

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT KUBWA, ABUJA**  
**ON TUESDAY, THE 26<sup>TH</sup> DAY OF FEBRUARY, 2021**  
**BEFORE HIS LORDSHIP: HON. JUSTICE K. N.**  
**OGBONNAYA**  
**JUDGE**  
**SUIT NO.: FCT/HC/CR/852/20**

**BETWEEN:**

FEDERAL REPUBLIC OF NIGERIA ----- } PROSECUTION

**AND**

WALEOLA WALIU ----- } DEFENDANT

**JUDGMENT**

On the 23<sup>rd</sup> of October, 2020 the Defendant Waleolu Waliu was arraigned with a count charge of intentionally penetrating with his penis into the vagina of a minor Little Miss Musa Abike Amidat aged 11 years old which is offence punishable under Section 1(2) Violence against Persons Prohibition Act 2015. He pleaded Not Guilty and the Prosecution opened its

case, called 2 Witnesses. The Court granted bail to Defendant.

The Prosecution called 2 Witnesses one of who was the victim Miss Abike Amidat. The 2<sup>nd</sup> Witness (PW2) is Chjioke Henry an Investigation Officer with NAP TIP. The Prosecution tendered three (3) documents – the Statement of the victim, the Statement of the Investigating Officer and the Medical Report from the Federal Ministry of Health Abuja

On their own part the Defence called 2 Witnesses – the Defendant Waleolu Waliu and his wife.

The victim PW1 had narrated the gory details of how the Defendant her Guardian and the husband of her Aunt under whose care she was, had raped her severally. She acted initially as a child-mindset for the Defendant family and later was put into school. She narrated how she had noticed that someone, the Defendant, was stroking and touching her leg/body at the middle of the night and she screamed but no one came to her rescue. She reported the case to her Aunty DW2, but her Aunty shunned her.

That another day the Defendant who said he was a Drycleaner as well as a Security man took her to his work place and at night had a fill of her by severally having sex with her without her consent, that was after he had given her a soft drink which she suspected to have been laced with sedative. That on the fateful day, the Defendant, in order not to make people come to her rescue, tied her mouth with a piece of cloth and

brandished a knife obviously to threaten and subjugate her. He then removed the victim's pant and raped her. That when she returned home and wanted to report the incident to her Aunt the DW2 told her not to disturb her.

The victim PW1 also narrated how she was also raped by the Defendant one day she was sleeping on the floor of the sitting room in the house of the Defendant. That the Defendant was sleeping in the sofa and pressed his body on her, that when she reported the issue to her Aunt she shunned her as usual and never gave her any attention. That she continued to endure the assault until that fateful day when the NGO came to their school and asked if any of them had experienced any sexual assault or indecent touching. That she opened up and narrated her ordeal in the hand of the Defendant. That from then she was taken to NAPTIP and the matter came to Court. She volunteered Statement to NAPTIP and it was admitted as EXH A. Meanwhile this rape started from the time she was 9 till 2020 when she was 11 years old. She had told Court that she was a virgin.

The 2<sup>nd</sup> Witness, PW2 told Court that on 7<sup>th</sup> February, 2020 SOAR Initiative reported a case of Rape to their office. The 2<sup>nd</sup> Witness (PW2) is an Investigating Officer with NAPTIP in charge of Rape, Human Trafficking and other violence against person. He narrated how they interviewed the victim and the Defendant and the victim was taken to their shelter. That Defendant was

invited and he freely gave his Statement under word of caution.

That he took the victim to the National Medical Centre Gwarimpa for necessary examination. He concluded investigation and sent the report to the Legal Unit. He said that he did not visit the scene of crime because as at the time of report the evidence at the crime scene had been destroyed.

