**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY**
**HOLDEN AT MAITAMA ABUJA**
**ON THE 7TH DAY OF APRIL, 2022.**
**BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH**
**(PRESIDING JUDGE)**

**CHARGE NO:FCT/HC/CR/338/17**

BETWEEN

FEDERAL REPUBLIC OF NIGERIA……COMPLAINANT

AND

FRIDAY INYANG……DEFENDANT

# JUDGEMENT

The defendant Friday Inyang was on 5th October, 2017 arraigned before this court on a two counts charge for offences punishable under section 1(2) and 2(1) of the Violence Against Persons (Prohibition) Act, 2015.

The two counts of the charge are as follows:

COUNT 1

That you, Friday Inyang (m), 45 years of Duste Bowuma, Abuja on or about February 2017 within the jurisdiction of this Honourable Court, intentionally penetrated the vagina of Anabel Amadi (F), 5 years of No 1 Ezentuoyi Street, Gbessa Village via Sauka Airport Road Abuja, with your penis by means of false and fraudulent misrepresentation of the act and thereby committed an offence punishable under Section 1 (2) of the Violence Against Persons (Prohibition) Act, 2015.

COUNT 2

That you, Friday Inyang (m), 45 years of Duste Bowuma, Abuja on or about February 2017 within the jurisdiction of this Honourable Court, wilfully\ caused physical injury on Anabel Amadi (f), 5 years of No 1 Ezentuoyi Street, Gbessa

Village via Sauka Airport Road Abuja by penetrating her vagina with your penis which resulted in bruises on her clitoris and vulva thereby committed an offence punishable under Section 2 (1) of the Violence Against Persons (Prohibition) Act, 2015.

The defendant was arraigned before this court on the above two count charge which was read and explained to the defendant in English language, the language of his election and he pleaded not guilty to the two count charge on the 13th February, 2018.

The prosecution called one witness, Jane Okereke, the PW1 and tendered several Exhibits. At the close of the prosecution's case the defendant made a no case submission which was overruled and the defendant ordered to enter his defence. The defendant testified as DW1 in his defence. The PW1 was recalled for further testimony. At the close of evidence both parties filed and exchanged written addresses. The written addresses were adopted on the last hearing date. The evidences of both witnesses is summarised below.

The prosecution in proof of its case, on the 30th of May, 2018 called one witness, Mrs Okereke Jane, a NAPTIP principal intelligence Assistance who gave evidence and testified as PW1.

She testified that on the 19th of February, 2017 a case of rape was reported to their agency against the defendant and she was detailed to handle the case. That she invited Annabel Emmanuel, mother of the victim. She interviewed the victim and recorded her statement. And that after recording she asked her the second time and she repeated the same statement, the victim thumb printed and she countersigned. That in the course of the interview she mentioned that the accused person put his wee wee in her own pee pee. That she asked her to show her, her pee pee and she pointed to her vagina. That after that she invited the defendant and told him why he was invited to their agency. Then she interviewed him and he admitted to committing the offence. That she asked him if he would be willing to put it in writing and he agreed but said he could not write and he authorised her to write for him. That she read the word of caution o him and recorded his statement and read it over to him, that he accepted that it was his statement and signed and thumb printed while she counter signed. Then she gave her superior who also counter signed too.

In the course of their investigation the victim was taken to federal staff hospital Gwarimpa for investigation. The result of the medical examination was handed over to her, she filed it, compiled her case file and submitted it to her superior.

That the medical report was that the vulva and clitoris of the victim has bruises. That the result is dated 28th febrauary 2017. It was admitted in evidence and marked exhibit A. The statement of the victim Anabel Emmaula dated 23rd February 2017 was also admitted in evidence and marked exhibit B.

Under cross examination she testified that she took the victim to the statement taking room alone with her. That the victim's mother was not there. She reiterated that the victim was taken to the hospital.

