IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT MAITAMA ABUJA

DATE: 24TH DAY OF NOVEMBER, 2021
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 5
SUIT NO: CR/192/2018

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ---- PETITIONER

AND

MORGAN ALEPA ---- DEFENDANT

RULING

The defendant was arraigned before this Court on a three count charge contrary to the provisions of the Violence Against Persons (Prohibition) Act, 2015. The charge reads as follows:

COUNT 1:

That you Morgan Alepa (M) 37 years old, of No. 25, Aswan Street, Wuse Zone 3, Abuja, on or about the 5th February, 2018 at No. 25, Aswan Street, Wuse Zone 3, Abuja, within

the jurisdiction of this Honourable Court, intentionally penetrated the vagina of Grace Hodo, (f), 17 years old, of No. 25, Aswan Street, Wuse Zone 3, Abuja with your penis by means of threat and thereby committed an offence punishable under Section 1(2) of the Violence Against Persons (Prohibition) Act, 2015.

COUNT 2:

That you Morgan Alepa (M) 37 years old, of No. 25, Aswan Street, Wuse Zone 3, Abuja, sometime in February, 2018 at No. 25, Aswan Street, Wuse Zone 3, Abuja, within the jurisdiction of this Honourable Court, willfully inflicted physical injury on Rosalyn Alepa (f), 26 years old, of No. 25, Aswan Street, Wuse Zone 3, Abuja, by hitting her nose with your fist, kicking and stepping on her on her head and body and thereby committed an offence punishable under

Section 2(1) of the Violence Against Persons (Prohibition) Act, 2015.

COUNT 3:

That you, Morgan Alepa (M) 37 years old, of No. 25, Aswan Street, Wuse Zone 3, Abuja, on or about the 11th January, 2018, at No. 25, Aswan Street, Wuse Zone 3, Abuja, within the jurisdiction of this Honourable Court, willfully inflicted physical injury on Goodness Hodo (F), 22 years old, of No. 25, Aswan Street, Wuse Zone 3, Abuja, by hitting her eye with your fist causing her to have a black eye, and beating her mercilessly and inflicted physical injuries on her and thereby committed an offence Punishable under Section 2(1) of the Violence Against Persons (Prohibition) Act, 2015.

The defendant pleaded not guilty to all the charges and the case proceeded to trial. The Prosecution called one Moses Unongu who testified as a sole witness. Three documents were tendered through the witness. The

prosecution closed its case on the 26/11/2020 and the matter was then adjourned for the defendant to open his case. The defendant opted to file a no case submission instead of entering his defence.

Learned counsel for the defendant, **J.C. Paul Esq** in the written address dated 29/1/2021 submitted an issue for determination to wit:

> *"Whether the prosecution has discharged the burden of proving the alleged offences as charged warranting the defendant to be called for his defence."*

Learned counsel submitted that the golden rule in the adversarial system of justice is the presumption of innocence of an accused of any alleged offence until contrary is proven. Counsel added that a no case submission is suitable and would be upheld if there was no legally admissible evidence to prove an essential element of

the alleged offences, and the evidence adduced has been so discredited as a result of cross examination, or the evidence is so manifestly unreliable that no reasonable tribunal can safely convict on it. He cited **Sunday Chijioke Agbo & 5 ors vs. The State (2013) 11 NWLR (part 1365) 399 at 404.**

Counsel submitted that PW1 being the IPO tendered the extra judicial statements of the defendant and two other witnesses who were never called to testify on the credibility of those statements, neither were the statements allowed to be scrutinized under cross examination. Counsel posited that Exhibits A, A1 and A2 are nothing but hearsay and inadmissible in the face of the law. Reference was made to **Prince Benedict Benjamin Apugo vs. FRN (2017) 8 NWLR (part 1968) page 417 at 447.**

Learned counsel further submitted that the prosecution has the discretion to call any witness of its choice and tender any evidence in support of the offences alleged as a

matter of strategy, but the prosecution must as a matter of duty be circumspect in sufficiently establishing prima facie case against the defendant. Reference was made to **Joseph Daniel Uwa vs. The State (2015) 4 NWLR (part 1450) at 439.** He therefore urged the Court to expunge Exhibits A, A1 and A2 for being hearsay.