In their Final Address the Defendant raised an Issue for determination which is:

**“Whether in view of all the evidence adduced in this case the Prosecution was able to prove the charge against the Defendant beyond reasonable doubt.”**

The Defendant Counsel submitted that in the case of

**Isa V. State**

**(2016) 6 NWLR (PT. 1508) 243 @ 249**

to prove the offence of Rape and to sustain conviction the Prosecution has the burden and duty to prove that the Defendant had intercourse with the Prosecutix without her consent or that the consent was obtained by fraud, treat, force, intimidation, deceit or impersonation. That there was mens rae and intention to have sexual intercourse and that there was penetration.

That in this case none of these ingredients was established by the Prosecution. That evidence of PW1 & PW2 could not sustain any of the ingredients. That the

victim started her menstrual period at NAPTIP. That if actually she was raped that she would have been bleeding and someone notice same and that she would have told her mother about the rape. Again that she would have been pregnant too. That she had at Cross-examination established that she was a virgin. That if she meant that the Defendant was playing with her private part without mentioning rape it would have been a different argument.

That offence of rape must be proved beyond reasonable doubt. That the PW2 did not pay a visit to the scene of the rape crime or present the knife which the victim alleged was used by the Defendant to threaten her. That there was a female agent of the NGO according to the victim where she narrated her story and where the victim recorded her Statement. That it means that she has been tutored on what to say.

It is imperative to state that the Statement of the victim was recorded at NAPTIP and in a NAPTIP Statement Sheets contrary to what the Defendant Counsel had stated. She never made any Statement in writing before any other person or NGO. The Statement so made by the victim was made before NAPTIP staffer.

The Defendant Counsel concluded that the Court should discharge and acquit the Defendant as Prosecution failed to establish the ingredients of the offence with which the Defendant is charged. They referred to the cases of:

### **State V. Ojo**

**(1980) 2 NCR 391**

**State V. Anolue  
(1973) 1 NCR 71**

**Iko V. State  
(2001) 14 NWLR (PT. 732) 221**

**Okoyomin V State  
(1973) 1 SC 21**

**Npahar V. State  
(2003) 6 NWLR (PT. 816) 230**

Upon receipt of the Final Address filed by the Defendant Counsel the Prosecution filed their own Final Address. In it they raised one Issue for determination which is:

**“Whether the Prosecution has proved his case against the Defendant beyond reasonable doubt.”**

The Prosecution Counsel submitted that Prosecution has established the case against the Defendant beyond reasonable doubt. That it discharged the onus placed on it by law by placing reliance on the direct vivid and credible testimony of PW1, the victim in this case. That the PW1, victim who is aged 11 rendered full account of instances where and when she was raped by the Defendant.

That to further buttress the case of the victim the Prosecution had presented the Medical Report from the Federal Government Medical approved facility hospital

which showed that the girl was a virgin at the time she was raped. That the report showed that there were bruises on the arm of the victim which suggested that there were struggles before the rape which further confirms that there was lack of consent.

That the Defendant Counsel had stated the case of

**Isa V. State supra  
(2016) 6 NWLR (PT. 1508) 249**

where the Supreme Court listed what the Prosecution must prove before conviction can be sustained. They relied on and referred to the case of:

**Nedewewu Posu & Anor V. State  
(2011) LPELR (1969) SC**

That the Defendant stated that a knife was used and referred to Team of Investigation from NAPTIP but did not visit the home of the victim which is the scene of the crime.

They submitted that it is trite that in criminal matter proceeding, that the onus is on Prosecution to prove the case. That the Prosecution had done so in this case and has established same without iota of doubt.

That under the charge, it deals with intentional penetration of the victim's vagina with the Defendant's penis by force and without her consent.

On whether the Sexual act was done by the Defendant with victim's consent, the Prosecution submitted that the victim who is only eleven (11) years old, is a minor

by all standard and as such cannot give valid consent on any issue not to mention giving consent to issue of Rape which is in any case a forceful act.

Again that if the victim, PW1 had consented to the act she would not have reported the case to her Aunt and subsequently to the NGO who came to her school on a sensitization programme after.

