IN THE HIGH COURT OF SIERRA LEONE

CRIMINAL JURISDICTION

THE STATE

V

JOSEPH PHILIP MAMIE

COUNSEL:
A SESAY ESQ State Counsel, for the State
A I SESAY ESQ for the accused person

BEFORE THE HONOURABLE MR JUSTICE N C RBOWNE-MARKE,
JUSTICE OF APPEAL
JUDGMENT DELIVERED THE 12 DAY OF DECEMBER,2011.

INTRODUCTION

1. The accused person is charged on a one Count Indictment with the offence of Rape. The particulars of the offence allege that on 8 September,2010 at Freetown in the Western Area of Sierra Leone, the accused person had carnal knowledge of Fanta Jabbie, without her consent. The particulars have been drafted in accordance with Form No. 4 in the Appendix to the Indictment Rules in the 1st Schedule to the Criminal Procedure Act,1965 (CPA,1965). Carnal Knowledge is the archaic description of sexual intercourse. So, in ordinary parlance, the allegation is that the accused had sexual intercourse with the complainant/victim, without her consent.

RAPE

2. Rape is defined in ARCHBOLD 35TH Edition at paragraph 2872 as having sexual intercourse with a woman without her consent, by force, fear or fraud. To constitute the offence of Rape, there must be penetration, even though the slightest penetration will suffice. Section 63 of the Offences against the Person Act,1861 (OAPA,1861) which still applies to this area of the Law provides that "*Whenever, upon the trial for any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed*

in order to constitute carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only." There is no dispute in this case about whether there was penetration or not. By the separate accounts of both victim/complainant, and accused, there was full penetration, and full intercourse.

3. Notwithstanding, the reference to Section 63 of the OAPA,1861, Rape is still largely a Common Law offence in Sierra Leone, though Section 48 of the Act of 1861 provides the punishment. It states that: "*Whosoever shall be convicted of the crime of Rape shall be guilty of felony, and being convicted thereof shall be liable..."* to imprisonment for life. Whether Rape has been committed or not, is in our jurisdiction, a matter dealt with by the Common Law.
4. As regards consent, it must be given bona fide by a rational person who knows the nature of the act consented to. Prior to 1981, it used to be thought that the prosecution in a case of Rape had to prove that that the consent of the victim of the sexual intercourse was vitiated by force, the fear of force or fraud. This is the position apparently canvassed in paragraph 2881 of ARCHBOLD 35th Edition. But in the case of R v OLUGBOJA [1981] 3 All ER 443 CA per DUNN,LJ at pages 448-449 explained that Consent under the Sexual Offences 1956 as amended in 1976 was merely declaratory of the Common Law, following the recommendations of the Criminal Law Revision Committee. At page 448 paras e-f DUNN,LJ says: "*....Accordingly, so far as the actus reus is concerned, the question is now simply: at the time of the sexual intercourse did the woman consent to it? It is not necessary for the prosecution to prove that what might otherwise appear to have been consent was in reality merely submission induced by force, fear or fraud, although one or more of these factors will no doubt be present in the majority of cases of rape. At paras h-j, the Learned Justice of Appeal states that: "..... They (i.e. the jury) should be directed that consent, or the absence of it, is to be given its ordinary meaning and if need be, by way of example, that there is a difference between consent and submission; every consent involves a submission; but it by no means follows that a mere submission involves consent...." and at paras a-b on page 449: "....Apparent acquiescence after penetration does not necessarily involve consent, which must have occurred before the act*

takes place...." and lastly, at para e on page 449: *"...The appellant was determined to have sexual intercourse with her. She was kept at the bungalow against her will until she submitted, although no force was used or threatened. In those circumstances the jury were fully justified in coming to the conclusion that she did not consent. The appeal is accordingly dismissed."* This was a case in which the victim, Jayne, had made a complaint to her mother about the Rape committed by a friend of the appellant, Lawal, but not about the Rape committed by the appellant. In fact, she told the Police about the Rape on her by Lawal, but said, at first, the appellant had not touched her.

RECENT COMPLAINT

5. Another legal issue which is of importance in cases of this nature, is that of recent complaint. Usually, the Rule against Narrative, or the Rule against Previous Consistent Statement, prohibits a witness while testifying, from narrating what he has said to another person, out of Court, or another occasion. Admission of such evidence might become self-corroboration; the witness will merely be saying to the Court, you must believe what I now say in Court, because I have said the same thing to another person, say, a few days ago. Recent complaints of sexual assaults or Rape, are of the same nature. But they are admitted, not to provide corroboration of the victim's evidence, but to show consistency: that what she now says in Court is not of recent invention, and also, in order to negative consent. Commonsense dictates that a complaint will not be made in the ordinary case where there has been consensual sexual intercourse. LILLYMAN [1895-99] All E R Reprint 586 and the cases which have followed thereafter, reaffirm this position of the law. The Learned Editors of BLACKSTONE'S CRIMINAL PRACTICE, 2003 Edition opine at para F4.16 page 2044 that: "*...In so far as complaints are admitted as tending to negative consent, it is submitted that they are not admitted, as if by way of exception to the hearsay rule, as evidence of lack of consent, but merely as evidence of consistency with the complainant's evidence, if given, as to lack of consent.*"
6. The Learned Editors opine further, citing the case of WHITE [1999] AC 210 as authority, that: "*...if the person to whom the complaint was made does not give evidence, the complainant's evidence that she complained*

cannot show her consistency or negative consent because, in the absence of independent confirmation, her own evidence takes the jury nowhere in deciding whether she is worthy of belief." This opinion will become of importance later, when I shall go on to deal with the making of the complaint by PW1.

7. As to the timing of the complaint, the authors opine in the same para F6.14 on page 2045: "*In order to be admissible, a complaint must be made 'at the first opportunity after the offence which reasonably offers itself.... This is a matter to be decided by the Court in each case. ... Thus, although complaints have been excluded if made after a day, ...or three days,.....a complaint made after a week has been admitted. Account should be taken of the fact that victims, both male and female, often need time before they can bring themselves to tell what has been done to them. Moreover, whereas some victims find it impossible to complain to anyone other than a parent or member of their family, others may feel it quite impossible to tell their parents or members of their family.....*" This last sentence is, a quotation in part from the judgment of the Court of Appeal in VALENTINE [1996] 2 Cr App R 213 at page 224 para C per ROCH,LJ, a case, to which I shall now turn.
8. In VALENTINE, the rape took place while both victim and accused were walking through a park after midnight. A knife was pulled out by the accused, and during the course of a struggle, with the victim, the victim cut herself. On arriving home, she went to sleep. In the morning, she complained to her brother that she had been attacked with a knife. She told him, she did not want to tell her parents. She went to work. Later, that same day, after work, she told a male friend that she had been raped; he advised her to report the rape to the Police. On conviction, the accused appealed, unsuccessfully, against his conviction, one of his grounds being that the complaint to the friend should not have been admitted into evidence, because it was not made at the first available opportunity. In delivering the judgment of the Court of Appeal, ROCH,LJ at page 219 para G, approved the direction given by the trial Judge in this respect: The trial Judge had directed the jury that: "*I do not think that the law requires me to say that the evidence should be excluded in those circumstances [the circumstances being that the complainant had bottled up the matter for some 24 hours] if the first opportunity could be said to*

