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## **IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**VS.**

**RAYMOND LUCAS**

Criminal Side No. 03 of 2006

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Ms. Madeleine for the Republic

Ms. Pool for the Accused.

### **JUDGMENT**

**Gaswaga, J**

The accused stands charged with one count of sexual assault of a child contrary to and punishable under section 130 of the Penal Code (Cap 158) as amended by Act No. 15 of 1996. The particulars of which allege that Raymond Lucas between the 7<sup>th</sup> and the 8<sup>th</sup> day of September, 2005 at Mont Plaisir, Anse Royale, intentionally for a sexual purpose penetrated the body orifice of one J R then a child under the age of 15 years old, knowing her to be a child. He denied the charge and the

prosecution led evidence of four witnesses while the defence relied on the evidence of the accused alone.

The facts giving rise to the charge are that J R (PW1) and the victim herein testified that she was born on the 23<sup>rd</sup> of June, 1992 (See birth certificate PE2) and lives at Mont Plaisir with her parents. On the night of Wednesday 7<sup>th</sup> September, 2005 J who was at the time a student aged thirteen years, either in senior two or senior three at Anse Royal school, went to spend the night at her maternal Grandmother's home at Anse Royale because her parents were working on night shift. This was not unusual especially during weekends and whenever the said parents went for night duty. J had arrived at the Grandmother's home fairly early and that evening the accused, who lives in the same house with his girlfriend and child, returned from work. The accused's girlfriend is an auntie to J. Marlene – one of J's aunties, and Theresia Annette – her Grandmother were also in the house as well as her cousins Alfie and Emma. One Raynold- a cousin to J's mother also lives there. Another male member of the household present that night was Thomas Anette who is very old and barely walks.

On that day J watched television until late in the night before switching off all the lights and going to bed. The house has five bedrooms. J and her little cousin Alfie slept on separate beds in the open corridor leading to the bathroom. This is the place where J always sleeps whenever she visits.

That while sleeping, J felt the bed sheet sliding off her body. It was being pulled away. She woke up and in her own words describes what she saw as follows:

'I woke up from my sleep still a bit dazed. I just opened my eyes, my heart was beating fast and I turned around just a little bit to try and see who or what it was that was pulling on my bed sheet because at that time I did not know who or what it could be. Then I just turned around, I just saw a shadow, I just saw a shape of a body, I did not know who it was and just as I was adjusting my eyes to see who was standing there then flashed a flashlight in his face and I saw him face to face and it was Raymond (accused).'

That the accused was standing on the right side of the bed but because it was dark J could not see what he was wearing. He told her to remain quiet and not to be scared. J firmly crossed her legs and held onto the bed sheet as the accused continued to pull it off her. He finally managed to remove J's panty and placed his finger into her private parts. After that he also used his tongue to lick her private parts. That J did not shout nor scream and could not stop or prevent him from doing it.

It is also J's evidence that after doing it for some minutes the accused got on top of her and even asked whether it was fun. She did not answer. That the accused forced his erected penis into J's private part and she felt very painful. She had never had sex before. She tried to shout in order to attract the attention of the other people in the house but the accused placed his hand on her mouth and told her to remain quiet. He then hurriedly got off the victim and returned to his room where his wife and child were sleeping. That the whole incident took about ten to fifteen minutes.

J felt so scared and empty. She could not sleep and didn't know who to talk to.

Early in the morning of 8<sup>th</sup> September, 2005 after passing urine she wiped herself and found traces of blood on the tissue. At about 06:45 am when the accused was going to work he touched J's feet twice and when she woke up and turned around to look at him he smiled and then went away. Later in the day J returned to her

paternal Grandmother's home. Her mother, Mary Agnes Annette (PW2) arrived from work at 12:00 pm. Her aunty Marjolene Annette (Raymond's girlfriend) also came to visit them at the same time. Given her naivety, this was the earliest opportunity when she gained courage and decided to confide in some people she trusted. She then narrated the whole episode to both her mother and aunty in the presence of her father who immediately escorted her to the police to lodge a complaint and, to Victoria hospital for a medical examination. On arrival, Mary Agnes Annette had noticed the distressed condition of her daughter and she stated in her evidence that J was not her usual self. Marie-Neige Raoul (PW3) a police officer attached to the Family Support Squad recorded statements from J and her mother and also interviewed the accused.

Dr. Robert Michel (PW4) who examined J on the 8<sup>th</sup> of September, 2005 at 4.45 pm stated that on the hymen there was a laceration at 12.00 o'clock and another at 6.00 o'clock with some slight bleeding. He further explained that this was a small tear at the top of the entrance of the vagina and another small tear at the bottom which definitely caused the slight bleeding. Both lacerations were fresh. That such lacerations take seven days to heal and once broken, the hymen never seals itself, it just heals and stays that way. During cross examination the Doctor ruled out the patient having been in her menstrual cycle at the time otherwise he would have easily noticed it given the big difference between the bleeding of a laceration and the bleeding of a menstrual cycle and recorded it in the medical report. It was his opinion that with this patient there was penetration. The investigating officer (PW3) wouldn't know this since she never examined the patient. Dr Michel concluded in his report (PE3) that there was strong suspicion of sexual assault.

