THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 20 WUSE ZONE 2, ABUJA

BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU.

ON THE 10TH DAY OF NOVEMBER, 2020

SUIT NO: FCT/HC/CV/339/2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ----------COMPLAINANT

AND

AWUYEMI DARE……..DEFENDANT

R. A. ENWUSOYELE for the prosecution.

B.J. AKOMOLAFE appears with **O.I. OJO** and **C.A. UKAFORO** for the defendant.

RULING

The defendant was arraigned on a two Count Charge of offences punishable under Section 1 (a) and Section 14(1) of the violence against persons (Prohibition) Act 2015. The charge reads as follows;

Count 1:- That you Awuyemi Dare (M) 35 years old of Block 2 Flat 1 Agric Quarters Karu Abuja on or about the month of July, 2017 at Block 2, Flat 1 Agric Quarters Karu Abuja within jurisdiction of this Court intentionally penetrated the vagina of Rahila Sabo(F) 13 years old of Block 2 Flat 1, Agric Quarters Karu Abuja with your penis and thereby committed an offence punishable under Section 1(a) of the Violence Against persons (Prohibition) Act 2015.

Count 2:- That you Awuyemi Dare (M) 35 years old of Block 2 Flat 1 Agric Quarters Karu Abuja on or about the month of July, 2017 at Block 2, Flat 1 Agric Quarters Karu Abuja within jurisdiction of this Honourable Court caused emotional and psychological abuse to Rahila Sabo(F) 13 years old of Block 2 Flat 1 Agric Quarters Karu Abuja and thereby committed an offence punishable under 4(1) of the Violence Against persons(Prohibition) Act 2015.

The defendant pleaded not guilty to the counts. The prosecution in proof its case called two witnesses and also tenders the statement of the defendant as Exhibit A1.

At the conclusion of the prosecution's case learned counsel for the defendant filed an address on no case submission, while the prosecution filed a Reply thereto. Also on record, the defendant's Counsel also filed a reply on point of law to the prosecutions' Reply. I have carefully gone through the arguments and submissions of learned Counsel for the prosecution and the defence as articulated in the written addresses and wish to state as follows;

That it is settled that a no case submission is premised on two factors (1) whether the evidence of the prosecution has been discredited as a result of Cross Examination thus making it manifestly unreliable that no reasonable tribunal could convict on it.

(2) Whether there was no evidence to prove essential elements of the alleged offence. These two factors are as spelt out in myriad of decisions over the years by the appellate Courts***. See UBANATU VS. C.O.P.(1999) 7 NWLR(pt.611) 511, OCHIDO VS. STATE (1995)1 NWLR (pt.369) 88, ONAGORUWA VS. STATE (1993),7NWLR(Pt303) 49*** amongst others.

The Supreme Court also held in the case of ***DABOH & ANOR VS. STATE (1977) LPELR 904 SC*** on the duty of when a submission of no-case has been made on behalf of an accused person thus ***"when a submission of no prima facie case is made on behalf of an accused person the trial Court is not thereby called upon at that stage to express any opinion on the evidence before it. The Court is only called upon to take note and to rule accordingly that there is before the Court no legally admissible evidence linking the accused person with the commission of the offence with which he is charged, if the submission is based on discredited evidence, such discredit must be apparent on the face of the record if such is not the case, then the submissions is bound to fail "per UDOMA JSC".***

At this stage of the trial therefore the court is to find whether there is a prima facie case made out against the accused person to warrant calling on him to enter his defence. See the case of **GEOFFREY VS. STATE(2019)LPELR 46867 CA** which followed the decision of the Supreme Court in the case of ***DABOH VS. STATE (***supra.)

On the meaning of Prima Facie evidence, the Court of Appeal in the case of ***DURU & ANOR VS. NWOSU (1989) LPELR 968 SC per Nnaemeka Agu JSC.*** held ***" What is then the meaning of the expression prima facie case? The expression prima facie comes from two latin words primus (which means first) and facie (face) prima facie therefore literally means on the first appearance. Applied to the rule of onus of proof in the law of evidence, a prima facie case is "is a case supported by such a quantum of evidence on every material issue thereof that if no evidence is called by the other side, or if called as it often happens in civil cases such contrary evidence is disregarded. The plaintiff (or the party on which the***

burden lies) will be entitled to the verdict of the Court on the case or the particular issue as the case may be. It is evidence which viewed on the face of it alone, is sufficient to entitle the Court to proceed with the proceedings. In a civil case at least it is not a case which take into account the evidence called by or on behalf of the opposite party." See also the case of ***DARIYE VS. FRN (2015)LPELR 24398(SC).*** The arguments of learned Counsel to the defendant is centered around these two factors enumerated in the decided authorities above. The learned Counsel argued that the oral evidence of the **PW2** is different from her extra judicial statement (**Exhibit RA**) as she was schooled by the prosecution on what to say in Court. He also argued that the age stated in the charge was imposed on the **PW2** by the prosecution. The learned Counsel further argued that there are material contradictions noticeable in evidence of the prosecution. He particularly quoted the **PW2** as saying in her statement that on one occasion when the defendant came back from work, he called her and handed a white bottle which contained groundnuts to her, then followed her to the room when he pushed her on the bed and penetrated her bum-bum with his penis. That however in her evidence before the Court, the **PW2** stated that she went to the car to get the bottle of groundnuts herself and the defendant followed her to the room where he put his penis inside her vagina. And that when the **PW2** was asked to identify her bumbum she touched her buttocks evidently showing that she knows the diference between her vagina and buttocks.

