IN THE SEYCHELLES COURT OF APPEAL

PAUL ELIZABETH APPELLANT

versus

THE REPUBLIC RESPONDENT

Criminal Appeal No: 10 of 2000

[Before: Ayoola, P., Pillay & De Silva, JJ.A]

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Mr. F. Ally for the Appellant
Mr. W. Lucas for the Respondent

JUDGMENT OF THE COURT

(Delivered by De Silva JA)

The appellant was convicted of the offence of sexual assault contrary to and punishable under Section 130(1) of the Penal Code (as amended by Act No. 15 of 1996) read with Sections 130(2)(d) and 130(3)(b) of the Penal Code.

He was sentenced to a term of 15 years imprisonment. The appeal is against both the conviction and the sentence. The victim of the sexual assault was Drina Larue, a girl 9 years of age (hereinafter referred to as the complainant).

The principal submission of learned counsel for the appellant was that it was unsafe and unsatisfactory to permit the conviction to stand for the reason that the complaint against the appellant was belatedly made by the complainant. It was further contended that she was subjected to "*pressure*" and was "*coached*" to falsely implicate the appellant. In the result, her oral evidence was suspect and unworthy of credit.

It is true that the complainant made no complaint whatever at or about the time of the sexual assault. However, her failure to make a prompt complaint has to be considered and evaluated in the context of the entirety of the evidence placed before the trial court. The case for the prosecution is that the appellant had requested the mother of

the complainant to come to his house and to attend to some domestic work such as "*cleaning, ironing and cooking.*" Consequent upon this request, the mother had visited the appellant's house on about five occasions. It was on a Saturday or Sunday that she was free to go to the appellant's house and on every such occasion she was accompanied by her daughter, the complainant. The complainant too assisted her mother in "*dusting*" and cleaning the appellant's house. It is in evidence that on three occasions the appellant had sent the mother on an "*errand*" to a shop while the complainant remained alone with the appellant in his house. It is the clear evidence of the complainant that while she thus remained in the house, the appellant had sexual intercourse with her on three occasions.

The complainant's evidence on these matters in examination-in-chief reads thus:-

"Q: When your mother went to work at Mr. Elizabeth place (i.e. the appellant's house) did you stay at home?

A: No. I went together with my mother ... Each time she went to Mr. Elizabeth's place to work, I went with her.

.....

Q: During the time you went along with your mother at (sic) Mr. Elizabeth's place did anything happen to you?

A: Only on 3 occasions that my mum went to the shop.

Q: Tell us a little bit more what happened on these 3 occasions?

A: He had sexual intercourse with me.

Q: ... who sent your mother to the shop?

A: Mr. Elizabeth did.

.....

Q: Where did this happen in the sitting room or somewhere else?

A: In the bedroom.

.....

Q: Did you tell what happened to you to your mother?

A: No.

Q: Can you tell us why you hid to (sic) your mother?

A: He told me not to tell anything to my mother.

.....

If asked tell my parents that the brother had done this to her.

Under cross-examination her evidence was as follows:-

"Q: ... I put it to you that what you have just told the court never happened whilst your mother went to the shop?

A: It was whilst my mother was away at the shop that he did that to me.

Q: Did you have a boy friend?

A: No.

Q: Why did you have to incriminate, why did you have to say that it was Mr. Elizabeth who had sex with you?

A: Because later they discovered I was pregnant.

.....

Q: But you would agree with me and admit before the Court that you have been placed into (sic) tremendous pressure and coached to give evidence before this court?

A: No.

Q: Are you sure?

A: Yes.

Q: Are you telling the truth to the Court?

A: Yes."

At the end of her evidence in answer to Court she said "*He forced me to lie on the bed.*"

The most crucial and relevant fact in assessing the above evidence of the complainant (which we have set out in extenso) is that she was a child of tender years.

Having regard to her age, she had in her evidence more than once given a relevant, valid and cogent reason for not complaining to her mother of what happened to her. It was only when she realised that she was pregnant that she disclosed the name of the appellant. Her conduct is consistent with her extremely young age and the consequent lack of understanding of the gravity of what was done to her.

The learned trial Judge in the course of his judgment succinctly set out the relevant part of her evidence and concluded:-

> "Her testimony not only proves beyond reasonable doubt that she was sexually assaulted but also proves that it was the defendant who committed that sexual assault against her. For these reasons simply based on the complainant's evidence alone, de hors the other evidence on record, I find this court can safely convict the defendant of the offence of sexual assault."

We are in complete agreement with the above finding which is in accord with the credible and cogent evidence of the complainant.

In the argument before us, in answer to Court, learned Counsel for the appellant very properly conceded that the conviction in this case could have been based on the sole testimony of the complainant. Therefore the other submission that the statement made by the appellant to the Police (Exhibit P2) was wrongly admitted in evidence by the trial Court does not now arise for consideration in this appeal.

As regards the question of sentence, the learned trial Judge has given his mind to all the relevant circumstances in favour of the appellant. He has noted that the appellant has no previous conviction and has shown remorse. However, as observed by the learned Judge, the circumstances of aggravation far outweigh the matters that could be urged in mitigation of sentence. The gravity of the offence cannot be over emphasised. The conduct of the appellant has resulted in an innocent nine year old child, herself giving birth to a child. We are of the view that there is no legal or rational basis upon which we could interfere with the sentence imposed on the appellant.

For these reasons we affirm the conviction and sentence and dismiss the appeal.

E. O AYOOLA	A. G. PILLAY	G. P. S. DE SILVA
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 9th day of *April* 2001.