

IN THE SUPREME COURT OF SEYCHELLES

Republic

Vs

**Ian Bistoquet of
Takamaka, Mahé**

Defendant

Criminal Case No: 46 of 2004

Mr. Sabino for the Republic

Mr. W. Lucas for the defendant

JUDGMENT

D. KARUNAKARAN, J

The defendant above-named stands charged before this Court with the offence of “sexual assault” contrary to and punishable under Section 130 (1) as amended by Act 15 of 1996, read with Section 130(2) (d) of the Penal Code.

Section 130 of the Penal Code (as amended by Act 15 of 1996) reads as follows:

(1) Any person who sexually assaults another person is guilty of an offence and liable to imprisonment for 20 years.

For the purposes of this section “sexual assault” includes –

an indecent assault;

the non-accidental touching of the sexual organ of another;

*the non-accidental touching of another with one's sexual organ,
or*

the penetration of a body orifice of another for a sexual purpose.

(3) A person does not consent to an act which if done without consent constitutes an assault under this section if—

the person's consent was obtained by misrepresentation as to the character of the act or the identity of the person doing the act;

the person is below the age of fifteen years; or

the person's understanding and knowledge are such that the person was incapable of giving consent.

(4) In determining the sentence of a person convicted of an offence under this section the court shall take into account, among other things -

whether the person used or threatened to use violence in the course of or for the purpose of committing the offence;

whether there has been any penetration in terms of subsection (2) (d); or

any other aggravating circumstances.

In the charge, the particulars of the offence allege that the defendant on a date unknown during the month of August 2001, at La Plaine St. Andre, Mahé sexually assaulted Emmeline Hibone, a girl under the age of fifteen years, by having sexual intercourse with her.

The defendant denied the charge. The case proceeded for trial. The defendant was duly defended by the learned defence counsel Mr. W. Lucas. The prosecution adduced evidence by calling five witnesses, in support of the charge. After the close of the case for

the prosecution, the Court ruled that the defendant had a case to answer in defence for the offence charged with, and explained him the substance of the charge and of his right of election to adduce evidence in terms of Section 184 of the Criminal Procedure Code. The defendant elected to remain silent and adduced no evidence in defence. At this juncture, I should mention that this Court did not draw any adverse inference from his choice of silence. Be that as it may.

The undisputed facts of the case are these:

The complainant in this matter is a young girl. She is now 19, having been born on 19th of April 1987. At all material times, she was and is living with her parents at Takamaka, Mahé. Her mother Mrs. Rosita Hibone (PW2) is a nurse by profession. During the year 2001, the complainant was 14 years of age. She was attending Secondary School at Anse Royale. She was in Secondary 3. In August 2001, she became pregnant. She could not continue her studies, stopped schooling and stayed at home. On the 3rd May 2002, she gave birth to a child. Indeed, a 14 year-old child giving birth to another child is an unfortunate incident. Obviously, it is too early for any girl for that matter, to embrace motherhood at 14. How did this happen? Who sexually abused her at this tender age of innocence? The defendant himself, gives the answers in his statement under caution to the police dated 23rd April 2002, and narrates the story behind her pregnancy. The said statement runs thus:

“I know Emmeline Hibone (the complainant) for quite a while as a friend. I used to go to La Plaine St. Andre to my uncle, Fabien Belle’s place and at times I sleep there. In August 2001, my uncle Fabien Belle went overseas and he asked me to accompany (to stay with) his wife, as she would be alone. One day, whilst I was at Fabien’s place, Emmeline Hibone came to Fabien’s wife, and she stayed for some days, she slept in her room. At night at times, we talked about sexual relationship and it happened that we had sexual intercourse. I could have had sexual relations with her without protections for about three times. I was still at Fabien’s place and Emmeline had already gone to her mother, she called me telling me that she was pregnant. I did not care much to that. Later there were

some arguments between my family and hers. Together with my uncle I went to see her father, he told me that I would have to contribute for Emmeline and I did not accept saying that the child must be born so that I would know if he/she was mine. I believe that the child is not mine since Emmeline had some boys she went out with, because she told me, when I questioned her”

In fact, the Court held a trial within trial to determine on the admissibility of the above statement as the defendant disputed the legality of the procedure adopted by the police for recording the statement. Mrs. Neige Raoul (PW4), a police officer, who recorded the statement, testified that before recording she cautioned the defendant, who voluntarily gave the above statement and no force, threat, promise, duress or coercion used to obtain the same. Another police officer Ms. Agnes Julius (PW5), who was a witness to the statement also testified corroborating the evidence given by Mrs. Raoul (PW4) relating to the defendant’s voluntariness and the procedure adopted by the police while recorded the statement. Following the trial within trial, the Court held that the said statement was admissible in evidence as the Court found that the defendant had given it voluntarily and not vitiated by any procedural flaws. Hence, the Court admitted and marked the statement of the defendant as exhibit P1 in this matter.

The complainant, Emmeline Hibone (PW1) also testified corroborating all the material facts admitted by the defendant in his statement supra. According to the complainant, she knew the defendant very well, even before the alleged incident, as he was also a resident of Takamaka and was once her senior-schoolmate. Be that as it may. In August 2001, the school had been closed for vacation. The complainant was spending her holidays staying at home.

