

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

IN THE SUPREME COURT OF SEYCHELLES

Republic

Versus

Jude Evans Jules

Accused

Criminal Side No: 17 of 2001

Mr. B. Hoareau for the Republic
Accused in person

D. Karunakaran, J.

JUDGMENT

The complainant A.J. is a 16 year old- girl, born on 9th of November 1988. She is now attending Secondary 2 at the P...School. A. is very religious and a regular churchgoer. She believes that God will punish those who speak lies. She seems to possess a higher degree of mental maturity and intelligence than that of an average girl of her age. Since birth, A. has been living with her family, which consisted of her father Jude Jules, mother Dova Jeremy and a three-year-old younger brother Ryan. Her father is self-employed and her mother is a workingwoman.

In the year 2000, A.'s family was living in a small two bedroom house at Anse Aux Pins. She was then attending Primary 6 at the Anse Aux Pins

School. During that period one Ms. C.L. - PW2 - was her class teacher. She is a dedicated teacher with an experience of about 23 years in teaching and dealing with children particularly, at the age of primary level. Being a class-teacher, she used to be very close, affectionate and friendly paying individual attention to all the children in her class. Normally, she used to observe changes if any, in the behaviour pattern and academic performance of the children in her class and used to help them - as a good teacher should - in all possible areas of childhood development. In June 2000, the teacher to her dismay first noticed a sudden and unusual change in the behaviour pattern of A.. According to Ms. L., during break times A. did not mix with other children. It was unusual. And she was seen withdrawn into her own shell of loneliness. Ms. L. asked A. what was wrong with her; but the little girl was reticent and did not speak her mind. The teacher continued to observe the changes in her behaviour. A. was not normal. She was not the same as she used to be. She stayed behind all the time; she continued avoiding the company of other children and was sitting alone in the class room. During the last week of June, the teacher again asked A. if she had something to tell her. It was before the 29th of June. Finally, the child came out of her shell but at snail's pace and eventually spoke. She spoke about something, which had been haunting her memories over weeks. It was sad to hear but the teacher had to listen and her testimony in this crucial aspect runs thus:

“Yes, the next day she (A.) came and said (that) she wanted to tell me something. Then she gave me a piece of paper in which she had written in English ‘Excuse me teacher, I have had sex two times’. I was sad to hear this. I asked if it was something she wanted to do. She said “No, the person forced me’. Then I spoke to her, advised her. She started to cry.”

After revealing the tip of an appalling iceberg, the little girl, on the 1st of July again approached the teacher and spoke about a subsequent incident, which had happened the previous day. At this juncture, it is pertinent to quote again the evidence of the teacher in respect of the second conversation she had with A., which appears on record - in verbatim - thus:-

“Q: After 29th June (2000) that is after (school) half term, did you have opportunity to speak to A. once again?

A: Yes, she came to me again the first day after first term.

Q: What did she do this time?

A: She told me that she had had sex on 30th once more and I said that I was sad to hear that. I reprimanded her and she told me the person forced her. Then I asked her if she was living with her father or a stepfather. She was surprised and she asked me why I had asked her that question. I told her that it was because sometimes stepfathers abuse their stepdaughters.

Q: What happened after that?

A: She took a piece of chalk and wrote on the blackboard “My Father” and then she went out. I called her back and asked her if that was true and she told me yes. I asked her if she wanted me to help her in any way. She said yes. I asked her three times. Then I send her home and I went to the head teacher and told her about the incident.”

The head teacher immediately, reported the matter to the Department of Social Services, which in turn referred it to the Police for investigation. As a result, the defendant, who is none else than the father of A. now stands charged before the Court with the offences of “sexual interference with a child contrary to Section 135(1) of the Penal Code and “incest contrary to section 151 A (1) of the same Code, under count 1 and 2 respectively.

The particulars of offence under count 1 read thus:

“The defendant on the 29th May, 4th June and 30th June 2000, committed an act of indecency towards A.J., a girl under the age of 15 years.

The particulars of offence under count 2 read thus:

“The defendant on the 29th May, 4th June and 30th June 2000, had sexual intercourse with A.J., knowing that she was closely related to him by blood namely, his daughter.”

