SIERRA LEONE · HIGH COURT · CRIMINAL JURISDICTION

State v Michael Chea Jackson

(SLHC 1 of 2020) [2020] SLHC 13 · 3 June 2020

Hon. Mr Justice John Bosco Allieu JA

A note on this copy. The complainant was a child at the time of the offence. His name has been replaced with the initials **RRF**, and his school is not named, so that he cannot be identified from this judgment. Nothing else has been removed. The original is a scanned document; obvious scanning errors in the text have been corrected, and the words of the judgment are otherwise as delivered. Published by lanbuk.com.

IN THE HIGH COURT OF SIERRA LEONE
(CRIMINAL JURISDICTION)

THE STATE VS. MICHAEL CHEA JACKSON

BEFORE THE HON. MR JUSTICE JOHN BOSCO ALLIEU- JA

COUNSEL:
K. CONTEH ESQ & A. KARGBO FOR THE STATE
C. TUCKER FOR THE ACCUSED

JUDGMENT

I

By indictment dated 3rd April 2017, the Accused pleaded NOT GUILTY to a 1 (one) count charge as follows:-

STATEMENT OF OFFENCE

SEXUAL PENETRATION contrary to Section 19 of the Sexual Offences Act, 2012. Act No. 12 of 2012.

PARTICULARS OF OFFENCE

MICHAEL CHEA JACKSON on the 28th day of November, 2015 at Freetown in the Western Area of the Republic of Sierra Leone, engaged in an act of Sexual Penetration with RRF, a child.

The Prosecution called 5 (five) witnesses in support of its case.

P. W. I is Tamba Morsay-P.C. 13425 attached at the Wilberforce Police Post. He knows the complainant and victim in this case, RRF. He also recognized the Accused. He recalled 28th November, 2018. He was on duty at the said Police Post when a case of Larceny was reported against the victim herein. The case was assigned to him for investigations. He obtained statement from the Complainant of the Larceny Report and VCS from the victim herein. He was instructed by D/Insp. Cole to escort the victim to Congo Cross Police Station for safe custody. Whilst at the Wilberforce Police Post, the Accused reported for night duties and told him that he will take care of the victim and that he should not bother to take him to the Congo Cross Police Station.

The Accused and this witness placed the Accused in cells at the Wilberforce Police Post. The cells were locked and the keys handed over to the Accused.

The next day, he travelled to Kenema. Around 10:00am. D/Insp Cole called him on his mobile phone and gave him certain information concerning the Accused and the victim. On his return from Kenema, he was called at the Congo Cross Police Station in order to make statement which he did.

This witness was Cross Examined by Defence Counsel. He confirmed that he is a Police Officer attached at the Wilberforce Police Post, "C" Division. He further confirmed that the date of the alleged incident was 28 November 2015 and that he was in Kenema.

The witness further answered that he knows the victim in this matter but that there was no relationship between them. The Accused was only a suspect in Police custody.

There were no Questions in RE-examination.

III

P.W. 2 is Matilda King, a Medical Doctor attached at the Rokupa Government Hospital and the Rainbow Centre, Fourah Bay Road, Freetown. She recalled examining and treating the victim. RRF who went there for the Medical Form to be endorsed.

Her findings were reduced to a report which she signed as "Ex A". There were no objections by Defence Counsel to its tendering thereof. On 30th November 2015, during the examination of the victim. RRF, she observed that there were no physical injuries seen on him but during the anal examination, she observed that there was redress around the anus. The age of the victim, according to her, was 15 (fifteen) years old.

The witness testified that she signed and dated the Medical Form.

She further testified that redness around the anus would have been as a result of forceful entry into the anus or forceful getting out of the anus.

The witness was Cross Examined by Defence Counsel. She maintained that she observed redness around the anus of the victim and that she had already testified as to its causes. She further maintained that one of the causes of the redness could be a forceful exit from the anus.

The witness answered that redness around the anus does not necessary mean penetration.

There were no questions in RE-Examination.