That her Aunt who she had reported to, threatened her by telling her not to allow anyone to know about the issue. Being a child, threatened and disappointed, she obviously succumbed to the threat and kept quiet because of fear for her life.

The Prosecution further submitted that the victim clearly, vividly and credibly gave account of how she had been raped by the Defendant severally at the age of eleven (11) years old. That it is very clear that the Defendant raped the victim since she could state that categorically the way she did.

That the victim being a child cannot fabricate lies against the Defendant. Beside the Defendant did not rebut the allegation which suggests that he actually raped the PW1.

Again the Defendant could not establish that the victim was seeing another person or that she was wayward. The victim's account of what happened puts no one in doubt that she was raped severally by the Defendant and that the Defendant could not deny that he sexually assaulted her.



On element that the Defendant penetrated the vagina of the victim with his penis, the Prosecution Counsel submitted that the Medical Report wherein the examination revealed evidence of sexual encounter and the pelvic inflammatory disease confirms that rape cannot be ruled out. That going by the said Report, it is evidently clear that the victim had been known carnally and raped severally just as she testified in Court for a girl of eleven (11) years old as she is to have pelvic inflammatory disease. They referred and relied on the case of:

**Adenekan V. State of Lagos**

**(2021) 1 NWLR (PT. 175) 130 @ 190 paragraph D – G**

Where the Court held the use of hand or mouth or even the slightest object on the vulva qualifies as penetration for the conviction of the offence. That full penetration breaking of the hymen need not be achieved before offender can be convicted. They referred to the case of:

**Ojo V. State**

**(1980) 2 NCR 39**

**Jegede V. State**

**(2001) 14 NWLR (PT. 723) 263**

On the element of Intention to have or having Intercourse with the victim, the Prosecution Counsel submitted that the Defendant intended to be having sexual encounters with the victim that is why he took her out with his young girl to the shop and stayed overnight in his work place so he could have free access to the victim's body. Again he also had

intentions to continuously rape the victim by not sending her back to her parents after he discovered that he cannot control his urge whenever he sees the girl lying down. It would have made a different impression to anyone that he made attempt to send the victim back to her parents. But he did not do so as the testimony of the victim revealed to the contrary when she stated that the Defendant tore the paper where the address of the victim's relative is, who she would have contacted and who she would have reported the rape and her ordeal in the hand of the Defendant.

That the action of the Defendant in the sexual relationship with the victim was intentional and premeditated and well planned out and perfectly executed and which was concealed by his wife who is the DW2 in this case. That it is a well established practice that evidence of corroboration of the evidence of the victim in a rape is required as a matter of law, but it is now a well established practice by the Court in Nigeria.

Also that the Medical evidence is not sine qua non to prove the offence of rape. That with the water-tight evidence of PW1 & PW2 the Prosecution has established all the ingredients of offence of rape against the Defendant. She referred to the case of:

**Isa V. State**

**(2016) 6 NWLR (PT. 1508) 243 @ 249**

They urged Court, that by the overwhelming evidence of the PW1 & PW2 as well as their Exhibit, to hold that

the Prosecution has successfully proved and established the offence of rape against the Defendant beyond reasonable doubt. They urged the Court to convict the Defendant and sentence him accordingly.

Upon receipt of the Prosecution Final Address the Defendant Counsel filed a Reply on Points of Law. They submitted that the Prosecution failed to prove the guilt of the Defendant beyond reasonable doubt. They referred to the case of:

**Abdul Kareem V. Lagos State Government  
(2016) 15 NWLR (PT. 1535) 177**

That Prosecution failed, neglected and refused to investigate the allegation against the Defendant. That they relied solely on the Statement and allegation of PW1. That PW2 said he did not visit the scenes of the rape.