The DW1, is the defendant himself, Mr. Friday Inyang. He testified before the court in support of his denial of the charge. That Mr. Obinna took him to his house and showed him a place in the corridor and gave him a mattress to lie on. That every morning he used to take him to the site and bring him back in the evening. That they continued like that for 5 weeks until he finished the job. That the last date was a Saturday so he requested for his money to enable him travel the next day. That on Sunday morning which was the first week of April he gave him N30,000 and dropped him at the bus stop and said he will call when he gets all the money. That on Wednesday he called him back to come to Abuja for a job for his sister. That when he got to Abuja on Monday, he called him from the bus stop and he asked him if he had N4000, that he gave Mr. Obinna the money because he said he wanted to give the money to a mechanic to repair his car which broke down. And Mr. Obinna told him to accompany him to his sisters office which he did. That on getting there he was handed him over to Mr. Obinna's sister in NAPTIP office. That the sister started telling him to accept that he raped the daughter of Mr. Obinna, that everything was already exposed. That he did not rape his daughter, neither did he even have access to his daughter because he usually took him to site in the morning and brought him back in the evening. That Mr. Obinna's sister works with NAPTIP as IPO, that she was also the IPO of the case. That her name is Mrs Janet. That he has not met her after that and she's the one who came to give evidence in this court as PW1.

Under cross examination he testified that Mr. Obinna called him on 17th of February, 2017 and he stayed in his house for 5 weeks. That he did the carpentry work for him in Souka, he roofed his first house where they live, that,

that was a while ago. That he was asked to make a statement but he told them that he cannot read and write. That before this incident, he had never been to NAPTIP.

DW1 further identified exhibit A and testified in respect thereof that.

> *"I signed and thumb printed the statement I made at NAPTIP, my family background recounted in the statement is true. I never said Annabel the daughter of Mr. Obinna sits on my lap and I scratch her vagina. And I also never said I used my penis into the vagina of Anabel."*

That he was detained at NAPTIP office the very day he was arrested and was granted bail. That Mr Obinna provided him with a corridor not a room. That he lived in Mr Obinna's house for 5 weeks and that his job finished in April. That he was detained in NAPTIP in April but he does not know the date. That he does not relate well with Annabel. That he is not aware that Annabel was taken to the hospital neither was he aware that Annabel had bruises in her vagina.

PW1 was recalled on the 17th February, 2021 and testified that the case was reported to her office on the 19th February, 2017. That a certain woman Chinyere Amadi came to the office on the 23rd February, 2017 with her daughter Annabel with a complaint letter. That she was detailed to handle the case, pursuant to which she then called the defendant to the office. That the defendant came and she told him of the case of defilement of Annabel (5 years) against him and the defendant admitted to the allegation. That she read cautionary word to him. That she gave him a statement sheet to write on and he said he could not write but authorised her to write for him. That after writing the statement, she read it over to him, he accepted it as his statement and he signed, while she counter signed. That after that, she took him to her superior who read the statement over to him and he accepted it as his statement, then her superior counter signed it.

That she interviewed both complainant and the victim on 23rd February, 2017. That after the complainant made her statement, she recorded the statement of the victim and took her to Federal Staff Hospital Gwarimpa. That the victim was examined and they were given a medical report dated 28th February, 2017. That it was the 27th February, 2017 she invited the defendant to her office and he made his statement on the same day and that she also issued him bail conditions on the same date. That he could not meet the conditions of bail so

they kept him in their holding cell until the conditions were met on the 13th March, 2017. When the defendant was released.

That the complainant later came to the agency with a letter of withdrawal dated 8th of March, 2017 when the defendant was still in the holding cell.

The full evidence of the prosecution witness, that of the defendant and the written and oral addresses of their respective counsel are aptly captured in the record of proceedings of this case. The final addresses of both counsel which have been fully considered would be referred to where found necessary.

