

In the name of God the most gracious the most merciful

**NATIONAL SUPREME COURT**

**Central States & Gadarif Circuit**

**Before:**

<b>Abdel Raheem Abdulwahab Altuhami</b>	<b>Head</b>
<b>Mohamed Al Tirifi Mohamed</b>	<b>Member</b>
<b><u>Alwa Ali Sarbel</u></b>	<b><u>Member</u></b>

**No. 204/2014**

**Criminal Circuit**

**TRIAL**

**Abdulla Obaid Mohamed Ahmed**

**Memorandum**

This is an objection by way of Cassation against the judgment issued by Al Gezira State Court of Appeal, as per its pleading No.: 25/2014, which decided to cancel the review application submitted by the advocate/ Abdul Aziz Mohamed Saeed, on behalf of the victim's guardian (Iamia Musa Dafaala) who has accused Abdulla Obaid for practicing sex with the victim who got pregnant contrary to Sharia Law. The accused appeared before the Child Court at Madani and after hearing accusation evidence, the court decided that accused is innocent, as there are no evidences that connect the accused to the charge attributed to him. The Court of Appeal has upheld this judgment. The guardian of the victim has submitted an objection.

The objection was submitted within the legal time; therefore, it is admitted in form.

As to its subject, the guardian of the victim states in his objection pleading that, the criminal case he submitted against accused was not sufficiently investigated, and that the performance of the police, public prosecution, child prosecution and the lawyers were weak and prevented the right of the victim in a fair trial. After he showed his anger to all prosecution bodies, he stated that, the evidence of the case, mentioning the victim's statement, the second accusation witness (Sara) statement and the third accusation witness (Mahdi) statement. As to the addition made by the advocate, which had taken most parts of the pleading, it was mere nonsense, a fight upon whether the victim had or had not reach the age of puberty, which was concluded by the fact that the victim is a child, whose consent cannot be counted, pursuant to the Child Act 2010 and has omitted the crucial question relating to whether

accused has committed the physical act, which constitutes the basic element of the crime, namely; practicing sex with the victim, as before answering this question, talking about consent will be useless.

Reference is made to the objection pleading, the reasons included therein and those added, the accusation has relied on circumstantial evidences such as, the accused and the victim had met in the house of Sara, from the accusation witness. On the day on which the accusation relied as being the day on which the offence has been committed, the witness went out to the grocery and left the accused and the victim alone inside the house. The offence took place immediately after she went them together. The witness denied this incident conclusively stating that, she has never left the house leaving the accused and witness inside alone, yet she confirmed that she closed the house as usual and nobody was there. The accusation also relied on the fact that there is love relation between accused and the victim, which, even if proved, will not relate accused to this offence. The appellant stated that the accused spoke about a settlement while he was detained and denied that, even the witness who mentioned this incident, stated that the purpose of the accused's confession was conciliation. However, the investigator did not mention that the accused had made any confession while he was in the police detention. All these facts weaken accused's confession.

As to the statement that, the investigator, public prosecution and the Court did not refer accused to the Criminal Laboratory to be checked by DNA, the accusation could have request this medical checkup even during the trial stage, however, this request was not made and this reason has not been raised before the Trial Court or the Court of Appeal, therefore, it cannot be raised for the first time before the Supreme Court and it does not relate to the Public Policy. As it was not raised before, it has not been decided by the lower courts, therefore, accusation was based on mere feelings, which were not supported by facts or at its best face, mere probabilities which do not conclude that accused has committed the offence attributed to him. The Supreme Court has clearly established that, conviction shall be established on conclusive and definite evidence and not on guessing, that any doubt shall be interpreted to the benefit of the accused while innocence can be based on doubt. Deciding a person innocent does not require conclusive evidence, while conviction requires a conclusive evidence. This means that, if the Court is hesitant between innocence and conviction, and there seems to be doubt, the Court shall favor innocence and issue its judgment accordingly and according to Sharia principles, which was followed by legislation which have decided the same principle by stating (no body shall be convicted if the theory of his guilt is no more than the theory of his innocence) .

Based on the above, I believe the reasons for objection and the reasons added thereto do not vitiate the contested judgment which upheld the judgment issued by the Trial Court, therefore, the objection shall be rejected.

Mohamed Al Tirifi Mohamed "signed"

Judge at the Supreme Court

21/05/2014

Abdel Raheem Abdulwahab Altuhami "signed"

Judge at the Supreme Court

23/09/2014

Alwa Ali Sarbel “signed”

Judge at the Supreme Court

24/09/2014

**Final Order:**

Objection ejected.

Contested judgment upheld.

Abdel Raheem Abdulwahab Altuhami “signed”

Judge at the Supreme Court

Head of the Circuit

26/09/2014