be that opportunity where she felt able to bring herself to say it. Not every woman can bring herself to say that a man has raped her, even if she has been most cruelly raped. I think we understand that in these Courts these days, even if it was not appreciated by Victorian Judges, who started laying down this principle towards the end of the last century." At page 223 para G to page 224 paras A-B, ROCH, LJ gave the ratio for the Court's decision. He said, " *The authorities establish that a complaint can be recent and admissible, although it may not have been made at the first opportunity which presented itself. What is the first reasonable opportunity will depend on the circumstances including the character of the complainant and the relationship between the complainant and the person to whom she complained and the persons to whom she might have complained but did not do so. It is enough if it is the first reasonable opportunity. Further, a complaint will not be inadmissible merely because there has been an earlier complaint, provided that the complaint can fairly be said to have been made as speedily as could reasonably be expected..... The complaint has to be made within a reasonable time of the alleged offence and on the first occasion that reasonably offers itself for the complainant concerned to make the complaint that was made in the terms in which it was made. We now have a greater understanding that those who are the victims of sexual offences, be they male or female, often need time before they can bring themselves to tell what has been done to them; that some victims will find it impossible to complain to anyone other than a parent or member of their family whereas others may feel it quite impossible to tell their parents or members of their family." At page 225 paras A-C, ROCH,LJ says further: "From those passages (i.e. passages from the summing-up) it must have been clear to the jury that the relevance of the evidence of complaints was to enable the jury to decide whether the complainant was inventing her story and adding to it as it went along, as the defence claimed, or whether she was someone who could only bring herself to complain of the sexual element of the attack on her when she had the opportunity to speak to a trusted friend of her own age alone, as the Crown claimed,...."*

9. These excerpts from the judgment of the Court of Appeal, are important in view of the evidence relating to the complaints made, or not made by

PW1. The defence has rightly argued that none of the persons to whom PW1 said she made a complaint, was called as a witness. The evidence of a complaint being made, actually came from the accused while testifying on oath. PW1 did say she made complaints, but these persons were not called as witnesses. Whether the prosecution can rely on the accused's testimony to fill in the lacuna in their case, is a matter I shall address later. For present purposes, it is sufficient to say that if his evidence did fill in the gap, VALENTINE supports a conclusion that they show that PW1 has been consistent; that she did not consent to sexual intercourse; and that her evidence of the sexual assault ought to be believed.

10. Further, and if I accept that the reported conversation between PW1 and the journalists amounted to a complaint or to complaints, I shall still have to grapple with the question of why PW1 chose to make her complaint in the public domain, as it where. The facts of the case of R v CUMMINGS [1948] 1 All ER 551 CCA, offer an explanation. There, the complainant was taken into a field by the accused, where she was assaulted. LORD GODDARD, CJ in delivering the Judgment of the Court had this to say at page 551 para H to page 552 para A: "*In the present case the prosecutrix was brought back by the appellant in his van. She states that he told her it would be no use her complaining to the warden of the camp because the warden was a friend of his. However that may be, the fact was that the prosecutrix had only been at the camp a week. When she got back on the night in question, she did see the warden of the camp – he was up and about – but she did not speak to him..... the prosecutrix did not make any complaint to the wardens.....Nor did she complain to the girls who were living in the same hut. That again is a matter which has to be taken into account....*" The appellant's appeal was dismissed. The relevance of this citation is the evidence given by PW1 that accused told her he was a Magistrate. Did this boast of the accused operate on her mind so as to dissuade her from making a complaint to competent authorities? This is an issue I shall have to return to later.

EVIDENCE

11. I shall now proceed to deal with the evidence led at the trial. The accused took his plea before me on 31 October,2011. He pleaded not guilty to the charge in the Indictment. On 2 November,2011, pursuant to

a written Application made by the Acting Director of Public Prosecutions dated 31 October,2011, and upon hearing Mr A Sesay, State Counsel, I Ordered that the accused be tried by Judge alone instead of by Judge and jury in accordance with the provisions of Section 144(2) of the Criminal Procedure Act,1965 – CPA,1965. Also, on Application made by Mr Sesay, State Counsel, and with the concurrence of Mr A I Sesay, Defence Counsel, I Ordered that the trial be held in camera, i.e. to the exclusion of the general public, save for lawyers, their clerks and the brother and the child of the accused. This was done in the interest of justice. The complainant then proceeded to testify.

PW1 FANTA JABBIE

12. The complainant and victim, Madam Fanta Jabbie was PW1. She explained how she came to know the accused. She was now living, just a few doors away from the accused, at 61 Fort Street, Freetown. One Pa Amadu had to pay her Le500,000 for a telephone. She went to Fort Street to find him, and there, demanded payment. Some people in the vicinity begged her to give him some respite. One of them came up to her and said that somebody else wanted a phone. She went to see who this person was. It was the accused. He was standing by the gate. He asked for the phones. She showed him one. He said he wanted the Nokia phone with a steel cover, and that he wanted three of them. He told her he was a Magistrate. He said he usually buys phones. He wrote down his telephone number and address on a piece of paper which he gave to her.
13. On a particular day, she was at the City Council when she received a call from someone who described himself as the Magistrate. He asked for the phones. She told him she had only red ones left. He told her to take them to him at Fort Street. She went to see him at Fort Street. To quote her: "*He was at the gate. He said he was not buying in the street. I should go into the veranda. He locked the veranda with two padlocks. I said 'please Sir, wey ar see u don lock!'. He said 'some of you Guinea woman need to be fucked.' My articles for sale fell on the ground. We started fighting. He held onto my side. He dragged me into a room and sat me on a big chair. He was trying to drag me into the bedroom. I was tired to resist. He shoved me on the bed. I climbed on the bed. I was kicking out and screaming out. He was playing music. He said nobody would come to my*

