

SUPREME COURT OF SEYCHELLES

Reportable/

[2023]

CR 51/2020

In the matter between

REPUBLIC

(rep. by Ms Rose)

Republic

and

GB

(rep. by J Camille)

Accused

Neutral Citation: *R v GB* (CR 51/2020) [2024]

Before: Govinden CJ

Summary: Sexual Assault

Heard: 08/04/21; 08/06/21; 14/06/21; 02/08/21; 18/03/2021; 05/09/22; 07/03/23

Delivered: 15 January 2024

ORDER

I find the accused guilty on Count 1; Count 2 and Count 3 as charged and I convict him accordingly on those counts

JUDGMENT

GOVINDEN CJ

The charges

[1] The offences with which the accused has been charged and pleaded not guilty to is as follows;

Count 1

Statement of Offence

Sexual Assault contrary to section 130 (1) as read with section 130 (2) (d) of the Penal Code and punishable under section 130 (1) of the same Act.

Particulars of Offence

GB, 47 years old, [REDACTED] Teacher of [REDACTED] School and resident of [REDACTED] Mahe on the 26th December 2019 at [REDACTED] Guest House, Mahe, sexually assaulted MB, a 14 year old student of [REDACTED] School, by penetration of her body orifice, namely the vagina of the said MB with his penis for a sexual purpose.

Count 2

Statement of Offence

Sexual Assault contrary to section 130 (1) as read with section 130 (2) (d) of the Penal Code and punishable under section 130 (1) of the same Act.

Particulars of Offence

GB, 47 years old, [REDACTED] teacher of [REDACTED] School and resident of [REDACTED] Mahe, on the 5th May 2020 at [REDACTED], Mahe, sexually assaulted MB, a 14 year old student of [REDACTED] School, by penetration of her body orifice, namely the vagina of the said MB with his penis for a sexual purpose.

Count 3

Statement of Offence

Sexual Assault contrary to section 130 (1) as read with section 130 (2) (d) of the Penal Code and punishable under section 130 (1) of the same Act.

Particulars of Offence

GB, 47 years old, [REDACTED] Teacher of [REDACTED] and resident of [REDACTED], Mahe, on the 11th May 2020 at [REDACTED], Mahe, sexually assaulted MB, a 14 year old student of [REDACTED] School, by penetration of her body orifice, namely the vagina of the said MB with his penis for a sexual purpose.

[2] The accused pleaded not guilty to all the charges and the matter proceeded to trial, with the Prosecution calling the following evidence against the accused.

The Prosecution evidence

- [3] The Virtual Complainant, MB, testified first. She stated that she was 15 years of age and lives together with her father, grandmother and brother at [REDACTED]. She was born on the 15th of August 2005. Her Mother's name is LA and father's name is GB. She goes to the [REDACTED] school in S5 and has met the accused, who is the [REDACTED] teacher at the school and has had the chance to talk to him and that she was 14 years of age at the material time.
- [4] The Virtual Complainant testified that she met the accused at the [REDACTED] Guest House on the 26th of December 2019 after they had contacted each other by phone and there they had sex, with the accused putting his penis in her vagina and after this she went home. On the 5th of May she met him again at the [REDACTED] trail after they had contacted each other by phone and again they had sex by him putting his penis inside her vagina. On the 11th of May the accused had also had sex with her by putting his penis in her vagina after they had talked over the phone. On the last occasion people saw them having sex and these people contacted her parents and police came and the investigation into this case started. She also went to the hospital to do some tests with her mother. Her phone number was [redacted50] and her phone was a G6 Plus.
- [5] She stated that her parents and the Social Workers put pressure on her to talk about the incident, though, they did not make any threats to her. She did not report the sexual relationships initially because she did not want to.
- [6] Ms L A, who is a Home Career, lives at [REDACTED] together with two children, including MB. She confirmed that her daughter was born on the 15th of August 2005. She remembers what happened on the 11th of May 2020. MB had informed her that she was going to throw away the trash. After she had returned, M ST B was supposed to go to one of their neighbors, [REDACTED], who was sick. Later at around 6.30 one of the Virtual Complainant's aunties had informed Ms LA that she received a phone call stating that someone had come across MB. The aunty wanted to know the colour of the clothes MB was wearing, in order to confirm whether she was the person that was seen. Ms LA indicated the colour of MB's clothes and the aunty had informed the witness that it was MB who had been spotted close to the [REDACTED] trail at [REDACTED].

