

**REPUBLIC OF CAMEROON**  
**IN THE NAME OF THE PEOPLE OF CAMEROON**  
**“JUDGMENT”**

**PART 1: THE HEADING**

**IN THE HIGH COURT OF FAKO DIVISION**  
**HOLDEN AT BUEA**  
**BEFORE HIS LORDSHIP JUSTICE MBOGE WILSON EBONG NGOLE**  
**WITH HIM Me TOUKAM JUSTINE AS REGISTRAR-IN-ATTENDANCE**  
**THIS TUESDAY THE 13<sup>th</sup> DAY OF MARCH 2018**

SUIT N<sup>o</sup> HCF/003C/2017  
JGT N<sup>o</sup> HCF/CRMJGT/028/18

**BETWEEN**

THE PEOPLE OF CAMEROON -----COMPLAINANT

VS

NASSARA DOUMADJI ALEXANDRE .....ACCUSED

**PARTIES:** Accused present. Prosecution witnesses all absent.

**CHARGE:** Indecency to child under sixteen and simple harm punishable by S.346(4) and 281 of the Penal Code.

**APPEARANCES:** Magistrate Emmanuel Kilo Ngwa for The People of Cameroon.

**PROSECUTION WITNESSES:** NONE

**DEFENCE WITNESS:** NONE

**COURT NOTE:** Judgment delivered in open court.

## **PART II- THE REASONING**

The accused is charged on a two count charge with two offences to wit: indecency to child under sixteen contrary to section 346(4) of the Penal Code and slight harm contrary to section 281 of the Penal Code.

On arraignment the accused pleaded not guilty to both counts of the charge and the prosecution called two witnesses to prove his guilt.

The first prosecution witness was Ngwa Regina, the victim of the offence. She informed the court on oath that she was a class three pupil of Government Primary School Mudeka. The accused is their neighbour in Buea.

On a certain day her mother left her at home with her siblings and went out to buy airtime for her phone.

The accused is occupying a flat in the same building where her family is living. In the absence of her mother the accused asked her to wait for him in a building housing a pit toilet. Later the accused joined him in the toilet. The accused then removed the pair of jeans trousers she was wearing. After undressing her the accused removed his own pair of trousers. The accused had sexual intercourse with her by inserting his penis into her vagina. As a result of the intercourse, she bled. During the intercourse the accused used his right hand to gag her.

After the incident the accused threatened her with death if she revealed to anyone what he had done to her. When the incident took place she was at home with her two younger sisters who are in class two and nursery two respectively. The incident took place in the night. After the incident she went to her bedroom and slept. In the morning at about 5 am she felt pain in her abdomen so she complained to her mother; she informed her mother that the accused was responsible for the pain she felt in her abdomen. She and the accused were taken to the Quarter Head's Compound. Thereafter she was taken to the hospital where she consulted a medical doctor who examined her and issued her with a medical report.

Under cross-examination she said that she bled from her anus. She said that she did not feel pain when the accused inserted his penis in her anus. She insisted that she made a complaint to her mother the day after the incident took place.

Under re-examination by the Learned Prosecuting Counsel she maintained that the accused inserted his penis in her anus and not in her vagina.

The second prosecution witness was the mother of the victim, Grace Euge. She informed the court that she trades in clothes and she was resident in Kumba. She told the court that on 10/08/16 she left her flat at Small Soppo, Buea where she was living with her friend and younger sister to buy airtime for the phone beside the main road. She also left her children including the victim of the offence in her flat. When she returned to the house PW1 and her siblings were already asleep. The next day she travelled to Mudeka and left her children in the care of her friend, Jessica. On 23/08/16 the victim of the offence when out of the house and complained that she was feeling pain in her vagina.

The victim of the offence explained that the accused inserted his organ which he uses to urinate into her vagina. She reported the matter to the Quarter-head who advised her to take her daughter to the hospital. She took PW1 to the hospital where PW1 consulted a medical doctor who examined her. When she and PW1 left the hospital she lodged a complaint at the police station where a statement was recorded from her and PW1. The statements of PW1 and PW2 were received in evidence as exhibit 'C' and 'C1' respectively. Two medical reports issued to PW1 on 23/08/16 were also received in evidence as exhibit 'A' and exhibit 'A1' respectively. A copy of the 1<sup>st</sup> PW's hospital consultation exercise book is in evidence as exhibit 'B'. PW2 informed the court that she had spent about 200.000 FCFA for the treatment of PW1. She said PW1 had a wound in her vagina that necessitated treatment.

