IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA
SUIT NO: CR/93/2018
BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

BETWEEN

FEDERAL REPUBLIC OF NIGERIA_____COMPLAINANT
AND
ABUBAKAR ABUBAKAR_____DEFENDANT

FINDING

The defendant is standing trial for the two count charges of rape punishable under section 1 of the Violence Against Persons (Prohibition) Act 2015. After having heard and understood the nature of the count charges, the defendant admitted to the commission of the crime, and even though the offence of rape is not a capital offence, however, considering the magnitude of the punishment, the court entered a plea of not guilty for him, and the burden was then placed upon the prosecution to prove the case beyond reasonable doubt as is envisaged in section 135 of the Evidence Act 2011. See the case of **State V. Ibrahim (2019) All FWLR (pt 1007) p. 707 at 729 paras. A-B.**

In trying to discharge the burden placed on it, the prosecution called one witness and tendered some exhibits which were marked as EXH. 'B1' and 'B2', and this is in addition to the confessional statement of the defendant.

At the close of the prosecution's case, the counsel to the defendant proffered and filed a written address on no case to answer, and which was replied by the prosecuting counsel, and the court overruled the submission and held that the defendant has a case to answer.

The defendant testified and further admitted that he committed the act of rape against the victims.

In compliance with the provision of section 294 of the constitution of the Federal Republic of Nigeria 1999, (as amended), the two counsel were allowed to finally address the court. See the case of **John V. State (2016) All FWLR (pt 840) p. 1298 at 1316 para. H.**

In his final written address, the prosecuting counsel formulated lone issue for this court to determine, to wit:

Whether the prosecution has proved his case against the defendant beyond reasonable doubt?

The counsel submitted that in criminal proceedings the onus is on the prosecution to prove his case beyond reasonable doubt and not beyond every shadow of doubt, and he referred to the case of **Nwankwo V. F.R.N. (2003) 4 NWLR (pt 809) p. I at pp. 35-36 paras. D-A.**

The counsel enumerated the ingredients required in prove of the offence of rape as follows:

a. That it was the defendant that raped the victims;
b. That the sexual act was done by the defendant without the victim's consent;
c. That the defendant penetrated the Vagina and anus of the victims with his penis; and
d. That the defendant intentionally (mens rea) had intercourse with the victim.

The counsel submitted that the prosecution in discharging its burden placed reliance on the direct, uncontroverted and credible testimony of the PW1, who is one of the victims, when she testified before the court as to how the defendant sexually raped her elder sister by penetrating her Vagina, and after which he penetrated her anus with his penis without her consent, and to him, the medical report from the Federal Government approved hospital suggests that the victims in this case were forcefully raped. He submitted that the confessional statement of the defendant admitting to the commission of the crime in which the defendant was charged is enough for the court to hold that the prosecution has discharged the burden placed upon it. The counsel cited the case of **Alonge V. I.G.P (1959) SCNLR 516** to the effect that the Supreme Court held that the evidence of a single witness if believed by the court even in a murder charge can establish a case, and he cited the cases of **Onafowokan V. State (1987) 3, NWLR (pt 61) 538 at 552, Sunday Effiong V. State (1998) 8 NWLR (pt 562) 362.**

The counsel submitted that a conviction can be based solely on a confessional statement of the defendant wherein the confession has been admitted in evidence as in this case, and also facts admitted

need no further proof and he cited the cases of **Ayoke V. Bello (1992) 10 NWLR (pt 218) 380**, **Confidence Insurance Ltd V. Trustee of O.S.C.E (1999) 2 NWLR (pt 591) 373,** and he also referred to the testimony of the defendant during examination in chief when he said he committed the offence.

The counsel submitted that the testimony of the PW1 was direct, clear and uncontroverted and consistent with the earlier statement she made, and her sense of accuracy was never in doubt in which she recounted how the defendant tied her legs while he was sexually abusing her sister and finally raped her without her consent at the location where she and her sister went to fetch firewood at the back of their house. To him, to corroborate the above, the victims were taken to the hospital where they were examined and a medical report was tendered.