[7] Thereafter, she called her daughter on her phone three to four times and after a while MB answered her call and informed her mother that she was at a shop. The witness asked MB to come out from the shop as the witness was close to the shop, however MB could not answer because she was not at the shop. When Ms LA came back to the house MB was there and she did not want to tell her where she had been. She became angry and slapped her. Upon her mentioning the police to her daughter, MB gave her the accused person's phone number.

[8] The mother testified that she went to the Police Station to file a complaint together with her daughter and from there they went to the hospital for her to be examined. The examination was to see whether she was still a virgin. The witness confirmed that the phone that her daughter was using at that time was a Samsung Galaxy, colour black and that her phone number was [redacted50] and the phone was handed over to the police. Ms LA further went on to state that her daughter's behavior changed following the incident and she started cutting herself on her arm and she had to be brought to the hospital. She was also referred to a Psychologist.

This witness evidence was not the subject matter of any cross-examination.

[9] A Social Worker attached to the Child Protection Unit, Evita Nourice, was also called by the Prosecution. Her job consists of counselling children victim of sexual abuse and their families. She is acquainted with the case before the court and stated that the case of MB was received by the Unit on the 11th of May 2020 following the complaint lodge by LA at the [REDACTED] Police Station. She provided some counselling to MB as she was showing some signs of depression and anger. It was her who referred MB to a psychologist for a mental assessment as she considered the scratches on her left hand to be one of unpredicted behavior.

This witness was not cross examined by counsel for the accused.

[10] Inspector Karine Brigillia is a Police officer attached to the Police Child Protection Unit in the case before the Court. She testified that she seized a black Galaxy J6 phone from LA on the 13th of May 2020, it belongs to the Virtual Complainant. Having taken

possession of it, she sealed it and gave it to Inspector Esparon so that he would do an extraction on it. Afterwards she received the phone back from the Inspector.

This witness was not cross examined by counsel for the accused.

- [11] Inspector Ivan Esparon has been a Police officer for 15 years. He is attached with the digital forensic unit at the Scientific and Crime Record Bureau. His duties are to extract digital evidence from digital devices such as mobile phones, computers, GPS and video footage.
- [12] With regards to the case before the Court the witness stated that on the 14th of May 2020 he received a request from police officer Brigillia from the Child Protection Unit to extract digital data from a Samsung phone belonging to the Virtual Complainant. He extracted the data using the forensic software Cellebrite and after the extraction he prepared a Report. It contains the process of receiving the digital devices, the mobile phone and then the examination, the software used and the data extracted. He signed his Report and gave it to the officer working on the case together with the data that he placed on a DVD. The Report of Inspector Esparon was produced in evidence without objection by the Defence. The Officer went into the content of his Report and stated that the phone contained 2 SIM cards, belonging to the Cable and Wireless with numbers [redacted61] and [redacted50].
- [13] The witness testified that his report contains the call log and SMS record from the mobile phone in regards to a specific number [redacted24] and that his report generated 8 call log and 1006 SMS messages that were send or received by the Virtual Complainant's phone from this number. His report contains the duration of the calls and the date and times they were made.
- [14] The witness then testified of communications received between the Virtual Complainant's Samsung phone and the phone with number [redacted24]. On the 1st of May 2020 at 06 hours, 59 minutes and 2 seconds the user of this number informed by SMS the person who was using Samsung phone: *"You will not tell me no, it will be best if we go to the same place that we went last time"*. On the same day at 07 hours, 1 minute

and 3 seconds the user of the Samsung phone texted back to the user of number [redacted24] and said: *“I will see if we will still go there or another place because I will go for lunch like last time, next to my house.”*

