has committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offences for which corroboration is required by statute.”**

- IV. The accused person's admission of the offence to the above witnesses is sufficient corroboration and I so hold.

This is supported by the case of **R V FRANCIS KUFU 1960 WNLR 1** wherein the accused was charged with indecent assault on a girl of ten years of age. The accused having admitted to the father of the girl just as the case herein, it was held that the admission of the offence by the accused to the father of the girl was sufficient corroboration. This case was referred to in **IKO V STATE PER IGUH JSC (2003) 3 ACLR 76**. See also **R v Rice (1963) 1 QB 857** quoted in **Iko v State (supra) per Katsina-Alu JSC**.

Similarly, in the case of **THE QUEEN V. OBLASA (1962) 1 All N. L. R. 651**, it was held that if a person makes a free and voluntary confession which is direct and positive and is properly proved, he may be convicted on the confession alone without any further evidence.

I find as a fact and hold that the accused person's confession is direct and positive and properly proved.

In the case of **JAMES OBI ACHABUA V THE STATE (1976) 12 S. C. 63** the Supreme Court held that confession alone even without corroboration can support a conviction so long as the court is satisfied of the truth.

In the light of the above and further to Section 180 (1) and (2), I find as a fact that the evidence of PW 1 has been sufficiently corroborated by the witnesses and I so hold.

The case of **AREBAMEN V. THE STATE (1972) 4 SC 35** supports my view which I have also relied upon provides:-

“Corroboration evidence is evidence of some material particular implicating an accused person in the commission of the offences alleged.”

Before pronouncing my verdict it is only proper that I pause and look at the submission of the defence. They did not call any evidence which they have a right to do.

Counsel for the Accused submitted that the evidence of PW 1 is manifestly unreliable in that when initially asked who raped her, she said one Samba Jallow. That she subsequently changed her story and said that it was the accused person. Counsel however did not say why PW 1 did that.

With due respect to Counsel, it is clear from the records of proceedings that PW 1 stated that the accused threatened her with a knife first if she refused to undress and then if she tells anybody that he did it. On account of that apprehension of fear particularly for a child of such a tender age it would be common for her to take it seriously and so she believed him and did as directed. Under cross-examination, Counsel had the golden opportunity to discredit PW 1 but failed to do so. In any event, Counsel did not refer me to any authority to substantiate her arguments. I therefore believe the story of PW 1 as being true and the actual state of affairs.

Counsel for the accused also submitted that PW5 threatened PW1 with beatings and that was the time she mentioned the accused person's name which she contended was corroborated by PW3 the victim's mother, PW5 and PW6 the victim's stepfather and aunty respectively. With due respect, nowhere in the records of proceedings have I come across any such statement.

Counsel further referred to the testimony of PW 2 Mariama Manga Jallow, a Police woman. That she told the court that on the 8<sup>th</sup> August 2002 she accompanied the victim and her mother to Bakau Health Centre where they were referred to the RVTH for medical check up. That she tendered a medical certificate of the examination of PW 1 which shows that the victim was defiled. Counsel did not refute, discredit or challenge the veracity or

credibility of the certificate. I am therefore bound to accept it as being credible in confirming that PW 1 was indeed carnally known.

Counsel also submitted that the evidence of PW 5 that the accused confessed in his presence and in the presence of his boss is and cannot be believed. In the absence to the contrary, and further to the fact that the accused did not enter his defence or call any witness more particularly the said boss to refute the said allegation, I have no other alternative but to accept that evidence as being true. Such allegation as serious as it was, ought not to have been taken lightly. I am surprised that Counsel did not take it seriously. In as much as the accused does not have to prove his innocence, it would have been prudent and in his interest to call his boss to testify on his behalf. He did not do so probably because he did it all and did not want to be drawn into it and I so hold.

Counsel submitted and I quote, “It is surprising that all the people in front of whom PW 5 said the accused confessed are his friends and also that neither PW3, PW5 nor PW6 the mother, step father nor the aunty contacted or reported the matter to the parents of the accused who they say are their neighbours.” This is a matter that goes to no issue. However, the accused on being asked said that he preferred his boss to be informed and besides anybody can be informed. She submits that what happened is that the prosecution, faced with the difficulty of proving their case resorted to calling a friend of PW 5 and PW 7 and urged the court to disregard them. Counsel’s argument bears no fruit and I therefore consider it as a mere conjecture and I so hold.

In the premises therefore I hold that the prosecution has proved its case beyond all reasonable doubt. See the case of *Miller v Minister of Pensions* (1947) 2 All E.R. 372 at 374 and *Bakare v The State* (1987) LRC PP179.

In the circumstances therefore, I find you guilty as charged and convict you accordingly.

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**HON. JUSTICE L. A. M. S. JOBARTEH.**  
**JUDGE.**