It is the submission of the prosecuting counsel that the statement of the defendant was recorded and which was confessional and was endorsed by a senior officer in the complainant's office having the defendant admitting to the crime, and the said statement was also tendered, and on this he cited the case of **Bature V. State (1994) 1 NWLR (pt 807) at 267** where the court enumerated the conditions to consider in determining whether the confessional statement was voluntary or otherwise as follows:

a. There is anything outside the confession to show that it is true;
b. It is corroborated;
c. The facts stated in it are true in so far as can be tested;
d. Defendant's confession is possible; and
e. The confession is consistent with other facts which have been ascertained.

The counsel submitted the defendant's statement is consistent with all the requirements above including his admission of guilt before the court, and he relied on the case of **Amachere V. Nig. Army (2003) 3 NWLR (pt 807) at 256.**

The counsel urged the court to see the case of **Isa V. State (2016) 6 NWLR (pt 1508) 243** particularly the dictum of His Lordship I.T. Muhammad JSC, and finally urged the court to hold that the prosecution has successfully proved its case beyond reasonable doubt against the defendant with respect to the offence to which he is charged.

On his part, the defence counsel, in his written address, formulated a similar issue for determination, to wit:

> **Whether the prosecution has proved the guilt of the defendant beyond reasonable doubt in the circumstances of this suit?**

The counsel answered the above question in the negative and submitted that the prosecution has failed to prove the ingredients of the offence of rape against the defendant. To him, the evidence of the PW1 has been so discredited during cross-examination that it would be unsafe to convict the defendant based upon such testimony, and to him, it is trite that an accused person is presumed innocent until his guilt is proved beyond reasonable doubt, and the counsel relied on section 317 (though I do not know which section of the law is, as no reference was made by the counsel as to which law he is relying on).

The counsel submitted that the position is that an accused person is presumed innocent until otherwise proved by the prosecution beyond reasonable doubt, and he cited the case of **Okashetu V. State (2016) 15 NWLR (pt 1534) p. 126 at 131** to the effect that it is not for the accused person to prove his innocence, and to him, the prosecution did not prove beyond reasonable doubt that the defendant committed the alleged offence of rape. He further submitted that the defendant should not be allowed to defend himself even when he chooses to defend himself, and he referred to section 349(6) (a) and (b) of the Administration of Criminal Justice Act 2015, and to him, the essence of the above provisions of the above quoted section is the consideration of the severity of the penalty attached to the capital offence punishable with life imprisonment. To him, the defendant had been put to represent himself in this case, and this has put the defendant in a precarious situation as the observance of section 349 of the Administration of Criminal Justice Act 2015 is mandatory and it goes to the root of this case. He cited the case of **Lucky V. State (2016) 13 NWLR (pt 1528) p. 128 at 131-132** where the Supreme Court enumerated the ingredients required in proof of the offence of rape to include:

i. That the accused had sexual intercourse with the prosecutrix;

ii. That the act of sexual intercourse was done without consent, or that the consent was obtained by fraud, force, threat, intimidation, deceit or impersonation;
iii. That the prosecutrix was not the wife of the accused;
iv. That the accused had mens rea, the intention to have sexual intercourse with the prosecutrix without her consent or that the accused acted recklessly not caring whether the prosecutrix consented or not; and
v. That there was penetration.

The counsel submitted that the evidence before the court does not sufficiently link the accused person with the commission of the crime and does not establish the elements of rape.

The counsel further submitted that the prosecution largely relies on the acclaimed confessional statement which is said to be made by the defendant and which was not written by the defendant himself but by another person in English Language, a Language which the defendant cannot speak or understand, the counsel cited the case of **Akinrinola V. State (2016) 16 NWLR (pt 1537) p. 73 at 77** to the effect that before a confessional statement could result in the connection of an accused, it must be unequivocal in the sense that it leads to the guilt of the maker where a confessional statement is capable of two interpretations in the realm of guilt and non-guilt, or wayward, a trial court will not convict the accused but give him the benefit of doubt. To him, it is the position of law that where a defendant does not speak or understand English Language, an extra-judicial confessional statement by the accused person must first be recorded in the Language of the accused person before translated to English Language, and he referred to the case of **Aliu V. State (2019) 14 NWLR (pt 1692) p. 314.** He further submitted that there was no testimony of the interpreter or the person who wrote and translated the statement of the defendant in English Language before the court, and there is nothing before the court to authenticate the confessional statement so as to show that the accused person, who does not understand English Language intended or understands the purport of the statement written in English by one Krombet John David, and to him, this court cannot attach any weight to this confessional statement as it does not conform with the provisions of section 17 of the Administration of Criminal Justice Act, and to him,

the truth of the confessional statement has not been established and a conviction cannot rest on same, and he urged the court to so hold.

