

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIIVISION
HOLDEN AT COURT NO. 5, MAITAMA ON THE 14TH DAY OF JULY
2021

BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE

SUIT NO.FCT/HC/CR/146/20

COURT CLERKS: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN COMMISSIONER OF POLICECOMPLAINANT

AND

PASTOR STEPHEN KALUDEFENDANT

JUDGMENT

The Defendant was arraigned before this Court on a two Count Charge dated the 16th day of October 2019 and filed the same date as follows:

Count 1:

That you, Pastor Stephen Kalu, male, 29 years old of By-pass, Opposite Calabar Kitchen Karshi, Abuja on or about the 28th day of October 2018 at about 12 noon in your room located at By-pass, Opposite Calabar Kitchen, Karshi Abuja did commit a criminal offence to wit: unlawful sexual intercourse with a Child in that on the said date, you had sexual intercourse with one Miss Blessing Orji, a 17 year old girl of Angwa Gwari, Karshi

Abuja without her consent and thereby committed an offence contrary to Section 31(1) of the Child's Right Act 2003 and punishable under Section 31(2) of the same Act.

Count 2:

That you, Pastor Stephen Kalu, male, 29 years old of By-pass, Opposite Calabar Kitchen Karshi, Abuja on or about the 28th day of October 2018 at about 12 noon in your room located at By-pass, Opposite Calabar Kitchen, Karshi Abuja committed a criminal offence to wit: Sexual abuse and exploitation of a Child in that on the said date, you sexually abused and exploited one Blessing Orji a 17 year old girl of Angwa Gwari, Karshi Abuja by subjecting her to unlawful sexual exploitation, you thereby committed an offence contrary to Section 32(1) of the Child's Right Act 2003 and punishable under Section 32(2) of the same Act.

In proof of the case, the Prosecution called three witnesses.

The 1st Prosecution Witness is the victim herself. The 2nd Prosecution witness is the guardian while the 3rd Prosecution witness is the Police.

The Defendant gave evidence for himself in defence of the Charge.

The Defendant's Counsel adopted his Written Address and argued that the Prosecution has not discharged the burden placed on it by law to justify the guilt of the Defendant.

That the Prosecution has not proved its case beyond reasonable doubt.

That there is no evidence from the 1st - 3rd Prosecution witnesses showing that the Defendant committed the alleged offences.

That the elements of the offence are not conclusively proved.

That the evidence of PW1-PW3 are not credible enough to warrant the conviction of the Defendant.

That the evidence of the PW1 is contrary to the Charge.

There is no credible evidence to show that the nominal complainant/victim was raped by the Defendant.

There is no corroboration in the sense of medical evidence in stained clothes etc.

The Prosecution also adopted his Written Address and canvassed that the Prosecution has through the PW1-PW3 proved beyond reasonable doubt the two Count charge against the Defendant.

That the victim was less than 18 years as at the time the Defendant had the alleged sexual intercourse with her.

That the allegation was never denied.

That the second Count was equally proved.

The admission of the Defendant that he had sexual intercourse with the Prosecutrix/victim becomes admissible and relevant as a confessional statement.

That the birth of the baby girl by the victim is proof that the Defendant had carnal knowledge of the victim.

The Defendant is charged under Section 31(1) and 32((1) of the Child's Right Act 2003

Section 31(1) states:

“No person shall have sexual intercourse with a child.”

Sub-section 2 states:

“A person who contravenes the provision of subsection (1) of this Section commits an offence of rape and is liable on conviction to life imprisonment.

Section 32(1) states:

“A person who sexually abuses or sexually exploits a child in any form or manner not already mentioned under this Part of this Act commits an offence.”

Rape means a forcible sexual intercourse with a girl or woman without giving consent to it. The most important and essential ingredient of the offence is penetration.

See *OGUNBAYO VS. STATE (2007) 8 NWLR (PT. 1035) 157.*

KAITAMAKI VS. R 1985 AC 147.

The slightest penetration will be sufficient to constitute the act of sexual intercourse.

However in the instant case involving a child under the Child's Right Act, it is immaterial that the offender believed the person to be of or above the age of 18 years.

2. That the sexual intercourse was with the consent of the child.

The ingredients of the offence of rape under Section 31(1) of the Child's Right Act are:

1. The victim is a child.

2.The Defendant had the mens rea, that is, the intention to have sexual intercourse with the Prosecutrix/victim.

3.That there was penetration.

OKOYOMON VS. STATE (1973) NMLR 292.

The PW1's (The Prosecutrix/Victim) evidence is that she was born on 28/03/2002. She further stated that she went to the Defendant's house in answer to a call by him on 28/10/18.

He shut the door and forced her to bed.

That it was Karshi market day. He took a pillow to cover her mouth and pressed her. She started screaming.

That his neighbours were not around. He held her hand and raped her after removing her pant with the second hand.

As she was struggling, he later removed his penis.

He put his penis inside her vagina and blood started gushing out.

She was crying and tired. The result was that she was pregnant. She put to bed on 10th of July 2019.

Exhibit B is the PW1 Statutory Declaration of Age stating that she was born on 28/03/02 at Mangu Town in Mangu Local Government Area of Plateau State.

The PW2 the guardian also stated in evidence that the nominal complainant, the victim was born on 28th day of March 2002.

That she started staying with him at the age of 7.

The PW3 the IPO also said the victim was 17 years old.

She said the Defendant accepted. That he did not deny.

