IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI –ABUJA

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

DATE:-10TH JUNE, 2022

BETWEEN:

FCT/HC/ CR/164/2021

BETWEEN

COMMISSIONER OF POLICE……. COMPLAINANT

AND

CHIZOBA OBI…….. DEFENDANT

JUDGEMENT

The Defendant was arraigned before this Court via a charge dated the 10th day of December, 2018 for the offence of rape punishable under section 31 (2) of the child right Act LFN, 2003 and in which he pleaded not guilty to the charge.

In the circumstances, the burden was placed upon the prosecution to prove the allegation beyond reasonable doubt as is envisaged in **Section 135 (1)** of the **Evidence Act 2011**, as amended. See the case of ***NWALU V STATE (2018) ALL FWLR (PT. 966) 267 At 280 Paragraphs. D-F*** where the Supreme Court held that by the provisions of section 135 (1) of the

Evidence Act, 2011, in discharging the onus of proving a case beyond reasonable doubt,the duty is on the prosecution.

In trying to discharge this burden placed upon it, the prosecution called 6 (Six) witnesses, and in addition tendered documents to wit; Statement of Complainants, Statements of Witnesses, Statement of Defendant, Medical Reports of the victims obtained at the Police Hospital, FCT Police Command, Area 1, Garki-Abuja.

Counsel to the Defendant at the close of hearing proffered an address on a no case to answer by the Defendant. However, no Final Address was filed before this Court either by the Prosecution or the Defendant.

According to the testimony of Pw1, upon confirming that he knows the Defendant stated that a week before Easter last year, her neighbor Mr. Martin's wife whom they live together came to her house very early in the morning on a Saturday and asked for her daughter which she carried with her to her house. She was told not to worry about where they were taking her to and after waiting for the daughter, she went to the said neighbor's house to see what was wrong with her daughter and later saw her daughter crying. She asked what the issue was and was informed that the Defendant has over time been fingering her daughter including her neighbor's daughter.

The Pw1 testified further that whenever she sends her daughter (One of the victims) to the Defendant's house, the Defendant would kiss her and put his hand inside her vagina. That the Defendant would lay her down and put his penis inside her vagina. That the Defendant was subsequently arrested and taken to the Police station.

During cross-examination, the Pw1 stated that the Defendant has been sleeping with her daughter for more than a year. Pw1 stated that they conducted a virginity test on their daughter to ascertain if she was still a virgin and they discovered that she (one of the victims) was no longer a virgin and that the said test was carried out by one Mrs. Esther who happens to be her neighbor.

Pw2 in evidence identified the victims of the offence allegedly committed by the Defendant confirming their respective identities. Pw2 stated that he was re-assigned the matter from Trademore Division of the Nigeria Police force and referred to him for further investigation. He confirmed to have invited the Complainants, the victims and the Defendant and that the Defendant had admitted knowing both the Complainants and the victims but the Defendant had denied having sexual intercourse with the victims.

Pw2 in further evidence stated that its first point of investigation was taking the victims to the Police Hospital for medical examination and that after the examination, they were brought back to the Police Station. Pw2 stated that he took steps to visit the crime scene after which it was revealed that the Defendant lives very close to the victims. Pw2 stated that he asked the victims to show him where the offence was usually committed and they showed him the room, identifying same to be a One-room self-contained apartment belonging to the Defendant.

PW2 admitted to having recorded the statement of one of the victims in this case to wit; Esther and identified same through her hand writing. The statements of the Complainants and the victims as well as the investigating officers were admitted and marked as evidence.

On cross-examination, Pw2 confirmed that he qualifies as a trained investigator and that that the medical report admitted in evidence before this Court goes to proof that the victims were dis-virgined. He similarly confirmed that the Defendant denied having intercourse with the Victims and that no medical examination was carried out on the Defendant.

PW3 in evidence stated he is a medical consultant working with the Police Hospital Garki, Abuja, and has been practicing for the past 7(seven) years, he could not confirm knowing the Defendant but however confirmed that he remembers meeting the victims on 29th March,2021. The Pw3 stated that the three (3) victims were presented to the Police Hospital facilities by an I.P.O on accounts of Sexual Assault and he examined all the 3 (three) victims in the presence of a female nurse and that the result of his examination was supportive of sexual assault. He confirmed to have issued a medical report to that affect and same was admitted in evidence before this Court.

On Cross-examination, the Pw3 admitted that the result of his medical examination does not evidence a bleeding discharge but that the hymen was breached. PW3 stated that anyone whose hymen appears breached has been sexually assaulted unless proven otherwise.