A contradiction for it to be material must be such that would affect or change the entire story of the prosecution. Where there are discrepancies in the story of the victim, or prosecution witnesses, such may not affect the prosecution case, especially if the main meat of the prosecution case is not affected. Looking at the

victim in the witness box, one would expect some coherence and consistency in her evidence rather than the prosecution putting words in her mouth.

In addition to the issue of contradiction or discrepancies in the testimonies of the prosecution witness, it is imperative to consider whether the elements of the offences within which the defendant was charged was proved by the prosecution. The defendant was alleged to have penetrated the vagina of the victim. This is a cardinal element of the offence of rape. The **PW2** in the entire evidence both in the open Court and in her statement to the prosecution claimed that at different times, the defendant put his penis inside her vagina. In the 1st Count it was alleged that the offence was committed sometimes in the month of July, 2017. It is interesting to note that the **PW1** the investigator did not carry out any investigation either by way of medical examination to ascertain if there was any penetration or bruises in the vagina of the victim occasioned by the penetration. See the case of ***OGUNBAYO VS. STATE (2007) LPELR 2323 SC*** where **OGBUAGU JSC** held ***"I will pause here to state that the important and essential of the offence of rape is penetration. It is also settled that sexual interference is deemed complete upon proof of penetration of the penis into the vagina."*** See the cases of ***R. V. MARSDEN(1891)2QB 149@ 15 per LORD COLERIDGE CJ.*** That "emission" is not a necessary requirement. The ***STATE VS. OJO (1980)2NCR(Nigeria Criminal Report) 391 @395 and JEGEDE VS. THE STATE (2001) 7 SCNJ. 135@ 141 2001. 7 SC(pt1) 122@ 125(2001) 14NWLR(pt.733, 264 per BELGORE JSC*** (as he then was). It has however been held **"that any even the slightest penetration will be sufficient to constitute the act of sexual intercourse. This is why even where penetration was proved but not of such a depth as to injure the hymen, it has been held to be sufficient to constitute the**

crime of rape. ***See R VS. ALLEN 9 C.S.P. 31.*** Thus proof of the rupture of the hymen is unnecessary to establish the offence of rape." See also the case of ***NATASHA VS. STATE(2007) LPELR 42359 SC. Per BAGE JSC.*** The essential ingredient of the allegation of rape was not established by the prosecution in the instant case and I so hold.

Furthermore the victim in her evidence in-Chief did not state that she was harassed or intimidated by the defendant. In her evidence under cross-examination she was asked ***"Before NAPTIP came to pick you from Karu site, you misbehaved and they asked you to pack your things and go? She answered "Yes", when they asked you to go you were crying and begging not to allow you to go? She answered "yes" and was further asked "why were you begging that you wanted to stay? She answered "Because I don't want to go back to my village because my aunty is good to me".***

In my view, emotional and psychological abuse is different from physical injury to which the victim was allegedly said to be put by the defendant.

The accused is therefore discharged of the offence under the provision of ***Section 1(a)*** of the Act for lack of proof.

In the same vein, the offence under the provision of Section 14(1) of the Act was also not established by the Prosecution. Section 14 (1) provides "***A person who causes emotional, verbal or psychological abuse of another commits an offence and is liable on conviction to a term of imprisonment not exceeding of one(1) year or to a fine not exceeding =N=200,000 or both."*** Emotional and psychological abuse stems from the prove of the offence of sexual assault on a victim; The onus is on the prosecution to prove that the victim was tortured or

abused by the defendant. The victim in her evidence under cross examination stated that when she was asked to go back to her village she did not want to go and was begging not to allow her go. I agree that if the victim was under any form of torture she ought to have opted to go back to her parents. The prosecution have therefore failed to prove the offence as enshrined in Section 14 (1) of the Violence Against Persons (Prohibition) Act 2015.

Let me round –up this ruling by emphasizing that the case was badly conducted by the agency. Even though it appears sensational, the prosecution should always have it at the back of it mind that Criminal matters are won not on sensation but on hard and proven facts. The law have not derogated from the fact that Criminal matters are proved beyond reasonable doubt as any lacuna in the prosecution case is resolved in favour of the accused person.

A lot of criminals would definitely be let off the hook of the agency, if matters are badly investigated. Bad investigation can never secure a conviction. The Courts are not magicians. The agency still needs to do more in the area of investigation to secure conviction in the court of Law and justice.

On the whole, I hold that upon a careful consideration of the no-case submission and the reply thereto by the prosecuting agency, the no-case submission succeeds and the defendant discharged accordingly.

SIGNED

HON. JUDGE
10/11/2020.