IV

P.W. 3 is RRF, a form 3 pupil of a junior secondary school in Wilberforce. He recognized the Accused and knew him as a Police Officer.

He recalled 28th November 2015. He was arrested and taken to the Wilberforce Police Post on allegations of Larceny. Statement was obtained from him. The Accused was on duty that night as a Guard and he was placed in cells after the statement was obtained from him.

At around 11:00pm, according to his testimony, he was taken out of the cells by the Accused to his guard post who enquired from him if he would want anything to eat to which he answered in the affirmative. The Accused then went out and bought bread, sausage and soft drinks which he gave him to eat. The Accused told him that he would want to help him by calling his parents so that they can plead with the complainant of the larceny allegations who had brought him to the said Police Station.

The accused then demanded sex with him but he refused. The accused then grabbed him and had sex with him in his anus. The Accused used his penis to penetrate into his anus. As at that time, the victim testified that he was

only wearing a boxer pant which the Accused forcefully removed. The Accused undid his zip on his trousers and forcefully inserted his penis into his anus and promised that he will help him with the case. The Accused tore the statement which the victim had made on the allegations of Larceny and threw the pieces of papers out of the window. At the time the Accused penetrated his anus, he ejaculated therein. He was crying.

In the morning, the witness testified, he became sick with pains all over his body. The boss of the Accused came to the Police Post in order to take the statement which he had made to the Congo Cross Police Station but did not see it. The witness was by then trembling with cold.

In the presence of this witness, the Accused told his boss that he, the victim, had torn the statement. It was at this stage that this witness explained to the boss of the Accused, an Inspector of Police, all that transpired between him and the Accused the previous night.

He was taken to the Congo Cross Police Station where further statement was obtained from him and he was placed in cells. In the cells, he became sick and vomited and he was taken to the Hospital where he was examined, treated and discharged. The Medical Request Form was endorsed which he returned to the Police.

According to the witness, at the time of the incident complained of, he was 17 (seventeen) years old. He testified that he was examined by Female Doctors.

This witness was cross examined by Defence Counsel. He maintained that at the time of the incident complained of, he was 17 (seventeen) years old. He answered that he is still a pupil in form 2 (two) at a secondary school but that after school, he drives a commercial taxi in order to maintain himself.

The witness indicated the location of the Police Post and that there were other houses surrounding the said Police Post.

The witness further answered that he was taken to the Wilberforce Police Post at around 6:00 to 7:00 pm and that he had no clothes on but that he was wearing a male boxer pants.

The distance between the Police Post and the Wilberforce Police Barracks is about 200 (Two Hundred) meters. He was taken to the Police Post in the vehicle of his boss and placed in the cells. He was half naked and he was the only one in the Police Cells that night. The Accused and himself were the only people in the Police Post that night but there were other Police Officers before the accused took up duties.

After the incident complained of, he was placed in Police cells for 1 (one) week and two (2) days before being taken to the Hospital. He returned the Medical Request Form to the Police Officers. The witness maintained that the Accused penetrated his anus and that he said the truth in this case. As at the time of his testimony, he was 19 (nineteen) years old. Statement was obtained from him at the Congo Cross Police station.

He was not charged to Court for the offence of Larceny because his father settled the matter.

Answering to questions in Re-Examination, the witness said that he spent 1 (one) day at the Wilberforce Police Post but that he spent a longer time in cells at the Congo Cross Police Station.

V

P.W. 4 is John Henry-D/Sgt 9803 attached at the F.S.U. Congo Cross Police Station, Freetown. He knows the victim in this matter. RRF and recognized the Accused as well. He recalled 28th November 2015. He was on duty at the F.S.U. Congo Cross Police Station, Freetown, when an alleged case of Sexual Penetration of a child was reported by RRF, the victim herein, against the accused. The matter was assigned to him for further investigations and he issued victim with a Police Medical Request Form for examination and treatment at the Rainbow Centre. Fourah Bay Road, Freetown, which said form was later returned endorsed.

