IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

DELIVERED ON THE 18TH SEPTEMBER,2023

BEFORE HIS LORDSHIP: HON JUSTICE ASMAU AKANBI - YUSUF

SUIT NO: FCT/HC/CR/014/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA … … … PROSECUTION

AND

ABUBAKAR MUSTAPHA DANRAKA … … … DEFENDANT

JUDGMENT

On 8th of May 2020, the defendant Abubakar Mustapha Danraka was charged before this Hon. Court by the Prosecuting Agency, National Agency for the Prohibition of Trafficking in Persons, (hereinafter referred to as *NAPTIP*) on a one count charge of intentionally penetrating the anus of one Shamsuddeen Ahmed, a 12-year-old with his penis. Specifically, the charge against the defendant reads thus:

That you, Abubakar Mustapha Danraka 'M', 41 years old of block 24, spring valley estate, Airport road, Abuja, between the 20th and 21th of march 2020 at your residence block 24, of spring valley estate, Airport road, Abuja, within the jurisdiction of the Honourable Court, intentionally penetrated the anus of one

Shamsudeen Ahmed, 12 years with your penis and thereby committed an offence punishable under section 1(1)(a) of the Violence Against Persons (Prohibition) Act, 2015.

On 5th of April, 2022, the defendant entered a plea of not guilty to the charge presented against him.

The Prosecution opened its case on 24th May, 2022 and concluded same on 24/1/2023. Equally, the defence opened it case on the 23/2/2023 and closed same on 29/3/2023.

The Prosecution in prove of its case presented, four[4] witnesses, that is;

1. Samuel Adeh, the Investigating Police Officer as pw1
2. Shamsuddeen Ahmed, who is the victim as pw2
3. Jumai Ahmadu Zurumi, the victim's mother as pw3
4. Dr. Denni Richard Shettima, a physician and consultant with the National Hospital Abuja as pw4.

The following documents were tendered in evidence through the PW1;

1. The letter – Re: Request for medical report of Shamsuddeen Ahmed, male, 12 years, hosp. No. 664951 issued by National Hospital, dated the 3rd April, 2020 admitted and marked Exhibit A;
2. The Statement of the defendant dated 30/3/2020 admitted and marked as Exhibit B;
3. The Statement of the victim Shamsuddeen Ahmed signed the 27/3/2020admitted and marked Exhibit C;
4. The Statement of Jummai Ahmed Zurmi signed on the 27/3/2020, admitted and marked Exhibit D.

Samuel Adeh, a police officer on secondment to NAPTIP investigated the case. He testified as pw1; he states that on 27th March, 2020 one Mr. Ibrahim Zurmi lodged a complaint of suspected rape against the defendant. He states that on 21st March, 2020, he invited the complainant, victim and the victim's mother to the agency, wherein their statements were voluntarily obtained; that the defendant was handed over to the agency by the police; that the statement of the defendant was recorded. He continued that an identification parade was conducted within the premises of the Agency wherein, the victim identified the defendant.

Going further, he said he visited the scene of crime; that also, the medical report of the victim was sent from the National Hospital.

Under cross examination, he admits that the defendant was handed over to the NAPTIP by the Police. he statesthatexhibit A has no link to the defendant, he doesn't have any idea about forensic medicine. He states that he made request to the Agency for the need to invite all the persons mentioned by the defendant in exhibit B, but, he never got a reply from the Agency. He admits that the wife of the defendant wrote her statement. When he was asked, if he kept some evidence, he denied same. He reiterates that the Agency failed to avail him the necessary things he requested for. He couldn't remember if he took the evidence of the cloth the victim wore on the day of the alleged incidence. He is aware of the newspaper publications. He didn't admit that the

Agency, nominal complainant and others condemned the defendant before trial.

The victim Shamsuddeen Ahmed, a 12-year-old boy as of the time of the incidence, testified as pw2. He states in evidence, that on a Saturday after the close of Islamiyya, he went to his friend Sudais's house; that when he knocked at the door to his friend's,it wasthe defendant,who opened his own door and said to him that his friendwas not around. That the defendant asked after his brothers and sisters; that the defendant dragged his hands and forced him into his house. He testified thatthe defendantgave him water to drink,that after he drank the water, he started feeling dizzy. He continued that the defendant removed his trouser and also his own trouser, laid him down on a red chair, close to the door; that after he finished what he was doing,he asked him to go home and not tell anybody what happened.

Testifying further, the Pw2 states that on getting home, his mummy asked where he was coming from; that he lied to her that he was coming from his friend Sudais's house, but his mother asked himto speak the truth. Eventually, he told her what happened. That his mother took him to the hospital for treatment, whilehis dad took him to *NAPTIP*. He testified that he wrote statement.

Under cross examination, the Pw2 admits knowing the defendant; that the defendant and his friend, Sudais are neigbours; that both live on the topmost floor; that him and his friends used to go to the defendant's house during sallah; that prior to this incidence, the defendant had never molested or hurt him. He stated under cross examination that the defendant stays in flat 5 and has a red chair;

that they finished Islamiya at 12 noon; that he was not told to say what he said at *NAPTIP*; that he lied to his mother because the defendant had told him not to tell anybody that he came to his house.

The Pw3, Jumai Ahmadu Zurmi is the mother of the victim. She testified that on the 20th March, 2020, after the evening prayer at the mosque, the victim didn't return home with his brothers; that after sometime, the victim returned home and when she asked him of his whereabout, he told her that he was coming from the mosque. She said she didn't say anything. Testifying further, she narrated what transpired between the defendant and the victim as told to her by the victim,Pw2. She further stated that herself and his father questioned the victim severally, (for more than 10 times), that he kept repeating the same story; that the victim's father drove out, without saying a word to her. She continued that upon narrating the incident to her neighbour, she was asked to tell her husband to notify the mosque committee and further advised to check the victim's anus to be sure; that as soon as she got back home, she checked the pw2's anus; that she saw something yellowish on the victim's anus; that she was agitated and couldn't wait for her husband to come back, hence she took the victim to the National Hospital; that she narrated to the Doctor, what happened to the victim. She continued that the Doctor examined the victim and confirmed that the victim was touched, that there were bruises aroundhis anus; that the Doctor, told her the victim would be admitted. She testified that the victim was admitted in the hospital from the 21st March, 2020 to 26th March, 2020. She said

the matter was reported to *NAPTIP*; that her statement was recorded by one Jubril Mohammed, who interpreted from Hausa Language to English Language.

On being cross examined, she admits being the mother of the victim; that the defendant is a neighbour and also the Imam of the mosque where they live; that her testimony in the court as well as the statement she gave to *NAPTIP*were narrated to her by the victim. The Pw3 under cross examination stated that the incidence happened on a Saturday; that he left for islamiya at about 9am anddidn't return home, until about 2 o' clock; that she took the victim to the hospital late in the evening. On being asked whether she took the sample of the yellowish substance that she saw around the victim's anus; she responded that she wasn't a Doctor. She equally stated that the victim didn't take a bath or changed his cloth. She stated under cross examination, that the victim had never lied to her and that whenever there were issues amongst his siblings, it is the victim she relies on to explain things to her.