[15] On the 4th of May 2020 several messages were exchanged between the Samsung phone and number [redacted24]. This started at 21 hours, 14 minutes and 24 seconds when phone using that number messaged the Samsung phone and it read: *“I want you so bad you know I haven’t feel you well tomorrow what’s the deal will I still get it”*. The reply from the Samsung phone to number [redacted24] at 21 hours, 15 minutes and 31 seconds was to the following effect: *“I had hope I could have come sleep at your place so we would have made love”*. The following message was received from phone with number [redacted24] at 21 hours, 16 minutes and 38 seconds: *“now you start messing with my head now”*. This was followed by a reply from the Samsung phone to the number [redacted24] at 21 hours, 16 minutes and 53 seconds, to the following effect: *“what did I do tell me”*. At 21 hours, 18 minutes and 22 seconds the user of the Samsung phone messaged: *“your head will not get mess up, stop”*. The user of number [redacted24] then replied at 21 hours, 18 minutes and 52 seconds: *“I think you making me wanting you and I am truly losing it I am sweating I want you baby every day”*. The user of the Samsung phone then replied: *“Ah ha ha I will escape”*. This was followed by the following message from the phone [redacted24]: *“You know something, I will never cheat on you because the way I appreciate you, every time I hear your voice I want you, I want to text you, I want to see you, I want to see the day when we will meet in a good place, you will see how I will make you last with me”*.

[16] On the 5th of May 2020 the following messages were exchanged between the two phones. At 09 hours, 34 minutes and 37 seconds message from the Samsung phone to [redacted24]: *“We will still go to the same place like we went”*. At 09 hours, 35 minutes and 59 seconds message was received on Samsung phone from number [redacted24] and it read: *“Ya we will make love, will I get that deal also”*. At 21 hours, 5 minutes and 36 seconds number [redacted24] texted the Samsung phone: *“Ya when I saw you it call for a bed and we were so wet, ha, ha, ha”*.

- [17] On the 8th of May there were the following messages exchanged between the two phones. At 20 hours, 20 minutes and 30 seconds the Samsung phone texted phone number [redacted24]: *“You should have put a love bite”*. This was followed by a message from the latter at 20 hours, 25 minutes and 36 seconds: *“this dude I’m scared of him, I don’t trust him”*. At 20 hours, 27 minutes and 32 seconds the user of phone number [redacted24] messaged the following to the Samsung phone: *“your mum does not notice anything?”* The answer came from the Samsung phone at 20 hours, 49 minutes, 17 seconds: *“no she does not notice anything”*; followed by *“She thought I was there at the back where I usually sit”*. At 21 hours, 31 minutes and 36 seconds the Samsung user informed phone with number [redacted24] that *“I didn’t want it to stop but I had to go in case my mum look for me”*.
- [18] On the 9th of May of the same year the following transpired between the two phones, at 13 hours, 17 minutes and 24 seconds a message is received by the Samsung phone from number [redacted24] and it read: *“I will come before they do, I will use the trail and much further before and what will you do”*.
- [19] On the 10th of May the following message was sent from the Samsung phone to the phone number [redacted24] at 21 hours, 38 minutes and 6 seconds: *“You were the one who make me lose my virginity, I recall that date, it was on the 26th of December 2019. I am already addicted to you. I will give you all my love. I will never stop loving you, nor forget about you, any simple things that occurs I can cry just because of you, I love you for real, if you want to believe or if you don’t want to believe, I don’t know”*. Another text was send by the same phone to number [redacted24] seven (7) minutes later as follows: *“You yourself thought that I was scared to do that and after you saw the way I was shouting because it was my first time and when you say that you were going to have sex with me, I couldn’t refuse or I couldn’t say no, I just did not reply, I just look at you”*. At 21 hours, 53 minutes, 1 second further text message was sent from the Samsung phone to phone number [redacted24] saying: *“I tell you on the 26th December”*.
- [20] The last data collected between the two phones was for the 11th of May 2020. At 14 hours, 21 minutes and 38 seconds the Samsung phone received the following message

from phone number [redacted24]: *“Will I see you today”*. At 18 hours, 30 minutes and 30 seconds the user of the Samsung phone informed the user of number [redacted24] as follows: *“I am coming after, I was waiting for Denis to finish watering the flowers”*.

[21] Inspector Esparon testified that all the texts received on the Samsung phone had been deleted by the user, but that he could recover them with the technologies that he works with. The officer testified that he can say that the messages were sent and received by the two phones but he cannot say who sent them.

[22] Ms Noella Flore is A Civil Status Officer. She produced the Birth Certificate of the Virtual Complainant, which shows that her full name is MB and that she was born on 15th of August 2005.