I have considered the case of the prosecution, the defence of defendant, final written addresses and oral submissions of both parties. I am of the view that the main issue arising for determination here is;

> *Whether the prosecution has discharged the onus placed on it by law to prove the charge against the defendant beyond reasonable doubt.*

The law is trite that in criminal cases, the prosecution is required to prove the offence against the accused person beyond reasonable doubt in order to secure a conviction. See

**THE STATE v. JOHN OGBUBUNJO & ANOR (2001) LPELR-3223(SC) pp. 11-12 paras E-E**

**KINGSLEY OKORO v. THE STATE (2012) LPELR-19793(CA) pp. 20 paras. D**

The PW1, I.P.O testified extensively and tendered several exhibits including that of the defendant, and the victim and her mother the (nominal complaint) who were never produced to testify before the court. The prosecuting counsel in his final address argues that contrary to the argument of the defence counsel, the evidence of their sole witness, the PW1, who is the IPO, establishes the offence against the defendant and sufficiently proves the crime alleged against him beyond reasonable doubt. He posits that the there is no law that compels the prosecution to call many or any particular number of witness.

The argument of the defence is that vital witnesses like the victim of the crime and the nominal complainant ought to have been called to give first hand

evidence rather than the only subsisting hearsay evidence of the PW1. He referred to

**ANDREW V. INEC (2018) 9 NWLR (PT. 1625) 507 at 576 paras B-C**

The prosecution on the other hand submitted that is(It is settled law) that the prosecution does not have to call a litany of witnesses to establish its case when same can be done via the evidence of one credible, reliable and vital witness. He referred to;

**AYOKE VS. BELLO (1992)10 NWLR (Pt218) 380 Ratio 2.**

And

**CONFIDENCE INSURANCE LTD VS TRUSTEE OF O.S.C.E (1992)2 NWLR (PT 591) 373 RATIO 13.**

This court's view is in tandem with that of prosecuting counsel that the evidence of a sole witness can be relied on to secure the conviction of a defendant, albeit such evidence has to be positive, credible, reliable, unequivocal and satisfactory. The contention of the defence in the circumstance is therefore apt that the evidence of the said sole witness must be carefully examined to ascertain its quality, credibility and sometimes probability. See

**CHIBUIKE OFORDIKE v. THE STATE (2019) LPELR-46411(SC) pp. 27-28 para. E**

The immutable position of the law as earlier observed is simply that the charge against an accused person must be proved beyond reasonable doubt to secure a conviction. And in order to prove the offence, the prosecution must lead credible evidence that establishes the elements or ingredients of the offence. See

**SUNDAY ADOGA v. THE STATE (2014) LPELR-22944(CA)pp. 37 para C.**

In order to establish these ingredients of the offence, the prosecution must adopt one or more of the legally recognised ways of proof. These ways have been adumbrated by the apex court in a plethora of cases including:

**EMEKA V. STATE(2001) (SC) 14 NWLR PT. 734 PG. 666 or LPELR-1125 PG. 14 PARA B-E**

**OMOREGE V. STATE (2017) (SC) LPELR-42466 PG. 12-13 PARA F**

**ISAH V. STATE (2017) LPELR-43472(SC) PG. 11 PARA B**

**And**

**ANDREW AYEDATIWOR V. THE STATE (2018) LPELR-43847(SC) PG. 22** PARA C-F where his lordship ARIWOOLA JSC reiterated this time hallowed principle of the law thus:

> *"In law, it is trite that the guilt of an accused who is charged with the commission of a crime can be proved by way of the following:-*
>
> *(a) confessional statement of the accused which has passed the requirement of the law;*
>
> *(b) Evidence of eye witness who saw or witnessed the commission of the alleged crime; or*
>
> *(c) circumstantial evidence which links the accused and no other person with the commission of the crime or the offence charged."*

The offences alleged against the defendant in the instant case is premised on rape of five year old Anabel Amadi.