The Pw4, Dr. Denni Richard Shettima is a Physician and a consultant with the National Hospital, Abuja. He testified that he was the head of the team that managed the victim when he was brought to the emergency children's ward of the National Hospital, Abuja at about 10pm on 21st March, 2020. He narrated what the Pw3, the victim's mother told him. The Pw4 stated that when the victim was examined, he was calm and not in distress, that looks lethargic; that the victim's vital signs, heartbeat, temperature were normal. He states that from their findings, they observed around the victim's perineum, blood clot around his

anus and upon a digital examination, they noticed that there was a tear at 3 0'clock and 12 o' clock positions, but no active bleeding; that the examination finger was stained with blood, thus, they suspected the victim was sexually assaulted. He continued that blood samples were collected to test for infections and that the victim was amongst other things placed on antibiotics and also medication to cover for post exposure epilepsy; that alsothe social welfare was notified forpsychosocial support etc. He stated that the test results showed that there was no further injury higher above the victim's anus; that they requested for the suspect to be tested as well. The Pw4 stated that the victim was discharged after five days and was being attended to at the outpatient clinic; that after the incubation period which was carried out at the time of assault, the results were normal, thus, the victim was fully discharged from the pediatric clinic.

Under cross examination, the Pw4 stated that a test was not conducted on the defendant; that he at no time had any contact with the defendant. He stated that apart from the history, there was nothing that linked the defendant; that the incidence was narrated to him by the parents of the victim. In response to the question asked, he agreed with the defendant's counsel that there are other possibilities for anal lacerations in human being and that his testimony is based on suspected case of sexual assault.

Above is the case of the Prosecution.

The defence on the 23rdFebruary, 2023, opened its case. The defendant testified for himself and calledtwo [2] other witnesses in support of his case. The defendant,Abubakar Mustapha Danrakatestified as Dw1. He is a Pharmacist and works as a Special Adviser to the Director General of the National Institute for Pharmaceutical Research Development, Abuja. It is his evidence, that on Friday, 20thMarch, 2020 at about 8.30am, he left for work from his house flat 5, Block 24 Spring valley Estate, airport road Abuja where he used to be a resident. That he resumed work at Idu around 10am. That he interacted with a visitor by name my Mr. Victor Okey Okafor who was referred to him by a Senior Colleague pharm. Gloria Nwoha; that pharm Gloria Nwoha works at the National Primary Health Care Development Agency. That he also attended to other official matters on his desk until around 1.00pm, when he met with the confidential secretary of the D.G to collect an official letter that wasfor dispatch to the Bureau of Public Procurement (BPP); that he then went down stairs to observethe Jumah prayer and he did this, in the company of a staff of the Institute,Mr Ali Gwagwa; that they both observed the Jumah prayer at the IduCentral Mosque and thereafter dropped him by the Institute's gate around 2.30pm and from there, he drove to the three arms zone to dispatch a letter. That on reaching there,one Mr. Ogundimu, the director who was responsible for treating official correspondenceswas not on seat; that he asked him to come and meet him at theFederal Ministry of Education,Headquarters, Secretariat; that this was around 4pm. He continued that he observed his afternoon prayer at the

Federal Ministry of Health Headquarters around 5pm. That after the afternoon prayers, he drove to Lugbe along the airport road, Abuja; that around 6pm, he parked his car at the Julius Berger Yard behind Lugbe Primary School, observed his evening prayer at the Central Mosque; that after the eveningprayer ended around 7.30pm, he was accompanied by a young brother in the mosque by name Bashar whom he dropped off at River Park Estate junction and then returned back home. That on getting back to the estate, where he used to live, he met one Abah, who also live in the estate, they exchanged pleasantries and entered the mosque to observe the late evening prayer at around 8pm or thereabout. That after the prayer, he drove to his house, where he retired for the day.

Testifying further, the Dw1 stated that on the following day, which was a Saturday, because he was overseeing an official activity inhis office, he had to prepare to go to the office; that in the morning at around 10am, their househelp Mrs. Aske came to the house, that he was the one who opened the door for her. That he lefthis house for the office around 11.30am, leaving his wife and the house help at home; that he arrived his office at 12noon or thereabout, dropped his things in his office which was on the 4th floor went to the boardroom; that the activity he was overseeing had already commenced (a3-day recertification program of the Institute); that he interacted with the lead team leader by name Dr Sam Ohle as well as other staff and colleagues, including the visiting consultants from Lagos.

That after the meeting, he went back to his office; that one of the organisers of the meeting by name Dr. Gloria Ajo came to serve him the lunch refreshment, that was served in the meeting; that around 1pm, himself and pharmacist Isa Galadima, who also participated in the meeting went to the Institute's mosque to observe the afternoon prayer and after the prayer, they both had discussionson the treatment regimen of COVID-19; that, he equally shared the latest treatment protocol for managing COVID-19 with the Pharm Isa Galadimathrough WhatsApp. He continued that one of the securities at the Institute, one Mr. Ifeanyi greeted them at the entrance of the Laboratory complex at around 2pm.

He testified that after the prayers he went back to his office to treat other official documents on his desk until around 3.30 pm, when he left for the Utako park to collect a parcel sent to him from Zaria;that he received the parcel from the driver one Mr. Ojukwu at around 5.30pm; that on his way home, he stopped by at the Conoil filling station along airport road, to buysome groceries; that he made payment with his ATM card. That on reaching the estate andbefore he proceeded to his house, he interacted with some of his neigbours, specifically Mr. Habib and Mr. Festus on the COVID-19 situation, before driving to his block. He said he was assisted by one of the estate workers by name Mr. Francis to carry the things to the last floor of the block.

That after taking a rest, he went to the estate mosque to observe his prayer around 7pm; that after the prayers all the persons that prayed in the mosque all left, while he stayed behind; that suddenly, he sawAlh. Zurumi briskly walk into the mosque with his

shoes, raining abuses and insults on his person; that his eyes were red and in fury. He said he tried calming him down, so that he could understand what he was saying and why he had his shoes on, but that he continued raining abuses on him; thatthe Alh. Zurumitold him, that the Pw2, informed him that the defendant assaulted him in his house that same day. He said, he was shocked to hear that and he told Alh. Zurumi that it was impossible and cannot be true as he was not around at that time.That he tried explaining to Alh. Zurumi how it was impossible, but Alh.Zurumi tried to jack him, but he pushed him away; that Alh. Zurumitold himhe would pay dearly; that the Dw1 must settle him, as he wouldn't let the matter go. The Dw1 continued that when he heard that, and also seeing the way Alh. Zurumi was staggering and knowing him as a drunkard, he called a police officer whom he referred to as Oga Mike at the Aco Police Station (AMAC Housing Estate Police Station); that as soon as Alh. Zurumi heard his conversation with the police officer, he walked out of the mosque, entered his car and drove off.

He continued that after the night prayer in the mosque on that Saturday, he returned home and informed his wife of the incident which transpired between him and Zurumi at the mosque.

He stated that on the following day, the 22nd March, being a Sunday, and after the afternoon prayer, the Imam of the mosque whose name is Mal. Bashir told him he wanted to see him after the prayer; that,that was how he got to know about the alleged assault; that because of the severity of the allegation of defamation of character by Alh. Zurumi, himself and his wife

consulted with their Barrister and it was agreed that the matter be reported formally to the police. He continued that on the following morning, i.eMonday, they lodged a formal complaint at theIddo Police Station; that the Police conducted investigation, his statement and that of his wife, the house help and one of his colleagues in the office, pharm Isa HayatuGaladima were taken voluntarily; that the Police insisted on interviewing the victim; that on Monday, 30th March, Alh. Zurumi with two *NAPTIP*officers came to the Police station; that the Divisional Police Officer informed him that the matterhas beentransferred to*NAPTIP*; that on getting to *NAPTIP*, he was interrogated and detained; that he was granted administrative bail on the 3rd of April. He said he kept on going to *NAPTIP*; that he was humiliated and, on several occasions, he drew the attention of *NAPTIP*to investigate the matter by inviting all the people he mentioned so as to know the truth of what happened.

