

**IN THE HIGH COURT OF THE GAMBIA****CRIMINAL CASE No: HC/114/09/CR/019/AO****BETWEEN:****THE STATE****COMPLAINANT****AND****SARJO KANTEH****ACCUSED PERSON****MONDAY 12<sup>th</sup> DECEMBER 2011****BEFORE HON. JUSTICE EMMANUEL A. NKEA****ACCUSED PERSON PRESENT****MR S. H BARKUN (DDPP) FOR THE STATE PRESENT****MR. B.S. TOURAY FOR THE ACCUSED PRESENT****JUDGMENT**

Upon a bill of indictment dated and filed the 17<sup>th</sup> March 2009, the accused person herein stands charged before this Court for having on the 10<sup>th</sup> day of May 2008 at Bundung, in the Kanifing Municipality of The Gambia unlawfully had carnal knowledge of one MAIMUNA DARBOE, a 7 year old child contrary to Section 121 and punishable under Section 122 of the Criminal Code. The accused person pleaded not guilty to the charge.

I am compelled to begin this judgment by first setting out the bizarre circumstances surrounding this trial. This case was first mentioned at the Bundung Magistrates Court then presided at by Her Worship K.S Camara (as she then was) on the 2<sup>nd</sup> of June 2008. Between this date and the 10<sup>th</sup> of January 2009 the matter was adjourned 32 times for one reason or another

ranging from the non-availability of defense counsel or failure by the prison authorities to reproduce the accused before the said Court to the non-availability of prosecution witnesses. The matter was subsequently transferred and the same was first mentioned before this Court on the 9<sup>th</sup> of March 2009. From that date this matter suffered another 41 adjournments at the instance of both sides with the prosecution only able to call in one witness. This witness tendered exhibits "A" and "B"; the cautionary statement of the accused and the medical report of the alleged victim respectively. The main reason advanced by the prosecution for their inability to call any further witnesses is that the witnesses have changed their addresses or have vanished out of the jurisdiction. Yet the prosecution refused to advise itself on the need to have the charges against the accused withdrawn. Faced by this unfortunate situation, and compelled by the need to do substantial justice in this matter, this Court was constrained to order the closure of the prosecution's case. The defense then elected to rest their case on that of the prosecution thus necessitating this judgment.

In the case of *MOGAJI v. NIGERIAN ARMY (2008) 3 NCC, 449* the Court held that an accused person who decided to rest his case on that presented against him by the prosecution has admitted the facts as presented by the prosecution. The ideal period to do so is where the case of the prosecution is porous. In exhibit "A" the accused elected not to say anything to the police and this was recorded as such. In exhibit "B" the alleged victim is said to have sustained laceration on the vaginal wall. There is no evidence as to the cause of this laceration and the report does not ex-facie state who

is responsible for inflicting such injuries. Thus not only were such issues as the evidence of vital witnesses absent from the record, but the important ingredient of corroboration could not be decipher as the prosecutrix whose evidence would have been corroborated never testified. In view of the above, I need not say that the case as presented by the prosecution is porous, but I must add that there is no evidence at all on record upon which this Court could infer the commission of the offence under charged and or link the accused person to the said alleged offence.

It is for the reasons stated here above, that I will hold that the prosecution has woefully failed to prove their case with the degree of certainty required by law. It is trite law that where the prosecution fails to prove its case beyond reasonable doubts the Court must proceed with the discharge and acquittal of the accused person. The accused person **SARJO KANTEH** is accordingly hereby discharged and acquitted.

**EMMANUEL A. NKEA**  
**JUDGE**

**ISSUED AT BANJUL, UNDER THE SEAL OF THE COURT AND THE  
HAND OF THE PRESIDING JUDGE THIS 12<sup>th</sup> DAY OF DECEMBER  
2011**

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**REGISTRAR**