

**SUPREME COURT OF SEYCHELLES**

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**Redact**  
[2021] SCSC  
CO 22/2019

In the matter between:

**THE REPUBLIC**  
(*rep. by Ms Monthy* )

**Republic**

and

**RJ**  
(*rep. by Nicol Gabriel* )

**Accused**

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**Neutral Citation:** *R v RJ* (CO 22/2019) [2021] SCSC 219 (14 May 2021).

**Before:** Burhan J

**Summary:** Sexual Assault. Sections 130(1), 130(2)(d) & Section 130(3) (b) of the Penal Code.

**Heard:** 6<sup>th</sup> December 2019, 30 January 2020, 23 July 2020, 5<sup>th</sup> August 2020, 28<sup>th</sup> August 2020 and 18<sup>th</sup> September 2020.

**Delivered:** 14 May 2021.

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**JUDGMENT**

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**BURHAN J**

[1] The accused in this case RJ has been charged with the following offence;

**Count 1**

*Sexual Assault contrary to Section 130 (1) as read with Section 130 (2) (d) & Section 130 (3) (b) of the Penal Code and punishable under Section 130 (1) of the Penal Code.*

*Mr. RJ of Les Mamelles, Mahe, on Sunday 17<sup>th</sup> December 2017 at Stad Linite at Roche Caiman Mahe, on Sunday 11<sup>th</sup> February 2018 at Beau Vallon Mahe and on another date unknown to the prosecution in February 2018 at Les Mamelles Mahe, sexually assaulted*

*another namely Ms. SL, aged 14 years old at the time, by inserting his penis into the vagina of the victim.*

- [2] The complainant/victim in this case S (PW1) stated she was at present 16 years old. In December 2017 she had gone for a party to her cousin's place at Copolia. She had thereafter taken a cousin to Les Mammelles and had returned with the accused and her cousin SM (DW1) (refer page 23 of proceedings of 6<sup>th</sup> December 2019) and on the way she had gone to pass urine at Stad Linite and the accused too had got down and had sex with her after she had passed urine. She stated it was not voluntary and the accused had forced her to have sex. She stated she had sex with the accused on other occasions and mentioned the 11<sup>th</sup> of February on the beach at Beau Vallon in the afternoon when it was getting dark. She stated this was the second time the accused had sex with her. She further stated on another day in 2018, they had sex in the basketball court at Les Mamelles. This had occurred in the night. This was the third time and she further stated she had sex with the accused only on these three occasions. She stated they had sex but there was no penetration. She explained however later that he had placed his private part in her private part.
- [3] Thereafter her cousin SM (DW1) who had been with her when the first incident occurred had told the incident to the girlfriend of her uncle and thereafter she had trouble with her mother, grandmother and uncle. Her family had gone to the police and she had been taken to hospital. She identified the accused as the person who had had sex with her. She also stated he was the boyfriend of her mother. She further stated that she was aware that the incidents at Beau Vallon beach and Les Mamelles occurred in the year 2018.
- [4] Under cross examination she admitted the father of the accused had a relationship with her grand aunt but they were now separated. She denied she was lying about the incidents. She further stated she had not run away or shouted when the incidents happened as she was scared and that's why she remained quiet. She had felt shy and embarrassed to tell them.
- [5] The prosecution next called Inspector Agnes Labiche (PW2) who stated she had been a police officer for the past 22 years and that she was presently attached to the Child

Protection Unit at Unity House. She produced the birth certificate of the victim as P2 and the letter of request to the Civil Status Department as P1. The date of birth of PW1 is the 6<sup>th</sup> of October 2003 as per document P2.