On being cross examined, the defendant stated that as of the time the matter was reported, he was a resident in the estate the incident was alleged to have been committed; that his wife told him the Pw2 and his sisters used to visit his house to sell their goods. He denied ever been the Imam of the estate mosque. He admitted being at the estate mosque on the 21st March, 2020 to observe his evening prayers. He stated under cross examination that upon enquiry from the Investigating Police Officer [IPO], if there was any progress on the investigation, the IPO told him he hadn't gotten any directive from the above.

The Dw2, Fatima RabiuDanraka, is the wife of the defendant. She is a civil servant. She testified and narrated what led to the case as narrated to her by the defendant. She further stated that on 20th March, 2020 being a Friday, her husband came back home around 8.30pm or thereabout; that on the next day, 21st March, 2020, their house help came over to the house and thereafter, the defendant left for work, leaving her and the house help at home; that the defendantdid not return home, until around 6pm; that the defendant freshened up and went for the evening prayers (both maghrib and ishai); that when the defendant retired back home, he told her what transpired between him and the father of the victim; that the following day, her husband told her that the elders of the mosque tried to intervene in the matter; that eventually they had to report the matter at the ACO police station; that they were referred to the Iddo Police station; that they reported the case of blackmail and also volunteered their statements; that the following day, Alh.Zurumi, the father of the victim was invited to the police station; his statement was also taken. The Police visited the hospital to interact with the victim; the Police also visited the defendant's house, to conduct investigation; that they checked the parlour, kitchen and around the estate; that the Police called their house help and took her statement. She stated that her husband was admitted to bail; that the police said they would investigate the matter. She said Alh. Zurumi, the father of the victim failed to take the victim to the police station as requested by the Police. She said on their next visit to the Police station, the DPO informed them that *NAPTIP*had taken over the matter, hence

the defendant had to follow the officers of *NAPTIP*to their office. She said her husband was detained, that she was not allowed access to the defendant; that on a Wednesday, around 9pm, a colleague of hers called her, asking her what was happening, that she told her he saw the defendant's picture all over the news i.e The Nation Newspaper, TVC News that he molested a child. The Dw2 while testifying, cried profusely, she stated, that she was destabilized and couldn't sleep; that the following day, being a Thursday, she went to *NAPTIP*and requested to see the officer in charge of the defendant's case; that she showed him what she saw on google; that the IPO expressed surprised, and denied knowledge of such; that the defendant's face was shown and everyone kept asking her, that it was horrible. She said she had to call the defendant's superior in his office, the Director General to help; that the defendant was eventually released.

On being cross examined, she admitted she was in the house on the Saturday the alleged incidence happened; that she was not present at the mosque; that the victim has been to their house once or twice, that the victim came with his senior sister to sell some stuffs; that the evidence pertaining to what transpired at the mosque, the involvement of the Imam and at the police station were narrated to her by the defendant.

The Dw3, Isa HayatouGaladima is a research fellow at the National Institute for Pharmaceutical Research & Development Idu (NIRPD). He knows the defendant, who is his colleague at work. He knows why he is before the Court. He testified to what happened in their office on the 21st March, 2020; that the

defendant also attended the meeting; that later in the afternoon, they both observed their afternoon prayer at the mosque located around the gate of the institute and afterwards, had some discussions with respect to the lockdown; that, that same day, the defendant sent to him the COVID-19 guidelines and from there, both went to their respective offices at about 1.40pm or thereabout. The Dw3 testified that at about 2pm, when he was leaving the office, the defendant was still around as his car was parked close to his; that few days later,the defendant invited him to come to the Ido police station to give testimony in respect to the allegation; that he went to the police station because he was certain that on the day the incident was alleged to have happened, both himself and the defendant were together.

The Dw3 while being cross examined, admitted not being around the defendant in the late evening. i.e between 6pm to 8pm; that it was not the defendant who told him about the alleged incidence; that it was a friend of his, who sent the link to him as the news was all over. He doesn't know the victim and has never met his parents.

At the close of evidence, parties filed and exchanged their final written addresses and by the leave of the Hon. Court, the final written address filed on behalf of the defendant was on the 12/7/2023 deemed as having properly filed and served on the prosecution. Edwin Inegedu of counsel,on 10/5/2023filed on behalf of the defendant a final written address, wherein he formulated a sole issue, that is;

Having regards to the evidence before the Court, has the Prosecution proved beyond reasonable doubt that the defendant, Abubakar Mustapha Danraka committed the offence with which he is charged.

On the part of prosecution, Selbol A. Langyiesq., filed a final written address dated and filed on 8/6/2023. The Prosecution adopted the defendant's issue as formulated.Bothcounsel argued and adopted their respective final written address on the 12/7/2023 and the matter was reserved for Judgment.

I have carefully considered the evidence put forward by parties, the submissions filed on behalf of partiesas well as the defence of alibi raised by the defendant; I am of the considered view that the defence of alibi raisedcan be dealt with together with the merit of the case. I consider it appropriate to do so, the matter having gone through full trial, thus, whether the defence of alibi is upheld or not, I am still bound to consider the merit of the case. See the case of ADAH V NYSC (2004) LPELR- 69 (SC). I, equally adopt the issue nominated by the defendant with a slight modification. The issue is;

Based on the evidence before the court, has the prosecution been able to prove the charge against the defendant beyond reasonable doubt.

The defendant is standing trial for the offence of intentionally penetrating the anus of one Shamsuddeen Ahmed, a 12-year-old boy with his penis contrary to s. 1 (1)(a) Violence Against Persons (Prohibitions) Act, 2015 and punishable with life imprisonment and as rightly cited by learned counsel to the defendant, the Supreme Court inTHE STATE v. MUHAMMED MASIGA (TSOLO) (2017) LPELR-43474(SC) held thus;

"For the prosecution to succeed, in proving the offence of rape, it must prove: 1. That the accused has sexual intercourse with the woman. 2. That the act was done in circumstances falling under the following: (a) against her will; (b) without her consent; (c) with her consent when her consent has been obtained by putting her in fear of death or of hurt. (d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or

believes herself to be lawfully married; (e)With or without her consent, when she is under fourteen years of age or of unsound mind. 3. That there was penetration. See OGUNBAYO VS STATE (2007) 8 NWLR (PT. 1035)157; UPAHAR VS STATE (2003) 6 NWLR (PT. 816) 230; STATE VS OJO (1980) 2 NCR 391; IKO VS STATE (2001) 14 NWLR (PT.732)221."