rescue. ,That I was not a virgin and he wanted to fuck me. He said my nails would wound him. So he tied my hands to the bed. I was screaming. He grabbed my head. He was banging it. I have long hair, and he grabbed my hair. He undressed himself. He began to fuck me. He fucked me till the other day. My throat was dry. He gave me cheese. I was tied up. The cheese stuck in my throat. He poured water down my throat because my throat was parched. The other day he said nobody would set me free and that I should shut up. He had a blade which he said he would use on me, if I did not open up my legs. Around 3pm next day, he said I could go take a bath and come back and that he was a Magistrate. He held me on the 8th September,2010 and released me on the 9th September,2010. I went out his house. I said to him, he would not go free. My skirt was torn. He threw his picture on the ground. I picked it up though my clothes were torn. I went home in my torn clothes. I told my sister Fatmata what had happened. She advised me to go to the Police. We went to the CID on 10/0910. I was given a medical report form. I took it to the Rainbow Medical Centre. I identify it. CID sent for him. Rev Ashcroft, a fair complexioned Reverend Mustapha and accused went to see me at my house at 61 Fort Street. Accused said he had come to beg me with Le400,000. I said I do not want theLe400,000. I said my pride was worth more than that. He grew annoyed. The Reverend was annoyed. On another day, the Reverend and accused came back to beg me. He said after he had fucked me, I reported the matter to the Police. The Reverend said he would have to leave because of what the accused had said. they left. Sometime after that, accused accosted me at Queen Street/Circular Road. He beat my feet with the buckle of a belt. He continued to torment me. At Rainbow Clinic, the Doctor examined me. He continued to threaten me to take the case out of Court."

14. What should one make of the evidence-in-chief of the victim-complainant? Have the elements of the offence been proved. The essential elements are sexual intercourse without the consent of the accused. If believed, there is evidence here which could convict an accused person. Clearly, according to PW1 she was forced into having sexual intercourse with the accused. She was tied up; she was threatened with a blade; she was locked up in a room; and the accused had sex with her. All the ingredients of Rape are present in her testimony; the

identification of the accused is not disputed; the adroitness of the accused; the luring of, and the bait held out to PW1 – I want to buy your wares; the scene of crime – it appears nobody else was in the house. But whether all of this should suffice to convict the accused of the offence will depend on how she fared under cross-examination, and on accused's version of events when he testified on his own behalf.

15. But before I can even consider whether the prosecution has proved its case beyond all reasonable doubt, I must bear in mind, and remind myself that though at Common Law Corroboration is not required as a matter of Law, it is dangerous to convict an accused person in case of this nature, without Corroboration. The witness may have an interest to serve, in that having submitted to the wiles of the accused, she may have become ashamed of herself, or, may even have had second thoughts about her own behaviour. So long as I have borne this warning in mind, I could go on to convict the accused without corroboration, so long as I believe the story of the complainant/victim, and I am satisfied in my mind, and I feel sure that the prosecution has proved its case beyond all reasonable doubt.
16. I shall now turn my attention to the cross-examination of this witness by Mr A I Sesay. She said: "*Accused has never been my boyfriend. I have never been to his house other than on the date of the incident. At the Police he said he was at 53 Fort Street. I only got to know his address at the Police Station. He tied me with a rope. I testified at the Magistrate's Court. I did not say he tied my hands with a shirt's sleeve. He tied me up with a rope. I told her – the Magistrate – he tied me with a rope. I am speaking the truth.*"
17. At this stage, Mr Sesay applied for permission to cross-examine the witness on her deposition given in the Magistrate's Court. She thumb-printed her deposition at page 25 of the Committal papers, before His Worship, J O Wellington Esq. though the Preliminary Investigation was begun before Her Worship Ms M Harding. The Deposition was admitted into evidence and marked exhibit A pages 1-25.
18. Cross-examination then continued, as follows: " *I did say when I got home I spoke to Fatmata. She advised me to go the CID. I did not tell the Court below it was Isatu I spoke to. I am speaking the truth. On the day accused called me on the phone, I went to his house in the afternoon. He*

released me about 3pm next day. I did not go straight to the Police. I live at 61 Fort Street. He lives in the same street. I called many people to see what had happened to me. I called Yusuf Jawara. I explained to him what happened. I told the Court I told Fatmata first. He had sex with me for a long time. 8 times. I was in good terms with my neighbours. At the time, I had just moved there. I only knew him when he asked me for the phones. He tied my hands. He did not tie my feet. He gripped my sides. I told the Police what I have said here. I told the Police about Jawara. The Police said they wanted to hear about the rape, and not what I said to Jawara. I explained the same thing to the Police."

19. At this stage, Mr Sesay indicated to the Court that he would want the prosecution to provide him with a copy of the witness's statement to the Police. I Ordered the State Counsel to comply with this request. Mr Sesay also applied for Bail for the accused. He stated that PW1 had said that accused would be locked up and would die in jail. I refused his Application, in view of PW1's evidence that she was being harassed by him. Further, even at this stage, it had not been suggested to PW1 that it was untrue the accused and other persons had gone to her house to beg her with the sum of Le400,000. It was also the view of the Court, that the particular allegation that PW1 said accused would die in prison, was a thinly veiled attempt by the Defence to stampede the Court into releasing the accused on bail, lest it be thought, this Court was acceding to, or fulfilling PW1' wish. This Court acts impartially and indiscriminately, and is indifferent to, and completely uninfluenced by comments made outside its precincts.
20. Cross-examination of PW1 continued on 8 November,2011. PW1 said "*I did say I made a statement to the Police. I now produce and tender it - exhibit B 1-8. I told the Police accused tied me up with a rope. (Counsel points out that she did not say so in exhibit B pages 1-8) (witness insists she did so) At that first meeting, I did not give accused information. He took my number. I insist accused called me on the phone. Accused kept me from 8th-9th. That is one day. I said accused had sex with me 8 times. I still say so (Counsel put to her that is not true). I have spoken the truth. I told the police he had sex with me 8 times not more than 10 times. I did say accused grabbed hold of me. I did not say something different to the Police. All that I have said is true. From veranda to room*

are two different things. I have never had a love relationship with the accused. He was not my boyfriend. I do not know late Madam Shaw. I never went to a 'cook' in her memory. I did not go to visit accused on the 8th, and saw a girlfriend in his house and then threatened to teach him a lesson. I said accused went to my house with Rev Ashcroft. Accused had Le400,000 in his hands. Accused is threatening me. His 'raray men' block my path. Accused fought me in the Master's Office. His gang threaten me when I come to Court. I told the Magistrate this - i.e. Pa Wellington. They do so in Magistrate Binneh's Court. I am speaking the truth. I will come with all the papers relating to the threats. Magistrate Wellington has a medical paper for my foot. He beat my foot with a belt. I went to the hospital. I have not made up a story. It was you who caused me to be put in the lock up. I have spoken the truth." She was not re-examined by State Counsel.