Under cross-examination PW2 told the court that PW1 informed her that she was raped by the accused about 4 days after the incident. In her absence her friend, Jessica looked after PW1. Jessica told her that PW1 complained of pain in her abdomen but she did not know what was happening to her that is why she did not make a report of the matter. Jessica told her she saw blood in the toilet where PW1 was raped. She said PW1 did not tell anyone that she had been raped. She was in Mudeka when the incident took place. Later on she said that she went to the roadside to buy air time for her cell phone. She spent two hours beside the road buying air time for her cell phone. By the time she returned to her apartment after buying air time for her cell phone the incident involving the accused with her daughter had taken place and her daughter was asleep. She lived in her apartment with her friend and her 4 children. When she left her apartment for the roadside to look for air time her children and friend were already asleep.

Her daughter was aware that she was going to the roadside to buy air time for her mobile phone. The time was 8 pm when she left her flat. She denied the suggestion that the story that the accused raped PW1 was trumped up and the contents of the medical reports were narrated to the doctor by her.

At the close of the case for the prosecution the accused was found to have a case to answer. Barrister Lohtabu Evans, Counsel for the accused, informed the court that the accused would give evidence on oath and had two witnesses to call to testify on his behalf the accused told the court. On 21/08/16 he left his house at about 7 am for the Mountain Hotel to visit a friend who was employed by a company renovating the hotel. While at the Mountain hotel he had a phone call from a fellow Chadian national who was also a tenant in the same building where he lived. The Chadian woman then told her that the police were looking for him because his neighbour's child had been raped and she was bleeding profusely. On hearing of the incident he returned to the compound where he was living. He went to one of his neighbours to find out what had happened. But before this neighbours could talk to him, other neighbours gathered around him and informed him that PW1 had been raped and she had informed them that he was responsible. The neighbours who informed him that PW1 had accused him as the perpetrator of the offence were PW2, the mother of PW1, and her roommate.

Thereafter the group of neighbours continued conversing in the English Language and he could not understand what they were saying. He told PW2 that he did not rape PW1. PW2's roommate showed him the 1<sup>st</sup> PW's medical report and asked him to give them the sum of 50.000 FCFA which they had spent to treat PW1. One of the onlookers took him aside and informed him that PW2 was not serious in making a complaint against him; she was interested in an amicable settlement. This officious onlooker then asked him to comply with the demands made by PW2 and her friends by admitting that he raped PW1 and paying up the amount requested by them. The onlooker who suggested that he should settle the matter amicably then left him and went to the spot where PW2 was and held a classroom with her. After the discussion PW2 then approached him. She questioned him whether there had been no incident between him and PW1. When he narrated an incident when PW1 asked him to give her money and thereafter followed him to the toilet where he had gone to urinate. At the toilet PW1 continued begging him for money as he was standing at the door of the toilet and urinating. When PW1 stretched her hand from behind and touched the front part of his trousers he cautioned her. PW1 then told him he would make a complaint to PW2 against him. On hearing this story most of the onlookers concluded that he raped PW1. PW2 and her roommates then warned him that if he did not

pay the sum of 50.000 FCFA the matter would be reported to the police. He told PW2 that he would prefer that a complaint be lodged against him at the police station than to admit that he raped PW1 and pay the sum of 50.000 FCFA as compensation for his crime. He was taken to the quarter head's compound where he repeated what he had said earlier that he would prefer the matter be reported to the police than to admit that he committed rape and pay the sum 50.000 FCFA to PW2. They left the Quarter-head's compound for the police station of the Mobile Intervention Unit. On the way PW2 and his roommates told him they were compelled to make a complaint against him because of the attitude of a certain Chadian woman who was living in their compound. PW2 and her roommate complained that the Chadian woman was arrogant, disrespectful and stubborn.

Under cross-examination he admitted that he made two cautioned statements to the police which are in evidence as exhibits 'E' and 'E1'. He maintained that a complaint was made against him because he did not pay the sum of 50.000FCFA requested by PW2 and her roommate.

Under re-examination he said the dispute he had with PW2 stemmed from the fact that he refused to be PW2's boyfriend and also refused to give her money.

One Mongombe Ngeke, a retired state agent who is resident at Small Soppo testified as the first defence witness. He informed the court that he was a caretaker of the building where PW2 and the accused were tenants. According to this witness, in spite of the fact that PW2 and her children were living in a building in his care he met PW2 and her family for the first time when it was reported to him that a child had been raped in the said building. The evidence of this witness painted PW2 and her roommates as women living a lifestyle of squator and promiscuity. He had overheard the accused complaining to a Chadian woman living in his compound that PW2 and his friends wanted to seduce him. He wanted to resolve the dispute between the accused and PW2 concerning PW1 but PW2 and the father of PW1 insisted that the accused had to pay the sum of 4 million francs to them for the dispute to be settled amicably.