The Prosecution has the burden to prove the ingredients by eitherof the following ways;

(a)By evidence of eye witness(es)

(b) By confessional statement of the (accused) Defendant
(c) By circumstantial evidence
See AKWUOBI V THE STATE (2016) LPELR – 41389 (SC)
In the final written addresses filed on behalf of parties, both counsel are at ad idem on the principle of law with regards to the position of law on burden of proof in criminal matters. See paragraphs 4.1.1 to 4.1.5 of the defendant's final written address and paragraphs 3.1 to 3.4 of the prosecution's final written address. Also, I am in total agreement with counsel, that the prosecution has a boundendutyas required by law, to discharge the burden placed upon it, by proving the charge against the defendant beyond reasonable doubt. See Ss 135 (1) & (2), 132, 135 (1), (2) & (3) of the Evidence Act and the case of EDAMINE V STATE (1997) 3 NWLR (PT. 438) 530 AT 475.
I must state, that the evidence adduced by parties in the instant case is simple and straightforward. The prosecution on the one hand, asserts that the Dw1intentionally penetrated the anus of one Shamsuddeen Ahmed, a 12-year-old boy, while on the part of the defendant, it was an outright denial of the commission of the crime, as hetestified to the fact that,between 11am and 7pm on March 21, 2020, he was not in the vicinity of the crime, thus, raising the defence of alibi.

Learned counsel for the defendant argued that under cross examination, the Pw2 admits knowing the defendant prior to 21st March, 2020; that there was no basis for the identification parade conducted by the prosecution. He submits that where the prosecution witness claims to have known the defendant prior to

the commission of the alleged offence, an identification parade is not necessary. He relied on ADEBIYI v STATE(2016) LPELR – 40008 (SC) @ Pp 15 -16 and others. He urged the court to hold that the identification parade and its outcome is unhelpful to the prosecution's case. The Prosecution is of the view that the identification procedure was not out of place. He argued that it was for the Pw2 to clearly identify who molested him and to also ensure that the right person was being investigated and that the procedure was necessary because of the severity of the allegation.

First off, what is the essence of an identification parade? See AMINU ABDULLAHI v. THE STATE (2021) LPELR-53453(CA). *The essence of an identification parade is to enable an eye witness who never knew the accused to pick him out from the lineup of people including the accused as the person who committed the offence. Since finding the perpetrator of an offence is a major ingredient of a crime, both the police, the ministry of justice must be sure that the person brought to Court is the person who actually committed the offence. In OKIEMUTE VS. THE STATE (2016) 15 NWLR (Pt. 1535) 297, the apex Court per Okoro, JSC held: "Issue of identification of an accused person is very crucial in criminal proceedings, and the real purpose of identification is to ensure that there is no miscarriage of justice. Identification of an accused person can be done by the victim of the crime if he is alive or by witnesses who saw when the offence was committed. An accused can also be identified under Section 167 (a) of the Evidence Act 2011.*"

It is in evidence that the defendant, parents of the victim as well as the victim lived within the same estate (Spring Valley Estate) as of the day of the alleged incidence. Under cross examination, the Pw2 admits that he and his friends used to visit the defendant during Sallah. Equally, the defendant in evidence testified that his wife told him that the victim and his sisters used to come to his house to sell their goods. This was also confirmed by the Dw2, the wife of the defendant. Thus, I am in agreement with counsel to the

defendant, that the identification parade conducted was unnecessary, as there is in evidence that parties in this case knew each other prior to the 20th or 21st March, 2020. And I hold so.

Given the evidence of the Prosecution witnesses, the material facts are as follows: -

1. It is established in evidence that the victim, his parents and the defendant as of the date the alleged act happened were all living in the same estate (Spring Valley Estate, ACO). They were more or less neighbours;
2. The Pw2 attended islamiyya on the 21st March, 2020 and after the close of islamiyya at about 12noon or thereabout, the Pw2 didn't return home with his siblings;
3. On his return home at 2pm, his mother, the pw3 questioned him on his whereabout, he couldn't give a satisfactory answer and eventually, when he opened up to his mother, he narrated what transpired at the defendant's house;
4. The Pw3 informed her husband. i.e the father of the victim, and the Pw2 was made to narrate the incidence to his father. According to the Pw3, the victim's father drove out, without saying a word to her;
5. The Pw3 said she was advised by her neighbours to check the pw1's anus for her to be sure; that following the advice, she saw some yellowish substance around the anus of the Pw2 and there and then, she took the Pw1 to the National Hospital, Abuja;
6. Upon presentation, the Pw4 observed that the Pw2 was calm and not in any distress that looks lethargic, but after the conduct of a medical examination on his perineum, blood clot was noticed around his anus and after further digital examination, he noticed that there was a tear at the 3' o clock and 12 o' clock positions; however, there was no active bleeding. The PW2 was thereafter placed on antibiotics, blood samples were taken to test for infections like hepatitis, HIV and vaginal diseases. The Pw4 together

with his team, notified the Hospital management through the Head of Department, the case of sexual assault.

7. The Pw4 also put the Pw2 on medication to cover for post exposure epilepsy and also notified the social welfare for psychosocial support etc. The Pw4 and his team further referred the Pw2 to the pediatric surgical unit to further review the Pw2's anus and upon a review, there was no further injury higher above his anus;
8. On 27th March, 2020 one Mr. Ibrahim Zurmi reported the incidence to the NAPTIP; the statements of the complainant, victim and the victim's mother was obtained voluntarily;
9. On 30th March, 2020, NAPTIP took over the case from the Police. The defendant volunteered his statement to NAPTIP.

As stated earlier, the defendant outrightly denied not being around the estate at around 11am to 7pm on 21st March, 2020.

The highlights of the defendant's evidence are as follows;

1. That on the 21st March, 2020, the defendant left his house for work at about 11.30am, leaving his wife and their house help, one Haske at home;
2. He attended a meeting at about 12 noon, interacted with the team leader of the exercise and other staff and colleagues;
3. At about 1pm, himself and one Pharm. Isa Galadima observed their afternoon prayer at the Institute Mosque;
4. At about 3.30pm, he left the Institute for Utako to receive a message from Zaria. He was able to collect the message around 5.30pm;
5. On his way home, along the airport, he stopped at conoil filling station to make some purchases of groceries. He made payment via his ATM card;
6. On getting home, he related with some of his neighbours and the estate workers;

7. At about 7pm, he left for the estate mosque to observe his evening prayers, after the prayers, he stayed back in the mosque;
8. While sitting alone in the mosque, the father of Pw2 walked in with his shoes and started hurling abuses at the defendant;
9. At first, the defendant couldn't comprehend what the father of the victim was saying, but eventually he heard him say that the pw1 informed him (the father of the victim) that the defendant assaulted him his house (the defendant's house) that same day;
10. The defendant was shocked to hear the allegation, as he wasn't around throughout the day and he tried to explain to the father of the victim;
11. In a bid to prevent the father of the victim from being violent, the defendant called one oga Mike at the Aco Police station within the AMAC Housing Estate Police Station;
12. On hearing the conversation of the defendant with the oga Mike, the father of the victim went out of the mosque;
13. The returned home, narrated what transpired between him and the father of the victim at the mosque to his wife;
14. On 22nd March, 2020 i.e the following day, the Imam of the mosque after prayers informed him of the sexual assault. The defendant says that was how he heard about the sexual assault;
15. The defendant and his wife, after consulting with their lawyer, it was agreed that the matter be reported to the police;
16. The defendant lodged a complaint at the Iddo Police Station, investigation commenced; the defendant stated that his statement was obtained, his wife's, Haske, the house help of the defendant and Pharm Isa HayatouGaladima's statements were also obtained by the Police.
17. While the Police were still investigating the matter, NAPTIPon 30th March, 2020 took over the matter;

18. On getting to NAPTIP, the defendant was interrogated and detained till the 3rd April, 2020 before he was released on bail.