PW4, a Police officer in evidence stated that the he knows the victims and the Defendant and that sometime in March 2021 precisely on the 27th March,2021, a case of procuring of minors was referred from the charge room office to her for further investigation. PW4 stated that both the complainant and the Victims alleged that the Defendant was responsible for assaulting them sexually. PW4 stated that she took the victims to the Police Hospital, Garki for medical examination and later also visited the

scene of the incident where she asserted that according to the complainant, the incident took place in 2020 and she (Pw4) went further to ask why the delay in reporting the case. Pw4 stated that the 1st complainant caught the 1st victim having sex with his 4years old son and went further to inquire where she learnt that from and the 1st victim replied that she learnt same from the Defendant.

PW4 further stated that the 2nd Complainant also said that the Defendant had similarly assaulted her daughter (one of the victims) and that same was confirmed by the victim. Pw4 further identified the recorded statement of the Defendant and same was admitted in evidence.

During cross-examination, PW4 confirmed that he did not arrest the Defendant and even though he saw that the Defendant was beaten, he did not know who was responsible for that. PW4 stated that he took the victims for medical examination as part of the investigations.

PW5, one of the victims, a 10 (ten) year old girl in evidence narrated her ordeal with the Defendant. PW5 identified the Defendant as her neighbor and confirmed that the Defendant in her words "used to remove her pants, lie down on her body, kiss her and used to put his hand in her private part (Vagina). There was however no cross-examination.

PW6, one of the victims, an 11 (eleven) year old girl in evidence equally narrated her ordeal with the Defendant. PW6 attested to knowing the Defendant identifying him as their neighbor and equally stated that the Defendant in her words "used to put his penis inside her private part (Vagina), that the Defendant would lie down on her body and be shaking her, as well as the Defendant kissing her". Pw6 stated further that the Defendant

used to touch her breast and the Defendant had warned her not to tell her mother. There was however no cross-examination.

The prosecution upon the above, closed his case.

Now, it is the primary duty of this Court to evaluate the evidence led at the trial, and to make appropriate findings so as to come to a reasonable conclusion. See the case of ***OBI V F.R.N (2018) ALL FWLR (Pt. 933) p. 1048 at 1080 paragraphs. C-D.*** The above position was reiterated by the Court of Appeal in the case of ***CHEMIRON INTERNATIONAL LTD V EGBUJUONUWA (2007) All FWLR (Pr. 395) p. 447 paragraph. C,*** Where the Court held that a trial Court is at liberty to look at all exhibits tendered before it in determining a matter.

It is on the above authority that I have to look at Exhibit "7" which is the statement of the Defendant made at the Police Station, wherein the Defendant denied the allegations proffered by the Complainants and the Prosecution. The Defendant asserted that one of the Complainant is hoarding his money, according to him the sum of N150, 000 (One Hundred And Fifty Thousand Naira) Only. The Defendant in denying the allegation stated that his manhood is not even working, however, there was no medical report to substantiate the claim of the Defendant in that regard.

The Court is equally minded in the instant case to evaluate Exhibit 6, 6A and 6B proffered by Pw3 which is a medical report confirming that there was an actual breach of the private parts (Vaginas) of the victims in this case. The medical reports in this instance is weighty and the Court is bound to rely heavily on same it however did not establish to the Court that the Defendant was the one that cause the breach of the private part (dis-virgin)

of the victim in proof of the allegation of rape as there is no evidence challenging same during cross-examination.

Thus, let me at this Juncture distill from the issues raised by parties in this case with a view to formulating the one that this Court will resolve, I adopt the sole issue to be resolved in the case to wit:-

> *"Whether from the totality of the evidence led, the prosecution has proved the offence of rape charged beyond reasonable doubt to entitle this court to convict the Defendant?"*

In this case, PW4 being the investigative officer did not give evidence that he was there when the offence was committed, but rather he conducted an investigation in that regard.

He informed the Court that he took the victims to the Police Station, later took them to the Hospital for medical examination and thereafter visited the crime scene, being the house of the Defendant.

PW5 and PW6 being the victims testified that that the Defendant in summary of their statement has been taking advantage of them and in synopsis, raping them.

