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SCSL-04-16-A
(1230 - 1235)

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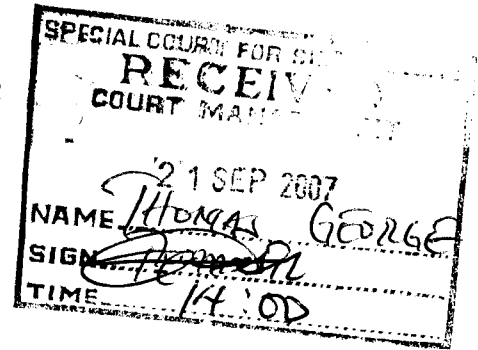
SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown - Sierra Leone

IN THE APPEALS CHAMBER

Before: Hon. Justice George Gelaga King, President
Hon. Justice Emmanuel Ayoola
Hon. Justice Renate Winter
Hon. Justice Geoffrey Robertson, QC
Hon. Justice A. Raja N. Fernando

Registrar: Mr. Herman Von Hebel

Date filed: 21 September 2007



THE PROSECUTOR

Against

Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu

Case No. SCSL-04-16-A

PUBLIC

COPIES OF ADDITIONAL AUTHORITIES FOR PROSECUTION APPEAL BRIEF

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Mr. Kojo Graham

Defence Counsel for Brima Bazzy Kamara

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Defence Counsel for Santigie Borbor Kanu

Mr. Agibola E. Manley-Spain

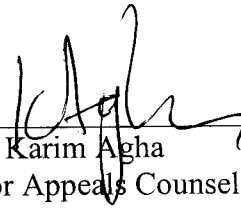
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1. The Prosecution files the attached copies of two authorities referred to in the Prosecution Appeal Brief, copies of which were not filed with the Prosecution Appeal Brief.
2. The Prosecution requests the Appeals Chamber to accept the filing of the copies of these two authorities out of time. The Prosecution was unable to include these authorities at the time that its Appeal Brief was filed. Given the brevity of these two authorities, and the short time since the Appeal Brief was filed, it is submitted that there has been no prejudice to the Defence.

Filed in Freetown,
21 September 2007



Christopher Staker
Deputy Prosecutor



Karim Agha
Senior Appeals Counsel

1232

THOMSON
SWEET & MAXWELL

1990 WL 753253 (CA (Crim Div)), [1990] Crim. L.R. 524
(c) Sweet & Maxwell Limited
R. v Radcliffe
(CA (Crim Div)) Court of Appeal (Criminal Division)
2 February 1990

Summary
Case Comments

Summary

Subject: Criminal procedure

Keywords: Child abuse; Indecent assault; Jury directions

Catchphrases: Direction to jury; indecency; gross indecency with a child under 14; whether dates on indictment material

Summary: Held, that it must be made perfectly plain to the jury on charges of gross indecency with a child under the age of 14 that that child must have been under that age when the indecency took place in order for them to convict the accused. A direction that "the dates which are set out in the indictment...are immaterial. The prosecution does not have to prove that any particular act happened between those dates. What you have to prove is that it happened... " was therefore a misdirection.

Case Comments

Children; Indictments; Jury directions; Sexual offences. Gross indecency with child under 14. Crim. L.R. 1990, Jul, 524
END OF DOCUMENT

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1233

Otto Triffterer (ed.)

Commentary on the
Rome Statute of the
International Criminal Court

Observers' Notes, Article by Article



Nomos Verlagsgesellschaft
Baden-Baden

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3044-140,

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Citation: e.g., M. Boot, in: O. Triffterer (ed.), Commentary on the Rome Statute (1999), article 7, margin Nos. 41-44

Die Deutsche Bibliothek – CIP-Einheitsaufnahme

Commentary on the Rome Statute of the International Criminal Court : Observers' Notes, Article by Article / Otto Triffterer (ed.). – 1. Aufl. – Baden-Baden : Nomos Verl.-Ges., 1999

ISBN 3-7890-6173-5

1. Auflage 1999

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1235

- (b) of the mouth of the victim by the penis of the perpetrator;
- (ii) by coercion or force or threat of force against the victim or a third person.¹⁰⁷

Depending on the circumstances, under international criminal law rape may acquire the status of a crime distinct from torture¹⁰⁸.

β) "sexual slavery"

47 In paragraph 1 (g), sexual slavery is listed as a separate offence, but it should be considered as a particular form of enslavement which includes various forms of slavery¹⁰⁹. The word "sexual" in the current paragraph denotes the result of this particular crime of enslavement: limitations on one's autonomy, freedom of movement and power to decide matters relating to one's sexual activity¹¹⁰.

Sexual slavery thus also encompasses situations where women and girls are forced into "marriage", domestic servitude or other forced labour that ultimately involves forced sexual activity, including rape by their captors¹¹¹. According to the Special Rapporteur of the Working Group on Contemporary Forms of Slavery "[p]ractices such as the detention of women in 'rape camps'¹¹² or 'comfort stations', forced, temporary "marriages" to soldiers and other practices involving the treatment of women as chattel, are both in fact and in law forms of slavery and, as such, violations of the peremptory norm prohibiting slavery"¹¹³.

γ) "enforced prostitution"

48 It has been argued that sexual slavery also encompasses most, if not all forms of "forced prostitution", which generally refers to conditions of control over a person who

¹⁰⁷ *Prosecutor v. Furundzija, supra* note 98, para. 185. The Trial Chamber noted that no elements other than these may be drawn from international treaty or customary law, nor is resort to general principles of international criminal law or to general principles of international law of any avail. It therefore considered it necessary to look for principles of criminal law common to the major legal systems of the world. "These principles may be derived, with all due caution, from national laws", *ibid.*, paras. 175 and 177. According to the Trial Chamber, any form of captivity negates consent, *ibid.*, para. 271.

¹⁰⁸ *Ibid.*, para. 164.

¹⁰⁹ "Enslavement" in paragraph 1 (c) means "the exercise of any or all of the powers attaching to the right of ownership over a person ..." (paragraph 2 (c)), and "slavery" means the "status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised" (article 1 para. 1 of the 1926 Slavery Convention). The definition of "enslavement" thus contains the *actus reus* of the offence; the word "slavery" denotes the condition or the status of the victim and should be interpreted as being a consequence or result from acts of enslavement. But see commentary on paragraph 1 (c) "enslavement", *supra*. In her report, the Special Rapporteur used the term "sexual" as an adjective to describe a form of slavery, not to denote a separate offence, 1998 Slavery Rapporteur Report, *supra* note 101, para. 30.

¹¹⁰ M.Ch. Bassiouni, *Enslavement as an International Crime*, 23 N.Y.U. J. INT'L L. & POL. 458 (1991).

¹¹¹ 1998 Slavery Rapporteur Report, *supra* note 101, para. 30. See also Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, U.N. Doc. E/CN.4/1998/54, para. 42.

¹¹² *Prosecutor v. Gotovic ("Foca")*, *supra* note 98, paras. 1.5 and 4.8.

¹¹³ 1998 Slavery Rapporteur Report, *supra* note 101, para. 8. See also article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), 266 U.N.T.S. 3.