The Defendant on the other hand said before they started the relationship of boyfriend/girlfriend with the victim he asked her of her age and she said she was 22 years in 2018.

That her elder sister confirmed the age.

The Defendant who gave evidence for himself said he made love to her in August 2018.

That it was an agreement.

That on 15/01/19 she called on phone to say she was not feeling fine and that she did not see her period for several months.

Under Cross-examination, the Defendant said the victim is not his wife.

That she was in SS3 when he started sleeping with her.

He also slept with her in October 2018. Two of his neighbours were around when he slept with her.

That the pregnancy that resulted from the sexual intercourse belongs to him.

By Section 277 of the Child's Right Act 2003, a child means, a person under the age of eighteen years.

The victim PW1 in the instant case was about 16 years, 7 months when the Defendant had carnal knowledge of her.

Exhibit B supports the evidence of PW1, PW2 and PW3 that the victim was born on 28/03/2002.

The Defendant's evidence that victim told him she was 22 years which was further confirmed by the victims elder sister is unbelievable.

The law is that it does not matter if the offender believed the person to be of or above the age of 18 years.

The Defendant did not call the said elder sister to give evidence of the said age.

The Defendant's evidence touching on the victim's age is an afterthought and I so hold.

I find therefore that the victim PW1 was below the age of 18 years at the time the offence was allegedly committed.

The Defendant further said they both agreed to continue the relationship. That it was a consensual act.

By Section 31(3)(b) it is immaterial that the sexual intercourse was with the consent of the child. The principle of law is grounded on the fact that a child is

legally incapable of giving a legally significant consent, that is actual consent.

The 2nd ingredient is whether the Defendant had mens rea, the intention to have sexual intercourse with the Prosecutrix/victim. The Defendant admitted in Exhibit C that he made love to her several times.

According to his evidence they mutually agreed to start the relationship that culminated into the sexual activities.

A confession of a Defendant to the commission of a crime plays a major part in the determination of his guilt if it is voluntary. The Defendant intentionally penetrated the vagina of the PW1.

In my humble view the Defendant had mens rea i.e, the intention to have sexual intercourse with PW1 and indeed had sexual intercourse with her and I so hold.

On whether there was penetration, the evidence is that the sexual activities between the PW1 and the

Defendant resulted in a pregnancy and a baby girl was eventually born.

The above fact was also admitted by the Defendant.

An important and essential ingredient of the offence of rape is penetration.

Sexual intercourse is deemed complete upon proof of penetration of the penis into the vagina.

In the circumstance of this case, the absence of medical evidence as to whether there was penetration is not fatal.

Learned Counsel to the Defendant argued that there was no corroboration.

That the PW1's evidence was not corroborated by any medical evidence and or blood stains etc.

The law is that what is admitted needs no further proof.

Corroboration of evidence is not required except where the law demands it. Evidence of corroboration of the evidence of the victim in a rape case is not required as a matter of law.

OGUNBAYO VS. STATE (2007) 8 NWLR (PT.1035) 157 SC.

IKU VS. STATE (2001) 14 NWLR (pt.732) 221 SC.

IBEAKANUWA VS. QUEEN (1965) 2 SCNLR 191.

There is no statute foisting on the Prosecution a duty to provide evidence of corroboration before a Defendant can be convicted for the offence of rape. It is not in the Child's Right Act or in the Evidence Act.

In the circumstance, the argument lacks merit and it is discountenanced.

The provision of Section 31(1) of the Child's Right Act is of very strict application.

For the totality of reasons given, it is my view and I so hold that the Prosecution has proved the offence of rape under Section 31(1) of the Child's Rights Act 2003 beyond reasonable doubt.

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The offence of rape under Section 32(1) is an alternate to the offence in Section 31(1) of the said Act. It is in

relation to offences not captured or covered in Section 31(1).

Count 2 is therefore an unnecessary surplusage.

It is accordingly struck out.

The Defendant is accordingly found guilty on Count 1 of the Charge and he is hereby convicted.

Prosecution: We urge the Court to proceed to sentencing. I do not intend that the Court goes into sentencing proceedings.

Defendant's Counsel: We do not intend to go through sentencing proceedings. We pray that the Court should be lenient.

I urge the Court to consider the evidence that he was ready to marry the victim.

I urge the Court to temper justice with mercy. He has learnt his lesson.

The Court should not impose the maximum sentence.

Prosecution: This Court does not have discretion.

Sentence:

Section 31 (2) of the Child's Right Act is strict.

It does not avail the Court of any discretion.

Our society particularly this Division of the High Court of the FCT is riddled with rampant cases of rape and indecent assault of children.

It is a pathetic situation. Our society must be swept clean of rapists.

Our children need the protection of our Courts.

The law is already there.

This particular Defendant still committed a similar offence of rape while on bail during the pendency of this case. He called himself a Pastor. He has desecrated his faith. He is not fit to be a Minister of God.

He is a danger to our children.

I have no choice but to apply the law.

The Defendant is hereby sentenced to life imprisonment.

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HON. JUSTICE U.P.KEKEMEKE

(HON. JUDGE)

14/07/21

Defendant absent.

L.O. Fagbemi Esq.

Defendant's Counsel- I seek for a short stand down. The Prosecutor is arranging for the production of the Defendant.

Court: case stood down.

Case recalled.

Defendant present.

D.F. Abah with O.S. Osho for the Prosecution.

L.O. Fagbemi for defence.

Signed.

Hon. Judge.

14/07/21.