Learned counsel also urged the Court to consider the evidence of PW1 under cross examination when he stated that he was not at the scene of the incident when it happened, and in his evidence claimed that the defendant confessed to him that he committed the offences. He urged the Court to discharge the defendant without being called to enter his defence. He cited **Ede Oko vs. The State (2017) 17 NWLR (part 1573) page 24.**

In response, **Chinenye Audrey Nnamani Esq** filed a reply on behalf of the prosecution. Counsel also raised a sole issue for determination as follows:

"Whether from the totality of the evidence led by the prosecution in this charge, there is any evidence linking the defendant to the offences he is charged with that would require this Court to call upon the defendant to offer any explanation to the Court."

Learned counsel submitted that when a Court is giving consideration to a submission of no case to answer, it is not necessary at that stage of the trial for the Judge to determine if the evidence of the prosecution is sufficient to justify a conviction. Reference was made to **Alewo Abogede vs. State (1996) LPELR – SC, Sunny Tongo & ano vs. COP (2007) LPELR –3257 (SC), Sunday Chijioke Agbo & ors vs. State (2013) LPELR – 20388 (SC).**

Learned counsel submitted that the evidence of PW1 is consistent with his duties as an investigation officer. Reference was made to **Obot vs. The State (2016) LPELR – 23130 (CA)** where the Court held:

"It appears the learned appellant's counsel does not appreciate fully the job description of an investigating Police Officer. He just investigates crimes. Invariably an investigating Police Officer is hardly ever at the crime scene. His investigation comes after the crime had been committed. An investigating Police Officer takes statements from accused persons and witness alike. He therefore testifies in Court giving a synopsis of what he did during the investigation. The evidence of the investigating Police officer is not by any standard hearsay. He gives an account of what he has done in the process of his investigations…"

Counsel added that the prosecution has raised questions which require the defendant to answer based on the analysis of the evidence led. Reference was made to the case of Tongo vs. The State (2007) NLR (part 1049) 549,

and Godwin Gabele vs. The State (2014) 15 NWLR 63 at 330 – 301.

Upon considering the written submission of both learned counsel, the only issue which arises for determination is whether from the evidence before the Court, the prosecution has made out a prima facie case against the defendant to warrant the Court calling on him to enter his defence.

The provisions of Section 302 of ACJA, 2015 empowers the Court after hearing the evidence for the prosecution and where it considers that such evidence is not sufficient to justify the continuation of trial, to record a finding of 'not guilty' in respect of such defendant without calling him to enter upon his defence and such defendant shall thereupon be discharged.

The above provision empowers the Court to undertake this exercise suo moto even without application from the

defendant. See State vs. Duke (2003) 3 NWLR (part 813) 394.

This is to further safeguard the defendants fundamental right under Section 36(5) of the Constitution; that an accused person is always presumed innocent until proved guilty. Any person accused of committing an offence is presumed innocent until proved otherwise through credible and reliable evidence adduced before a Court of law before which he is arraigned, tried and convicted. In order to obtain conviction, the prosecution must always prove the offence against an accused beyond reasonable doubt. See Section 138 of the Evidence Act, 2011 and the case of Odu vs. State (2001) 10 NWLR (part 722) 688.

At the close of the case of the prosecution, the defence is at liberty to make a 'No Case Submission'. And where such is made, it postulates that evidence was not led by the

prosecution in support of all or any of the essential ingredients of the offence charged.

It has long been settled that a submission of 'No Case' to answer could also be properly made and upheld in the following circumstances;

a. When there has been no evidence to prove an essential element in the alleged offence; and/or
b. When the evidence adduced by the prosecution has been so discredited under cross-examination, or is so manifestly unreliable that no reasonable tribunal could safely, convict on it. See:

See Sunday Agbo vs. State (2013) 11 NWLR (part 1365) 377 and COP vs. Amuta (2017) 4 NWLR (part 1556) 379 and Owonikoko vs. The State (1990) 7 NWLR (part 162) 381.

At this stage the Court is called upon to simply ascertain if the prosecution has made a prima facie case requesting the defendant to offer some explanation and not

whether the evidence led against him is sufficient to justify conviction. See Ekwunugo vs. FRN (2008) 7 SCNJ 241 at 242. It is needless to call upon the defendant to enter his defence where the prosecution has failed to discharge the burden of proof placed on it by law and has failed to establish the essential ingredients of the offence/s charged. In the case of The State vs. Eniedo (2001) 12 NWLR (part 726) 131, the Court held that where a no case submission is made, the trial Court at that stage is not expected to express an opinion on the evidence, it is only called upon to prima facie find whether on the evidence adduced there is admissible evidence linking the defendant with the offence with which he is charged. Prima facie refers to evidence, which if uncontradicted and if believed, will be sufficient to prove the case. Prima facie case is not the same with proof of a crime which occurs after the close of trial.