The counsel submitted that the two medical reports have nothing to show whom the reports are referring to, and the court cannot read meaning to a document other than what was written or contained in same, and there was no oral testimony by the maker of the documents as to the identities of those referring to in the documents, and to him, the court will not be sent on a voyage of discovery. He further submitted that the reports did not identify the defendant as the person responsible for the abuse on the girls stated on the reports, and he referred this court to the case of **Ede V. F.R.N. (2001), NWLR (pt 695) p. 502** to the effect that for the prosecution to succeed, the identity of the accused person must of necessity be established. Also to him, the medical report did not link the accused person with the commission of the offence, and there is no mention of the defendant as being who penetrated the purported victims of the rape, and therefore no weight can be attached to the medical report in deciding whether the defendant is guilty or not.

On the evidence of PW1, the defence counsel submitted that the position of law in the testimony of a person below the age of 14 years is clear that a court will not convict on same even if after it has ascertained that the minor understand the implication of telling the truth, this or because to him, the person at that age will lack reliable capacity to tell about situations even if they had experienced same personally, and he quoted the provisions of section 209 (1) of the Evidence Act 2011. He further cited section 209 (3) of the same Act to the effect that there is need for the evidence of the prosecutrix to be corroborated, and he cited the case of **Mohammed V. State (2018) 13 NWLR (pt 1635) 86.** He submitted that there is nothing before the court to corroborate the testimony of the PW1 that she was raped by the defendant, and it is unsafe for this court to convict the defendant on the uncorroborated testimony of the PW1.

The counsel posed the following questions:

What happened between 9th and 11th of December, 2018?

Was it that nobody was arrested until 11th of December 2018?

Was it that the police went there on 11th December, 2018 and arrested anyone simply to enable them prosecuting this case which the defendant was unfortunate to be the victim?

Was it that the defendant committed the offence and waited three days in the bush for the law enforcement agency to come and arrest him?

Was it that he was arrested but it took three days to obtain defendant's statement?

The counsel answered that the defendant is just a victim of circumstances, and that was why there are inconsistencies all over in this case, and these cast doubt as to the guilt of the defendant, and he cited the case of **Botu V. State (2018) 3 NWLR (pt 1607) p. 410** to the effect that where there is any doubt in the case presented by the prosecution, such doubt must be resolved in favour of the accused person, and finally he urged the court to discharge and acquit the defendant for the prosecution having failed woefully to prove his guilt beyond reasonable doubt.

Thus, having summarised the submission of both counsel, let me quickly adopt the issues formulated by the prosecuting counsel, that is to say:

Whether the prosecution has proved its case against the defendant beyond reasonable doubt?

Now, it is the duty of this court to evaluate the evidence of the prosecution and that of the defence with a view to ascribe probative value to the one that is credible in determining whether, the prosecution has proved beyond reasonable doubt the guilt of the defendant. See the case of **Obi V. F.R.N. (2018) All FWLR (pt 933) p. 1048 at 1080 paras. C-D** where the Court of Appeal, Lagos Division held that the primary duty of a trial court is to evaluate evidence led at trial, to make appropriate findings and to come to a reasonable conclusion based on its evaluation of the evidence.

The first prosecution witness (PW1) testified that she and her sister by name Hajara went to the back of their house to fetch firewood, and the defendant saw and called them, and they went and met him, and he said he would give them medicine to take to their relative. The defendant then held and tied their hands with ropes, and he brought a knife and a bottle with some medicine in it.

The defendant loose the rope from Hajara and he further tied her (PW1) with the rope.