That the fact that the Defendant took the victim to his office and refused to send her back to her parents are all speculations and assertions which are not backed up or supported by any concrete evidence. They urged Court to discontinuance them. The Defendant Counsel also submitted that when there is doubt in the case of a Prosecution, it must be resolved in the favour of the Defendant. They referred to the case of:

**The People of Lagos V. Mohammed  
(2014) 2 NWLR (PT. 1407) 584**

**Akindipe V. State  
(2008) 15 NWLR (PT. 111) 560**

That Prosecution failed to link the Defendant to the alleged offence. That the Medical Report was dumped on the Court because the maker of the document was not called as a Witness. Again the Medical examination of PW1 was done weeks after the offence was allegedly committed. They urged the Court to so hold. They urged Court to discontinuance the submission of the Prosecution and discharge and acquit the Defendant.

### **COURT:**

In any criminal matter/action in which the Defendant has pleaded Not Guilty, it is incumbent on the Prosecution to establish the case against the Defendant beyond reasonable doubt. That is an onus which the Prosecution must discharge in order to secure conviction of the Defendant and for the Defendant to be subsequently sentenced. Unless and until the Prosecution has done so through the testimony of its Witness and Exhibit tendered and through those Witnesses and through any subpoenaed Witness as the case may be, it will not be held that the Prosecution has established the case against the Defendant. That is why it is said that every Defendant is not guilty until proven to be guilty by the testimony of the Witness called by the Prosecution and the evidence tendered by them too.

Again in any matter where the Defendant is charged with rape, it is incumbent on the Prosecution to

establish the following elements: that the accused had sexual intercourse with the victim without her consent or that the consent was obtained by fraud, threat, intimidation, force, deceit or a fake promise and inducement or impersonation. That there was act of penetration of the vagina of the victim either with finger, object or penis.

The Prosecution must also establish that there was intention which is premediated or sudden given the circumstance or situation as the occasion warrants. Such act must be done recklessly whether or not and or minding whether victim consent or not. This is what the Court decided in the following cases:

**Isa V. State**

**(2016) 6 NWLR (PT. 1508) 243 @ 249**

**Ndewewu Pose & Anor V. State**

**2011 1 LPELR**

**Ogwunbanjo V. State**

**(2007) 8 NWLR (PT. 1035) 57**

So where there is evidence of penetration with an object, with finger, mouth or with penis it is rape once the penetration of the victim. See the case of:

**Adenekan V. The State of Lagos**

**(2021) 1 NWLR (PT. 1756) 139 @ 190**

See also the case of:

**Jegede V. State**

**(2001) 14 NWLR**

Where the Court held that breaking of hymen need not be achieved before conviction on rape can be attained/sustained. Any forceful entry without the consent suffices.

It is an offence to have carnal knowledge of a minor more so when such carnal knowledge is forcefully done without the consent of the minor. Even when a minor gives “consent” such cannot be a defence because a minor has no mind of his/her own to be able to know the implication of her action, decision and the consequences of such action. **S. 50 Penal Code.**

So once consent is obtained by putting a victim in fear or death or hint it tantamount to rape. Also when a person has carnal knowledge of a person under the age of 14 with or without her consent. It also tantamount to rape. **See S. 282 Penal Code.**

Again even where consent is given by a person below the age of 16 to such indecent sexual when done by his teacher, guardian or any person entrusted with her care or education shall Not be deemed to be consent. See **S. 285 Penal Code.** See also **S. 1 Violence Against Persons (Prohibition) Act 2015.**

In this case the victim PW1 has accused the Defendant Waleolu Waliu – DW1 of raping her and forcefully having sexual intercourse with her without her consent meanwhile the PW1 is only aged 11 at the time, 2017. This indecent act continued both in the house of the DW1 and once in his office at Gwarimpa until that fateful day when the NGO visited her school.

This Court had summarized the testimony of the PW1 & PW2 and those of the DW1 & DW2 too.

The question is can it be said that the Prosecution has established this case of Rape against the Defendant beyond reasonable doubt and so much so that this Court should find him guilty and convict him for the offence of rape of the 11 years old Musa Abike Amidat and subsequently sentence him accordingly.