In Abacha vs. State (2002) 7 SCNJ page 1, the Supreme Court explained thus:

"The evidence discloses a prima facie case when it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused."

Having set out the basic legal framework guiding No Case to Answer submission, the Court now proceeds to consider each count of the information in relation to the evidence adduced by the prosecution witness to determine whether or not the evidence discloses a prima facie case against the defendant.

In Count 1, the defendant was alleged to have intentionally penetrated the vagina of the subject (Grace Itodo) with his penis by means of threat, an offence punishable under Section 1(2) of the VAPP Act, 2015. Section (1) of the Act provides:

"(1) a person commits the offence of rape if-

(a) He or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else;

(b) The other person does not consent to the penetration; or

(c) The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse."

And subsection (2) states as follows:

"(2) A person convicted of an offence under subsection (1) of this section is liable to imprisonment for life except-

(a) Where the offender is less than 14 years of age, the offender is liable to a maximum of 14 years imprisonment.

(b) In all other cases, to a minimum of 12 years imprisonment without an option of fine; or

(c) In the case of rape by a group of person, the offenders are liable jointly to a minimum of 20 years imprisonment without an option of fine."

While Section 2(1) provides:

"A person who willfully causes or inflicts, physical injury on another person by means of any weapons, substance or objects, commits an offence and is liable on conviction to a term of imprisonment not exceeding 5 years of a fine not exceeding N100,000.00 or both."

The sole witness in this case is the IPO who is the Principal Intelligence Officer of NAPTIP. The witness said

the Agency sometime in January, 2018 got a distress call from one Roselyn Aleppa alleging that she has been violated by her husband. She was invited to the office and the case assigned to him. That during the course of his interview with the complainant, she said the defendant beat her all the time. He beat her and her sister and the sister was admitted in hospital. She also told him that the defendant raped and impregnated the last girl in the family who at that time was a minor. The defendant was invited and he gave his statement. The statement of the complainant as well as the victim of the rape and the other victims were tendered in evidence.

Under cross examination, the witness said that the victim was violated and had lacerations on her body, a black eye and a swollen neck. These were documented by way of photographs. He said he did not witness the rape but the minor was invited and the defendant also confirmed

that he did it. He said he did not know if the parties had any disagreement, or whether the wife was instigated.

Learned counsel to the defendant submitted that Exhibits A, A1 and A2 tendered by the PW1 are hearsay and should be expunged from the record. He said on the basis of Exhibit A, PW1 claimed that the defendant had confessed to the commission of the offences without even establishing the ingredients of the offences. He added that the claim still fall within the purview of hearsay evidence as there is nothing in Exhibit A which prima facie showed that the defendant committed the offences. Learned counsel for the prosecution submitted that the prosecution has done the needful to warrant the defendant to give some explanation.

It is rudimentary law, the evidence of an investigating officer on what a prospective witness told him in the course of investigation is hearsay and inadmissible. See **Ike vs. State of Lagos (2019) LPELR – 47712 (CA).** The admissible

evidence of an investigating officer is the evidence of what he saw, observed and actually did in the course of his investigation. See Ugwumba vs. The State (1993) 6 SCNJ (part II) 217 at 225, Ekpo vs. The State (2001) 7 NWLR (part 712) 292 at 304, Opolo vs. The State (1977) 11 – 12 SC, Ejioffor vs. The State (2001) LPELR – 1465 at 17 – 19.

In essence therefore, the testimony of an investigating officer giving account of the outcome of his investigation is certainly not hearsay. In this instance the evidence of PW1, the Investigating Officer seeks to confirm the allegations against the defendant as true, not the fact that they were made. PW1's evidence on that point is therefore hearsay and inadmissible.

Sections 37 and 38 of the Evidence Act 2011 provides:

"Hearsay means a statement-

(a) Oral or written made otherwise than by a witness in a proceeding; or

(b) Contained or recorded in a book, document or any record whatever, proof of which is not admissible under ay provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it.

38. Hearsay evidence is not admissible except as provided in this part or by or under any other provision of this or any other Act."