[23] Dr Maxwell Fock Tave is a Gynaecologist at the Seychelles Hospital. One of his duties is to examine cases of rape and child abuse. His competence as an expert in this field was not contested. He examined the Virtual Complainant at 23:05 hours on the 11th of May 2020. She was brought for examination after it was suspected that she had had a sexual relationship with another person. Upon his examination, he noticed that her hymen was not intact and there was no evidence of bleeding or fresh lesion and no abnormal discharge. He wrote a Report on his findings and produced it to the Court. It was admitted in evidence. According to him, the hymen is not intact probably as a result of sexual intercourse. He further stated that the absence of discharge does not necessarily mean that there was no recent sexual intercourse.

The case for the Defence

[24] The accused decided to exercise his right to remain silent and not to call witnesses in his favour.

Submissions

[25] In its closing submissions Counsel for the Republic submitted that it is in evidence that the Virtual Complainant was below the age of 15 years and the issue of consent or reasonable belief of consent cannot arise in law.

- [26] The Counsel further submitted that the Virtual Complainant gave cogent credible and consistent testimony that the accused did have sexual relationship with her, including on the occasions covered by the charges. Relying on the authority of Raymond Lucas v/s R SCA 17/09, she submitted that therefore this is a fit case where there is no necessity for the court to seek for corroboration of a child witness.
- [27] Nonetheless, Counsel submitted that there is enough independent evidence adduced by the Prosecution's witnesses. The witness, to which she refers as PW2, corroborated the evidence of MB that on the 11th May 2020 she left her mother's house to meet with the accused. The witness (PW2) testified that after being made aware of MB's whereabouts she made a complaint to the police at the Beau Vallon Police Station and then thereafter brought MB to the doctor to be medically examined. The evidence of PW7 and his medical report (Exhibit P6) confirmed that MB's hymen was not intact and PW7 testified that one of the reason that might cause the hymen to be not intact is that MB have engaged in sexual intercourse. All the evidence taken together gives credibility to the evidence of MB and indicates that her evidence is the truthful account of what had happened.
- [28] The Learned State Counsel further submitted that Defence Counsel in his cross-examination attempted to discredit PW1 by insinuating that she was lying that the accused never had sex with her on these three occasions and that it was her family who is putting pressure on her to tell lies to the Court and that she is infatuated with GB (the accused) because he was there at her school and that she fancied him and wanted him and that is why she came up with the story that she had sex with him at [REDACTED] and on two occasions on the trails. Despite that, the Virtual Complainant remained consistent and cogent in her evidence about her accounts of events and testified that the incidents did happened.
- [29] In conclusion she submitted that the Prosecution has proven beyond reasonable doubt that the accused person committed the offence of sexual assault as charged; that the victim is of a very young age incapable of giving consent to such an act; and that the accused is an adult above 18 years old with the knowledge of the consequences of his action.

Moreover, she submitted that he was a school teacher at the same school as MB and was in a position of trust and authority as a teacher to look after students under his care but not to take advantage of that position to prey over these same students for his sexual gratification. Therefore, the Court should take this into account amongst other things when sentencing him as per Section 130(4)(b) & (c) of the Penal Code.

[30] The Defence, on the other hand, submitted that the Prosecution has failed to prove the essential elements of the offences under both counts and that, accordingly, the charges must be dismissed against the accused and the accused must be acquitted on that basis. Defence submitted that the Prosecution has failed to prove charges beyond a reasonable doubt against the accused person for the following reasons:

- (i) It is submitted that the testimony of the complainant is not credible and must be disregarded by the Court. According to the Defence, the complainant testified that on the 26th December 2019, by way of text messages, she and the accused agreed to meet up at the guesthouse of [REDACTED]. However, the Prosecution did not tender any evidence relating to the same text messages, to corroborate the complainant version of events.
- (ii) According to the Defence submissions, the complainant testified that she went to the guesthouse at [REDACTED] and saw the accused under the veranda on the top floor. She then proceeded to meet the accused there and get inside of the room on the bed where they sat and then had sex with the accused. It is submitted that it is inconceivable that the complainant can walk straight into a guesthouse and meet up with any guest living there, let alone the accused and get access into the bedroom of the guest and have sex. It is submitted that surely someone from the guesthouse management would have seen her and questioned her as to her business at the guesthouse. He submitted that the version of events as testified by the complainant clearly casts a doubt as to her credibility as a truthful witness.
- (iii) Learned Counsel submitted that in regards to the second count a similar doubt lurks as to the credibility of the complainant's version of events. In support of the second count she testified that at the material date she met up with the accused at