Be that as it may. A. was called as a key witness for the prosecution. Although she was a child of tender age, only 12 at the time of the commission of the alleged offence, she was able to recount vividly the past events of her life and testified to the following facts:-

On the night of 29th May 2000, A. was at home. Her mother, Dova Jeremy had been out for a dinner at the invitation of her boss namely, the employer. Only A.'s father and her little brother Ryan were present at home. A. was sleeping alone in her bedroom. Her little bother Ryan, aged 3 was sleeping with his father in the latter's bedroom. In between these two bedrooms lies the living room. At or about 8 p. m while A. was sleeping, her father came into her bedroom, woke her up and asked her to go along with him to his

bedroom. A. said that she was sleepy. Her father still insisted that she should go into his bedroom. In A.'s own words "He forced me. He was asking me to go in his bedroom". Hence, A. went in. Her father, hereinafter called the "defendant", asked her to remove her clothes, which she did. He put her on his bed. It is pertinent to rehearse the evidence of A. in this respect as she testified in Court thus:-

Q: When he told you to remove your clothes what did you do?

A: I removed my underpants.

Q: What happened next?

A: I cannot remember but (what) I do recall is when he actually put his private part into mine.

Q: Tell us what exactly happened when he inserted his private part into yours?

A: I cannot recall but what I can recall (is that) he did it for few minutes.

Q: When you say he did it, what exactly he did?

A: He did not exactly insert his penis but he placed it close. ...

Q: How did you feel when the accused was doing it to you?

A: I was frightened.

Q: And after that incident what did you do?

A: I went to the toilet and after that I went back to my room.

Q: Why did you go to the toilet?

A: I went to pass urine.

Q: Did you notice anything unusual whilst you were in the toilet?

A: I noticed that there was blood in my underpants?

Having thus testified on the first bloody incident, A. proceeded to talk about another incident of similar nature, which happened on the night of the 4th of June 2000, when her mother had gone to Alphones Island with her employer. According to A., on that particular night she was watching television in the living room. At or about 11 p. m, she switched off the television and went to sleep in her bedroom. Her little bother Ryan was sleeping in his baby cot. As A. was in bed in her bedroom, the defendant called out her name. A. responded and went to see her father, the defendant in his bedroom. A sequence of another episode similar to the first one ensued. Although the sequence of acts like removal of clothes, putting her on the bed, putting his private part into that of the little girl were all similar to the ones involved in the previous incident, A. could notice a difference between the first and the second one. That was an act of kissing, which the defendant had added to the second incident over and above what he did to A. during the first one. After the incident, A. did not go to toilet but went straight to her bedroom to sleep.

Besides, A. recalled and narrated another episode, the third one, which happened at home day time. On the 30th of June 2000 A. was at home. It was her half term school holiday. During the day her mother was not at home. Her father, her brother Ryan and another little boy Terry - a cousin of hers - were present. At or around 11 a. m, A. was watching television, it was showing a programme, which according to A., was a Repetition of Sports Events - presumably the events of the previous day being Independence Day. The little boys Ryan and Terry were playing outside the house. A. was lying down watching television in the living room, the defendant was also watching with her. After a while, the defendant made gestures to A. asking

her to go with him. A. said, “No” and continued watching the programme. After watching the sports events, A. went to her bedroom. The defendant also followed and entered her bedroom. As soon as he entered the bedroom unzipped his fly, made A. to remove her panty, held by her back and put his private part into that of A.. His private part slipped and went in between her thighs. After some time, A. felt something coming out of him, according to her it was not blood coming out of her private part, as it happened before but was different. The defendant removed it himself and wiped off his private part. A. did not tell her mother about any of the said incidents as she was scared to; nor did she tell any other adult for that matter as she did not feel at ease. She also testified that even with her own class teacher Ms. C.L., at first she was not feeling at ease to tell her verbally, that is why she wrote it on a piece of paper and gave it to her. Having thus deposed, A. under cross-examination denied that she had any grudge against her father for any reason whatsoever. She also denied that she had fabricated the incidents against her father because he once refused her permission to go on a school picnic. Following the investigation by the police, A. disclosed everything in her statement to the police. In view of all the above, the prosecution contends that it has established the case against the defendant beyond reasonable doubt and hence, seeks a conviction in this matter.

