The Judiciary

The Superior Court

Jurisdiction of Kordofan States

Criminal Circuit

H. E/Ali Alshareef Dowalbeit, President

H. E/Dalya Basheer, Member

H. E/Adam Ismail Adam, Member

Trial of: Azzedine Abdallah Nasrallah

Serial no. M A/ DWK/TG/24/2017

Judgment

First Legal Opinion:

On 6/11/2016, the juvenile Court in Elobied, convicted the accused/ Azzedine Abdullah Nasrallah, under Article 45/C, of the juvenile Code of 2010, and sentenced him to 10 years in prison as of 6/11/2016 as well as a fine of 3.000 pounds, and in case of failure to pay, he was to be imprisoned for further four months, all to be spent consecutively.

The convicted individual did not accept the ruling and appealed, supported with his reasons, to the court of appeal in North Kordofan, who presently issued its ruling upholding the earlier verdict in its entirety, on 28/11/2016.

However, the ruling by the court of appeal did not satisfy the convicted, so, through his lawyer, he filed this appeal on 3/1/2018. Yet, in the records (proceedings) I did not come across a notice that notified the convict of the ruling against him by the court of Appeal.

Therefore, the date of request of appeal is the date the appellant came to know of the verdict by the Court of Appeal. Hence, the appeal is accepted pro forma.

As regards the subject:

Reasons for appeal

The Court of First Instance erred in convicting the accused based on the testimony by the witness that was not taken under oath.

The plaintiff and the accused had had a long running dispute over inheritance involving the house of the family. The plaintiff recounted that on lengthy detail, including issues that were irrelevant to the case.

A lot of doubt surrounds the results obtained from the Forensic medicine, as the incident took place on 5/3/2016. Besides, the victim's conduct had not been investigated.

The doctor in charge did not state his rank

The lack of credibility on the side of the prosecution's witness, who had had personal interest, and did not reside in the house in question, as he stated that he had not seen the accused on the night of the incident at home.

The accused's presence in the house was not a solid evidence that he had committed the crime. He was there visiting his family and he did not meet the victim.

The investigation was inadequate as the crime scene was not inspected after the detective's visit to check the presence of material evidence.

The appellant requested the annulment of both rulings by the court of first instance and that of the court of appeal, and that they were to be substituted by a court order that cancelled the case and released the accused.

Facts

The facts are summed up in that the victim (Rwaa) had been at home alone - or in the company of her younger siblings. Her mother had been out to a funeral house near the family's home.

The accused, who was Rwaa's uncle, her father's brother, came in. Rwaa's little brother had thrown her sandals into a deserted room, so she went in to fetch it. Seeing her, the accused followed her into the room. He pinned her to a wall and put his hand on her mouth threatening her. He then took off her underwear and inserted his penis inside her vagina. Suddenly he heard her father's voice who had just arrived home, talking on the phone. The accused threw her clothes and dictated to her to tell her father if - asked about being in that room - that she had been bitten by an ant and that she had gone into that room to take off her clothes to get rid of the ant. The accused then left passing by his brother, the victim's father. The father then found his daughter in the deserted room, hurriedly trying to put on her underwear looking frightened and discomposed. When her father asked her, she began to stutter. His voice went louder as he called out for his other brother, Hanafi, who had been watching TV in his room. So, when her uncle asked her, she told him that her uncle had had sex with her. The father and the uncle noticed some wet stuff on the victim's clothes, so he called the accused, but the latter's phone was turned off. Then the plaintiff took his child to the Family and Juvenile Affairs dept. at the police station. A suit was filed, and the victim was taken to hospital where it was proven that she had been sexually abused.

A sample was taken from her clothes and her vagina and was sent to the Forensic Medicine lab which affirmed the presence of semen in her clothes. Two days later the accused was arrested, and due procedures were taken against him. Then, he was tried and was convicted by the Court of First Instance, and the ruling was upheld by the court of appeal.