the [REDACTED] nature trail at [REDACTED]. She testified that on that occasion, they went for a stroll up the trail, then had sex in the bush. On the third count in the charges she testified that again she met up with the accused on the same trail and had sex there. It is the submission of the Defence that it is inconceivable for the Court to believe that the accused could have been so reckless as to have sex with a minor on a public trail. He submitted that, “*Surely the complainant cannot be believed to be truthful in that version of events*”. There is a clear doubt on the credibility of the complainant’s testimony.

- (iv) Learned Counsel submitted that the credibility of complainant’s evidence is further called in question when the Court will note that complainant has at no time made an immediate report of the alleged incident even when she has had an opportunity to do so and this clearly called into question her version of the story and whether indeed the incident really happened. On this note it is submitted that the Court will note that in cross-examination complainant had stated that she had related alleged incident with mother **only** after mother had asked her what had happened. Clearly complainant never related the incident voluntarily and without a prompt. It is submitted that in law the admissibility of a complainant in a sexual assault case rests on the condition that the complaint must have been made voluntarily and not in reply to question of a suggestive, leading or intimidating, character (*R v Osborne* [1905] 1 KB 551).

Analysis and determination

- [31] The Prosecution bears the burden to prove the charges before the court and it has to do so beyond a reasonable doubt. The accused has a right to remain silent. He has exercised this right in this trial and no adverse inference would be drawn as to the exercise of this right by him, whether in or out of court. In its attempt to discharge its burden of proof in this case the Prosecution has called several witnesses, including expert witnesses and has tendered several documents in evidence. The Court’s duty is to examine this evidence and determine whether the Prosecution has been able to discharge this onerous burden.

[32] The accused has been charged with sexual assault contrary to section 130 (1) read with section 130 (2) (d) of the Penal Code and punishable under section 130 (1) of the Penal Code in Counts 1, 2 and 3.

[33] These provisions are as follows:

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

...

(2) For the purposes of this section “sexual assault” includes-

...

(d) the penetration of a body orifice of another for a sexual purpose.”

[34] Further, especially relevant to this case is also the provisions of section 130 (3) (b) the Penal code, which reads as follows:

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

(b) the person is below the age of fifteen years;”

[35] In respect of sexual assault offences charged in this case, the Court must be satisfied that the Prosecution has proven beyond a reasonable doubt the following essential elements of the offence.

[36] That the accused penetrated the vaginal orifice of the Virtual Complainant. This is the physical element or the actus rea of the offence. Penetration, however slight, would be sufficient to establish this element.

[37] That the Accused intentionally penetrated the vaginal orifice of the Virtual Complainant for a sexual purpose and that when he did so, she did not consent or could not have consented to this act.

[38] Consent is shown by the connecting circumstances, including the acts or words used by both parties, whether before, during or after the sexual encounter. It is to be noted, however, that if the Prosecution manages to prove beyond a reasonable doubt that the Virtual Complainant was below the age of 15 years there would legally have been no

consent given on her part as under section 130 (3) (b) of the Penal Code a person below that age cannot consent to a sexual act.

[39] With regards to the necessity of corroboration or independent evidence to support the credibility of the child witness, I accept the submission of Counsel for the Republic that the law has moved on and that now our law of criminal evidence is firmly established in the following proposition. It is now the law that it is not obligatory on the courts to give a corroboration warning in cases involving sexual offences. Further, it is at the discretion of judges to look for corroboration when there is an evidential basis for it. As such there has to be an evidential basis for me to use my discretion to rely on corroborated evidence in this case. If there is no such basis and I find the evidence of the Virtual Complainant to be wholly consistent, cogent and credible, I can act on it solely to convict the accused.

[40] Notwithstanding this, I do, however, warn myself of the inherent risk of unreliability in the evidence of a child witness. I am especially cautious as there are no eyewitnesses and no independent evidence that directly implicates the accused except the evidence of the Virtual Complainant. The medical report is consistent with the Complainant's account, though, it does not implicate the accused particularly as it only serves to show that the Complainant may have been penetrated sexually. I therefore warn myself of the need to treat the evidence of this intelligible but yet tender aged witness with caution, bearing in mind her vulnerabilities and impressionableness.