After the close of the case for the prosecution, the Court ruled that the defendant had a case to answer in defence for the offences on both counts. The defendant elected to give evidence under oath. He also called his wife Dova Jeremy - DW2 - who is none other than the mother of A. to testify in support of his defence.

The defendant testified in essence, that A. once asked him to give permission for her to go on a picnic. Since her mother was not present at home that time, the defendant told A. to wait and get permission from her mother. When A. asked her mother, she refused permission. Because of this incident, according to the defendant, A. has made up the stories and has framed the defendant in this matter. Further, the defendant testified that he had never involved in any sexual or indecent act with A.. According to him, A. has lied to her class teacher, police as well as to the Court under oath. Moreover, the defendant testified that on all those dates mentioned by A., there were other people at home. It is also the presumption of the defendant that A. is fabricating these stories hoping that if the defendant punished, she would get all the freedom she wanted to. In cross- examination, the defendant admitted that on the night of the 29th May, 4th June and during the day of 30th June 2000, his wife was not present at home. He also recalled that the 29th May was a rainy day and A. was sleeping in her bed. According to him, the bed was not in her bedroom but it was in the living room. On the 30th June, at 11 a. m A. was not alone in the living room. That time, one of the defendant's nieces by name Samia was also watching television with her. In the circumstances, the defendant testified that he never committed any sexual or indecent act against A.; nor had the opportunity, nor time, nor circumstances to commit those acts.

DW1, Dova Jeremy, the wife of the defendant testified that she was not present at home when the alleged incidents happened. Therefore, she could be of no assistance to the defence. However, she stated that after the alleged incidents, she left the defendant and went to live with her mother. The defendant is now living in concubinage with another woman in his house at

Anse Aux Pins. In the circumstances, the defendant contended that the whole case has been concocted against him by A., as she is very intelligent, cunning and capable of making up such stories to penalise him.

Before one proceeds to examine the evidence adduced by the prosecution, it is important to examine the provisions of law relevant to the offences the defendant now stands charged with.

As I see it, the offence under count 1, is referred to in the charge as “sexual interference” as it is so termed in the marginal notes inserted at the side of Section 135(1) of the Penal Code, although no such term is used in the text of the section. It should be noted that the weight of the authorities is to the effect that marginal notes are not parts of the statute and so should not be considered, for they are inserted not by legislature nor under the authority of legislature but by irresponsible persons. See, *Uddin V. Associated Portland Cement Manufacturers, Ltd* [1965] 2 Q. B 582.

This section reads as follows:

135. (1) Any person who commits an act of indecency towards another person who is under the age of fifteen years is guilty of an offence and liable to imprisonment for 20 years.
- 2) A person is not guilty of an offence under this section if at the time of the offence the victim of the act of indecency was –
- (a) fourteen years old or older and the accused had reasonable ground to believe that the victim was over fifteen years old; or

(b) the spouse of the accused.

(3) A girl under the age of fifteen years cannot in law give any consent which would prevent an act being an assault for the purposes of subsection (1):

Provided that it shall be a sufficient defence to a charge under that subsection if it shall be made to appear to the court before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of fifteen years.

Section 151 A (1) of the Penal Code reads thus:

A person who has sexual intercourse with another person of the opposite sex when the person knows that the person and that other person are closely related by blood is guilty of an offence and liable to imprisonment for 3 years.

2) A person is closely related by blood to another person if –

(a) in the case of a man, the other person is the grandmother, mother, sister, half-sister, daughter or grand-daughter of the person;

(b) in the case of woman, the other person is the grandfather, father, brother, half-brother, son or grand-son of the person.

To constitute an offence under Section 135(1) above, the prosecution has to prove the following elements obviously, beyond reasonable doubt.

- (i) The defendant committed an act of indecency towards the complainant;
- (ii) The complainant was under the age of fifteen years; and

(iii) The complainant was not the spouse of the defendant.

To constitute an offence under Section 151 A (1) above, the prosecution has to prove the following elements.