Basically, Rape is unlawful carnal knowledge of a person without consent. Same has also been defined by the Supreme Court in cases such as:

**KAZEEM POPOOLA v. THE STATE (2013) LPELR-20973(SC)P. 33 paras A-D**

**SUNDAY JEGEDE v. THE STATE (2001) LPELR-1603(SC)pp. 6-7 paras F**

**SHUAIBU ISA v. KANO STATE (2016) LPELR-40011(SC) p. 28 paras A-F**

In order to determine therefore whether same has been proved the court must examine carefully the evidence adduced before the court whether it establishes the existence of all the ingredients of the offence of rape. See

**SHUAIBU ISA v. KANO STATE (2016) LPELR-40011(SC) (Pp. 30 paras. B)**

*"It is settled that sexual interference is deemed complete, upon proof of penetration of the penis into the vagina.It was held in the English case of R. U. Marsden (1891) 2 QB 149 at 150, per Lord Coleridge, C.J. that emission is not a necessary requirement. Our Nigerian Case law is replete with authorities that even the slightest penetration will be sufficient to constitute the act of sexual intercourse. Thus, even where penetration was proved but not of such a depth as to injure the hymen, it has been held to be sufficient to constitute the crime of rape. See: The State v. Ojo (1980) 2 NCR 391 at 395; Jegede V The State (2001) 7 SCNJ 135 at 141. Thus, discharge of "whitish", "greenish", "reddish" or whatever colour of fluid in a rape offence, is not considered credible evidence for establishing the offence of rape."*

Now, the ingredients of the offence can be gleaned from a careful appraisal of the provision of the law under which the defendant has been charged and relevant authorities of the apex court in respect thereof.

The said Section 1 and 2(1) of **VAPP ACT** provides as follows:

*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.*

*(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 persons, the offenders are liable jointly to a minimum of 20 years imprisonment without an option of fine.*
*(3) The Court shall also award appropriate compensation to the victim as it may deem fit in the circumstance.*

*(4) A register for convicted sexual offenders shall be maintained and accessible to the public*

*The elements of the offence of rape as captured above are;*

*1. the other person does not consent to the penetration;*

*2. 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*

See also

**JAMES UTANG v. THE STATE (2015) LPELR-25869(CA)pp. 10-11 paras A-B**

And

**SHUAIBU ISAH V. KANO STATE (2016) 6 NWLR PT..?? PG 271 PARA A-D**

Where the supreme court while adumbrating on the offence of rape under Sc. 283 of the **PENAL CODE** which is in Pari Materia with Sc. 1(1) of the **VAPP Act** highlighted the ingredients of the offence of rape as follows:

*1(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 case of any substance or addictive capable of taking away the*

*will of such person or in the case of a married person by impersonating his or her spouse.*

It is in the light of the ingredients of rape as outlined by the Supreme Court in the aforementioned decisions, that I would proceed to consider the totality of the evidence adduced by the complainant. The culpability or otherwise of the defendant would depend on whether or not the prosecution has satisfactorily led credible evidence before the court that establishes all the ingredients of the offence as set out above.

The first ingredient is that the defendant had sexual intercourse with the victim, Annabel.

The only evidence adduced in respect of sexual intercourse by the defendant with the victim is that of the PW1, the IPO. As a matter of fact, the entire case of the prosecution rests on the evidence of the PW1.

The defence counsel has in his final addressed attacked the credibility of the evidence of the PW1. He urged the court to discountenance same as hearsay evidence which is devoid of any value or weight. That the court cannot act on the Exhibits B and D, the written statements of the victim and her mother, considering that they were never presented before the court to testify or be cross examined on their extra judicial statements.