With this evidence the submission of no case to answer made on behalf of the accused was rejected and instead he was invited to put up a defence under section 184 of the Criminal Procedure Code, Cap 54. The gist of his defence was that on the day in question the accused returned from IDC where he works as a welder at about 06.00 pm and went to Didier's place. Later he came home and found every one watching television. He did not spend much time inside the house and went outside to smoke a cigarette whereafter proceeded to his room to sleep till morning when he left for work. The accused categorically denied any knowledge of the above allegations. He stated that he kept in his bedroom the whole night and did not touch J's feet when he was going to work in the morning of 8<sup>th</sup> September, 2005. During submissions and cross examination it clearly emerged that the defence was indirectly pointing a figure to Raynold, one of the male adult occupants of the house that night, as being responsible for the commission of the offence.

Although some doubt was cast on the prosecution case by the defence, it will be noted that most of the facts regarding the offence having been committed were not disputed. What was however disputed vehemently and therefore forming the major contention in this case is the allegation that it is the accused who committed the offence herein. The fact that the accused was in that house at the material time and further, that J was sexually assaulted has been proved to the satisfaction of the court. It was the evidence of J that she had never had sex in her life although she was having an affair with ..... She felt pain when her aggressor forcefully pushed his erected penis in her vagina and saw traces of blood on the tissue used to wipe herself. This is consistent with the evidence of Dr Michel who examined the victim a few hours later and said the lacerations were still fresh and bleeding, and that

such lacerations were painful as they were caused by the tearing of the tissues. He ruled out same having been self inflicted or sustained through a fall or accident or by participating in *sporting* activities.

There is undisputed evidence on record that the accused had lived in that home and interacted and related well with J for quite a long time. In her evidence she had stated that since it was dark the accused flashed a light in his face to enable her recognize him and probably for her not to make noise or react adversely. She was grilled by the defence on this particular aspect of the evidence but stood her ground. Whatever the source of the light J had maintained that it was the accused's face, which was very familiar, that she saw when the light was flashed. But that is not all. She went on to state that

"... I saw the shape of the body. ... I kept trying to see... then flashed the light... I recognized him. That is when I turned and told him "Raymond you are scaring me" ... no I did not make a mistake. I know his voice. ... it could not have been Raynold. ... I know the difference in their voices, their hight and the build of their body". Further, that "*there are only two men in the house and there are so many differences between those two men. ...Yes because his (Raynold) voice is much deeper than Raymond's, it is a different pitch*".

Asked whether she agrees that it is easy to make a mistake she answered:

" Yes it is and I have made some mistakes but this is not something that I am mistaken about."

From this evidence, although it was dark yet the victim was terrified, it is clear that

the victim was able to recognize her assailant without much difficulty and I am unable to agree with the defence that she was mistaken in so doing. The accused had been recognized by a person who knew him so well by his appearance, voice, body build, shape and size and was able to differentiate him from Raynold who was in another room. Moreover, in his own words the accused said he was on good terms with J and had lived with that family for about two years. He knew exactly where J slept whenever she visited. One wonders why and how a young girl like J would concoct such a tight story that has even stood the wrath of cross examination, against the accused well knowing the repercussions thereof. The defence submission that the whole story was fabricated in order to get rid of the accused from that household is an afterthought and totally lacks basis otherwise the accused would have brought it up while testifying or in his statement.

It was submitted that in sexual offences such as this one corroboration of the virtual complainant's testimony with independent pieces of evidence was required otherwise no conviction could be entered basing on the uncorroborated evidence. The defendants in **RVs Padayachy CR NO. 103 of 2003** and **R Vs Jerry Bacco CR NO. 05 of 2003** were acquitted for lack of corroboration. 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. See **R vs. Olsen (1973)**, **Tirant vs. Republic (1976)** and **Athanatius vs. Republic (1977)**.

Following the above authorities it was contended that the only independent evidence offering corroboration is the testimony and report of Dr Michel which confirms in some material particular that the offence herein was committed but not the most crucial aspect of the accused in the dock being the man who committed it. However, in the case of **R Vs Labaleine 1985 SLR 43** it was held that "*a court*

*may convict an accused in the absence of corroboration if satisfied that the complainant's evidence is truthful."* Further, a court can even convict on the sworn but uncorroborated evidence of a child after warning itself of the danger of convicting without corroboration and is convinced of the child's story notwithstanding that danger, vide **R Vs Jean Baptiste (1956-1962)**. Besides, there is no rule preventing a court from entering a conviction based on evidence of a single witness as long as he is entirely reliable, trustworthy and credible. ***Having observed J while testifying, I found her to be a young but very intelligent and confident girl who seemed to be very sure and coherent of what she was saying. This even became more apparent during cross examination. She was truthful and her credibility therefore could not be questioned***

This is one such case where given the overwhelming incriminating evidence the court would be prepared to convict the accused basing on the virtual complainant's testimony as well as the evidence of the other witnesses whom I also found to be credible. The evidence rules out any other person having been J's aggressor, not even Raynold. **SEE RANGASAMY'S CASE..... WARNING**

In conclusion therefore, I am satisfied that the prosecution has proved all the ingredients of the offence alleged herein. The accused is found guilty and accordingly convicted.

**D. GASWAGA**

**JUDGE**

Dated this 28<sup>th</sup> day of May, 2010