- (i) the defendant had sexual intercourse with the complainant; and
- (ii) the defendant knew that the complainant was his daughter

Be that as it may. Coming back to the evidence in the present case first of all, I should state that I keenly observed the demeanour and deportment of both witnesses for the prosecution in this matter. Both appeared to be very credible. I believe both of them in every aspect of their testimony. The entire evidence adduced by the prosecution is reliable, consistent and cogent in all material particulars, necessary to constitute the charge levelled against the defendant on count 1 in this case. To my mind, simply based on the credible evidence of the complainant alone this Court can safely conclude that the defendant committed the act of indecency against the complainant A., knowing well that she was his daughter. Especially, the dates and time of the commission of the alleged acts, repetition of those acts by the defendant, the psychological/behavioural changes of the child as observed by the teacher during the relevant period, the complaint made by the child to her class teacher at the earliest opportunity and all these facts are consistent and corroborative. Although the complainant was of tender age at the time of the commission of the alleged offence, the evidence she gave was consistent, reliable and clinching as to the sequence of events that constitute the commission of the alleged offences by the defendant. I totally believe A. in her testimony relating to the three incidents. On the contrary, I do not believe the defendant in any aspect of his testimony in defence. In my

judgment, I am sure that A. is not a girl, who would concoct stories of this nature and compose a tragedy in her mind with so many intricate details against her father for being refused permission to a picnic.

On evidence, I find that the intentional repeated acts of the defendant towards the complainant, in all three episodes constitute the element of indecent acts so to say, acts of gross indecency. These acts indeed, speak for themselves. As regards the element of age admittedly, the complainant was under the age of fifteen years; she was not the spouse of the defendant. Since the complainant was under the age of fifteen years at the time of the offence, she cannot in law give any consent which would prevent an act being an assault for the purposes of subsection 135 (1) supra. Hence, I find the prosecution has established all the necessary elements to constitute the offence under count 1, against the defendant in this matter.

Coming back to the alleged offence of incest, under count 2, it is true that the complainant is the daughter of the defendant. At the same time, it is necessary for the prosecution to prove the element of "sexual intercourse" whether natural or unnatural to complete the offence of incest under Section 151 A (1) against the defendant. It shall not be necessary to prove the completion of the intercourse by the ejaculation or emission of seed, but the intercourse shall be deemed complete upon proof of penetration only. However, in the present case, there is no clear and direct evidence on record to show there was indeed, penetration by the defendant or for the proof thereof. Although the complainant noticed bleeding from her private part during the first episode of indecent act, she did not tell the Court whether it was caused by penetration or otherwise. The Court cannot in the

circumstances, draw only inculpatory inference against the defendant to the effect that it was only penetration that could have caused the bleeding, while there could be other possible causes for such bleeding. Therefore, I find there is no sufficient and strong evidence on record to prove beyond reasonable doubt that the defendant had sexual intercourse with the complainant at the material time within the meaning, which the law attributes to the term “sexual intercourse” referred to, in Section 151 A (1) of the Penal Code. Hence, I dismiss the charge under count 2 and acquit the defendant accordingly, that is, of the offence of incest.

Particularly, in sexual offences, although it is not a rule of law, as a matter of practice, it is desirable to look for corroboration. See, *Camille vs. R.* (1973) SCAR p.83. However, this proposition should never be misinterpreted to mean that an accused person charged with a sexual offence cannot be convicted on the uncorroborated evidence of the complainant. In the case of indecent assault, corroboration is not required when there is evidence by an independent eye-witness vide *R vs. Rose* 1972 No. 13 SLR. Indeed, an indecent assault is an assault accompanied with circumstances of indecency on the part of the accused. An assault accompanied by word or circumstances evincing an indecent intention is an indecent assault. It has been held in *R Vs. Fred* No. 2 (1974) SLR that in cases of indecent assault, the evidence relating to the assault need not be corroborated.

In any event, I warn myself of the danger and am also aware of the desirability for corroboration in offences of this nature, but I am sure that A. was speaking the truth and the whole truth to the Court in this matter. Hence, I attach the highest degree of credibility to her evidence on all three

incidents of indecent assault by the defendant. I also find that A. has not concocted this story to incriminate her father falsely in this case.

In the final analysis, having considered the whole of the evidence, I am satisfied that prosecution has proved the charge beyond reasonable doubt against the defendant on count 1. Therefore, I find the defendant guilty of the offence of sexual interference contrary to section 135(1) of the penal Code and convict him of the offence accordingly.

.....
D. Karunakaran

Judge

Dated this 30th day of November 2005