21. That portion of her evidence under cross-examination in which she says she told Fatmata, is of some importance since Fatmata was not called by the prosecution. It was suggested to her also, that in the Court below, she had said she spoke to Isatu. Isatu was not called also. What she was here saying was that she had made a complaint after the incident. Recent complaints are admissible in sexual offence cases, not to provide corroboration, but to show consistency, as I have already pointed out in paragraph 10 above. But where the person to whom the complaint was made, is not called as a witness, the complainant's evidence that she complained cannot show her consistency or negative consent because, in the absence of independent confirmation, her own evidence takes the Court nowhere in deciding whether she is worthy of belief. This, i.e. recent complaints, is an issue I shall return to briefly when dealing with the accused's evidence in Court.
22. It seems to me, and my assessment of Counsel's cross-examination is that it was aimed at, firstly, discrediting the witness, and her narrative; secondly, that if any sexual intercourse took place between herself and the accused, it was consensual because they were having an affair; thirdly, that PW1 had become vengeful because she had met another woman, his girlfriend, according to Counsel, in his house on the 8th. Let us now see whether he has succeeded in any of his objectives.

23. Firstly, it has now been established that at Common Law, a man could found guilty of raping his wife, and also of raping a wife who is estranged from him - see the cases of R v R [1992] 1 A C 599, HL; and R v M [1995] Crim L R 344 per LORD TAYLOR, LCJ. It has also been established by the cases, that sexual intercourse is a continuing act, it follows that consensual sexual intercourse will become rape if the woman ceases to consent during intercourse, and the man, with the necessary mens rea, as described above, continues the act. That is, he knew that victim was not consenting to the act of intercourse. It follows that even if I were to believe the accused's evidence, and accept that PW1 and the accused had a love relationship, I could still convict the accused of the offence of Rape, if I believe that the prosecution has proved beyond all reasonable doubt, that between 8th and 9th September,2010, PW1 did not consent to sexual intercourse with the accused. Consent on days and/or nights prior to 8th September,2010 will not automatically be transmitted to or transmuted into intercourse on that day, and on 9th September,2010.

INCONSISTENCIES AND CONTRADICTIONS

24. Second, how can a witness's evidence said to be discredited to the extent that it ought not to be believed, or to be relied on? It is true that if a witness has contradicted herself so much in that, in Court, she has said things which contradict what she had said in another Court, or to the Police, she ought not to be believed. But the Court has to examine the contradictions to see whether they indeed affect the witness's credibility. If on the whole, the story told by the witness in Court is very much in the same terms as that given in the lower Court, or in her statement to the Police, then it would be foolhardy of a Court to hold that because of slight discrepancies, her evidence ought to be rejected. What the Court should look for, is variance in the evidence given in different tribunals relating to the matters the prosecution must prove in order to succeed. With the greatest respect to Defence Counsel, whether PW1 said the accused had sex with her, 8 times or 10 times is not really material. The real issue is whether he had sex with her at all. That the victim should, considering the distressful nature of the offence, retain in her memory and recite same on all occasions, the number of times her assailant assaulted her, is not really a requirement of the

criminal law. I shall refer to two cases to show that the Court only takes into consideration material discrepancies and contradictions. And, another pitfall most Counsel inexperienced in criminal prosecutions encounter, is the folly of putting in evidence the whole of a statement, when the intention is to show merely that it contains some contradictions. Counsel do forget that once a statement has been admitted into evidence, it is admitted for all purposes, and not for the limited purpose envisaged by Counsel. So that, if in the main, the substance of the victim's story remains the same, minor discrepancies and contradictions will not really affect its cogency or its worth. Mr A I Sesay, in his written address to the Court cited the case of R v GOLDER. With respect to Mr Sesay, that case dealt with the issue of a hostile witness, i.e. a witness called by a party who turns hostile in the witness box, and refuses to give evidence in accordance with a statement he has made before, or, gives evidence contradicting what he has said on a previous occasion, and unfavourable to the party calling him. It dealt with Section 3 of the Criminal Procedure Act,1865 which still applies in Sierra Leone, and not Sections 4 and 5 which are the apposite provisions dealing with the procedure of impeaching a witness's testimony in cross-examination. The principle enunciated in that case does not therefore apply to the facts of this case. I shall therefore cite an old case which sets out the true principle.

25. R v RILEY and another (1866) 4 F&F 964 was a case tried at the Guildford Crown Court, Surrey Summer Assizes before BARON CHANNEL. In the course of his judgment he said: *"If you want to contradict the witness upon that point, you must put the depositions in. The Act (here referring to Lord Denman's Act) allows you to put them into the hands of the witness to refresh his recollection thereby, and to enable you to cross-examine him upon them; but you must take his answers; and if with the deposition before him he denies the suggested contradiction, or adheres to a statement which you suggest is inconsistent with the deposition, then, in order to contradict him you must put the deposition in evidence, that the whole may be read; and then it will appear how far the suggested contradiction exists, and the absence of a particular statement may be explained by the context; or even if there is a discrepancy on one point, it may appear that it is only a minute point, and that in all the rest of the evidence there is a perfect*

consistency, so that the general result of the comparison may be rather confirmation than contradiction." In the case of R v WRIGHT 4 F&F 967, also tried by BARON CHANNELL in the same Court, he repeated the same principle of Law. This second case was one of Rape. The Learned Editors of BLACKSTONE'S CRIMINAL PRACTICE ,2002 Edition have opined at page 2073, after citing both RILEY and WRIGHT that "*If a prior inconsistent statement is put in evidence under s.4 or s.5 of the 1865 Act, it is not admitted as evidence of the facts it states, except to the extent that the maker in evidence adopts any part of it as true, but goes to the credit of the witness.....and the Judge should warn the jury of the limited use to which it may be put.....that although S.5 expressly allows the Judge to 'make such use of the [writing] for the purposes of the trial as he may think fit', this does not allow him to treat the statement as evidence of the truth of its contents, but means, for example, that he may call attention to other parts of the statement to which no reference has been made.*" PW1's deposition and statement to the Police were admitted into evidence by me pursuant to both Section 5 of the CPA,1865, and our own Section 190(2) and (3) of the CPA,1965. I can therefore "*.....make such use of the (deposition) for the purposes of the trial as (I) may think fit -Section 5, CPA,1865; and I may "*.....*take it into account in judging the credibility of the witness on (her) evidence as a whole.....*" - *Section 190(3) CPA,1965.*

26. So, I shall turn my attention to the inconsistencies and contradictions highlighted by Counsel for the accused. The first inconsistency related to the material used to tie up PW1's hands. Before the Inquiring Magistrate, she had said - see page 6 of exhibit A - that "*....inside his bedroom, the accused tied my hands onto the bed. The accused used a long sleeve shirt to tie up both hands to his bed.....*" In this Court, under cross-examination, she said accused tied her hands with a rope. This would be a material discrepancy, if for instance, it was an essential element of the offence charged; or, if it was contradicted by other evidence, be it medical or otherwise, in a situation where part of the accused's defence depended on the material used to do the tie-up. The medical evidence, exhibit D pages 1-3 is silent on this issue. Nor is it an essential part of the accused's defence. He denies having sex with PW1 on 8th September; and denies raping her on any occasion. In my judgment, and in the words

of BARON CHANNELL "..... *it is only a minute point, and that in all the rest of the evidence there is a perfect consistency, so that the general result of the comparison may be rather confirmation than contradiction.*"