[41] I have carefully considered the testimonies led before this Court as tested under cross-examination. I have also given such careful consideration to all other evidence adduced. I have done this analysis bearing in mind the legal issues arising in this prosecution. The submissions of both the Prosecution and the Defence has also been scrutinized in order for the Court to find out what each parties are saying their cases are. Having done this, this Court has come to the following determination.

[42] Firstly, the evidence in this case would reveal that the Learned Defence Counsel, whilst under the full instructions of the accused decided not to cross-examine some witnesses. As a result the Court needs to address the legal consequences of the Defence's decision not to exercise its constitutional right of cross-examination. Testimony of LA, the mother

of the Virtual Complainant; Evita Nourice, the Social Worker and Inspector Karine Brigillia are the relevant ones.

The Seychelles Court of Appeal in *Trevor Zialor v R* (SCA 10 of 2016) [2017] SCCA 42 (6 December 2017), basing itself on numerous English Authorities had the following to say regarding the consequences of such failures:

“That being the case the rule in Browne v Dunn(1893) 6 R. 67 has direct application, namely, that if the only evidence on a material fact in issue in the case emanates from a particular witness, the failure to cross examine such a witness may amount to a tacit acceptance of the evidence of such witness on such material fact. Lord Morris put it as follows

“...the witnesses having given their testimony, and not having being cross-examined, having deposed to a state of facts which is quite reconcilable with the rest of the case...it was impossible for the plaintiff to ask the jury at trial, and it is impossible of him to ask any legal tribunal, to say that these witnesses are not be credited.” (p. 79).

A decision not to cross examine a witness at all or on a particular point is tantamount to an acceptance of the unchallenged evidence as accurate unless the testimony of the witness is incredible. We cannot exclude undisputed facts (see Wood Green Crown Court exparte Taylor [1955] Crim L. R. 873.).”

[43] Passage from *Cross on Evidence* (7th ed) at 303 is also pertinent:

“... any matter upon which it is proposed to contradict the evidence-in-chief given by the witness must normally be put to him so that he may have an opportunity of explaining the contradiction, and failure to do this may be held to imply acceptance of the evidence-in-chief.”

[44] This Court accepts and applies this common sense principle in this case when it comes to the failures of the Defence.

[45] Upon a careful perusal of the record it is evident that the decision not to cross-examine those witnesses is pertinent to two relevant factors in this case. First, is the fact of the Virtual Complainant owning a Samsung mobile phone; and, secondly, her movements and whereabouts on the 11th of May 2020.

[46] From these uncontested testimonies the following is found proven by the Court beyond a reasonable doubt. Firstly, that the Virtual Complainant left her mother’s place at [REDACTED] on the 11th of May 2020 and she was supposed to go to a neighbor. At

6.30 pm she was informed by a relative that someone wearing similar clothes as the Virtual Complainant was seen at the [REDACTED] trail. Virtual Complainant's mother then called her daughter on her phone number [redacted50] many times without getting an answer. When she answered she said she was at a shop but arriving at that shop her mother found that she was not there. However, when Virtual Complainant's mother came back home she found her daughter there. After great reticence the latter gave her mother the accused person's phone number. Virtual Complainant's phone was handed over to the police and it was ultimately handed over to Inspector Esparon.

[47] There was digital record introduced by the Prosecution through the Digital Forensic expert, Inspector Ivan Esparon. Through this witness the Prosecution proved that on a number of occasions the Virtual Complainant contacted phone number [redacted24] and organized to meet at several places, sometimes this coincided with the places and time mentioned in the charges before the Court. However, the Prosecution did not call evidence from a telephone service provider to prove whom this number belonged to. The Virtual Complainant testified that she did not remember the phone number that the accused was using at the material time. Inspector Esparon did not identify the owner of this number. The Complainant's mother only testified that the former gave her the accused person's number on the 11th of May after her complaint. This leaves the digital evidence useless as it only shows that the Virtual Complainant was texting an unknown person, though, at material times and on relevant matters. It doesn't establish beyond a reasonable doubt that it was the accused texting and the Virtual Complainant texting him back.