This witness obtained statements from the victim and other relevant witnesses and on 29th November 2015, the Accused, who was a serving member of the Sierra Leone Police Force was arrested and detained. The same date, that is, 28 November 2015, D/Sgt 10987 Tarawally L and this witness obtained VCS from the Accused by following the Judges Rule. The said Statement was tendered as "Ex B" and there were no objections by Defence Counsel.

On 30th November, 2015. D/Sgt 10987 Tarawally L, the victim. RRF, the accused and this witness visited the scene of crime at the Wilberforce Police Post. This witness observed, in the Desk Diary, a release entry made by the Accused to the victim, who was by then suspect in a matter, dated 28th November 2015 at 02:13hrs serial No 1.

On 2nd December 2015, after visiting the scene of crime, D/Sgt 10987 Tarawally L and this witness obtained additional VCS from the Accused by following the Judges Rule. The said statement was tendered as "Ex C" and there were no objections by Defence Counsel. This witness concluded his evidence in chief by testifying that the matter was later transferred to the major incident response team. F.S.U.. C.I.D. Headquarters, Freetown, for further investigations.

This witness was cross examined by Defence Counsel. He answered that in "Ex C", the Accused continuously denied the allegations made against him. The Accused told him that he had cause to remove the victim from the cells because he complained that he was sick.

The Accused told him that the Crime Officer and the Investigator, Tamba Morsay, P.W. 1, were not around. The witness denied that it was humane that the victim had to be removed from the cells.

There were no questions in Re-examination.

VI

P.W.5 is Samuel Kalil Bangura-D/Sgt 13168 attached at the F.S.U, Major incident report scene at the C.I.D. Headquarters. Pademba Road, Freetown. He knows the victim. RRF and recognized the accused as well. He recalled Thursday 8th September 2016. He was on duty at the F.S.U., C.I.D. Headquarters, Pademba Road. Freetown, when he was instructed by the N.C.O. crime, D/Sgt 7866 Kamanda R., to charge the accused with the offence of Sexual Penetration of a child. Together with D/PC 13960 Kamara A, they charged the accused with the offence of Sexual Penetration of a child. The Judges Rule was followed and the said Charge statement was tendered as "Ex D". There were no objections by Defence Counsel.

This witness was Cross Examined by Defence Counsel. He confirmed that the only thing he did in respect of this case is to obtain charge statement from the Accused.

There were no questions in Re-examination.

VII

The State Counsel closed the case for the Prosecution after tendering in evidence "Ex E", the Committal Warrant.

There were no objections by Defence Counsel to its tendering thereof.

VIII

In his case, the accused opted to rely on his statements made to the Police, that is, "Exs B and C" respectively. In those statements, the accused denied the allegations made against him.

He told the Police that on the night before the incident complained of by the victim, he took over duties at the Wilberforce Police Post from P W 1, Tamba Morsay. The victim was by then in Police custody and P W 1, Tamba Morsay, had wanted to take him to Congo Cross Police Station in order that he be detained. The victim however pleaded with them that he should not be taken to Congo Cross Police Station in fear of the inmates who will be cruel and in fact manhandle him. The victim showed some scars on his body as signs of cruelty done to him by inmates whilst he was detained at the Congo Cross Police Station. Based on that, the Accused felt sorry for him and told P. W 1. Tamba Morsay, that he should leave the victim at the Wilberforce Police Post and he will take care of him. P.W. I., Tamba Morsay then handed over the victim to him and left. But before leaving, he. Tamba Morsay, PW 1, placed the victim in cells.

The Accused then read the file containing the allegations for which the victim was detained and attempted to go to sleep by placing his hand on the table. However, he heard the victim banging the door of the cell and crying which led him to go there and pointed a torch light in the cell. He observed that the victim was sweating profusely and shivering. He felt sorry for him and took him out of the cells and when the victim complained that he was hungry, he, the Accused, then gave him some bread and water.

The Accused allowed the victim to spend the night out of the cells but in the morning, he returned him to the cells.

The victim however continued banging the door of the cells and when the Accused enquired from him what the matter was, the victim told him that he needed food. The Accused then went and bought bread for him but the victim told him that he will take the bread with him.