She told the court that the defendant removed Hajara's skirt and applied the medicine in the bottle on Hajara and he climbed her and

have canal knowledge with her and she started bleeding, and the defendant washed her skirt and gave back the shirt to Hajara back to wear. The PW1 further told the court during examination in chief that the defendant striped and asked them to bath in the stream.

When asked by the prosecuting counsel whether the defendant did anything to her (PW1), and she told the court that the defendant tied Hajara by the back and neck and left her. The PW1 also told the court that the defendant had carnal knowledge with her from the anus, and he then set them free and asked them to dress back, and he then returned the knife to his waist.

The defendant could not cross examine the PW1, however, his counsel applied to the court for the recall of the PW1 which was granted to him.

The counsel to the defendant took time to cross examine the PW1, and she further testified that when the alleged rape was taken place, she cried but there was nobody there.

Thus, the evidential burden of casting reasonable doubt on the prosecution's case is on the defence. See the case of **Kekong V. State (2018) All FWLR (pt 923) p. 82 at 100 paras. A-B.** In the instant case throughout the questions and answers session during cross examination, the PW1 has not been contradicted or discredited. See the case of **Gana v. F.R.N. (2019) All FWLR (pt 1012) p. 730 at 749 paras. B-C** where the Supreme Court held that where evidence is given by a party, and it is not contradicted by the other party who has the opportunity to do so, and such evidence proffered is not inherently incredible and does not offend any rational conclusion or state of physical things, the court should accord credibility to such evidence.

In the instant case, the counsel recalled the PW1 and cross-examined her, however, he could not be able to contradict the evidence, and the best thing this court should do is to accept it as being credible. The evidence of the PW1 is hereby accepted in proof of the offence of rape against the defendant.

In the course of the proceedings, the prosecution tendered the confessional statement of the defendant from the bar, and which was admitted in evidence as EXH. 'A1'.

It is the contention of the counsel to the defendant that the confessional statement tendered by the prosecution in this case

shows on its face that it was written in English Language. That it is also on its face that it was not the defendant that wrote the statement but one Krombet John David, whereas, facts before this court shows that the defendant does not understand English Language. It is the contention of the counsel that there was no testimony of the interpreter or the person who wrote and translated the statement of the defendant in English Language before the court, and he then urged the court not attach any weight to the confessional statement as it does not comply with section 17 of the Administration of Criminal Justice Act and urge the court not convict the defendant resting on the confessional statement.

Thus, section 17(3) of the Administration of Criminal Justice Act 2015 provides:

> **"where a suspect does not understand or speak or write in the English Language, an interpreter shall record and read over the statement to the suspect to his understanding and the suspect shall then endorse the statement as having been made by him, and the interpreter shall attest to the making of the statement."**

By the above quoted provision, it could be inferred that because of the word used "shall", it is mandatory for the interpreter to record and read over to the suspect who does not understand English Language and the suspect shall then endorse the statement having been made by him, and the interpreter shall attest to the making of such statement.

It is to be noted that at the initial stage of this proceedings, the defendant indicated that he does not understand English Language, and the court incompliance with section 36(6) (e) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) appointed an interpreter for the purpose of this proceedings from English to Hausa Language and vice versa. Therefore, it is a fact that the defendant does not understand English Language.

It is therefore, the duty of this court to examine EXH. 'A1' with a view to see whether the provision of section 17(3) of the Administration of Criminal Justice Act has been duely complied with. See the case of **Chemiron Int'l Ltd V. Egbujuonuwa (2007) All FWLR (pt 395) p. 447 at 458 para. C,** where the Court of Appeal, Lagos Division

held that a trial court is at liberty to look at all exhibits tendered before it in considering or determining a matter.

Looking at the confessional statement, it can be seen that the defendant authorised Krombet John David to write the statement for him he could not write, and the defendant signed such instruction. In the statement, the defendant confessed to the commission of the crime and he also thumb printed. The person who recorded the statement in English Language, Krombet John David, stated:

> **"The statement was written in English Language which he agreed is his statement he signed, thumb printed and dated and I counter signed."**

Now, the question is: whether the confessional statement satisfies the requirements under section 17(3) of the Administration of Criminal Justice Act 2015?