[48] In determining the issue of credibility, I have closely followed and a carefully scrutinised the testimony of the Virtual Complainant with a keen eye on her demeanor and candor as she is the sole eyewitness to the offences. The impression that she created was that she was a young girl overtaken by the events. She was clearly a willing participant in the various encounters with the accused person. This is shown by her reticence to tell her principal caregiver the reality that she found herself in after their escapades were discovered on the 11th of May. In her own words she did not denounce the actions of the accused because she did not want to and she gave in to speak the truth after some

pressure came from the Social Services. She shows no signs that she had a motive to construct a story in order to implicate the accused, to the contrary she passed herself off as a young and vulnerable school girl who was groomed and taken advantage of by a teacher of the same school. Her actions and conducts upon being discovered is reflective of a young girl who is afraid of the truth being discovered, namely that she, an underage school girl, had engaged in sexual relations with a teacher. I find her evidence to be cogent, consistent and credible.

[49] The Defence in an attempt to discredit the testimony of the Virtual Complainant has argued that there was no recent complaint of the incident by her, especially given that offences allegedly originated in December 2019. It is argued that she finally came with a false complaint after pressure from the mother and the authorities. The Court finds that there was indeed no spontaneous complaint by the Virtual Complainant. However this does not affect the veracity of her testimony because it is explained by the circumstances of the case as I have mentioned above. It is further alleged that she was infatuated by the accused her teacher and was prepared to concoct the offences because he was not seduced by her. Looking at the evidence it appears that indeed there was infatuation on the part, but the infatuation was one that resulted from the grooming by the accused only and not by malice. The Defence has also put forward the argument that her story is unbelievable given that the accused would not do a sexual act in public as it is alleged in the Count 2 and 3. The Court having scrutinized the entirety of the Virtual Complainant evidence finds, however, that he did and his audaciousness adds to the gravity of the case.

[50] Virtual Complainant's testimony seems reasonable and consistent with other evidence that has been accepted; and remained firm and consistent under the cross-examination.

Did the accused have penetrative sex with the Virtual Complainant on the 26th December 2019 at [REDACTED] Guest House [REDACTED], Mahe; on the 5th May 2020 at [REDACTED] trail, [REDACTED] ; and on the 11th May 2020 at [REDACTED] trial, [REDACTED], Mahe?

[51] Virtual Complainant testified under oath that she met the accused at the [REDACTED] Guest House on the 26th of December 2019 after they had contacted each other by phone.

She testified that there they had sex, with the accused putting his penis in her vagina and after this she went home. On the 5th of May she met him again at the [REDACTED] trail after they had contacted each other by phone and again they had sex by him putting his penis inside her vagina. On 11th of May the accused had also had sex with her by putting his penis in her vagina after they had talked over the phone before. On the last occasion people saw them having sex and these people contacted her parents. According to the Virtual Complainant each time they had organized those rendezvous by phone before they met on each of those occasions.

[52] The Testimony of Dr Fock Tave established that the Virtual Complainant had engaged in penetrative sexual intercourse before. While this does not directly corroborate the evidence of the Complainant that it was specifically the accused who penetrated her, in some way it proves that her story of having experienced sexual intercourse is true. Hence, I find it supportive of her evidence only to this extent.

[53] Having found that the Virtual Complainant is a witness of truth, I find proven beyond a reasonable doubt the fact that the accused penetrated the vaginal orifice for a sexual purpose on all three occasions and at the various places averred in the charges.

[54] The Prosecution also needs to establish that those sexual penetration were for a sexual purpose and was without consent. The evidence in this case reveals that there was factual consent in this case by the Virtual Complainant. However, as her Birth Certificate proves, she was 14 years of age when those sexual penetrations were done to her by the accused. By virtue of section 130 (3) (b) of the Penal Code she could not have consented as she was below the age of 15 years. The penetration were also for a sexual purpose and intentionally done by the accused and so I find. Accordingly, I find proven beyond a reasonable doubt that the sexual acts performed by the accused on the Virtual Complainant in Count 1 to 3 were done without her consent.

Final determination

[55] For the reasons aforesaid I therefore find the accused guilty on Count 1; Count 2 and Count 3 as charged and I convict him accordingly on those counts.

Signed, dated and delivered at Ile du Port on of 2024

Govinden CJ