The prosecuting counsel argued per contra that the said statements and evidence do not amount to hearsay, because the PW1 is the Investigating Police Officer. That her evidence comprises findings in the course of her investigation of the case which ought to be relied upon by this court in the determination of this case she referred to several authorities in support of this argument, which this court has taken the time to read and consider. See

**ODEH ABAH v. THE FEDERAL REPUBLIC OF NIGERIA (2022) LPELR-56738(CA)pp. 77-78 paras A-A**

The PW1 testified that she recorded the statements of the victim and her mother. And she narrated how she took the victim to the hospital and obtained Doctor's report which was also tendered in evidence. The maker of the Medical Report also did not appear before this court.

It is Imperative at this point to point out that the defendant completely denied the charge against him. His statement was admitted in evidence, he said it was recorded by the IPO on his behalf because he can neither read nor write. He however denied ever telling the police that the alleged victim sits on his lap nor that he used his penis to scratch her vagina.

From the look of things it does appear, IN THE CIRCUMSTANCE that the prosecution's case would either stand or fall with the evidence adduced vide the PW1, its sole witness.

The prosecution relies heavily on the extra judicial statement of the defendant confessional statement to prove that he in fact committed the offences as charged.

The prosecuting counsel in his final address submitted that since the defendant did not object to the tendering of his statement, it is deemed by law to have been voluntarily made. He relied on the same view held by the Supreme court in cases such as **ISA V. STATE {2016}LPELR-4001 (SC) page 20 paragraph D-E** and

**STEPHEN V. THE STATE (2013) LPELR-20178(SC)p. 24 paras D-E**

The prosecution also placed reliance on the statement of the victim and her mother, the nominal complainant and also the medical report.

As earlier observed these witnesses were never called to testify before this court. They were never tested under the fire of cross examination on the contents of these documents by the other party to further determine their evidential value. The relevance of cross examination in our adversarial jurisprudence cannot be over emphasised. Justice would not be complete where the necessary opportunity is not given for cross examination before reliance on evidence presented by a party. It is a matter of fair hearing which is recognised even by the holy Books. See for example the **Holy Bible PROVERBS** 18:17 where it is aptly stated that:

> "The first to state his case seems right until another comes and cross-examines him."(CSB)

See also

**MAJOR AL MUSTAPHA V. STATE(2013) 17 NWLR(PT. 1383) PG. 350 @ PG. 409 PARA D-E & 423 PARA D-H**

**OKORO V. STATE(2012) LPELR-7846(SC) PG. 31 PARA D** Where **his lordship** Per RHODES-VIVOUR ,J.S.C resonated on the importance of cross examination as follows:

> *"I must state that examination in chief is an opportunity to state the facts of his case by the plaintiff and his witnesses. Cross examination is to test the correctness of the testimony of the plaintiff and his witnesses, while re-examination is another chance to clarify facts but not an opportunity to restate the testimony given in evidence in chief all over again."*

As it stands the effect, that these extra judicial statements would have on the case of the prosecution, and the end of the day boils down to the adjudged credibility and weight to be attached to the evidence of the PW1.

The whole logic of admissibility is not just whether or not evidence is accepted but on the weight or evidential value ascribed to same.

Even if the court were to believe the PW1 about her narration of what she was told, such belief would only be limited to the fact that she actually received the information she testified about. In my humble view, it should not translate to accepting, believing and convicting upon the content of said information without any further direct or circumstantial eye witness corroborative evidence. It would also be necessary in the circumstance to hear first hand from the said informant whose evidence would then have the opportunity of being tested under cross examination.

In as much as I agree with the prosecuting counsel's argument that the evidence of an IPO is not necessarily hearsay evidence, however this should be only to the extent of the findings and discoveries in the course of investigation. This was the view held in the case of **EKPO V STATE (2015) LPELR- 25837 (CA) PP. 9 para**

AND

**IBRAHIM KAMILA v. THE STATE (2018) LPELR-43603(SC)pp. 22-23 paras D-A**

It is in the light of the afore stated and also in spite of the authorities hitherto by prosecution referenced, that my thinking is in tandem with the reasoning in EKPO'S case that of the defence counsel the evidence of an IPO can in certain circumstances have little or no evidential value in terms of proof of relevant ingredients of a crime. See

**EKPO V. STATE(2001) 7 NWLR PT. 712 PG. 292** where the court was of the view that admission said to have been made by a person to IPO ought not to be acted upon without calling such a complaint to testify.