In the confessional statement, it is not shown whether such statement was read over to the defendant to his understanding as having been made by him. To my mind, the confessional statement does not seem to have been made in compliance with the said section of the ACJA. The requirement that it should be read to the defendant to his understanding as having been made by him is mandatory because of the use of the word "shall" in that segment of the section, and therefore, failure on the part of the recorder to have done so, becomes fatal to the prosecution's case.

The prosecution did not call the recorder to testify at its instance, and this also becomes fatal to the prosecution's case. See the case of **Wahab V. State (2016) All FWLR (pt 855) p. 55 at 80 paras. B-C** where the Court of Appeal, Lagos Division held that where the statement of an accused was made in another Language other than the one in which it was recorded, it is necessary that the prosecution call the recorder of such statement. In the instant case, the prosecution failed to call the recorder, Krombet John David, to testify.

The Court of Appeal, Ibadan Division held in the case of **Yinusa V. State (2017) All FWLR (pt 910) p. 317 at 335 paras. C-D** that while a trial court is not bound as a matter of law to make a finding as to the probative value of all the exhibits before a conviction can be granted, it will not be proper for exhibits to become unavailable to the court for further consideration, evaluation, or appraisal by reason of their disposal before the end of a case. In the instant case, the EXH.

'A1' is available, and therefore this court owes a duty to evaluate it and to ascribe a probative value to it. In the circumstances, I hold the view that EXH. 'A1' is not worthy of acceptance to prove that the defendant has made a confessional statement to the commission of the crime.

On EXH. 'B1' and 'B2', the counsel to the defendant contends that the two reports had nothing to show to the court whom the reports were referring to, and the court cannot read additional meaning to a document other than what was written or contained in same. To him, there was no oral testimony by the maker of the reports as to the identities of those referring to in the documents. The maker of such reports did not identify the defendant as the person responsible for the abuse on the girls, and to him, the medical reports did not link the defendant with the commission of the offence, as there is no mention of the defendant being who penetrated, and to him, therefore, this court cannot attach weight to the purported medical reports in finding the defendant guilty.

Thus, EXH. 'B1' reads:

MEDICAL REPORT

RE: ALI MANSIYA, 10 YEARS, FEMALE

The above named 10 year old female was brought in by the police as a case of rape. Patient presented with complains of pain in the anus. On examination, patient was not in any obvious distress. Systemic examination did not show any abnormality. Vulvo Vaginal also seen to be intact. However, anal splinter is parted with small laceration at the 12.5 and 9:00 O'clock.

An assessment of possible sexual assault was made and was treated.

Please kindly give all necessary consideration on account of her predicament.

The EXH. 'B2' reads:

MEDICAL REPORT

RE: ALI AJARA, 11 YEARS, FEMALE

The above named 11 year old female child was brought in by the police as a case of rape. She presented with complains of vaginal bleeding following rape.

On examination, she was seen to be in painful distress. Vaginal examination reveals vulva laceration.

An assessment of vulva laceration secondary to possible sexual assault was made. Laceration was sutured and antibiotics given.

Please kindly give all necessary consideration on account of her predicament.

Thank you.
Yours faithfully,
Signed and stamped
Dr. Harri Bala I.
Senior Medical Officer.

The two reports were prepared by Dr. Harri Bala I., a senior medical officer attached to Federal Staff Hospital, Gwarinpa, Abuja. By the two reports, it could be inferred that a case of rape was reported to the police, and the later took the PW1 and her sister to the said hospital and examination was carried out. EXH. 'B2' reveals that there was Vulva laceration which is secondary to possible sexual assault and it was sutured and antibiotics given.

EXH. 'B1' reveals that vulvo vaginal seen to be intact, however, anal splinter is parted with small laceration, and assessment was made of possible sexual assault and was treated, and all the reports were dated the 11th day of December, 2018, and were signed by the maker.