Having gone through the records of the trial and all the evidences and detective's journal, and the rulings of the lower courts and their reasons, and the appellant's request and his reasons, I approve of the rulings by the lower courts.

The crime of abuse and all sexual crimes against children are proven by the victim's statements that are supported by medical evidence that establishes assault against the victim's sexual private parts, and, by the presence of any marks caused by the assailant. They are also proven by the immediate informing of the assault by the victim, as well as by the presence of the semen on both the victim's and the assailant's body.

In this case, the victim affirmed that the assailant was her uncle, her father's brother, and soon the presence of both her father and her uncle Hanafi, and that the medical report ascertained the sexual assault although her hymen was not removed. And the forensic lab affirmed the presence of semen on the child's clothes.

All that was supported by the actual presence of the accused at that very same time in the house and his leaving in such a hurry and his being discomposed and uneasy as he heard the father's voice talking to a friend on the phone.

And what the plaintiff stated that he found the victim trying hurriedly to put on her clothes and that she looked frightened and disturbed, making him feel that some unusual thing had happened. All that clearly affirms that the assailant had sexually abused her.

As for the feud the accused had spoken of, it could not be termed as feud, but as mentioned by the lower courts, it was a normal dispute that arose in most cases of inheritance and would easily be settled in Sharia'a courts, whether those residing in the house liked it or not. And that it was not a plausible reason for the plaintiff to thrust his daughter, her reputation and future, into this case, and, it is not a rational thing for him to do it out of spite, putting his daughter through such a position, the negative consequences of which will only be detrimental to his daughter and not his brother.

Regarding what was mentioned by the appellant about the testimony given by the witness Hanafi, we reply that what Hanafi had concealed, depicted a desperate attempt on his side to distance his brother from the accusation. However, his testimony was not the evidence that led to convicting the accused, but it was in support of other evidences presented by the prosecution.

It is true, that the accused's presence in the house did not constitute a crime - had it been in normal circumstances, , but it was associated with fear, discomposure and hurriedness where a recent crime was discovered, the results of which were witnessed by both the plaintiff and the witness Hanafi; the victim is in a state of fright with her clothes wet with semen.

And, regarding the report issued by the criminal lab, there can be no appeal against it at this stage as it was shown to the accused and he couldn't reject it or appeal against it (see page 8 of the record) And the appellant's saying that the sample was sent a week later, was refuted by the detective who affirmed that it was sent on the date it was taken, on the date of filing the charges.

Hence, I see that the evidence presented was enough to associate the accused with the crime, unequivocally. And, as the victim was a child in the sense of the Juvenile Code and based on the facts presented in the medical report and that of the forensic lab, it is established that the accused had perpetrated a sexual act upon the body of the victim that did not amount to adultery. And as stated by the Court of First Instance: had it not been for the arrival of the plaintiff at that very moment saving his daughter, a rape crime could have happened, if he had been a bit later. Hence the conviction was valid under Article 45/C of the Juvenile Code of 2010.

As for the punishment, if this court could intervene, it would have. It was incumbent to consider the victim as the assailant's (Mahram), and the assailant's act was an attempt to commit incest under Article 150 of 1992, a circumstance that should call for severer punishment, and calls on the court to hand down the maximum punishment. But, as the punishment is discretional of the Court of First Instance, this court should not interfere with it unless it was in violation of the law which is not present in this case. Therefore, I decide that we settle for not interfering. And, if my colleagues in the venue should agree with me, we decide:

1-upholding the whole of the ruling.

2-all parties be notified of the ruling

Dalya Basheer Siraj

Supreme Court Justice.

22/1/2017

Second opinion: Agree

Adam Ismail Adam

Supreme Court Justice

22/1/2017

Third opinion; agree

Ali Alshareef Dowalbeit

Supreme Court Justice

23/1/2017

Conclusive opinion;

1- Upholding the ruling.
2- All parties be informed of the ruling.

Ali Alshareef Dowalbeit

Head of the Criminal Circuit/ Supreme Court

Greater Kordofan States.