Be that as it may, I am mindful that it is settled law that the evidence of an IPO is considered to be direct evidence. See

**OLAOYE V. STATE 2018 LPELR-43601(SC) PG. 42-43 PARA D-A**

The IPO herein has narrated to court her findings and discoveries in the course of investigation of the instant case. There is however a disconnect between these pieces of evidence and the quality of evidence required to establish the offence of rape. This disconnect ought to be resolved for the evidence to acquire any credibility of an IPO. It is my humble view in this circumstance that direct evidence must in this circumstance be distinguished from eyewitness account of evidence of a crime. Again see: **EKPO V. STATE (2001) 7 N W L R (PT. 712) PG. 292**

The only witness who appeared before this court to say that the defendant had sexual intercourse with the victim as per the first ingredient of the offence is the IPO.

The only witness who testified about the circumstance of the rape and medical report attesting to injuries and bruising of the clitoris without rupture of the hymen in support of the fact of penetration is the IPO.

The victim, the nominal complainant and the Doctor were not presented before this court.

The prosecution's witness, the IPO under cross examination admitted that the nominal complainant applied to the complainant (NAPTIP) to withdraw the case against the defendant before he was charged to court. The application for withdrawal of the complaint against the defendant tendered through the IPO by defence is in evidence as Exhibit L.

The gravemen of this case appears to have emerged at this juncture. And it is whether these pieces of evidence of the prosecution's sole witness satisfactorily establishes that:

a.) The defendant had sexual intercourse with the alleged victim.
b.) That the act was done without her consent
c.) That the alleged victim is not the wife of the defendant.
d.) That the defendant had the mens rea to have sexual intercourse without consent or that he was recklessly did not care whether there was consent
e.) And that there was penetration.

As earlier observed herein the nominal complainant herself, according to the evidence of the IPO applied to the complainant to withdraw her complaint. This was before the defendant was even charged to this court. It is not much surprise therefore that the nominal complainant and alleged victim were never presented before this court.

The reason for the application for withdrawal of nominal complaint is that she wished to pardon the defendant because the medical report stated that her daughter's hymen is still intact.

The prosecution in proof of its case did not present either of the two other persons whose names were both listed in the proof of evidence as witnesses nor the Doctor to testify before this court on this.

I wish to digress a little at this juncture on the fact presented by the IPO that the alleged victims hymen was found to be intact after Doctor's examination. The defendant in his counsel's final reliance on this by the defence is not in consonance with the position of the law. The exact position of the law which has been espoused re-echeed again and again by the supreme court in plethora of decided cases is that penetration can still be established in a rape case even where it is found that the hymen has not been injured nor ruptured and is still intact. See particularly the case of **ISAH V. KANO STATE (2016) LPELR-40011(SC) PP. 13-14 PARA F**

See also

**NDEWENU POSU & ANOR v. THE STATE (2011) LPELR-1969(SC) pp 23 para E**

Where the Supreme Court held that penetration had been proved although it was shown by medical report that the hymen had only been partially injured.

The defence of the defendant on this ground therefore cannot hold water, as it is not a defence recognised by law.

Be that as it may suffice to in the circumstance this court cannot rely solely on the testimony of the IPO (PW1 to establish the ingredients of rape to prove that the defendant raped the nominal complainant's daughter. Failure to present the vital witnesses in this instance is definitely fatal to the prosecution's case. See **ADAMU v. THE STATE (2019) LPELR-46902(SC) pp. 24 paras A**

That leaves the extra judicial statements and the medical report so heavily relied on by the prosecution to be considered in proof of the alleged offences.