- [6] The next witness the grandmother of the victim Ms M (PW3) stated she lived together with her daughter X (PW5) and the victim PW1 her grandchild. In November, the accused had informed her he wanted to have a boyfriend/girlfriend relationship with her daughter X (PW5) the mother of the victim. The accused she stated was treating the victim PW1 as he would treat his children and the accused would take the victim and DW1 for pizza. On the 4<sup>th</sup> of March A (PW4) who was her son had given her a call and said he was coming to her house with his girlfriend E as he had something to tell her.
- [7] The next morning they had come and asked witness if she was aware that the accused was performing indecent acts with the victim PW1 and she had stated she was not aware. They had gone to the police and the Child Protection Unit and they had brought the victim PW1 in for questioning. She had gone home and was informed later that the victim had told the police that the accused had performed indecent acts on her.
- [8] Witness PW3 admitted under cross examination she had not noticed anything bad between the accused and the victim and she was shocked when she became aware of what was happening. She further stated it was only A PW4 her son and his girlfriend E who had told her of the incidents regarding the victim and the accused. The victim had not told her anything. She stated it was (DW1) and another person who had informed them that they had seen the act between the victim and the accused.
- [9] Witness A (PW4) gave evidence and stated the victim was the child of his sister X. He too stated that his girlfriend E had informed him that she had heard that several things were going on between the accused and the victim. He admitted he had not seen anything.
- [10] Ms X (PW5) the mother of the victim, gave evidence and stated that she had known the accused as they had a relationship as boyfriend and girlfriend. She had asked her daughter about the incident but she had refused to tell her. She was aware that he had

done something bad to the victim her daughter and noticed a change in her character but had not seen or noticed anything.

[11] The next witness called by the prosecution was the Social Service worker Ms Alphonse (PW6). She stated that the victim was under age at the time of the incident and she had shown that she had been affected by the abuse and they had decided to give her counselling in the form of guidance and support. Dr. Fock-Tave (PW7) produced the medical report of the victim as P3. In his examination he had noted that the hymen was not intact. He further stated that if she had had intercourse the hymen would not be intact. As the incident occurred sometime back there was no evidence of sperms. He further stated the victim had not mentioned having a relationship with anyone to him.

[12] Thereafter the prosecution closed its case. The accused chose his right to remain silent. No adverse inference should be drawn from the accused exercising his right to remain silent. The defence called two witnesses namely the cousin of the victim SM (DW1) and an ex-girlfriend of the accused LA (DW2). Witness DW1 stated that she knew the accused and that he was her uncle and that she was at present 15 years and studying in school. She stated that the victim PW1 was her cousin. She further stated she had not noticed anything wrong between the accused and the victim. She also stated she had not seen them doing anything. She had not noticed anything improper. Under cross examination she stated she does not hang out with the victim at the same time she states she had always been present when the victim was with the accused. She stated she had not noticed anything improper or indecent. The next witness (DW2) stated she was an ex-girlfriend of the accused and had had a relationship with him for 5 years. She stated that she had not noticed anything wrong happening between the victim and the accused and she had been with them in the pick-up. She also stated she was with the victim when they went to Beau Vallon beach but nothing happened.

[13] I have considered the evidence before this court. I will first start with the evidence of the victim's mother PW5. In her evidence she categorically states that she got to know of the incidents between her daughter PW1 and the accused from the victim's cousin SM (DW1). However on confronting her daughter PW1 she had refused to say anything. The

grandmother of the victim PW3 too stated that the entire incident came to light because of the information given by DW1. Even the victim PW1 states it was DW1 who had told others about the accused and herself. It is clear from the evidence before court that it was not the victim who had told others about the intimacy between herself and the accused. PW1 further states the entire matter came to light due to DW1 telling the girlfriend of her uncle PW4. This is confirmed by the evidence of PW4 who states his girlfriend was informed by DW1 about indecent acts being committed on the victim by the accused. It is apparent from the above that DW1 having spoken to several persons about the intimacy between the accused and PW1, for reasons best known to her now comes to court and denies that nothing happened between the victim and the accused. I am therefore unable to accept the evidence of DW1.

[14] I have also considered the evidence of the defence witness DW2 an ex-girlfriend of the accused. She states that in her presence nothing happened. It is quite obvious that the said incidents amounting to sexual offences with another under age child would not be committed in the presence of his girl-friend or ex girl friend or a third party specially a relation to his current girlfriend. It is also apparent in most cases of this nature that there are very few or no eyewitnesses to the actual incidents of sexual assault, therefore witnesses themselves admit that they did not see the accused do any sexual act and therefore are of the view that the accused is innocent or has not done anything. However there evidence when taken with the other evidence clearly supports relevant facts spoken of by the victim such as the trauma she was undergoing as borne out in her unusual conduct, the fact that the victim and the accused were together on the date in question at the particular location, The mere fact that other witnesses state that they did not notice anything or did not actually see any sexual act being done to the victim by the accused or think that the accused has been charged unnecessarily is not in itself a ground to dismiss the case against the accused. For the aforementioned reasons, I proceed to reject the evidence of the defence witnesses.