One of the contentions of the counsel to the defendant on the exhibits is that the medical doctor is not called as a witness. However, it is allowed in law for a medical report to be tendered without calling the maker. See the case of **S.P.D.C. Ltd V. Ikontia (2011) All FWLR (pt 582) p. 1834 at 1840 paras. A-B** where the Court of Appeal, Calabar Division held that by the provision of section 42 (1) of the Evidence Act, Cap. 112 LFN 1990, the tendering and admission in evidence of medical report without calling the maker to come to court and give evidence is allowed.

In the instant case, EXH. 'B1' and 'B2' are admitted in evidence without any objection and therefore, it is allowed in the absence of the maker, and to this, I therefore so hold.

It is also one of the contentions of the counsel to the defendant on this that the report did not link the defendant with the commission

of the crime, however, going by the two reports dated the 11th day of December, 2018, it could be inferred that there was a report to the police, and the police took the victims to the hospital and they were duely examined and on EXH. 'B2' there was vulva laceration which is secondary to possible sexual assault on Hajara, and it was a rape case which was reported to the maker of the reports, and these are in tandem with the evidence of the PW1 which was duly accepted by this court. I am therefore convinced that the reports are worthy of acceptance even though they do not link the defendant with the commission of the crime in this case. See the case of **Erin Folami V. Ajao (2011) All FWLR (pt 562) p. 1797 at 1803 paras. B-C.** where the Court of Appeal, Lagos Division held that a medical report that is worth convincing the court should be one that states the nature of the management of the patient and the date he is discharged and the value of the sickness the patient suffers from. In the instant case, all those that are required to be present as in the above cited case are also in the reports tendered, and to this, I hold the view that the reports are worthy of acceptance. Therefore, EXH. "B1" and "B2" are accepted accordingly.

Thus, while it is the duty of the prosecution to prove the allegation of committing a crime against a defendant, and not for the defendant to prove his innocence, however, where the prosecution had advanced adequate evidence which shows that the offence charged, the burden of proving that he is innocent shifts to the defendant in view of the provisions of section 138(3) of the Evidence Act 2011, as amended. This is the position of the law as decided by the Supreme Court in the case of **Giki V. State (2019) All FWLR (pt 979) p. 509 at pp. 521-522 paras. G-A.** In the instant case, and it is on this premise, I have to evaluate the evidence of the defendant with a view to ascribe a probative value to it.

The defendant was given an opportunity to testify and in the course of examination and as well as the cross examination, the defendant admitted to the commission of the crime only and stopped at that. Thus, he did not waste the time of the court in that regard, and therefore, his evidence is worthy of acceptance. See the case of **UBN V. Uke-Fayanju (2019) All FWLR (pt 1017) p. 613 at 655 para. H** where the Court of Appeal, Akure Division held that a piece of

evidence is credible when it is worthy of belief. It is conclusive if it leads to a definite result.

It is the duty of the prosecution to prove the ingredients of the alleged offence. See the case of **Obi V. F.R.N. (2018) All FWLR (pt 933) p. 1039 at 1074 para. D.**

The ingredients required in proof of the offence of rape include the following:

a. That the accused had sexual intercourse with the prosecutrix;
b. That the act of sexual intercourse was done without the consent or that the consent (if any) was obtained by fraud, force, threat, intimidation, deceit or impersonation;
c. That the prosecutrix was not the wife of the accused;
d. That the accused had the mens rea, the intention to have sexual intercourse with the prosecutrix without her consent or that the accused acted recklessly not caring whether the prosecutrix consented or not; and
e. That there was penetration.

It is evident, as per the evidence of the PW1, that the defendant has had sexual intercourse with one Hajara, who is a sister to the PW1, and had also sexual intercourse through the anus of the PW1, and this has not been challenged even during cross-examination.

It is evident that the defendant had to tie the victims before having carnal knowledge with them, and this shows that it was against their consent. They also had to cry, but nobody was there to rescue them. All these point at that the defendant had carnal knowledge with them without their consent.

It is evident that the victims are not married to the defendant as they only went to fetch firewood at the back of the house near a stream and the defendant had to tie them before having carnal knowledge with them, this shows that they are not married to him. They are even of 10 and 11 years of age, and all these are not challenged during cross examination, and are not controverted by the defendant.