The Accused then decided to take the victim to the Post and on their way, the victim who did not have any shirt on, was shivering and passersby were staring suspiciously. They came across one Nurse Lady called Sundu who enquired from the victim what the matter was. He told him that one man brought him to the Police Station and Nurse Sundu promised to let his mother know about his whereabouts as she handed over a shirt to him to put on.

On arrival at the Post, they met one Pa Kamara and Accused explained to him that the victim was sick whilst in detention and that he caused him a lot of trouble. Suddenly, a report was brought in and whilst he was attending to it, his boss, Inspector Cole arrived in the office and enquired why is it that the Accused was out of the cells. The Accused had wanted to explain but Pa Kamara did the explanations instead and Inspector Cole entered his office.

After some time, Inspector Cole came out of his office and enquired from the Accused the file in respect of which victim was brought to the Police Post. The Accused searched for the file everywhere but could not find it. It then occurred to him that victim may have taken the file and he went back to the C. I. D. office where he discovered that the file had been destroyed. The Accused suspected the victim of having torn the file and he gathered the torn papers and returned to the Post and explained to Inspector Cole.

Whilst explaining to Inspector Cole, the victim interjected and told the Inspector that the accused removed him from the cells, told him that he will help him with his case and then sexually penetrated his anus. After the victim had explained his story to Inspector Cole and the other Police Officers present, they were taken to Congo Cross Police Station.

In the question and answer session that followed in "Ex B", the Accused further denied the allegations made against him. He further denied to have torn the case file relating to the victim. He answered that the Police Post and the C. I. D. office, where the alleged incident occurred were about 40 meters apart and that another Police Officer, PC 14925 Jabati P. was on duty as the Post Orderly. Questions were also put to him touching and concerning breaches in his work procedure.

In "Ex C", the Additional VCS of the accused, he was extensively questioned on the several breaches in Police Procedures which he did not adhere to when on duty at the Wilberforce Police Post. The Accused attempted to proffer answers to the questions posed to him.

IX

After the close of the case for the Accused, the respective Counsel in this case intimated this Hon. Court that they will submit written closing addresses. They however failed to do so despite several adjournments and this file was withdrawn for Judgment.

X

Where the Accused pleads "NOT GUILTY" to an offence as charged, the Prosecution is obliged to prove at the trial every fact or circumstances stated in the indictment which is material and necessary to constitute the offence charged. The burden of proof of guilt lies upon the Prosecution and it is not for the Defence to prove innocence-see the observations of Sankey LC in Woolmington Vs DPP (1935) A.C. at page 481-482.

If there is a real state of doubt, the Prosecution has failed to satisfy the onus of proof which lies upon him-R.V. Stoddart 2 Cr App R 217. For the principles as enunciated, see paragraph 1001, page 361 Archbold Pleading, Evidence & Practice in Criminal Cases, 36 Edition, Butler and Garsia, 1995 Reprint WM. W Gaunt & Sons Inc.

In the instant case, the Accused is charged under Section 19 of the Sexual Offences Act. 2012. Act No 12 of 2012 which states as follows:-

"A person who engages in an act of Sexual Penetration with a child commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years".

In the Interpretation Section of the said Act, that is. Section 1 thereof:

"Child" means a person under the age of 18

"Sexual Penetration" means any act which causes the penetration to any extent of the vagina, anus or mouth of a person by the penis or any other part of the body of another person or by an object".

In relation to the Statute and the aforesaid definition, it is imperative for the Prosecution to prove the following:-

1. That the victim is a child 2. That there was an act of Sexual Penetration. 3. That the act was perpetrated by the Accused.

If there is any real state of doubt in the proof of the Prosecution's case, then such doubt should be resolved in favour of the Accused.