27. The next bit of inconsistency highlighted by Counsel for the accused, was the person to whom she first made a complaint. In this Court, she said it was Fatmata. In the Court below, as is recorded on page 6 of exhibit A, she said she first told Isata. Later, when she got home she told Baby, in the presence of her Landlord, and of his son, Joseph. Baby is apparently the daughter of the Landlord. Since neither Fatmata, nor Isata, nor Baby have been called as witnesses, the discrepancy is irrelevant in terms of consequences. As I have explained above, a recent compliant of a sexual assault, only goes to consistency, and does not constitute corroboration. What I cannot do, is, in the absence of those witnesses, to conclude that complaints were indeed made to them, and that the details of these complaints were narrated to them. PW5 Alfred Samuels, who apparently lives in the same house with PW1 said in his testimony, that sometime in September,2010, PW1 disappeared for two days. On his return home from work one day, he heard her crying in her room. She did not explain anything to him. This is not evidence of a complaint, but evidence of the emotional state of a victim/complainant. The attitude of the Courts, as shown in the cases, is that distress or tears cannot be relied on to support allegations of sexual assaults, simply because they could be easily manufactured, or could be the result of remorse. So, his evidence does not constitute recent complaint. The only evidence of recent complaint actually came indirectly from the accused whilst testifying in his defence.

28. The last bit of inconsistency pointed by Counsel for the accused, was PW1's accusation in this Court, that the accused had sex with her 8 times, whilst at the Police Station, she had said it was more than 10 times – see page 8 of exhibit B. Cases of sexual assaults, are unlike other offences against the person, and unlike offences against property. Deep emotions are involved. There is the issue of the violation of the integrity of the person, and also the issue of the invasion of the person of a woman. If I sitting as both Judge and jury were to consider whether the accused raped PW1 8 times or 10 times as a serious issue, I would myself be showing an insensitivity which the facts of this case do not warrant. It is

my respectful judgment that 1 session of sexual intercourse with a woman against her consent constitutes the offence of Rape. Multiple sessions only aggravate the seriousness of the offence, and would, if accepted by the Tribunal of fact, go towards sentencing. In this respect, I would again call in aid the words of BARON CHANNELL quoted above. The inconsistency was of little moment. Both exhibits A and B are on the whole, vivid accounts of the Rape perpetrated on PW1, and they are consistent with her evidence in this Court. In all three instances, she narrated how she came to know the accused; how she came to go to his house on the 8th; she describes the house as being like a bunker; there was no one else in the house; and that the accused raped her repeatedly. In other words, her evidence in Court in the important respects, confirms the narratives she gave to the Police, and to the Court below.

29. The third issue, that is the suggestion that PW1 had become vengeful because she had found the accused with another woman on 8th September,2010, brings me to the purpose and effect of cross-examination. I shall first go to PHIPSON ON EVIDENCE 13TH Edition para 33-68: "*All cross-examination must be relevant to the issues or to the witness's credit. The object of cross-examination is two-fold – to weaken, qualify or destroy the case of the opponent; and to establish the party's own case by means of his opponent's witnesses. It is not confined to matters proved in-chief.....para 33-69: "As a rule, a party should put to each of his opponent's witnesses in turn so much of his own case as concerns that particular witness, or in which he had a share."* PROFESSOR CROSS in his seminal book, CROSS ON EVDIENCE 5th Edition at page 256 shares the same view. There, he says: "*The object of cross-examination is two-fold, first to elicit information concerning facts in issue or relevant to the issue that is favourable to the party on whose behalf the cross-examination is conducted, and secondly, to cast doubt upon the accuracy of the evidence-in-chief given against such party.*" And again to BLACKSTONE'S previously cited. at para F7.4 page 2058: "*.....a party who fails to cross-examine a witness upon a particular matter in respect of which it is proposed to contradict him or impeach his credit by calling other witnesses, tacitly accepts the truth of the witness's evidence in chief on that matter, and will not thereafter be entitled to invite the jury to disbelieve him in that regard. The proper course is to*

challenge the witness while he is the witness box, or, at any rate, to make it plain to him at that stage that his evidence is not accepted."

30. Now, Counsel suggested to PW1 that she was vengeful because she had found another woman with the accused when she went to his house on the 8th. This means he has been so instructed. This piece of evidence will be borne in mind when I come to consider the case presented by the Defence. In his voluntary cautioned statement, exhibit B pages 1-8, the accused never said at any stage that PW1 went to his house on 8th September,2010. He said PW1 went to his house on the night of 6th September,2010 - see pages 3-4 of exhibit B, which I shall quote in part: *"On the 5th of September, 2010 at 17.00hrs she came to me and said she has come to sympathise with me and also pass the night to my place. In the morning hours of the next day which is on the 6th September,2010 she told me she will be going to Conakry to do her business and both of us walk together and later separated. On the same date at about 22.30hrs at night I heard someone banging my window and I asked who it was and to my surprise it was complainant. I then said to her you told me you are going to Conakry, so what brought you here again. She refused to speak and I said to her I will not open my door for nobody and for that matter I no longer interested in this relationship anymore. Two days later, whilst driving along Wallace Johnson Street I had a phone call and it was from the Editor We Yone Press Newspaper..... and told me that Complainant brought my complaint to their office that I raped her....."* No mention is made here of any woman being in the house on the night of 6th September, nor on the night of 8th September. In his evidence in-chief, the accused said nothing about the night of the 6th - he did not say PW1 had gone to his house that night. The last night both of them slept together was the night of the 5th, as he had stated in his statement, quoted above. No mention was made by him of his having a wife; nor of his wife visiting him on the night of the 6th or on any other night.

31. The rules relating to the conduct of cross-examination by Counsel, are quite clear. Counsel is only entitled to put questions based on his instructions. Counsel is not entitled to go, free-lancing, as it where. The accused, has not on any occasion, remotely suggested he had someone with him on the night of the 6th. It was only DW2, who claimed she was his wife, who said that whilst she was in the house on the night of the 6th,

PW1 went there, and that on a previous occasion, she had met PW1 in the house. I shall return to her evidence later when dealing with the case for the defence.

32. An accused in a criminal trial does not bear the burden of proof on any issue, save that of insanity. But he does bear the evidentiary burden in certain matters. If Counsel suggests improper motive or bad conduct on the part of a prosecution witness, he should at least show that he has some evidence to support the imputation. Neither the accused, nor Counsel, bears the burden of proving that the imputation is true. Either or both are only obliged to raise the issue and to call on the prosecution to discharge the burden of proving the imputation is untrue or unjustified. There being no evidence to support the imputation, it follows that this line of questioning was improper on the part of Counsel.