Now, one thing whichis constant in this case, is that, the pw2 is not in doubt as to the identity of the defendant. Thus, it is immaterial whether he is referred to as an Imam or called by his name. The Pw2, his parents and the defendant are not strangers to each other.Learned counsel to the defendant argued that,exhibit D is hearsay evidence; that same was taken in Hausa Language and translated into English by one Mohammed Jibrin; that the said Mohammed Jubrin did not testify as regards what he translated and failure to call him, renders the exhibit D hearsay. He cited FRN V USMAN & ANOR (2012) LPELR-7818 (SC) and NA ALLAH V KOFAR KADE NIG. LTD (2020) LPELR-49596(CA)Without wasting much ado, I do not agree with the argument of the learned counsel in this respect andI must state that the cases cited by the defenceare not similar to the issue at hand;first off, exhibit D is not theconfessional statement of the defendant as it was, in the cases referred to by counsel to the defendant. Also, at the point of tendering same, the defence counsel did not object to its admissibility;the defendant was/is not the maker of the exhibit in question and no cautionary word is contained therein or administered on the maker. Secondly, the maker was called as a witness in this case and she did not deny knowledge of the existence of exhibit D and its content.She testified to the fact that they reported the matter to NAPTIP and in her oral testimony, she states that her statement was taken through one Jubril Mohammed, who served as her interpreterfrom Hausa Language to English Language. Exhibit D reads*"My name is Jummai Ahmad Zurmi, the mother of Shamsudeen Ahmad, 12 years old. I authorized officer Mohammed Jibrin to help me translate my statement into English Language in writing."*Hearsay is defined in Section 37 of the Evidence Act as follows: *"37. Hearsay means a statement - (a) oral or written made otherwise than by a witness in a proceeding; or (b) contained in a book; document or any record whatever, proof of which is not admissible under any*

*provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it." In the locus classicus, Subramaniam Vs Prosecutor (1965) 1 WLR 965, it was held: "Evidence of a statement made to a witness called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made." See also: UTTEH VS THE STATE (1992) 2 NWLR (Pt. 223) 287; (1992) LPELR-6239 (SC) @ 11 C -E; Arogundade Vs the State (2009) 6 NWLR (Pt. 1136) 165; FRN Vs Usman (2012) LPELR-7818 (SC) (a) 19 - 20 F - C."*See MARIAM MOHAMMED v. ATTORNEY GENERAL OF THE FEDERATION (2020) LPELR-52526(SC).

Also, under cross examination, the Pw3 stated thus;

Q: What you wrote in your statement (NAPTIP) and the verbal oral evidence in court today is only based on what your son told you. You didn't see the event happen, nobody told you he saw what happened

A: what my son told me, that is what I said today and what I wrote at NAPTIP.

It is glaring from the evidence before the court, that the Pw3 gave direct evidence of what she heard from the Pw2. Accordingly,I find and hold that exhibit D is not hearsay evidence and same was rightly admitted in evidence.

The offence for which the defendant is charged is Rape contrary to s.1(1)(a) of the Violence Against Persons (Prohibition) Act 2015 and punishable under s.2 of the same law. For the avoidance of doubt, it states:

"(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 ofhis 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"

The evidence of the Pw3 under oath is that, the pw2 left home for Islamiyya; that after the close of Islamiyya at 12noon, he failed to return home with his other siblings; that on his return at about 2pm,i.e 2hours after the close of Islamiyya, she questioned him as to his whereabout and after much persuasion, he narrated what the defendant did to him in his house to her. Also, following the advice of herneighbours, to check the Pw2's anus; she said, she sawsome yellowish substance around his anusand coupled with what the Pw2 told her, she decided to take the Pw2 to the National Hospital, Abuja for treatment. On arriving the hospital, the pw4, observed the pw2's perineum; hestates there was blood clot and a tear around the pw2's anus. Specifically, the Pw4 Dr. Denni Richard Shettima, the physician who was the head of the team, testified that he carried out medical examination on the Pw2 when he was brought to the National Hospital, Abuja by his parent. According to the Pw4, he stated thus "*the major findings we observed that day was his PERENIUM, where we noticed around his anus there was blood clot and when we did digital examination, we noticed that there was a TEAR at the 3 o'clock and 12 o'clock positions but no active bleeding. The examination finger was stained with blood. So, we suspected that there was sexual assault…then, we also put the child on antibiotics and then we notified the hospital management through our HOD that we have a case of sexual assault.*" see also exhibit A, the Medical

Report. The testimony of the Pw4 as well as exhibit A, the medical report corroborates the oral evidence of the Pw3 where she stated that "*the doctor confirmed that the boy was touched, and she also saw bruises on the anus of the boy. Then the Doctor told her that the boy would be admitted.*"The Pw4 in his oral testimony confirmed that there was blood clot around the pw2's anus and also a tear at the 3 o'clock and 12 o' clock positions. This evidencecertainly supports the testimony of the Pw3 that she saw some yellowish substance around the anus of the victim.In ISYAKU MU'AZU v. THE STATE (2022) LPELR-57534(SC)Per HELEN MORONKEJI OGUNWUMIJU, JSC (P. 8, paras. A-D) relying on an earlier decision of the Supreme Court states *"In State v. Gwangwan (2015) LPELR-SC 504/2012, the Supreme Court stated that corroboration means or entails the acts supporting or strengthening the statement of a witness by fresh evidence of another witness and it does not mean that the witness corroborating must use the exact or very like words and this is because evidence that is regarded as corroboration is clearly not a repetition of the evidence sought to be corroborated, otherwise there will be no need for the original evidence*."

Now who is/was responsible for the tear, bruises or lacerations seen around the Pw2's anus?

The Pw2 is the victim in this instant; it is his evidence that "*… I can recognize the defendant. I know why I am in court today. On Saturday, after Islamiyya, I went to my friend's house Sudais. I knocked at the door and he opened his door and said they are not around. He now asked me about my brothers and sisters. He dragged my hand and forced me into his house. He brought me water to drink when I drank it, I started feeling dizzy. <u>He now removed his trouser and my own. After he finished what he was doing, he told me to go home and not tell anybody…He laid me down in the red chair close to the door</u>*"

Under cross examination the Pw2 was asked if he knew the defendant; to which he responded in the affirmative. He was

further asked to describe the defendant's house, number of flats. The Pw2states that the defendant was living in flat 5; that he has a red chair and lives on the topmost floor.

Again, the Pw2, on being cross examined by counsel for the defence, was asked thus;

Q: Did they ask you to say what you said in NAPTIP;

A: No

Q: In your statement, you said after he gave you water, you slept and you don't know what happened and after you woke up, you left;

A: Yes

Q: So why did you now lie to your mummy that you went to see your friend, when as a matter of fact, you went to see the defendant;

A: Because he said that I should not tell anybody;

Q: what do you mean by that, that you shouldn't tell anybody that he gave you water to drink or you came to his house or that you slept in the chair of the house;

A: that I came to his house;

Q: Are you afraid of the defendant;

A: I am not afraid of him.

Exhibit C is the statement of the Pw2, which I find pertinent to reproduce.