The 2<sup>nd</sup> witness for the defence, Elizabeth Liengu, told the court that she was a seed maize producer resident at Small Soppo, Buea. Sometime in August, 2016 she was returning from Clerk's Quarters when she met a woman who informed her that a child had been raped in the compound where the accused was living. The woman who informed her of the incident took her to the flat occupied by PW2, her friends and PW2's children. She met two young women and three children in the flat. One of the young women pointed at a 6-year-old girl as the victim of the offence. She was informed that the offence was

committed a week previously. Under cross-examination this witness said ironically that she lived in Small Soppo and the accused did not commit the offence.

The foregoing is a summary of the evidence on which the prosecution is inviting me to convict the accused of the offences of Indecency to Child under sixteen contrary to section 346(4) of the Penal Code and Slight Harm contrary to section 281 of the same code. It is alleged in Count One of the charge preferred by the learned examining magistrate inter alia that the accused had sexual intercourse with PW1, a child aged seven and thereby committed an offence contrary to and punishable under section 346(4) of the Penal Code. It is also alleged in count two of the charge that at the same time and place by the use of force he caused to PW1 a minor inability to work lasting for 21 days, thereby offending the provision of section 281 of the Penal Code.

As concerns the offence of indecency to child contrary to section 346(4) of the Penal Code with which the accused is charged in count one, the evidence of PW1, the victim of the offence, in her examination in chief is that the accused penetrated her by inserting his penis into her vagina. However, when she was giving evidence under cross-examination she told the court repeatedly that the accused penetrated her through her anus. The evidence of PW2, the mother of PW1, is that her daughter complained to her that she was raped by the accused and she had a wound in her vagina. The legislator has .....the term 'in case of rape' in section 346(4) of the Penal Code the section under which the accused is charged in count one.

Moreover, it has been alleged in the charge in count one that the accused had sexual intercourse with PW1. It follows that the question whether the accused had sexual intercourse with PW1 is material in determining the guilt or innocence of the accused in count one of the charge. It is clear that the evidence adduced by the prosecution on this point is marred by inconsistencies and contradictions. The evidence of PW1 in her examination in chief that the accused penetrated her through her vagina is inconsistent with what she said under cross-examination. The 1<sup>st</sup> PW's evidence under cross-examination on the issue of sexual intercourse also contradicts the evidence of PW2 that PW1 told her the accused had sexual intercourse with her and she had a wound in her vagina. It is trite law that contradictions of evidence of witnesses may not necessarily be fatal to a case especially when they are minor and did not materially affect the fundamental and crucial issues. However, where contradictions or inconsistencies in the evidence of witnesses are material to the proof of the ingredients of an offence, they are fatal to the case of prosecution. See *ATIKU v. STATE* (2010) A NWLR (PT 1199) 241.

It is also trite law that where there are contradictions in the evidence of the prosecution witnesses on a material fact such contradictions ought to be explained by evidence by the prosecution. In the absence of such an explanation for such contradictions, the court cannot speculate on imagined explanation for such contradictions and proceed to choose which of the witnesses or versions to believe. In the present case I am unable to choose which of the two versions of PW1's evidence under examination in chief. I am also unable to choose between the testimony of PW1 under cross-examination and the 2<sup>nd</sup> PW's testimony as to the nature of the assault inflicted on PW1 by the accused.

Apart from the fact that there are material inconsistencies or contradiction in the prosecution's case as to whether there was sexual intercourse or buggery between the accused and PW1, the evidence of PW2 as to her whereabouts when the incident took place is also marred with inconsistencies and contradictions. The evidence of PW2 as to why she noticed that PW1 was raped one week after the incident when they were living in the room does not lend credence to the prosecution's case. PW2 told the court that when the incident took place she was at the roadside to buy air time for her phone and then in the same breath told the court that she was at Mudeka at the time of the offence. I find it hard to believe that PW2 could not discover that her daughter was raped because she was a petty trader who was moving from place to place to sell her wares. Even if she did not notice it what about her roommate who remained in her flat in her absence. Why did her roommate not notice any abnormality in PW1. Why was she not called as a witness for the prosecution. The answers to these questions would have helped to elucidate what happened between the accused and PW1. In the upshot I find it unsafe to convict the accused of the offence of indecency to child contrary to section 346(4) of the Penal Code as charged in count one. He is therefore discharged and acquitted in count one.

As regards count two which accuses the accused of causing slight harm to PW1 contrary to section 281 of the Penal Code it is alleged in the charge that the offence was committed at the same time and place as the offence of indecency to child for which the accused has been acquitted. Since the evidence adduced by the prosecution to prove the offence in count one is inconsistent and contradictory, I hold that it would be unsafe to rely on the same evidence to convict the accused of the offence of slight harm contrary to section 281 of the Penal Code.

That being the case, the accused is hereby discharged and acquitted on count two of the charge.

**REGISTRAR-IN-ATTENDANCE**

**PRESIDENT**