PW2 D/WPC 9212 KALLON

33. I shall now go on to deal with the evidence of the other witnesses. PW2 was D/WPC 9212 Ann-Marie Kallon. She identified the Police Medical Report Form issued to PW1, and she said, she obtained a statement, exhibit B, from PW1 which she identified. She tendered accused's charge statement as exhibit C. In that statement, accused said he relied on his previous statement to the Police which was yet to be tendered. She was recalled later, on 10 November,2011 to tender it as exhibit E pages 1-10.

34. She was cross-examined by Mr A I sesay. She began by saying that she had not spoken that morning to Mr Sesay when she came to Court. This question arose out of an earlier outburst from PW1 when she had alleged she had seen the two of them talking that morning. PW2 said she visited the scene-of-crime. She interviewed a neighbour by the name of Sonia, who said she knew nothing about the matter. She said PW1 had not told her that she spoke to anybody after the Rape. This answer is supported by exhibit A, and I found it rather surprising. I should have thought that one of the first thing an investigator would ask a victim of a sexual assault for, would be the recipient of a complaint from the victim. However, she explained herself in these words: "*I have investigated rape cases before. We normally ask victims for names of persons they have spoken to after the Rape. Complainant did not mention person she spoke to after the alleged Rape. I asked her whether she spoke to anybody*

about it. She said it was a shameful incident and could not speak to anybody about it. I charged accused with Rape. We do not get superior orders. I would have charged accused without superior orders."

35. On her return to the witness box on 10 November,2011, after tendering in evidence exhibit E, she was cross-examined further by Mr A I Sesay. She said: " *The preamble records the time complainant said accused had sex with her. I see page 6. He was asked where he was on 8/09/10 (11 is an error on my part) at 1.30pm. He said he was at his office at Youyi Building at 1.30pm. He told me he was in his office from 1.30pm - 5 pm on that day 8/09/10 (11 is an error on my part). Accused said he was not at his house at the time of the incident. I did not go to accused's office. I don't know whether my colleagues went there. He denied having sexual intercourse with complainant on this day."*

36. I allowed this line of questioning to proceed, though I had my doubts whether exhibit E was being read correctly. I shall therefore now refer to its contents, so far as this issue of the date and time are concerned, as it bears on the important issue of alibi. At the start, the accused is told: "*.....Fanta Jabbie who alleges that on Wednesday 8th September,2010, at 14.00 hours she was raped by you. We are going to interview you on that....*" This set the tone for the interview. What PW1 actually told PW2 was not really that accused raped her at exactly 2.00pm. Thankfully, through Mr A I Sesay's efforts, we have before us exhibit B, PW1's statement as recorded by PW2. What she told PW2 as appears on page 4 of exhibit B is that she arrived at accused's residence at 2pm. It was than her ordeal began, and continued into the next day. So, it is not a question of PW1 being raped at exactly 2pm, and nothing else, or nothing more. The rape continued into the next day, 9 September,2010.

37. To return to the accused's statement exhibit E, this is the sequence of questions and answers beginning at page 6: " *Q- On the 8th September,2010 at 1.30pm where were you? Ans- I was in my office at Youyi Building. Q- When did you first meet complainant? Ans - Sometimes in August,2010 I was standing by my car right in front of my house gate when I saw the complainant and proposed love to her and she agreed without much words and even showed me her house at No 8 Fort Street which I later proved to be false. Q- What time of the day do you actually meet with her? Ans - It was around 5pm just from work".* This answer

was given to the specific question preceding about when accused first met PW1. What I believe has led to the apparent confusion, is the question following: "*On that same date 8/9/10 Complainant told us that you introduced yourself to her as a Magistrate, and you gave her your mobile number advising her to inform about those that will resist to pay her money in doing her business. Is it true? Ans: It is not true.*" *PW1 did tell the Police that the accused gave her his phone number on 8th September,2010. She said, as confirmed by the accused himself, that this was at the first meeting, when she had gone to Fort Street, in search of one of her debtors*". In fine, the accused did not say, as suggested by Mr A I Sesay, and as stated by PW2, that he was in his office between 1.30pm and 5pm on 8th September,2010. The only explanation the accused has given about his whereabouts on 8 September,2010 is to be found on page 4 of exhibit E where he says, inter alia: "*.. Two days later, whilst driving along Wallace Johnson Street, I had (a) phone call....*". The previous date he was referring to was 6 September,2010 as appears on the preceding page, page 3. By wrongly juxtaposing 1.30pm on page 6 with 5pm on page 7, both Mr A I Sesay and PW2 had misled themselves into believing that what the accused had said related to his whereabouts between 1.30pm and 5pm on 8 September,2010.

PW3 – DR KING

38. PW3 was Dr Matilda King. She said she knew PW1. She had got to know her when PW1 went to the Rainbow Centre on 10 September,2010. PW3 said she interviewed PW1, and did a general examination. She also did a physical examination and a vaginal examination. She tendered in evidence her Report as exhibit D. Under cross-examination, she said there was redness around the clitoris, and that there could be causes for the redness other than sex. Exhibit D is very terse. It states that no physical injuries were seen. Under genital findings, she said: Old ruptured hymen with redness around the- the word there is not clear, but her cross-examination reveals that what she meant was redness around the clitoris.
39. Where an accused has denied sexual intercourse with a victim in a case of rape, the question of whether intercourse took place or not is of vital importance. In this case, the accused has not denied sexual intercourse

with PW1. He is merely saying in his defence that consensual sexual intercourse took place between himself and PW1 as late as the night of 5 September,2010. He has impliedly denied that sex took place between them on 8 September,2010, whether consensual or otherwise. PW1, on the other hand, is alleging that forced sex took place between herself and the accused on 8 September,2010. All that PW3's evidence has confirmed is that PW1 had had sex before. PW1 is a woman of over 50 years, and according to her, has one child. She was clearly not a virgin before 5 September,2010. The issue in this case has been narrowed down by the accused and his Counsel to one of consent to sexual intercourse, and I see no reason why I should introduce other non-contentious issues into my judgment.

PW4 – SGT 3045 FOFANAH

40. PW4 was Sgt 3045 Santigie Fofanah. He was among the officers who interviewed the accused, but as he had not signed the accused's statement, there was nothing else for him to say, and he was stood down without being cross-examined.

