

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y.HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 23
CASE NUMBER : CHARGE NO: CR/248/18
DATE : THURESDAY 17TH SEPTEMBER, 2020

BETWEEN

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

KABIRU ORIYOMI DEFENDANT

RULING

The Defendant was arraigned before this Honourable court with one count charge to wit;

“That you Kabiru Oriyomi (m), 43 years old of Mai Angwan, Zone 7, Dutse Alhaji, Abuja, on or about the 15th day of May, 2018, at Mai Angwa, Zone 7, Dutse Alhaji, Abuja, within the jurisdiction of this Honourable Court intentionally penetrated the vagina of one Fakeye Boluwatife (f) 17 years old Mai Angwa, Zone 7, Dutse Alhaji, Abuja, with your penis, without her consent, by means of force, and thereby committed an offence punishable under section 1(2) of the violence against persons (prohibition) Act 2015.”

The Defendant pleaded not guilty to the charge and the trial commenced.

The prosecution called two witnesses and closed its case.

PW1 (AbimbolaAbolarin) testified as follows:-

PW1 is the Investigation Officer named **AbimbolaAbolarin**. The case was assigned to her for investigation by squad head. She claimed to have cautioned the Defendant who spoke Yoruba language, and the Defendant wrote his statement Exhibit “A” in Yoruba language. PW1 claimed to have cautioned the Defendant in Yoruba Language. PW1 translated the statement into English and that she took the Defendant to a superior officer before whom the Defendant signed and thumb-printed the statement and signed. The PW1 also obtained the statement of the prosecutrix and that of the wife of the Defendant. The statement of the Defendant, that of the prosecutrix, as well as the statement of the wife of the Defendant were admitted as Exhibits “A”, “B” and “C” respectively.

Under cross – examination, the PW1 stated that Kolade John sent by Mai Angwa to make report of the allegation

PW1 stated that she took the prosecutrix to two Hospitals for examination of whether the Defendant had carnal knowledge of her or not. She gave oral evidence that the medical report did not confirm virginity. PW1 stated that she took the prosecutrix to two hospitals, one in Dutse and the other in Garki Hospital in Zone 3. She could not remember the names of the doctors who attended to the prosecutrix in the two Hospitals.

PW2 (BalaSalisuYakubu) testified as follows:-

PW2 is the Mai Angwa of Dutse. BalaSalisuYakubu who lives in DutseAlhjai. His evidence is that he heard noise around his house, he went there and saw a crowd of women around the Defendant's wife. PW2 inquired from the Defendant's wife who informed him that the husband raped the girl that was squatting with her. PW1 asked how the Defendant's wife confirmed this, and the woman in turn stated that the girl informed her. Later some Yoruba people brought the Defendant to PW2, and when PW2

asked the Defendant, he denied it. When the girl came, the girl said the Defendant raped her, the Defendant said whatever the girl said is true. The Defendant retorted whether the prosecutrix was a small girl, and the wife started hitting him. PW2 protected the Defendant and suffered some battery. Some security personnel around him advised that the case should be taken to (NAPTIP) and the case was reported to NAPTIP who said they wanted to hear from him, he went and volunteered statement as he stated before the court.

PW2 gave the name of the prosecutrix as Bola. PW2 also stated that he could not state categorically that the Defendant commit the offence because his house is far from the Defendant's house.

At the closed of the prosecution's case, the Defendant entered no case submission.

Learned counsel for the Defendant formulated a lone issue for determination to wit;whether a prima facie case

has been established against the Defendant in this case to warrant calling on him to enter his defence?

Arguing on the above, learned counsel submit that the basic ingredient of offence of rape as envisaged in section 1 of the violence against person (prohibition) Act 2015 involves three ingredient to wit;

- a. Intentionally penetrate the vagina, anus or mouth of another person with any part of his or her body or with anything else.
- b. The other person does not consent or
- c. The consent is forcefully obtained, or by threat, intimidation, fraud, or use of substance that is capable of taking away the will of the person. ***OKOH VS NIG.ARMY (2013) 1 NWLR (Pt. 1334) 16 C.A.***

Learned counsel submit that both PW1 and PW2 did not prove penetration or lack of consent of the prosecutrix.

Both PW1 and PW2 were not present at the scene of the crime.

Counsel contended further that the prosecutrix who was named as a witness as well as the wife of the Defendant who is also named as a witness were not called. Their statements are Exhibit “B” and “C” which the supreme court held not to be of any use without calling them.

ASAKE VS NIGERIAN ARMY COUNCIL (2007)1 NWLR (Pt. 1015) 408 C.A.

