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IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

V/S

P.T. A.

Criminal Side No 45 of 2000

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Mr. R.Govinden for the Republic

Mr. F.Elizabeth for the Accused

JUDGMENT

Perera J

The accused stands charged with the offence of sexual assault, contrary to Section 130 of the Penal Code. As amended by Act no. 15 of 1996. According to the particulars of the offence, the accused, on dates unknown in the year 2000, sexually assaulted A., his daughter, who was seven years old at that time.

A. (*hereinafter referred to as the complainant*) was 10 years old at the time the trial commenced. The Court examined the child to ascertain whether she understood the nature of the oath and the duty to speak the truth. Upon being satisfied, she was permitted to testify under oath.

The Complainant's evidence was that she was living at M...P..., Anse Royale with her mother, her father (*the accused*) and a brother who was 13 years old. The daughter of the accused by a previous union, one R.A. was living closeby. On the day of the incident, the Complainant was alone in the house. Her mother and brother had gone to purchase "*baka*". Her father who was lying on his bed, called her and asked her to scratch his back. He asked her to remove her panty. Thereafter, in the words of the Complainant, "*he put his penis in my vagina*", and "*it was painful.*"

The mother returned and found both of them on the bed. She asked her what she was doing on her father's bed. She did not reply. Then the accused gave her a rupee and she went out and bought an "ice cake."

The Complainant reported the incident to her mother the next day. Consequently the mother informed R., who in turn, complained to the Police.

W.P.C. Stella Francoise (Pw2) testified that consequent to a complaint made by R.A., she questioned the Complainant in the presence of her mother and a Social Worker. Then she took her to the hospital, where she was examined by Dr. Michel. Thereafter she arrested the accused and obtained a statement under caution. Upon Learned Counsel for the accused raising no objections, it was admitted as exhibit P1. In that statement, the accused stated that he asked his daughter to come to the bed and scratch his back and that thereafter she lay down in the same bed as she felt sleepy. His wife arrived and saw them, so both of them got up and went outside to sit. He denied that he had never had sexual intercourse with his daughter.

Dr. Philip Michel (Pw3) testified that the virtual Complainant informed him that she had been sexually abused by her father on several occasions. Then he examined her and found that "*the hymen was not intact and was slightly irritative*". He produced his report marked P2. On being cross examined, he stated that a rupture of the hymen could be attributable to causes other than sexual intercourse. He however did not see any bleeding at the time of his examination.

The accused decided to make a statement from the dock. In that statement he merely stated "*I am not guilty of this offence. I do not accept having done such offence. That is all I want to say*".

The defence called the evidence of M.J., the mother of the Complainant and the wife of the accused. She stated that when she returned home that day, she found the Complainant scratching the back of the accused. The Complainant did not have her party on and the accused was in his underwear pulled down to his knees. She told her that the accused had removed the party and put it under his pillow. The witness informed R., the daughter of the accused about the incident, the next day. She went to the

Police Station to complain. Thereafter the Police took her to the hospital. After she was examined by the doctor, A. was taken to S...C... by the Social Services Officer. She is still residing there.

On being cross examined she stated that when she returned from purchasing “*baka*”, he found the accused lying on the bed, face down and that he was nude. A. had her hand on his buttocks, and was scratching. She lifted the pillow and found the panty. Then A. told her that the accused had touched her vagina and asked her to suck his penis. Then she rebuked him. Consequently she informed R. about it. She further stated that she is happy that A. was at the Convent as the accused no longer has access to her.

It is a rule of evidence that a spouse is not a competent witness against another spouse except in certain cases specified in Section 134 of the Criminal Procedure Code. One exception being where the charge affects the liberty or person of the other spouse. (***R v. Verolla 46 Cr. App. R. 252***). In the present case, M.J., who is the common law wife of the accused incriminated him. However as Section 134 applies to married parties, to preserve the institution of marriage, the evidence of this witness will not be defeated by the prohibition contained therein.

As regards corroboration required in sexual offence cases, the Court may convict an accused in the absence of corroboration if it is satisfied that the evidence of the Complainant is truthful. Corroboration is ***independent evidence*** of some material fact, which implicates the accused and tends to confirm that he is guilty of the offence charged against him.

In the present case, the Court is satisfied that the Complainant, despite her tender years and exposure to Court proceedings, and also testifying against her own father, was speaking the truth. She stated that the accused had committed similar offences on her previously. The Court is mindful that she was only seven years old at that time. In any event, pursuant to Section 130 (3) (b) of the Penal Code, consent is not a relevant factor where the victim is below the age of 15 years. In addition to the evidence of the Complainant I find corroboration in the evidence of M.J., her mother, although called as a defence witness, as no application was made by Counsel for the accused to treat her as a hostile witness. I also find corroboration in the evidence of Dr. Michel who confirmed that the complainant's hymen was not intact and that it was slightly irritated. This was a corroboration of a material particular.

Accordingly I find the charge of sexual assault as envisaged in Section 130 (2) (d), proved beyond a reasonable doubt against the accused. He is therefore convicted as charged.

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A.R.PERERA

JUDGE

Dated this 26th day of January 2004