PW5 – ALFRED SAMUELS

41. PW5, the last prosecution witness was Alfred Samuels. He said the accused was his neighbour. He said in September,2010 PW1 disappeared for two days. On his return from work he met her at home. "She was locked in the house crying. She did not explain anything. My Dad told me something. He is Mr Alex Samuels. On 13/09/10 (11 is my mstake) Fanta Jabbi (another error on my part, as she was in the house at the time), two Reverends with accused and Mr Mustapha went with Le400,000 and said they went to beg Fanta Jabbie. The Reverend said they went to beg Fanta Jabbie. Fanta said she would not accept Le400,000 as her pride was worth more than that. On 14/09/10 (11 is an error on my part) one Reverend and Mr Mustapha and accused went with Le500,000. On this occasion only the Reverend came They came to beg her with Le500,000. Aunty Fanta said she would not accept the money, that her pride was worth more than that....."
42. Under cross-examination, PW5 said that he was present when the money was taken by the Reverend. He said PW1 lives in the same house with him,

but she is not his relative. He sympathised with her because her house was demolished to make way for a road.

43. At the close of his evidence, Mr A Sesay, State Counsel tendered in evidence, the accused's Committal Warrant as exhibit F, and closed the case for the prosecution.

ACCUSED PUT TO HIS ELECTION - EVIDENCE OF THE ACCUSED - DW1

44. I proceeded to put the accused to his election in accordance with the provisions of Section 194 of the CPA,1965. The elected to give evidence on oath, and said he had one witness. His evidence is recorded on pages 19-23 of my minutes. He said, inter alia: " *I know complainant very well. I did not rape complainant. Complainant is my girlfriend. She was. She is not now. On 2 August,2010 I approached complainant and told her I wanted us to love which she accepted.....she has been sleeping in my house from 4 August,2010 at 53 Fort Street. I gave her my telephone number and picture for remembrance. She has been sleeping with me and cooking for me.....she was not around when I buried my sister. She came to me on 5 September,2010 as if to sympathise with me on the loss of my sister. She even brought me a tray. There she slept on the 5th. She slept in my room. Both of us have been sleeping together. On 6th Spetember,2010 both of us woke up amicably.....she bid me farewell, that she was going to Conakry to do her business. Both of us walked to Theological Hall along Fort Street. On 8 September,2011 I was in my office at around 1.30pm when We Yone Press called me that he wants to see me. I went there with 2 of my colleagues. A lady had gone to her complaining that I raped her. I asked the Editor what he told her. He said he told her that man is not a rapist. On 9 September,2010 Complainant brought me to Mr BAILOR, The Master and Registrar. In my presence Master told her I was not a rapist....Master and Registrar advised me to go to work. The next day, 10 September,2010 my name was published in For Di People newspaper.....On 20 September,2010 she went back to SLBC. Dan Moseray and three others came to my house.....Dan Moseray told her I was not a rapist. On 21 September,2010 I was charged to Court for an offence I did not do.....I am alone in my house. My wife is at Moyamba.*"

45. Under cross-examination the accused said: " *My sister was hospitalized in my house...I was boyfriend to complainant. The relationship was not*

terminated before 8 September,2010. Up to 8 September,2010 the relationship was a bit sour. People were coming to the house demanding payment of debts from complainant..... The relationship became sour in September.....she slept with me on 5 September. We had a good relationship up to 6 September,2010. At We Yone, the Editor told me somebody had reported that I raped her. I then asked the Editor what did he say in response. The Editor said I was not a rapist. The Editor said it was Fanta Jabbie who made the accusation. I told the Editor Fanta Jabbie is my girlfriend. The relationship was good between 5th and 6th September but she came to my house on the night of the 6th at about 10.30pm. She knocked at my window. I was fast asleep. I asked who is it? She said it is Fanta Jabbie. I said I thought you said you were going to Conakry. She was standing out of the veranda. I switched the lights on. She went away. I went back to bed. She was still my girlfriend at the time. I did not open the veranda door. I did not open the door. ....I am a married man. My wife arrived from up country. I have been married for more than 5 years. On 8 September,2010 I arrived home at around 5-5.30pm. Complainant called off the relationship. She made a false allegation against me....I explained something to my Reverend about complainant...we did not at anytime go to the residence of Fanta. I do not know Alfred Samuels. I do not know complainant's address....I did not transact business with complainant."

46. My assessment of the accused's evidence is the he is not speaking the truth. I watched his demeanour in the witness box. He seemed to be fully in control of himself, and quite self-assured, cocksure in fact. He was confident his tissue of lies about his relationship with the complainant had been accepted by the Court. Curiously, in his encounters with the persons who confronted him with the allegation made by complainant, he merely said these persons said they told complainant he was not a rapist. He did not say for instance, that he denied the allegation; that it was false.

47. It seems to me that the defence has, inadvertently, provided the evidence of recent complaint which was absent in the prosecution's case. The Rule of Practice is that the prosecution should lead all evidence probative of the guilt of the accused, before it closes its case. The leading case is R v RICE[1963] 1 All ER832, CCA per WINN,J at page 839

para A et seq; "*There is a general principle of practice, the Court thinks, though no rule of law, requiring that all evidentiary matter the prosecution intend to rely on as probative of the guilt of any one of a number of accused persons, should be adduced before the close of the prosecution case if it then be available.*"

48. Where however, an accused has gone on, in his defence to give evidence on his own behalf, the Court cannot close its eyes to such evidence. The Court could use such evidence to ground its findings. In PEARSON (1908) Cr App R 77 CCR, the Lord Chief Justice though quashing the conviction of the appellant on another point, said at page 79; "*Of course, if the evidence for the defence supported what was wanting the Court would not interfere.*" The same Court, differently constituted, took the same stance in the case of JOINER (1910) Cr APP R 64 at pages 65-66. It seems therefore, that the Defence has itself provided evidence of a complaint which was not provided by the prosecution. That notwithstanding, as I have stated above, evidence of recent complaint does not amount to corroboration; it merely shows consistency.

DW2 - AMINATA KARGBO

49. I shall now turn to the evidence of DW2, Aminata Kargbo. She said accused was her man - i.e. she was married to him under native law and custom. She said she knew complainant as lover of the accused. She said she used to call the accused on the phone while was living in the provinces. A woman used to answer the calls. "*I came to town in August,2010. I came at night. When I knocked, accused asked who had come. He opened. When I went inside, I met complainant inside the room. I asked accused what she had gone to do there. The man tried to explain. Complainant began abusing me.....we had a quarrel. I went back to the provinces. In September,2010 - 6/09/10 I came back. I was in the room with accused. About 10.30pm we heard a knock on the door. Accused went out and opened the door. I did not go out. I heard the accused speaking to somebody. I asked him who he had been talking to. He did not tell me who it was. Even when this case was on, we had a tussle....*" She went on to narrate other incidents, the sum total of which was to create the impression that the complainant was boasting that she had influence in the Courts. I know as a fact that she has no influence in this Court. I am

only concerned with the facts of the case as narrated in Court. This attempt to waylay the Court with extraneous issues, solely intended to prejudice the Court in its deliberations, clearly did not have the desired effect. That a complainant should be anxious to see that she gets justice in these Courts, is not such a bad thing. To testify about what PW1 is said to have said out of Court that she had a Judge who had stood up for her, in my respectful judgment, was intended clearly to stampede this Court in deciding in 'her man's favour. It has had the opposite effect. This Court cannot be influenced nor sidetracked by a blatant, and not too subtle attempt, to besmirch the reputation and integrity of the judicial process. Yes, it is true, the committal proceedings were conducted before three Magistrates in a row. Two of the three recused themselves at different stages, and it may be, that the Judge who is in charge of the Magistrates Courts, thought it fit that the proceedings should not be aborted, but ought to be concluded, and thus remitted it, as he was entitled to do, to another Magistrate's Court, for completion. This is what justice is all about.