It is the humble view of this Court that the Prosecution has credibly established the case of rape against the Defendant, Waleolu Waliu in that he should be convicted for having indecent sexual assault with the victim PW1 without her consent again she is a minor.

It is the law that any sexual intercourse with a minor is a crime. To start with the victim is 11 years old. The Defendant is her guardian.

The victim had told the Court her gory experiences in the hand of the Defendant which she looked up to as a father but who turned out to use her to satisfy his unbridled, indecent, filthy and unwholesome satanic and insatiable sexual escapade in his own house and his office. The Defendant was not able to counter the allegation that he took the victim to his office. He could not also state why he took her to his office in the first place when he knew that he will not be coming home that day. His wife, the DW2 was equally not worried that her husband could not come home that same day. Giving the distance between his office of the Defendant in Gwarimpa and his home in Kubwa there is no how it

would have been too late for him to go home on the fateful day. He deliberately delayed going home because he had premeditated to rape the victim. The Defendant feeble attempt to deny the incident at home could not stand. So also his wife DW2 attempt to protect her husband and most probably her image could not stand too. After all she shunned the girl each time she made efforts to report the indecent action of her husband. Her testimony contradicted that of her husband's testimony. While her husband stated that they have no problem with the victim, the wife DW2 told Court that the victim is truant. The husband stated severally that he and the victim were like father and child. DW2 stated that the victim has habit of coming home with pencil which she claims were given to her by her friend and that she normally disappear and they – she and her husband search for her. DW2 also told Court that she was with her husband on the 7<sup>th</sup> of February, 2020 when they both went to the school to search for the victim. Her husband told Court that he went alone. That when he wanted to call the Police her Head Teacher asked him not to call the Police. DW2 said that she went to NAPTIP together with the Defendant. But the Defendant said that he went alone and that his wife met him at NNPC Filing Station leading to Area 1. Meanwhile the wife said that she was with him the school when the NAPTIP called him. But the Defendant told Court that he was not with her in the school. He also told Court that the Head Teacher when to principal's office. But he had told Court that the Head Teacher had told him to wait so she could find out if



the victim is with her friend. Most surprising is that the Defendant never said that the NAPTIP staff – IPO beat him. But the DW2 said that her husband was slapped, beaten without letting him know why he was invited to NAPTIP. The Defendant never made mention of beaten and harassment. DW2 said that the NAPTIP told them that victim reported harassment. While the Defendant told Court that NAPTIP told him that the accused him of Rape. Under Cross-examination DW2 said we meet, I was with him when he received call to come NAPTIP. The Defendant never denied raping the girl in his office. He claimed that he never stayed over-night in the same office.

Both the Oral Statement of the victim and her Statement to NAPTIP were Never Contradicted by the Defendant. She had stated that the Defendant had raped her several times that she lost count. This Court believed her.

The Prosecution were able to establish the case against the Defendant especially by the testimony of the victim and documents tendered – Medical Report which shows bruises in the private part of the victim as well as the Pelvic Infection of the Statement of Dr. Ezimo. The Medical Report shows the ruptured hymen among other things.

The Prosecution Counsel had been able to establish the Prosecution's case. The Defendant could not adequately counter same. That being the case, the evidence of the

Prosecution Counsel is more than enough to earn the conviction of the Defendant.

That being the case, this Court therefore hold that you Waleolu Waliu is guilty of rape of Miss Musa Abike Amidat which is an offense punishable.

You are hereby convicted of the said offence of rape.

### **ALLOCUTUS**

Once a person is convicted of a crime the person must serve some terms in the prison or pay fine or both such prison term and fine.

In this case, the Court had listened to the Counsel for the Defendant make allocutus. This Court having listened to the Defendant Counsel make allocator on behalf of the convict. This Court hereby sentences the Defendant Waleolu Waliu to Seven (7) years Imprisonment for rape of an underage child – Musa Abike Amidat.

**This is the Judgement of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2021 by me.**

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**K.N. OGBONNAYA**  
**HON. JUDGE**