The testimonies of Pw5 and Pw6 were unchallenged during cross-examination and so it was accepted by this Court. By this, it is very glaring that out of the pieces of evidence of the prosecution, it is only that of Pw5 and Pw6 that is so direct in trying to prove the alleged offence of rape, this is because they told the Court that the Defendant inserted his penis into their vagina, and in the instant case, owing to their age, consent is immaterial. See **Section 31 (3) of the Childs Right Act, 2003.** See the case of ***POPOOLA V STATE (2012) ALL FWLR (PT. 617) P. 767 at***

773 paragraphs. F-G where the Court of Appeal, Ibadan division held that sexual intercourse is deemed complete upon proof of penetration of the penis into her vagina. Any slightest penetration of the penis into the vagina will be sufficient to constitute the act of sexual intercourse and it is not necessary to prove injury or rapture of the hymen to constitute the crime of rape. See the case of ***POSU V STATE (2010) All FWLR (Pt. 46) p. 507.*** Let me at this juncture enumerate the ingredients required in proving an offence of rape to include:-

a. That the accused has sexual intercourse with the prosecutrixes;

b. That the act of sexual intercourse was done without her consent or that the consent 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 i.e. 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;

e. That there was penetration. What is the duty of this Court is to examine whether those ingredients exists in the evidence of Pw5 and Pw6 in proving the offence of rape leveled against the Defendant. See the case of **ISA V KANO STATE (2016) All FWLR (Pt. 822) p. 1775 at pp. 1783-1784 paragraphs. H-D.**

It is in the evidence of Pw5 and Pw6 (the prosecutrixes) that the Defendant had inserted his private part into her private part, that is to say he has had sex with the victims and by this ingredient,

No.1 cannot be said to have been established because the evidence requires corroboration.

Owing to the age of the victims and by the provisions of **Section 31 (3) of the Childs Right Act, 2003,** consent is immaterial, so in the instant case, whether or not the Victims consented goes to no effect. By this ingredient, No.2 has been established. However further evidence is necessary to establish the offence see section 36 (5) of the 1999 constitution.

From the totality of evidence adduced in this matter, there is no gain-saying that the Defendant cannot by all standards be married to the 3 (three) victims in this case, the victims are under-age and by legal marriage standards, only a person who attains the marriageable age of 18years can be said to have contracted a marriage known to law. From this ingredient, No.3 has not been established the duty is on the prosecution to establish that by supporting evidence.

That the Defendant inserted his private part into the private part of Pw5 and Pw6 as well as 1 other, that is to say, the Defendant has inserted his penis into the Vagina of the Victims and by this, the ingredient of penetration, being an essential ingredient has not been established the evidence of PW5 and PW6 requires coroboration.

Thus, on the authority of ***UPAHAR V STATE (2003) FWLR (Pt. 139) p. 1514 at 1527 paragraphs. B-E,*** an ingredient of corroboration is included among the ingredients required for the proof of offence of rape, that is to say, the prosecution must adduce credible evidence to corroborate the complaint made by the prosecutrix especially as in the instant case involving minors.

Now the question that begs the answer of this Court is; Whether corroboration that is required in practice only relates to a rape committed against a minor?

In finding an answer to this, I have to give recourse to **Section 209 (1) and (3) of the Evidence Act 2011** as amended, which read:-

> *"In any proceeding in which a child who has not attained the age of fourteen years; is tendered as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the Court, he is possessed of sufficient intelligence to justify the reception of this piece of evidence and understood the duty of speaking the truth".*
>
> *(3) "A person shall not be liable to be convicted for an offence unless the testimony admitted by virtue of subsection (1) of this section and given on behalf of the prosecution is corroborated by some other material evidence in support of such testimony implicating the Defendant."*

By these provisions, it could be inferred that the evidence of a person who has not attained the age of fourteen years cannot sustain a conviction of a person suspected of committing any offence unless such evidence is corroborated. The Evidence Act 2011 as amended, does not provide that the offence of rape requires corroboration for it to be proved by the prosecution, but rather that it is a matter of practice. See the case of ***LUCKY V STATE (2016) ALL FWLR (Pt. 857) p. 574 at p. 605*** Where

the Supreme Court held that it not a rule of law, but one of practice that an accused person on a charge of rape cannot be convicted on the uncorroborated evidence of the Prosecutrixes.

In light of the foregoing, I have to examine the evidence of the Defence with a view to see whether it corroborates with the evidence of Pw5 and Pw6. In this case, the Defendant denied the allegation, hence the need to bring the medical report into limelight. See the case of ***POPOOLA V STATE (Supra)*** where the Court held that it is where rape is denied by the accused person that the Court is enjoined to look for medical evidence showing injury or inordinate penetration to the private part of the Victim or other parts of the body as corroboration.

In Exhibits 6, 6A and 6B, which are the medical reports, it is to the effect that the hymen of the victims appeared breached. During examination in chief, the Pw3 who is the medical officer that prepared the medical report explained that sexual intercourse is one of the causes for a hymen to be breached.