50. To show that this witness was untruthful, and that she was only called to deceive the Court, became apparent when she was subjected to cross-examination by State Counsel. Already, she had narrated incidents which even the accused person had not spoken about; for instance, the fictional incident she claimed occurred in August,2010 when she allegedly met PW1 with the accused in his room. Under cross-examination, she said: "*We have been together for 5 years. The marriage was made in Kamakwie. I live at 53 Fort Street. I was in Kamakwie before 6 September,2010. Iwas there for 1 year 6 months. For 1 year 6 months I had not been together with this man. He used to go to Kamakwie to meet me. He went to me in May,2010. We have children - 3 children and 2 grand children. I came to know her in August,2010. I just came to town in August,2010. We married in 2006.*"

51. One of these answers brought the carefully crafted concoction crashing down. She said she had been in Kamakwie before 6 September,2010; that the accused had in fact visited her there in May,2010. The accused had said clearly in his evidence, that his wife lived in Moyamba. Kamakwie is in Bombali District in the Northern Province. Moyamba is in the Southern Province. Her evidence was designed specifically to mislead and to deceive

the Court. And as with all such devious plans, their outcome was far different from what had been anticipated. I do not believe her evidence on any point. She is not worthy of credit in any respect. The accused had no burden to discharge. The burden is on the prosecution to prove its case. In attempting to prove that he had a relationship with PW1 to the knowledge of his customary wife, he has himself shown that he is not a person to be believed. That it is untrue as he has testified, that he had been in a relationship with PW1.

BURDEN AND STANDARD OF PROOF

52. I shall now go on to deal with the burden and standard of proof in this case. I must remind myself of my duty as Judge and jury in this case. This Court is sitting both as a Tribunal of Fact, and as the Tribunal of Law. I must thus, keep in mind and in my view at all times, the legal requirement that in all criminal cases, it is the duty of the Prosecution to prove its case beyond all reasonable doubt. It bears the burden of proving beyond a reasonable doubt every element of the offence or the offences, with which the Accused persons are charged. If there is any doubt in my mind, as to the guilt or otherwise of the Accused person, in respect of any, or all of the charges in the Indictment, I have a duty to acquit and discharge the Accused person of that charge or charges. I must be satisfied in my mind, so that I am sure that the Accused person has not only committed the unlawful acts charged in the Indictment, but that he did so with the requisite Mens Rea: i.e. the acts were done wilfully as explained earlier in this Judgment. I am also mindful of the principle that even if I do not believe the version of events put forward by the Defence, I must give it the benefit of the doubt if the prosecution has not proved its case beyond all reasonable doubt. No particular form of words are "sacrosanct or absolutely necessary" as was pointed out by SIR SAMUEL BANKOLE JONES,P in the Court of Appeal in KOROMA v R [1964-66] ALR SL 542 at 548 LL4-5. What is required is that it is made clear by or to the tribunal of fact, as the case may be, that it is for the prosecution to establish the guilt of the accused beyond a reasonable doubt. A wrong direction on this most important issue will result in a conviction being quashed. The onus is never on the accused to

establish this defence any more than it is upon him to establish provocation or any other defence apart from that of insanity."

53. I have also reminded myself, and borne in mind, the rule of practice, that in a case of this nature, I must heed the warning that it would be dangerous to convict the accused on PW1's uncorroborated evidence. That I must look for corroboration, if there is any. But also, that I can convict the accused of the offence of Rape, so long as I have heeded this warning, and kept it in mind at all times during my judgment.

ALIBI

54. Mr A I Sesay has addressed the Court on several issues, one of them being the defence of alibi. He says the accused was not present at the scene-of-crime on the 8th September,2010. As I said to him, the prosecution's case, and the evidence of PW1 is that she was raped in the accused's house between 8th and 9th September,2010, not just at 2pm on 8th September,2010. She was raped at least 8 times. As I have pointed out, save for the reference of him being in his car driving along Wallace Johnson Street on 8 September,2010, the accused has not really said where he was on 8 September,2010. Nor has he said anything about where he was on 9th September,2010. It is true, on reading exhibit E, he was not asked by the Police about his whereabouts on 9 September,2010. Nor was the allegation, which was already known to the Police, that he had raped PW1 between 8 and 9 September,2010, put specifically to him. But he has given evidence in his defence before me, when he already knew, and himself heard in Court, the specific allegation that the rape continued over a period of 24 hours. He did not say anything in this Court about his whereabouts on 9 September,2010. If he had done so, I would have been duty bound to take whatever he had said into consideration, however late in the day. And if he had raised an alibi, and that alibi had not been disproved by the prosecution, I would have been duty bound also to hold that the prosecution had not proved its case beyond all reasonable doubt. The case presented by the defence is that sexual intercourse did not take place between the accused and PW1 on 8 September,2010, nor on 9 September,2010. The Defence case is that consensual sexual intercourse took place between them for the last time on the night of 5 September,2010. I believe PW1's evidence that the rape took place on 8

September,2010 and continued into 9 September,2010. I believe, and I so hold, that the prosecution has disproved beyond all reasonable doubt, any alibi raised by the defence.

FINDINGS AND CONCLUSION

55. Having reviewed the whole of the evidence, including that led by the Defence, I have no doubt in my mind that the accused did rape PW1 between 8th and 9th September,2010. The evidence of what followed, given by PW5, Alfred Samuels, is also instructive: the accused and others went to PW1 with the sum of Le400,000 to beg her not to proceed with her accusation of rape. The conduct of an accused person after an alleged rape, should also be taken into account by the Court trying him. The defence did not seriously challenge this piece of evidence, given by both PW1 and PW5. Why would the accused go to the house, together with a Priest or with Priests, to beg PW1, and take along with him the sum of Le400,000? The only inference any tribunal of fact, properly directed could reasonably draw, is that it perhaps showed contrition for a wrongful act; that it was an admission of guilt; that it was an attempt to induce PW1 to withdraw her complaint.

56. I therefore find him guilty of the offence of Rape as charged in the Indictment.

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

SENTENCE: 2 years + compensation to PW1 in the sum of Le 400,000.-