It is further the argument of counsel that PW1 stated that the Defendant wrote his statement in Yoruba language and that PW1 translated same into English including the cautionary words. Counsel contended that Exhibit “A” is the English version and that the court cannot admit and rely on a document written in a language other than the official language of the court. ***DARMA VS BATAGARAWA (2002) 17 NWLR (Pt. 796) 243 C.A.***

Court was urged to discharge and acquit the Defendant as there is no cogent and credible evidence to prove penetration, lack of consent on the part of the prosecution.

Upon service, the prosecution filed a reply wherein a sole issue to wit; whether from the totality of the evidence led by the prosecution in this charge, there is any evidence linking the Defendant to the offence he is charged wit, that would require this Honourable court to call upon the Defendant to offer any explanation to this Honourable Court.

Arguing on the above, learned counsel submit that when a court is giving consideration of no case submission, it is not necessary at that state of the trial for the learned trial judge to determine if the evidence is sufficient to justify a conviction. The trial court only has to be satisfied that there is a prima facie case requiring at least some explanation from the accused person. ***ALEWO ABOGEDE VS STATE (1996) LPELR SC at Ratio 3.***

Learned counsel argued that, PW1's evidence before this Honorable court is consistent with her duties as an investigation officer as espoused in the case of ***OBOT VS THE STATE (2016) LPELR (Pt. 23130) C.A.***

It is further the submission of counsel that the Defendant made a confessional statement and that confessional statement is the best evidence that the accused person committed the offence since it is his own confession. ***OGUNLEYE TOBI VS STATE (2019) 2 SC (Pt. 11) 1 at 23 Paragraph 5 – 15.***

Upon service, the Defendant filed a reply on point of law, wherein counsels submit that there is no legally admissible evidence that points at prima facie case against the Defendant as Exhibit "A" is not valid as the Defendant did not sign the cautionary word. ***IORAPUU VS STATE (2020) 1 NWLR (Pt. 1706) 391 SC.***

Learned counsel submit further that since the makers of Exhibit "B" and "C" were not called as witnesses to be

cross – examined, the documents are not evidence of facts contained on them. ***HOUSA VS STATE (1994) 6 NWLR (Pt. 350) 28 S.C.***

Learned counsel submit further that in rape case, corroboration is the main prove and that both PW1 and PW2 have admitted that they were not eyes witnesses. And that the prosecutrix was not called thereby rendering the evidence called by the prosecution without corroboration inadmissible. ***MOHAMMED VS STATE (2018) 13 NWLR (Pt. 1635) 85.***

Counsel finally urged the court to discharge and acquit the Defendant.

Court:-I have considered the available evidence adduced by Prosecution vide PW1 and PW2 on the one hand and the defence by counsel representing the Defendant that Defendant have no case to answer on the other hand.

The rationale behind the submission of a no case to answer is that the Prosecution has not made out a Prima facie case against a named Defendant or Defendants.

In consequence, asking such a Defendant to enter upon his defence would be requiring him to prove his innocence which will indeed be contrary to the presumption of innocence contained in section 36 (5) of the 1999 Constitution of Federal Republic of Nigeria as altered.

Above principle was applied by the Court of Appeal in the case of *EGBINE VS STATE (2015) LPELR 25303*.

A submission of No Case to answer may be properly made and upheld when:-

- a. There has been no evidence to prove an essential element in the alleged offence,
- b. When the evidence adduced by the Prosecution has been so discredited as result of cross – examination

or is so manifestly unreliable that no reasonable court or tribunal could safely convict on it.

Apart from the two situations aforestated, a court should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before the court. if however a submission is made that there is no case to answer, the decision would not so much depend on whether the adjudicating court or tribunal (if compelled to do so) would at this stage convict or acquit but on whether the evidence is such that a reasonable tribunal or court might convict.

If a reasonable tribunal might convict on the evidence so far laid before it, there is indeed a case to answer.

Ademola, CJN, as he then was (of blessed memory) applied above principle in the case of ***IBEZIAKO VS COMMISSIONER OF POLICE (1963) 1 ALL NL. R. 61.***

It is trite law that strictly speaking that ruling on a No Case to answer should be limited to law which though is very impossible not to make reference to the facts of the case. I am very aware then that this ruling ought to be very short and brief from the evidence adduced by the prosecution. Defence of No Case to Answer is refused and dismissed.

Defendant shall enter his Defence forthwith.

Justice Y. Halilu
Hon. Judge
17th September, 2020

APPEARANCE

Ijeoma M. A with **ArinzeMbanefor** – for the Prosecution.

AdemolaOyedokun – for the Defendant.