It is evident that the defendant had the intention to have carnal knowledge with the victims as he had to lured them to come to him, applied medicine on them, striped them naked and had sexual intercourse with them, and all these are not challenged during cross examination.

It is evident that there was a penetration, as the PW1 told the court that Hajara started bleeding when the defendant had carnal knowledge with the same Hajara. This is the most important of the ingredients required in proof of the offence of rape. See the case of **Ogunbayo V. State (2007) All FWLR (pt 365) pt 430 paras. A-C** where the Supreme Court held that the important and essential ingredient 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 vagina emission is not a necessary requirement. It has however, been held, that any, even the slightest penetration, will be sufficient to constitute the act of sexual intercourse. In the instant case, evidence show that the defendant had carnal knowledge with Hajara, and the PW1, and by the EXH. 'B1' and 'B2' it is clear that was a vulva laceration and there was possible sexual assault. All these are not challenged during cross examination. The only thing the counsel did was to bring all these issues in his written address, and which have no force of law. See the case of **Kekong V. State (supra),** and cannot substitute the place of evidence.

So, for the prosecution to establish the offence against an accused person, it must present or advance credible evidence in any of the following modes, namely:

a. Through testimony or testimonies of eye witness or witnesses; and/or
b. Through confessional statement, voluntarily made by the accused person, and/or
c. Circumstantial evidence which clearly point to the sole fact that the accused person and no other person committed the offence charged. See the case of **Giki V. State (supra).** In the instant case, the evidence of the PW1 was accepted and even the defendant had admitted in the course of giving evidence that he has had sexual intercourse with the witness, and therefore even without accepting the confessional statement of the defendant, it is enough for this court to find the defendant guilty.

Assuming but not conceeding, that without accepting EXH. 'B1' and 'B2' with regards to corroboration, still this court can find the defendant guilty and convict him on the basis of the evidence of the PW1 and his admission of guilt in the course of giving evidence in his

defence. See the case of **Musa V. State (2013) All FWLR (pt 692) p. 1693 at 1710 para. E** where the Supreme Court held that it is not a rule of law that an accused person in a charge of rape cannot be convicted on the uncorroborated evidence of the prosecution…. Also where there was enough on ground from which the trial court can reach a decision then there is no need to warn itself of the danger of acting on the uncorroborated evidence of the prosecutrix. In the instant case the evidence of the prosecutrix is corroborated by the two medical reports and the admission of guilt of the defendant, and to this, I so hold. See the case of **Mohammed V. Kano State (2019) All FWLR (pt 1002) p. 1002 at 1023 paras B-C** where the Supreme Court held that there is no law or statutory provision that in rape case, evidence of the prosecutrix must be corroborated. However, it is rule of prudence and the settled course of practice by the court to seek for corroboration in rape cases.

It is to be noted that the offence to which the defendant is alleged to have committed is not a capital offence, even though, the punishment carries life imprisonment. It is only when the punishment of an offence carries death penalty that such an offence will be taken as a capital offence. See Garner, Bryan A., Black's law Dictionary, English Edition, at page 1111 where capital offence is defined as a crime for which the death penalty may be imposed. In the instant case the court recorded the plea of not guilty considering the magnitude of the offence in which the defendant is charged; and even though he admitted guilty to the charge. See the case of **Abdullahi V. F.R.N (2016) All FWLR (pt. 843) p. 1782 at 1798 para. B** where the Supreme Court held that where an accused person is charged with a non capital offence and he pleads guilty thereto, the court is at liberty to adopt a summary trial procedure and convict and sentence him based on the evidence presented by the prosecution. The burden on the prosecution in the circumstances is very light. In the instant case, and based upon the circumstances of same, it was not out of place to have opted for the prosecution to slightly prove beyond reasonable doubt as to the commission of the offence, and to this, I therefore so hold.

The counsel to the defendant alluded to the position of the law and more particularly section 349 of the Administration of Criminal Justice Act 2015 that the court in considering the severity of the

offence, which to him, is a capital offence, and for the fact that the defendant has been put to represent himself which occasioned the admissibility of all the documentary evidence tendered by the prosecution, he believes this has largely put the defendant in a precarious situation to the effect that the observance of section 349 of the Evidence Act is mandatory and it goes to the root of this case.