[15] Having considered the evidence of the victim, I am satisfied that the victim is telling the truth. Yes she had a difficulty in explaining the word sex but eventually she did so and it is clear from the evidence that the accused had inserted his private part into hers. She

identified the accused who was the boyfriend of her mother and three instances where he had sex with her at Stad- Linite, Beau-Vallon beach and basketball courts at Les Mamelles. The Social Service worker PW6 testified to the fact that the victim was undergoing counselling as she showed the effects of an abused child. It was clear in her evidence before court that she was visibly affected when talking about the said incidents. The record speaks for itself. She has clearly identified the accused as the person who had sexually assaulted her. The accused being a boyfriend of her mothers had scared her into not mentioning the incidents to anyone even before or after the incidents. It is clear from the evidence that everything came to light only after her cousin SM (DW1) had told the close relatives of indecent activities between the victim and the accused.

[16] Another contention of the defence is that the prosecution has failed to prove the particulars of the offence that the penis was inserted into the vagina of the victim. In addition to stating that the accused put his private part into her private part, the victim PW1 gives the following detailed description of the incidents that occurred to. In her evidence she explains details of the act that the accused did at Stad Linite. He had made her lie down and then removed her panty and had sex with her. She further gives details that when at the beach in Beau-Vallon, he had removed her bikini, then removed his short and put in on the ground for her to sleep and then he had slept on top of her and started to have sex with her. She stated he had sex with her in her private part. She stated he had put his private part in her private part. She then gave details of the incident at the basketball court at Les Mamelles and stated that on arriving at the basketball court they had got down from the vehicle, he had asked her to come to him, then lifted her skirt and removed her panty he had then asked her to bend and then removed his short and his boxer and then put his private part in her private part. After the act they had gone to her great grand aunt's place at Au Cap. I am of the view that considering the above detailed description given by the victim that all the details set out clearly in her evidence establish beyond reasonable doubt she was sexually assaulted by the accused.

[17] Her evidence was that the accused had not used protection at the time he placed his private part in her private part. The fact there was penetration is corroborated by the evidence and report of the gynaecologist Dr. Fock-Tave who examined the victim and

observed her hymen was not intact and stated that when a person has sexual intercourse with penetration, it is a ground for the hymen not being intact. I am therefore satisfied that penetration did occur. Further the age of PW1 at the time of the incident was 14 years a minor and therefore consent is not a defence for the accused.

[18] In **Raymond Lucas v The Republic SCA No 17/2009**, it was held that it is not obligatory on the courts to give a corroboration warning in cases involving sexual offences and the judge may use his discretion to look for corroboration when there is an evidential basis for it. PW1 was subject to lengthy cross examination but no materials contradictions or omissions were noted. It is apparent that the victim had no reason to lie and put the accused in trouble by falsely implicating him. In fact she had endured and remained silent but due to DW1 telling her relations, she was compelled to come out with what actually happened to her at the hands of the boyfriend of her mother the accused. Her reason for refusing to confide in her mother and others is due to the fact her assailant was the boyfriend of her mother. I am satisfied for all the aforementioned reasons that the victim PW1 was telling the truth and no evidential basis exists for this court to look for corroboration.

[19] I am satisfied beyond reasonable doubt that the victim PW1 is telling the truth and proceed to accept her evidence which is supported by the evidence of the doctor and his report. The social service worker also in her evidence states that PW1 needed counselling due to the abuse on her. PW5 the mother of the victim also states she observed changes in the victim's behaviour. PW1 has clearly identified the accused, her mother's boyfriend as the one who had sexually assaulted her. It is the contention of the prosecution that the evidence indicates he would take the victim and DW1 for pizzas on the basis of being a good parent thus having an opportunity to commit the offence on the victim.

[20] Having considered the entirety of the prosecution evidence, I am satisfied that the evidence in its entirety clearly proves all the elements of the charge against the accused beyond reasonable doubt. I proceed to find the accused guilty as charged and proceed to convict him of same.

Signed, dated and delivered at Ile du Port on 14 May 2021

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Burhan J