The complainant’s mother had a cousin by name Mr. *Fabien Belle*, who was living with his wife Mrs. Josie Belle (PW3) at La Plaine St. Andre, Aux Cap, Mahé. In August 2001, Mr. Fabien Belle had gone abroad leaving his pregnant wife Josie to stay alone in the house. Hence, at the request of Josie, the complainant’s mother asked the complainant, as she was on holidays, to go and stay with Josie at her house, so that the complainant could

be of some assistance to that pregnant woman. The complainant therefore, went to the Belles' house and was staying there for about a week. During the same period the defendant, a relative of the Belles was also staying in the house cooking food for the dogs and running errands for Mrs. Belle. According to the complainant, during her stay in Belles' house, the defendant approached her and had unprotected sexual intercourse with her on several occasions, when Mrs. Belle was away from home. The complainant further testified that during those acts of sexual intercourse, she could feel the penetration of the defendant's private part as well as ejaculation of semen. Subsequently, the same month she missed her menstrual period. She did not feel comfortable to tell her mother or any one about her missing periods or pregnancy. She was hiding it from her mother and others for about 5 months. But, the symptoms of pregnancy became so conspicuous and some of her friends and relatives noticed the symptoms and even asked the complainant, whether she was pregnant. Eventually, the complainant had to spill the beans about her pregnancy and wrote an apologetic secret-letter to her mother revealing her pregnancy. Her mother shocked by the revelation, immediately took her to the English River Hospital for medical examination. Complainant tested positive for pregnancy. As a follow-up, the complainant had to attend prenatal clinics and finally delivered a child on the 3rd May 2003, nine months after the alleged episode of sexual intercourse with the defendant. Further, the complainant testified that she did not have sexual intercourse with any other man apart from the defendant during the relevant period.

The complainant's mother Mrs. Rosita Hibone (PW2) also testified corroborating the evidence given by the complainant. Mrs. Josie Belle (PW3) testified for the prosecution confirming the facts that both, the complainant and the defendant were staying during the relevant period in her house and of their exclusive company, conducive circumstances and opportunities for them to have sexual intercourse.

I shall now proceed to examine the evidence pertaining to the charge in question. Before doing so, I should state that all the witnesses testified for the prosecution in this matter, appeared to be very credible. I believe them all, in every aspect of their testimony. The entire evidence adduced by the prosecution is reliable, consistent, cogent, and

moreover corroborative in all material particulars. It is not in dispute that a sexual offence has been committed against the complainant as alleged by the prosecution. As a matter of fact, the complainant has given birth to a child at the age of 14. Needless to say, maternity is a matter of fact, whereas paternity is a matter of faith or credibility. In this particular case, the fact of giving birth to a child, that is the “maternity”, speaks for itself. It presupposes the fact that an abuser should have had sexual intercourse with the complainant, who could not have in law, given her consent to any such act, which constitutes an “assault” by virtue of Section 130 (2) supra. The uncontroverted evidence as to “maternity” clearly shows that in August 2001 an act of “sexual assault” has been committed by an abuser having had sexual intercourse with the complainant, who was then below the age of 15 years. Although it was a consented sexual intercourse, it is an act of “sexual assault” in the eye of law, in view of the fact that she was below the age of fifteen at the time the alleged act was committed vide Section 130 (3) (2) supra. In the circumstances, the only question that remains now for determination is this:

Has the prosecution proved beyond reasonable doubt that it was the defendant who committed the sexual assault against the complainant?

Obviously, the case for the prosecution completely rests on the direct evidence of the complainant and the confessional statement of the defendant. On the issue of credibility, I find no reason to diminish the evidential value of the complainant’s testimony in this case. To my mind, simply based on the unchallenged evidence of the complainant alone the Court can safely conclude that the defendant did commit the act of sexual assault against the complainant and made her pregnant. In fact, the complainant though of young age gave clinching, cogent and very reliable evidence as to the act of sexual intercourse and to the fact that it was the defendant, who committed the act. She confirmed under oath that the defendant was the one involved in the entire episode of the sexual assault during August 2001.

On the question of corroboration, I note that in matters of sexual offence, it is desirable to look for corroborative evidence being a rule of practice. However, in the case

on hand, since I completely rely upon the truth of the evidence of the complainant, there arises no such need for corroborative evidence *vide R vs. Rose 1972 No: 13 SLR*. In any event, I find there is strong and overwhelming evidence in the defendant's confession - Exhibit P1 - to corroborate the evidence of the complainant on the material facts that (i) a "sexual assault" was committed against the complainant in August 2001 and (ii) the defendant was the one who committed it.

In my final analysis, I diligently considered the whole of the evidence on record. I believe the complainant as a truthful and satisfactory witness. I accept her evidence in toto. I find that she had no reason to concoct this story to incriminate the defendant falsely in this matter. In the circumstances, I am sure that the prosecution has proved beyond reasonable doubt that not only an offence of sexual assault was committed but also the defendant was the one, who committed that offence by having sexual intercourse with her. This was committed during the month of August 2001 at La Plaine St. Andre, Mahé against the complainant, who was then below the age of fifteen years.

I therefore, find the defendant guilty of the offence of sexual assault contrary to section 130(1) as read with section 130(2) (b) of the Penal Code and convict him of the offence accordingly.

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D. Karunakaran

Judge

Dated this 12th day of March 2007