Thus, one of the purports of that section is that a defendant charged with a capital offence or offence punishable with life imprisonment shall not be allowed to represent and defend himself. To my mind, this section 349(6) (b) of the Administration of Criminal Justice Act is inconsistent with the provision of section 36(6) (c) (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides:

> **"Every person who is charged with a criminal offence shall be entitled to:**
> **(c) defend himself in person or by legal practitioners of his own choice.**
> **(d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution."**

From the above quoted section, it could be inferred that the law does not differentiate whether it is a capital offence or an offence with life imprisonment, rather any person who is alleged to have committed any offence. As the word used in the Act is "shall" and so also the word used in the constitution is "shall".

Notwithstanding the above position, the defendant was assisted by this court to have written to the Legal Aid Council for a legal practitioner to be assigned to him, however, no response from the council, this was in line with section 349 (4) of the Administration of Criminal Justice Act.

A different counsel stood for the defendant by name Sunday Adaji Esq on provono, and he could not continue, until when the present counsel in person of Qousim Opakunle Esq took over and

concluded it. Therefore, the argument of the counsel to the defendant goes to no issue.

At this juncture, I need not to warn myself of the danger of convicting or rather finding the defendant guilty of the offence of rape as I am satisfied with the evidence of the prosecution. See the case of **Musa V. State (supra).**

In the circumstances of this case and based upon the foregoing analises, I have to find the defendant guilty of the offence of rape punishable under section 1 (2) of the Violence Against Persons (Prohibition) Act 2015.

I therefore found you Abubakar Abubakar guilty of the offence of rape punishable under section 1 (2) of the Violence Against Persons (Prohibition) Act 2015.

CONVICTION

Based upon the finding of guilt, I hereby convict you Abubakar Abubakar of the offence of rape punishable under section 1 (2) of the Violence Against Persons (Prohibition) Act 2015.

ALLOCUTUS

CT-DEF: Do you want to plea for leniency, but take note that the punishment of rape under section 1 (2) of the Violence Against Persons (Prohibition) Act 2015 is life imprisonment, which reads:

> **"A person convicted of an offence under subsection (1) of this action 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 persons, the offenders are liable jointly to a minimum of 20 years without an option of fine."**

So, subsection I of the above section provides:

> **"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."

By the above quoted subsection, it could be inferred that you fall into the category of persons that can be punished under section 1 subsection 2 of the Violence Against Persons (Prohibition) Act 2015.

Signed
Hon. Judge
9/2/2021

Appearances:

Sam Offiah Esq appearing with Chinenye Edoka Esq and Aishatu Ahmed Esq for the prosecution.

Olaseinde Karim Esq appearing with Qousim Opakunle Esq for the defendant.

CT: The finding was read over, and I am to listen to the allocutus.

DC-CT: I just want to plead on behalf of the defendant that the court should show mercy and leniency on the defendant. As a young man, he has a child and a wife, and this is the first time he attended court, and I pray the court to consider section 1 subsection 2(b) of the Violence Against Persons (Prohibition) Act 2015 which states that in other cases, to a minimum of twelve years without an option of fine. He has not waste the time of the court.

SENTENCE

I make reference to the case of **Lucky V. State (2016) All FWLR (pt 857) p. 576 at pp. 607-609 paras. A-A,** where Ngwuta JSC sounded this warning on the need to impose the appropriate punishment as provided by the law, which to me is section 1 (2) of the Violence Against Persons (Prohibition) Act 2015, by imposing a term of life imprisonment. See also the case of **Popoola V. State (2014) All FWLR**

(pt 715) p. 204 at pp. 215, 217, 218 and 219 where erudite justices of the Supreme Court warned that there is need to impose the maximum sentence for the punishment of rape in accordance with the law.

Thus, in line with section 12(2) of the sentencing guideline and Practice Direction 2016, I therefore sentence you Abubakar Abubakar to life imprisonment having found you guilty and convicted you of the offence of rape punishable under section 1(2) of the Violence Against Persons (Prohibition) Act 2015.

Signed
Hon. Judge
9/2/2021