It is trite law that a defendant can be convicted solely on his confessional statement. There are however standards to be met before convicting solely upon such confessional statement. It must be direct, unequivocal and positive and the court must be satisfied with the truth of the confession. It is also desirable to have some outside evidence which would make it probable that the statement is true. See

**KOLADE V. STATE (2017) LPELR – 42362 (SC) PP. 74 PARA A**

**AWELLE V. PEOLE OF LAGOS STATE (2016) LPELR-41395 (CA) P. 24 para B**

**FABIYI V. STATE (2015) LPELR-24834 (SC) Pp. 26-27 para E**

**NWEZE V. THE STATE(2017) LPELR-42344(SC) PG. 32-33**

And

**ISAH V. STATE(2017) LPELR-43472(SC) PG.11-12 PARA E-F**

Where the supreme court per BAGE JSC posited on conviction solely on the basis of confessional statement as follows:

> *"This Court, per the Learned Onnoghen, JSC (as he then was; now CJN) in **PETER ILIYA AZABADA VS THE STATE (2014) All***

***FWLR (Pt.751) 1620, para. B*** *has made it abundantly clear in the following words:*

*"The confessional statement of an accused, where it is direct, positive and unequivocal as to the commission of the crime charged, is the best evidence and can be relied upon solely for conviction of the accused person. An accused person can be convicted on his confessional statement alone, where the confession is constant with other ascertained facts which have been proved.*

*Confession in criminal procedure is the strongest evidence of guilt on the art of an accused person. It is stronger than evidence of an eye witness because the evidence comes from the horse's mouth who is the accused person. There is no better evidence and there is no further proof. Therefore where an accused person confesses to a crime in the absence of an eye witness to the killing, he can be convicted on his confession alone once the confession is positive, direct and properly proved. In other words, a free and voluntary confession of guilt, direct and positive and if duly made and satisfactorily proved, is sufficient without corroborative evidence so long as the Court is satisfied as to the truth of the confession."*

Also in **NIKE V. FRN (2014)13 NWLR PT. 1424 PG. 305 or LPELR-22877(SC) PG. 33 PARA D** per ONNOGHEN JSC the supreme court restated this position of the law while citing with approval its previous decision in **IKEMSON V. STATE(1989) NWLR (PT. 11) 455 at 476.**

The defendant testified that the statement was written on his behalf by the IPO because he can neither read nor write. The statement is to the effect that the defendant entered the house of the nominal complainant to carry out some or on 25/02/2017. The PW1's evidence on the other hand is to the effect that the case of rape was reported on the 19/02/17 and that she recorded the statement of the victim on 23/02/17, that is about two days before the defendant came into the house of nominal complainant going by defendant's statement.

The statement is to the effect that the defendant spent five weeks in the nominal complainant's house meanwhile the statement was written just two days after he allegedly entered the house. It does not make sense that he had already spent five weeks just after two days these contradictions raise

serious doubts the veracity of the statement. I have not found cogent and credible evidence adduced which support the relevant facts set out in the statement.

Incidentally, the prosecuting counsel in her final written address particularly at paragraphs 3.19 to 3.22 in a surprising volta face urged this court to disregard both the oral testimony of the defendant and his extra judicial statement. And she relied on the authority of **EDOHO V. STATE (2010) 14 NWLR (PT. 1214) 651@659 paragraphs B-D** and proceeded to quote the said holding of the Supreme Court thus:

> "I therefore apply the inconsistency rule which rule is that where a witness makes an extrajudicial statement which is inconsistent with his later testimony at the trial, such testimony is to be treated as unreliable while the statement is not regarded as evidence as evidence on which the Court can act"

Suffice to say that that I am not satisfied about the truth of defendant's statement. The Exhibit A, this does not satisfactorily meet the required standard for conviction solely upon confessional statement of the defendant as outlined in the supreme court decisions hitherto relied on. Therefore find that this court cannot convict the defendant solely on the said confessional statement.