By the provisions of Sections 125 and 126 of the Evidence Act, 2011, for oral evidence needed to prove a fact in issue to be admissible, it must be the evidence of a witness who said or heard or perceived the fact in issue.

To further buttress the above, the Court of Appeal in the case of **Musa vs. State (2018) LPELR – 46037 (CA)** held thus:

"Now, dealing with the testimony of the prosecution witnesses. The only witnesses called by the

prosecution were the two investigating Police officers….PW1 and PW2 were not present and did not witness the commission of the crime. They only came into the picture after the crime had been committed. Undoubtedly, it is hornbook law that the evidence of a Police witness on what a prospective witness told him in the course of investigation is hearsay and inadmissible. The admissible evidence of Police witness is the evidence of what he saw, observed and actually did in the course of his investigation. See also ***Ugwumba vs. The State (1993) 5 NWLR (part 269) 660 at 668****…I restate that the testimony of PW1 and PW2 was in respect of what they were told that happened on that fateful day by persons who were not called as witnesses. Their testimony is therefore clearly hearsay as it is not direct oral testimony…It is rudimentary law that*

hearsay evidence is inadmissible and does not command any probative value."

See Utteh vs. State (1992) LPELR (6239) 1 at 11, Arogundade vs. The State (2009) LPELR (559) 1 at 23 and FRN vs. Usman (2012) LPELR (7818) 1 at 19 – 20.

By the hearsay rule, an assertion other than one made by a person while giving oral evidence in Court is inadmissible as evidence of the facts asserted. In very simple terms, hearsay evidence is any statement made out of Court but offered in Court to prove the truth of the facts asserted in Court. It is testimony or documents quoting people who are not present in Court, making it difficult to establish its credibility or to test it by cross examination. It is hearsay if the evidence seeks to establish truth of a statement and not merely the fact that it was made. See Jubril vs. FRN (2018) LPELR – 43993 (CA), Arogundade vs. State (supra),

In Ojo vs. Gharoro (2006) LPELR – 2383 (SC) Tobi JSC, described hearsay evidence as follows:

> *"When a third party relates a story to another as proof of contents of a statement such story is hearsay, Hearsay evidence is all evidence which does not derive its value solely from the credit given to the witness himself, but which rest also, in part, on the veracity and competence of some other person. A piece of evidence is hearsay if it is evidence of contents of a statement made by a witness who is himself not called to testify."*

See Judicial Service Committee vs. Omo (1990) 6 NWLR (part 157) 407, FRN vs. Usman (supra).

With respect, I cannot find any prima facie evidence showing or illustrating the ingredients of the offence under Section 1 of the VAPP Act, 2015, as stated in Count 1 of the Charge, OR the elements of the offences under Section 2(1)

vide Counts 2 and 3 of the Charge. PW1 certainly did not witness the commission of any crime.

Beyond the allegations contained in the various counts of the Charge, there is nothing in the evidence adduced by the prosecution, save the inadmissible hearsay evidence of PW1 as follows:

> *"During the course of my interview with her, she complained that the Respondent beat her all the time. The last time was when he beat her and her sister and the younger sister was admitted in hospital. She also informed the agency that the last girl in the family was raped and impregnated by her husband. The girl was a minor. After the interview we invited the defendant and he gave us a statement. We also extended our investigation to taking the younger sister who was beaten and the little girl raped and impregnated. Their statements were taken."*

He categorically said during cross examination that he did not witness the rape, but the minor was invited to their office and they documented her by way of photographs but he did not tender the photographs in evidence.

By Section 357 of the Administration of Criminal Justice Act (ACJA) 2015;

> *"Where at the close of evidence in support of the charge, it appears to the Court that a case is not made out against the defendant sufficiently to require him to make a defence, the Court shall, as to that particular charge, discharge him being guided by the provisions of Section 302 of this Act."*

In the light of the foregoing, the Court holds that the prosecution has not established any prima facie case against the defendant. The evidence of PW1 being hearsay

is so unreliable that no Court or tribunal would convict on it.

By reasons of the foregoing, the Court resolves the sole issue for determination in favour of the defendant against the prosecution. The No Case Submission succeeds and this being the case, the defendant is discharged.

Signed
Honourable Judge

Appearances:

Defendant in Court speaks and understand English Language

J.E. Yakusak Esq – for the prosecution

Oyiogu Chioma Esq – for the defendant