"*STATEMENT OF VICTIM*

NAME: Shamsuddeen Ahmed NATIONALITY/TRIBE: Nigeria/Hausa
STATE OF ORIGIN: Zamfara State L.G.A OF ORIGIN: Zurmi
AGE: 12 years OCCUPATION: Student, SEX: Male RELIGION: Islam
ADDRESS: Spring Valley Estate, Aco.

TELEPHONE NUMBER(S)……
I FREELY ELECT TO STATE AS FOLLOWS: my name is Shamsuddeen Ahmed. I am 12 years Old. I have six Siblings my School name is Oloye private School Aco.
On Friday 20th March, 2020 in the evening when I went to pray in our neighbourhood mosque at Spring Valley Estate, Iman Danrake told me to see him after prayer which I did and Iman Danraka gave me fifty naira to buy sweet for myself. On Saturday 21st March, 2020, in the morning after Islamiya Studies I went to check up on my friend master sudois who also happens to be a neighbour to Iman Danraka, and the Iman came out from his house to inform me that my friend is not around, so Iman Danraka held my hand and took me inside his house. He gave me water to drink and after drinking I started feeling sleepy. Iman Danraka removed his own trouser and removed my trouser and lied me down on the chair facing down after which Iman Danraka removed his own trouser and put his penis inside my anus. After Iman Danraka finished what he was doing. I was feeling pain in my Anus but he told to go home and warned me not to tell anybody. When I got home my mother and sisters were already looking for me, my mother asked me where I was coming back from, but I lied to her that I was coming back from my friend's house. After my mother persuaded me, I told her the truth, of what Iman Danraka did to me, my mother Mrs. Fatima and Ahmed Checked my anusand saw some yellow poss and Injuries I also told my mother that Iman Danraka led me down on one of the red chair close to the parlour door and nobody else was in his house on that day. After he finished, he open the door for me to go home. After which my mother took me to the Hospital for treatment.
Signed.
27/3/2020"
Exhibit C and all other exhibits in this case, were tendered and admitted without any objection from the defence. The law is that objection to admissibility of a document should be made at the

time the document is being tendered. In other words, the proper time to object to the admissibility of documents is when it is being tendered. Mere looking at exhibit C, it clearly satisfies the principle of admissibility as required in evidence. As can be gleaned from exhibit C, the Pw2, the victim expressly stated that the defendant removed his penis from his own trouser and also removed the Pw2's trouser, laid him (the Pw2) on the chair facing down; that the defendant put his penis inside his anus, that when the Dw1 finished what he was doing, he felt pain in his anus; that the Dw1 asked him to go home and warned him not to tell anybody. The defence didn't deem it fit to cross examine the Pw2 on this material fact; rather, the defendant's counsel chose to address the issue in his final written address. It is elementary law that when a witness testifies on a material fact in controversy, the defence has the opportunity to cross examine the witness to show the contrary. See EMMANUEL EGWUMI v. THE STATE (2013) LPELR-20091(SC). At the risk of sounding repetitive, there is sufficient evidence before the court that the defendant's identity is not mistaken to the Pw2. Learned counsel to the defendant argued that exhibit C vindicates the defendant as there are contradictions in the prosecution's evidence. I beg to differ with the defendant's counsel. He failed to point out the material contradictions in exhibit Cand the oral testimony of the Prosecution witnesses, particularly, the evidence of the Pw2, which is direct and unequivocal.He states thus "*…he dragged my hand and, forced me into his house. He brought me water to drink, when I drank it, I started feeling dizzy. He now removed his trouser and my own. After he finished what he was doing, he told me to go home and not tell anybody.*"It is trite that direct evidence is the best form of evidence. See s. 126 Evidence Act which requires oral evidence in all cases must be direct. Evidence is direct when, if the fact to be proved was seen by the witness who saw it, if it was heard, then it must be the evidence of the witness who heard it. See YAHAYA V OPARINDE (1997) 10 NWLR (pt. 523) 126, OJO V GHANORO (1999) 8 NWLR (pt.615) 387.In the present, the Pw1 gave account of how the

defendant removed his trouser and that of the Pw1, laid him down on a red chair and there is nothing or contrary before the court suggestive of the fact that the Pw2 concocted the allegation against the defendant. It is equally in evidence that there are bruises/tear and blood clot around the Pw2's anus. Now, what was the cause of the bruises/tear, if there was no penetration of the penisinside the anus of the Pw2? In RABIU V STATE (2005) 7 NWLR (925) 491. 2004 LPELR 7382. The Court of Appeal restated the general principle of law, that there must be proof of penetration, no matter how slight before an offence of rape can be said to be proved. The law is trite that arguments in the written address of Counsel however brilliant cannot dislodge the evidence on record, substitute, or constitute evidence upon which the Court can act. See the Case of MUAZU V. STATE (2018) LPELR-46768 (CA)At this stage, I must state, that the fact the Pw4 stated in evidence that exhibit A, the medical report cannot be linked to the defendant is of no moment as his duty being a medical expert was to testify as to his findings after examining the victim. There is no disputing the fact that pw4 didn't witness the act nor conducted a test on the defendant, however, there is in evidence that the pw4 upon examining the Pw2's perineum, blood clot was found around his anus and on further investigation, the Doctor noticed a tear at the 3 o'clock and 12 o' clock positions; the Pw4 states in evidence that the Pw2 was placed on medications and also referred to the social welfare for psychosocial support. There is in evidence that the Pw3 saw some yellowish substance on the anus of the Pw2 and that prompted her to take him to the hospital. See MUBARAK USMAN v. KANO STATE (2018) LPELR-46568(CA) on the essence of a medical report in rape cases. The position of the law is that although a medical report is not mandatory for proof of the commission of the offence of rape, once there is a denial at play of the commission of the offence by the accused person which the prevailing circumstances do not support, the Court is encouraged to look for a medical report showing injury to the private part or any other part of the body of the rape victim. In

other words, the intendment of a medical report is to establish injury sustained to the private part, that is, the vagina, or any other part of the body of an alleged rape victim and nothing more. See the cases of IKO V. THE STATE (2001) SCNJ P.39 and KAZEEM POPOOLA V. THE STATE (2013) 17 NWLR (PT. 1382) P.96."

It is crystal clear that the defendant had relied on the defence of alibi to exonerate him as it appears to me, that he failed to controvert the allegation made against him. Learned counsel to the defendant argued that the defendant rebutted the allegation against him; that the defendant gave clear details, with specific particulars of his whereabouts on 21st March, 2020; that the failure of the prosecution to investigate thealibi raised, the defendant is entitled to an acquittal; that under cross examination, the Pw1 admitted that the Agency failed to investigate the alibi during investigation. Reference was made to ADEBIYI V STATE (2016) LPELR 40008 (SC), STATE V ODOMO…. The Prosecution's counsel submits that the evidence of the Dw2, Dw3 & Dw4 do not tally with any specific time frame and also that the defence of alibi ought to have been raised timeously as same cannot be raised at trial.

