

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 20 GUDU-ABUJA
ON WEDNESDAY 29TH DAY OF JUNE 2022
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE R. OSHO-ADEBIYI
CHARGE NO.FCT/HC/CR/783/2020

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ----- COMPLAINANT

AND

JAMES FRANCIS-----DEFENDANT

RULING

The Defendant was on the 19th day of February 2020 was charged with a one count charge as follows:

COUNT 1

That you, JAMES FRANCIS (M) 16 years old, of FHA. Berger Camp Kubwa. Abuja, Federal Capital Territory, sometimes in September 2019. at FHA. Berger Camp Kubwa. Abuja. Federal Capital Territory, within the jurisdiction of this Honourable Court, and intentionally penetrated the vagina of one THERESA TITUS (F) 15 years of FHA. Berger Camp Kubwa. Abuja, Federal Capital Territory, with your penis, without her consent, by means of force and thereby committed an offence contrary to Section 1(1) and punishable under Section 1(2) of the Violence Against Persons (Prohibition) Act, 2015.

The Defendant took his plea of not guilty on the 9th of February 2021 and hearing commenced on the 7th day of September 2021, with the prosecution opening its case,

and called 4 witnesses -PW1- the IPO, PW2-the victims' father, PW3, the Victim's brother and PW4, the victim.

The prosecution thereafter closed their case, and the Defendant has now filed a no case submission where the Defendant's Counsel raised a sole issue for determination, which is whether or not the prosecution has made a prime face case against the Defendant.

The Defendant's counsel arguing the sole issue submitted that from the evidence of the prosecution witnesses particularly the evidence elicited under cross examination, the prosecution has not made out a case against the Defendant, in other words, the prosecution has not made out a prima facie case against the Defendant as investigation on the matter was not carried out and there are no corroborating exhibits before this Court in support of the prosecution's case and asking the Defendant to enter his defence will require him to prove his innocence.

Counsel urged the Court to find and rule in favour of the defendant for lack of evidence and complete absence of prima facie case against the Defendant. Counsel relied on the case of Emedo V The state (2002) 15 NWLR (Pt 789) 196 of 204 and Ohuka & ors v. The state (No2) (1988) LPELR(SC).

The Prosecution on their part filed a reply and raised a sole issue for determination to wit: "Whether by the prosecution's evidence before the Court, a prima facie case has been established against the defendant?"

Counsel submitted that a review of the testimonies of PW1, PW2, PW3 and PW4, together with the 13 Exhibits in evidence obviously reveals a prima facie case which warrants the defendant to be called upon to enter his defence, failure upon which the court could convict the defendant. Contended that there is evidence before this

court that the victim is a minor of 13 years old and that her vagina was penetrated by the defendant, without the victim's consent.

Submitted further that the Prosecution's evidence clearly shows the elements of the offences charged and this court can convict the Defendant on this evidence before it. Counsel submitted further that at this stage of No Case Submission, the credibility of evidence is not in issue as erroneously contended by the defence counsel, rather what is in issue is whether there is any evidence before the Court which if the Court believes, it can convict the defendant. which answer in the instant case it is in the affirmative. Counsel therefore urged the Court to overrule the no case submission and order the Defendant to enter his defence. Counsel relied on the case of;

1. Morah V FRN (2017) LPELR - 50299 (CA).
2. Ohuka & ORS V State (NO.2) (1988) LPELR - 2362(SC).
3. FRN V. Umar & ANOR(2022) LPELR-56808 (CA) JCA, (Pp. 6-7 paras. C)
4. Ajboye V. The State (1995) 8 NWLR (1414)408.
5. Shinkafi & Anor Vs. FRN (2017) LPELR-42701 (CA).
6. Oyinbo V. IGP (2019) LPELR - 47788 (CA) Pp 32 - 33, Paras F-D).

I have considered the processes filed, the evidence of the prosecution witnesses, as well as the written address as argument of respective Counsel in this case.

The purport of a no case submission is that the Court is not called upon at this stage to express any opinion on the evidence before it. The Court is only called upon to take note and rule accordingly that there is, before the Court, no legally admissible evidence linking the Defendant with the commission of the offence charged. But if there is legally admissible evidence, however slight, the matter should proceed as there is something to look at. It is the contention of

Defence counsel that the evidence of the prosecution is not sufficient, unreliable and has been discredited by the Defence on cross examination that this Court cannot safely convict the Defendant on, and this Court should discharge and acquit the Defendant on the charge against him by the prosecution.

I have looked at the evidence of the PW1, PW2, Pw3 and PW4, in this case and the law is settled that a no case submission may be upheld when: -

1. There has been no evidence to prove an essential element of the alleged offence
2. Where the evidence led by the prosecution has been so discredited as a result of cross-examination or is manifestly unreliable that no reasonable tribunal could safely convict on it. See Section 303(3) of the Administration of Criminal Justice Act 2015 and the case of CHYFRANK NIG VS. FRN (2019) LPELR-46401 (SC).

As rightly noted by the Prosecution Counsel, the credibility of the evidence is not in issue at this stage as what the Court should concern itself is whether there is a prima facie case requiring at least some explanation from the Defendant. See the case of IGWE Vs. STATE (2021) LPELR-55336 (SC) where the Court held that prima facie case means that there is a ground for proceeding. It therefore means that something has been produced to make it worthwhile to continue the proceeding.

The Defendant has been charged with the offence of rape under Section 1 of the Violence Against Persons (Prohibition) Act 2015 and the said Section provides thus:

(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.

In this instant case, from the totality of the evidence of prosecution's case, particularly the evidence of PW4, it is her evidence that sometime in 2019, she went to her friend "Mrs Paulina's" house and the Defendant seeing that PW4 was alone, Mrs Paulina having excused herself, the Defendant requested to have sex with the PW4 which she refused. That there was a scuffle which led to the Defendant tearing her skirt and the Defendant threatening to use his brother's gun to kill her if she refused and as a result of fear instilled in her, he successfully had sex with her. That she informed Mrs. Paulina who also threatened her. That the Defendant for the second time, came to her house and demanded for sex, which she refused, and he repeated his threat with a knife, which made her succumb. That the Defendant came to her house again, but her brother came in before he could carry out his act. That she fell ill afterwards and was taken to the hospital where it was discovered she was pregnant, and she gave birth to the child.

The question therefore that begs to be answered at this point is from the totality of the evidence adduced by the prosecution's witnesses, is there

evidence linking the Defendant with the commission of the offence charged? The evidence of the PW4 as elicited above is to the effect that the “Defendant” had sex with her on two occasions, without her consent and with the use of threat, thus, it is my view that the above evidence is sufficient to hold that there is prima facie evidence linking the Defendant to the offence charged which requires the Defendant to explain his own side of the matter.

Having considered the totality of the evidence of the prosecution witnesses particularly the evidence elicited by the PW4; vis a vis the elements of the offence of rape earlier stated, it is my view and I so hold that the prosecution has made out a prima facie case linking the Defendant to the offence as charged as there are grounds that requires the Defendant to give evidence in defence to the allegation as made out against him.

Consequently, the no case submission is overruled, the Defendant is hereby called upon to enter his defence.

Parties:

Appearances:

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
23/06/2022