Thus, it was held in the case of ***UPAHAR V STATE (Supra*)** that corroborative evidence with respect to the offence of rape is evidence which shows or tends to show that the story of the prosecutrix that the accused person committed the crime is true, not merely that the crime has been committed. See also the case of ***LUCKY V STATE (Supra) per Rhodes-Vivour JSC at p. 613 paragraphs A-B:-***

> *"Corroboration means evidence that supports the evidence of the prosecutrix. Corroboration is not constricted only to evidence of a witness pointing to the appellant as the person who committed the offence. This is not the position of the law.*

> *Sex is usually not performed in the presence of a third party. In most cases, it is a hidden act performed behind closed doors, away from prying eyes. It is rare to get a witness to give evidence on oath that he saw the appellant had sex with the prosecutrix"***.**

Armed with the above, and with reference to the instant case, it will be difficult to have a person that will come before this Court to testify that he saw the Defendant having sex with the Victims as it is performed in a hidden place behind closed doors. See also the case of ***ISA V KANO STATE (Supra) at p. 1793 paragraph D*** where the Court held that corroboration in a rape case is that evidence which tends to show that by the story of the victim, it is the accused that committed the crime, and such evidence need not be so direct. It suffices if it corroborates the said evidence in some material particular to the charge in question this has not been done in this case.

Thus, it is on the above premise that I come to the conclusion that the evidence of PW5 and PW6 has not been corroborated, and I therefore, so hold.

It is also my position that all the ingredients required in proof of the offence of rape against the Defendant have not been established.

Thus, let me further have recourse to the testimony of the Defendant with a view to see whether he had any available defence to warrant this Court not to convict him accordingly.

The Defendant made heavy weather in his statement that his manhood is not functioning properly, however, no medical examination was conducted to further establish this fact. The

Defendant also asserted that the complainant is indebted to him and as such, the accusation. This assertion has also not been established beyond the mere assertions.

On the whole and based upon available evidence that is required in substantiating the claims of the Defendant and to this, I believe the Defendant has not discharge it responsibility as required by law.

The prosecution while trying to establish the case against the Defendant in this matter same called five witness who graphically testified in this Court. The three of the prosecution witness were all cross examined by the defence. The remain two witness were not cross examined because of the age of the two witness as they are minors. Same exhibit were tendered in the cause of the prosecution case.

On the 13th April, 2022 the prosecution having closed its case the defendant's Counsel moved the Court base on the provision of section 302 of the Administration of Criminal Justice Act, 2015 that the Defendant should be discharged simply because of the inability of the prosecution to establish any of the ingredient of the offence . Counsel urge the Court enter a no case submission nothing save the testimonies of PW5 and 6 has indicated any connection between the Defendant and the alleged offence according to the Defendant' Counsel PW5 and 6 are of 10 and 11 years of age this evidence require corroboration. Nothing to commiserate their evidence there would be no way the Court can proceed and convict the defendant when there is a ground to proceed the Court can call the Defendant to enter its defence see section 303 (3) of the Administration of Criminal Justice Act, 2015 prosecution that the Court has the discretion to call on the Defendant to enter his defence based on this section prosecution

maintained that while replying the Defendant Counsel maintained that prima facie means ground to proceed . ground to proceed can only be established when there is evidence connecting the Defendant with the case where the evidence is un-corroborated especially the evidence of PW5 and 6 (minor) a prime facie case cannot be said to have been made out it follows therefore that where enough grounds for proceeding have been shown, then a no case submission may not be sustained and the accused would be required to enter upon his defence. A prima facie case means that there is ground for proceedings but it is not the same as proof which comes later when the Court has to find whether the Accused is guilty or not. See ***UBANATU VS COP (1999) 7 NWLR (pt611) 512, AFAND VS A.G BENUE STATE (1988)2 NWLR (pt75) 201*** two major condition as laid down here for upholding a No case submission are:-

(a) Where there has been no evidence to prove an essential element in the alleged offence.

(b) When the evidence adduced by the prosecution has been so as a result of cross examination or its so unreliable that no reasonable person can safely conclude on it. From the above reasoning I have thoroughly stand by the evidence led by the prosecution I am convinced that there is no reason whatsoever that the Defendant should be call upon to enter his defence. Consequently the Defendant is hereby discharged based on the reason stated above.

HON. JUSTICE M.S IDRIS
(PRESIDING JUDGE)

Appearance

John Ijagbemi :-Appearing with Nneka Amachi For The Prosecution

Mark Ikechukwu:- Appearing with OPeyemi Adeyemi for the Defendant