The law is trite that where a defendant raises the defence of alibi, the Prosecution is duty bound to investigate the activities or particular stated to it by the defendant. See GODWIN EGBE UTTO v. THE STATE (2021) LPELR-56230(SC). In the instant case, it is not in doubt, that the Pw1 admits thatNAPTIPdidn't investigate the defence of alibi raised by the defendant in exhibit B. The defendant and the witnesses called by him, testified to the fact that the defendant was not at home at the time the alleged offence was said have been committed.The Dw1 in his oral evidence in court states amongst other things, that on 21st March, 2020 he attended a meeting at his office. In his words, he stated thus "… *on Saturday, the following day, because I was overseeing an official activity at the Office, I had to prepare to go to the office again that morning around 10am, our house help by the name Mrs. Haske came to the house. I was the one who opened the door for her to enter,*

after dressing up and preparing to leave the house for the office, I left around 11.30am leaving my wife and house help at home. From the estate, I drove straight to the office at Idu Industrial Layout. I reached the office around 12 noon. I went straight to the office, which is the 4th floor, dropped my things in the office and went straight to the boardroom.At the boardroom, the activity I was overseeing had already commenced. It was an assessment meeting of the three-day recertification programme of the Institute. I interacted with the lead team leader for the exercise by name Dr. Sam Ohle. I also interacted with a lot of staff and colleagues, including the visiting consultants from Lagos."

Exhibit B, the Statement rendered to NAPTIP by the defendant, reads in part "*… I reached the NIPRD gate around 12.10pm and Mr. Ifeanyi the securityon duty gave me access. I was in the Institute till around 1.40pm and the same Mr. Ifeanyi witnessed my departure from the institute. In the institute, I interacted with Dr. John Ohhale, Dr. Gloria who served lunch to me, Mr. Adekoya the USP consultant on the ISO reaccreditation exercise that concluded on Saturday 21/3/2020. I also was with Pharm. IsahGaladima, whom I called so that we could go and pray Zuhr together at 1.09pm till 1.38pm when I transferred Covid-19 protocol via WhatsApp."*

Going further, the Dw3 IsahHayatouGaladima, a colleague of the defendant in the office testified thus "*…on the 21st March, 2020, which happens to be a Saturday, there was an accreditation by a Standard body, they used to accredit our laboratory every two years for standardization and there was a meeting that day in respect to the accreditation. The meeting was scheduled at 11am and during the meeting there were plenty people there…the defendant later joined us; I think it was to 12…*" The Dw3 further stated that himself and the Dw1 at about 1pm, observed the afternoon prayer at the Institute's mosque; that the Dw1 even sent the COVID-19 guidelines to him.

As stated earlier, the prosecution didn't investigate the activities stated by the defence witnesses particularly the activities the defendant stated in exhibit B. Now, at this stage, the questions that arises are – Did the defendant specifically inform the prosecution that he attended a meeting or an official activity in his office, on 21/3/2020? Did the defendant present the minutes of meeting and the list of those who attended the meeting of 21st March, 2020 to the prosecuting agency for investigation?Did he avail the prosecution with the evidence of receipt of payment?

It is in evidence that the defendant is a Special Adviser to the Director General of the National Institute for Pharmaceutical Research Development Abuja, (now referred to as the Institute) therefore, it is presumed that the Institute is a Public Agency and, on this note, I take judicial notice of the fact that the Dw1's office being a public agency keeps record of the minutes of meeting and the list of attendees for record purposes. See s.102 of the Evidence Act.

Going further, the defendant narrated his itinerary with particular reference to the purchases he made on 21/3/2020, wherein he made payment vide his ATM at Conoilmini mart along the airport road. In as much as the law requires the prosecution to investigate the defence of alibi, authorities abound that the defendant, has a duty to play his own part, by supplying to the prosecution detailed and credible particulars of his activities in the defence of alibi. In KAZEEM AYINDE v. THE STATE (2023) LPELR-60153(SC), relying on a plethora of cases stated thus "*the case of Aiguoreghian v. State (2004) 3 NWLR (pt. 860) 367 at 401, Onu, JSC, speaking for this Court in the lead judgment, restated that: - "It is a well-established principle that an alibi means that the accused was somewhere other than where the prosecution alleges he was at the time of the commission of the offence. The defence of alibi, as it were, implies that the accused person was elsewhere at the time when the offence charged was alleged to have been committed in a particular place," The Court referred to the earlier decisions in*

Gachi v. The State (1965) NMLR, 333, Okosun v. A. G., Bendel State (1985) 3 NWLR (pt. 12) 283 and Ikemson v. The State (1989) 3 NWLR (pt. 110)455. The law on the essential requirements for the plea or defence of alibi by an accused person charged with the commission of a criminal offence before a Court of law, is firmly settled in our criminal procedure jurisprudence, some of the requirements are that: 1. The defence/plea of alibi is primarily based and predicated on and within the personal knowledge of the accused person which he must raise timeously and provide adequate particulars of his where-about and with whom he was at the material time by dint of Section 140 of the Evidence Act, 2011, (Section 141 (1) and 142 of the 1990 Act). It is therefore a requirement of the law that an accused person who relies on a plea or defence of alibi, bears and has the initial evidential, burden of providing the essential particulars and evidence of such a plea or defence on the balance of probabilities in order for the duty of the police or prosecution to investigate it for the purpose of disproving same at the trial Court to arise. SEE IFEJIRIKA V. STATE (1999) 3 NWLR (PT. 593) 59 AT 78, EYISI V. THE STATE (2000) 15 NWLR (PT. 691) 555, TANKO V. THE STATE (2009) ALL FWLR (PT. 456) 1977 AT 1999, GACHI V. THE STATE (SUPRA), GALIDIKA V. THE STATE (1972) 2 SC, 21, PETER V. THE STATE (1997) 3 SCNJ, 28, NDUKWE V. THE STATE (2009) 2 - 3 SC 48, SOWEMIMO V. STATE (2004) 11 NWLR (PT. 885) 515, ANI V. THE STATE (2003) 11 NWLR (PT. 830) 143. 2.The prosecution/police has the duty, where the plea or defence of alibi is properly and timeously raised by an accused person, in the course of the investigation of the offence he was charged with, to fully investigate it in order to be able to disprove same at the trial Court. See SOWEMIMO V. STATE (SUPRA), AIGUOREGHIAN V. STATE (SUPRA), NSOFOR V. THE STATE (2002) 10 NWLR (PT. 775) 274, LORTIM V. STATE (1997) 2 NWLR (pt. 490) 711. 3. The accused person has no duty to prove the plea or defence of alibi after properly and timeously raising it in a case. See Arebamen v. State (1972) 7 NSCC, 174, Ikono v. State (1973) 8 NSCC, 352, Okolo v. S. O. P. (1977) NNLR, 1, Ikono v. The State (1973) SC (reprint) 167, (1973) LPELR - 1483 (SC), Nwabueze v. State (1988) 4 NWLR (pt. 86) 18, Aliyu v. State (2007) All FWLR (pt. 388) 1133 at 1144. 4. That failure to investigate an alibi plea or

defence properly raised by an accused person may be fatal to the case of the prosecution for a doubt would be created and the standard of proof beyond reasonable doubt not attained which entitles the accused person to be discharged. See Aiguoreghian v. State (supra), Sowemimo v. State (supra), Nsofor v. State (supra) Dogo v. The State (2001) 2 SCM, 39 at 53, Amodu v. The State (2010) 2 NWLR (pt. 1177) 97 at 81, Ozaki v. The State (1990) 1 NWLR (pt. 124) 92. 5. That failure to investigate the plea or defence of alibi raised by an accused person may and is not fatal to the case of the prosecution if and where there was strong, credible and compelling evidence fixing him at the scene of the commission of the offence he was charged with, at the material time. Tobi, JSC, in the case of Ebri v. The State (2004) All FWLR (pt. 216) 420 at 435, restated the law that: - "Where the evidence of the prosecution witnesses specifically and unequivocally pins down an accused person to the scene of crime and says that he committed the offence, failure to investigate the alibi by the police will not result in an acquittal of the accused. In such a situation, the failure to investigate the alibi is not only superfluous, but also otiose. " See also Nwosisi v. State (1976) 6 SC, 109, Okosun v. A. G., Bendel State (1985) 3 NWLR (pt. 12) 283, Odu v. State (2001) 1 SC (pt. II) 30, Eyisi v. State (2000) 12 SC (pt. 1) 24, (2001) 15 NWLR (pt. 691) 555, Archibong v. The State (2006) All FWLR (pt. 323) 1147 at 1184. 6. That a successful plea or defence of alibi completely exculpates the accused person from criminal responsibility or liability as it is proof that he was not at the scene of the crime he was charged with at the material time and, so, ipso, facto, did not commit the crime in question, and is entitled in law, to be acquitted and discharged. See Amodu v. The State (supra)."