I had earlier found that the evidence of PW1 does not meet the requirement of the law for prove beyond reasonable doubt of the ingredients of the offences charged against the defendant. The confessional statement also which the prosecution sought to anchor its case as a last resort is also unable to withstand the waves of doubts raised which the this is line with presumption of innocence until proved otherwise law provides must be resolved in favour of the defendant. The applicable principle of the law in this regard is that where there is doubt in the case of the prosecution, such doubt must be resolved in favour of the defendant. See

**UGBOJI V. STATE(2017)LPELR-43427 (SC)Pp. 54-55 para E**

**OMOREGIE V. STATE (SC) (SUPRA) @ PG.15-16 PARA E-A**

**BASSEY V. STATE(2012) LPELR-7813 (SC)PP. 26 para F**

And of course the locus classicus **OFORLETE V. STATE (2000) LPELR-2270(SC) pp. 26 para E**

> *"... I have reasonable doubt as to the guilt of the appellant as regards his conviction for manslaughter. The law, as I understand it, is that such doubt must be resolved in favour of the appellant where the allegation of his offence has not been proved beyond reasonable doubt by the prosecution."*

As the saying goes, it is better that ten guilty men escape justice than for an innocent man to be convicted for an offence he did not commit. This view was highlighted and adopted in the case of

**SHEHU V. THE STATE (2010) 8 NWLR (PT. 1195) S.C PG. 112 or LPELR-3041 PG. 25 paras. F-F as follows:**

> *"Where the prosecution fails to prove the case beyond reasonable doubt, the accused must be discharged and acquitted. There are no two ways about this."*

I agree with the submission in paragraph 5.6 page 10 of the Appellant's Brief of Argument and this is also now firmly settled in a line of decided authorities, that it is better for ten guilty persons to escape than one innocent person to or should suffer.

In other words, it is better to acquit ten guilty men, than convict an innocent man.

In the case of **Saidu v. The State (1982) 4 SC 41 @ 69-70**, Obaseki, JSC stated inter alia, as follows:

> *"It does not give the court any joy to see offenders escape the penalty they richly deserve but until they are proved guilty under the appropriate law in our law courts, they are entitled to walk about in the streets and tread the Nigeria soil and breathe the Nigeria air as free and innocent men and women."*
>
> *On his part Sir Matthew Hal is quoted as remarking that:*
>
> *"it is better that 5 criminals escape justice rather than one innocent person to be punished for an offense he did not commit."*

*"So be it with the appellant. In the circumstances of the evidence before the court which are borne out from the records. I will give benefit of my doubt, in favour of the Appellant and render my answer to issue 2 of the Appellant, in the negative."*

So that is the positioned of the law and this court can only hope in the circumstance, that the lapses of the complainant in the prosecution of this case has not unwittingly created a window of escape for the defendant.

If that is the case however, then he should see this as fate giving him a second chance in life to mend and straighten his ways. Otherwise he should be rest assured that what goes around certainly comes around.

In the light of the foregoing, the prosecution has failed to discharge the burden placed on it by law to prove the offense charged against the defendant beyond reasonable doubt. And the position of the law in situation such as this is to uphold the not guilty plea of the defendant. See

**THE STATE V. OGBUBUNJO & ANOR () PG. 21 PARA E-G**

And

**ANKPEGHER V. STATE (2018) LPELR-43906 (SC) PG. 10-12** where the supreme court restated in clear terms the meaning of 'proof beyond reasonable doubt'.

Thus, the sole issue for determination is therefore resolved in favour of the defendant.

Consequently, the defendant, Friday Inyang is hereby found not guilty of the offences against him in counts one and two of the charge. In line with **Section 309** of the **ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015**, he is hereby accordingly discharged and acquitted.

Signed

Honourable Judge

Representation

Sam Oppiah Esq for Prosecution

L.O Fagbemi Esq for Defendant