On the issue of corroboration, the Principle of Law is that in all cases of Sexual Offences, corroboration is required- see paragraph 1299 page 484 Archbold Pleading, Evidence & Practice in Criminal Cases, 36th Edition, Butler & Garsia, 1995 Reprint WM. W. Gaunt & Sons Inc. What is required is independent testimony which affects the accused by tending to connect him with the crime, that is, evidence direct or circumstantial, which implicates the Accused in some material particular that the Accused committed the offence-see paragraph 1296 page 482, Archbold Pleading, Evidence & Practice in Criminal Cases, 36th Edition, Butler & Garsia, 1995 Reprint WM. W. Gaunt & Sons Inc.

In the instant case, one of the issues which is uncontroverted, according to the evidence, is that the victim, P. W. 3, RRF, a 17 (seventeen) years old pupil was arrested and taken to the Wilberforce Police Post where he was detained on allegations of Larceny. The Accused was the night Orderly, and the Police Officer whom he relieved, P.W. 1, Tamba Morsay had locked the victim in cells before leaving the Police Post. The Accused, later in the night, unlocked the victim from the cells and took him to the Guard Post where he provided food for him. The cells and the Guard Post are not situated in the same building. Rather the Guard Post is situated a bit farther from the cells.

What is however in controversy is that the victim, P W 3, RRF testified that the accused Sexually Penetrated his anus in the Guard Post which said sexual assault made him sick. The Accused, on the other hand, in his statements made to the Police, "Exs B and C", told the Police Investigators that the victim became sick whilst in the cells, banged on the door and pleaded with the accused to unlock him, and the Accused, out of sympathy for the victim, unlocked him and took him to the Guard Post where both of them slept. Another issue that is uncontroverted, according to the evidence, is that the case file containing the report of Larceny against the victim was torn to pieces at the time when the said victim and the Accused were together at the Police Post. What is however in controversy is that the victim, PW 3, RRF testified that the Accused promised to help him with his case and that after the Accused had sexually penetrated his anus, he tore the file and threw the pieces out of the window. The Accused, on the other hand, in his statement made to the Police, "Exs B and C" said that it occurred to him that the victim may have torn the file. He made this revelation in the morning, to his boss, the Crime Officer, Inspector Cole, after the said Inspector Cole had reported for duty and searched for the file but could not find it based on which he enquired for the file from the said Accused.

In the instant case, what is apparent is that there was no independent testimony from a witness which could have corroborated the testimony of the victim, P W 3, RRF tending to connect the accused with the offence committed.

However, the accused's own evidence may afford the necessary corroboration, as may also his conduct in the circumstances of the particular case- see R V Medcraft 23 Cr App R. 116. Also R V Blatherwick 6 Cr. App R. 281. In effect, was the Accused justified in unlocking the victim from the cells without making an entry in the desk diary as to the reason of unlocking the victim from the cells and taking him to the guard post where both of them spent the night together? The Accused, in "Exs B and C" admitted that he was in breach of Police procedures, by acting in the aforesaid manner.

Furthermore, why was the case file containing the report of Larceny against the victim torn to pieces when the Accused, as the night Orderly, was supposed to be in custody of the said file? Clearly, the accused bears the responsibility for any case file damaged during the time he was on duty.

But it is for the Prosecution to prove his case against the accused and not for the Accused to prove his innocence.

It is however my considered view that the conduct of the Accused in the circumstances of this particular case provides the necessary corroboration which implicates him, which confirms in some material particular that he committed the offence as charged.

I am left in no doubt that the conduct of the Accused by unlocking the victim from the cells and taking him to spend the night at the guard post, in breach of Police procedures, was of the purpose of sexually assaulting him and which he the accused, did. Furthermore, I am left in no doubt that it was the Accused who tore the case file containing the report of Larceny against the victim in fulfilment of his promise to the said victim that he would help him with the case after he, the Accused, had sexually penetrated the anus of the victim with his penis.

Based on all the foregoing, the Accused is hereby FOUND GUILTY of the offence as charged.

Having listened and taken into consideration the plea in mitigation made for and on behalf of the Accused by his Counsel, the ACCUSED IS HEREBY SENTENCED TO A TERM OF IMPRISONMENT OF 10 (TEN) YEARS.

HON. MR JUSTICE JOHN BOSCO ALLIEU-JA