Also, inMonday Odu v. The State (2001) 10 NWLR (Pt.722) 668 at 674 per Mohammed JSC as follows: - "...Although there are occasions on which failure to check an alibi may cast doubt on the reliability of the case for the prosecution, yet where there is positive evidence which cancels the alibi, the failure to investigate

the alibi would not be fatal to conviction. I do not have to repeat what this Court had said in several decisions, but the onus of establishing alibi, being a matter within the personal knowledge of an accused lies on him. It is not enough for the accused to say to the Court that I was at a particular place away from the scene of crime, he has to prove his assertion. Even if the police have failed to investigate such assertion, the accused has the onus of adducing evidence on which he relies for his defence of alibi. The issue of the defence of alibi has failed."(underlined emphasis mine)

Stemming from the above cited case, it is clear that where a defendant raises a defence of alibi, he must first of all, disclose with specificity, the material evidence and particulars of the alibi; it is upon these disclosures, that the prosecution is saddled with the responsibility of investigating the plea. Going by the available evidence adduced in respect to the defence of alibi, it thus appears to me, that the defendant failed to avail the prosecution with necessary evidence with respect to the said meeting held in his office on 21st March, 2020. The defendant had the onus of presenting the minutes of the meeting and list of attendees to the prosecution for further investigation. These are credible and concrete evidence which could have aided the prosecution in investigating the defence raised by the defendant.The defendant in his oral testimony states "*At the boardroom, the activity I was overseeing had already commenced. It was an assessment meeting of the three-day recertification programme of the Institute. I interacted with the lead team leader for the exercise by name Dr. Sam Ohle. I also interacted with a lot of staff and colleagues, including the visiting consultants from Lagos.*" A careful perusal of exhibit B, it is not contained therein that the defendant or the Dw3 attended a meeting at the office on 21/3/2020. Reading through the exhibit B, that is, the extra judicial statement of the defendant, the defendant merely stated that he interacted with some persons, particularly one Mr. Adekoya the

USP consultant on the ISO reaccreditation exercise that concluded on Saturday 21.3.2020; he did not state expressly that he was part of the exercise. Both the Dw1 & Dw3 equally failed to present documentary evidence to buttress the fact on the COVID-19 protocols sent via WhatsApp. The general principle of law is to the effect that he who assert must prove. See s. 131 Evidence Act. See Monday Odu v. The State (supra).The defendant qeuallyfailed to present to the Hon. Court, the receipt he generated vide the ATM on 21st March, 2020 or the house help by name Haske.Now, the Defendant and his wife, Dw2 testified to the fact that their house help, Haske was at their residence on the 21st March, 2020; the house help from evidence is not residing with the defendant. According to them, she comes in every Saturday to clean the house. On this particular day, the 21st March, 2020the house helparrived the defendant's house at about 10am and as stated by the defendant, when he was leaving for work around 11.30am, he lefthis wife and house help at home; also, the Dw2 testified that theHaske, the house help did not leave the house till about4.30pm. The Dw1 & Dw2 testified to the fact that they reported the matter to the IddoPolice Station; that the Police obtained the statement of the Haske; however, the Pw1, an investigator with *Naptip* did not state in evidence that during investigation, he obtained the statement of Haske, the defendant's house help.The defendant clearly has the burden of calling Haske as a witness in this matter to at least buttress the fact that she was at his residence on 21st March, 2020. The said Haske is only known to the Dw1 & Dw2. s.140 Evidence Act is to the effect that when a fact is especially within the knowledge of any person, the burden of proving that fact is upon him. It is incredible that the defendant found it convenient to present the house help to the Police but failed to present her to NAPTIP or call her a witness before this Hon. Court. I repeat, the evidence put forward by the Dw1 & Dw2, is thatHaske does not live with them; she comes to clean the house on Saturdays. If truly, the Haske rendered her statement at the Iddo Police Station, why then, did the defendant

fail to call her as a witness? The argument of the defendant's counsel in paragraph 4.4.2 of the final written address, cannot replace the credible and cogent evidence in the circumstance of this case. It is my findings that Haske, the house help, whom I consider a vital witness in this case ought to have been presented as a witness to corroborate the assertions of the Dw1 and Dw2 that she, indeed, was at their residence between the period of 10am to 4.30pmon 21/3/2020.Also, I do not believethe evidence of the DW3, as there is nothing before the court to show that the Dw3saw or was with the defendant between the hours of 12 noon to 2pm on 21st March, 2020. If, indeed, they attended a meeting together in the office as stated by them, then they bear the responsibility of adducing concrete and sufficient evidence to buttress that fact. Like I said earlier, the place of work of the defendant and the Dw3 is a Public Agency, wherefore, minutes of meetings are kept for public purposes. The defendant failed to avail the Court with any documentary evidence of the said meeting held at his office on the 21st March, 2020 between the hours of 12 noon till 1pm or thereabout. Both the Dw1 & Dw3 equally failed to present documentary evidence to buttress the fact on the COVID-19 protocols sent via WhatsApp.After a calm consideration of the evidence put forward by parties, I find as a fact that the defence of alibi raised by the defendant was not substantiated; the defendant is duty bound to provide credible and verifiable evidence to the prosecution. Accordingly, the defence of alibi raised by the defendant fails. And I so hold.

Flowing from the testimonies and all the evdenceadduced before the court, I find and hold that the prosecution proved the ingredient of rape against the defendant. It is myfindings that the prosecution has proved the one count charge of rape against the defendant beyond reasonable doubt.And I so hold. Accordingly, he is hereby found guilty and convicted under s. 1(1) (a) of VAPP ACT 2015.

SENTENCE

I have listened to the allocutus made on behalf of the convict and I must also say that, I watched the demeanour of the convict all through the trial, if given the opportunity to impose a lesser punishment on him, I would have done so; however, going by the provisions of the law, I do not have such discretion. See s. 2VAPP ACT which is to the effect that a person convicted of an offence under s. 1 (1) (a)VAPP ACT, is liable to life imprisonment; therefore, I have no powers to state otherwise. Accordingly, the convict is hereby sentenced to life imprisonment.

ASMAU AKANBI- YUSUF
[HON. JUDGE]

APPEARANCES:

Arinze Mbanefoesq, C.P Ugochukwu Esq for the prosecution,

Edwin Inegedu Esq and Lebo Albert – Ekitoesq., for the defendant.

Defendant present.