

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI - ABUJA**

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 12**

**SUIT NO: FCT/HC/CR/205/2015**

**BETWEEN:**

**COMMISSIONER OF POLICE.....PROSECUTOR**

**VS**

**DESMOND IORKYUMBUR .....DEFENDANT**

**JUDGMENT**

The Defendant, Desmond Iorkyumbur was arraigned on a one court charge which reads:-

“That you Desmond Iorkyumbur ‘M’ 20 years, at about 2.330 hrs at Phase 2, Site 1 Kubwa Abuja within the Abuja Judicial Division committed felony to wit: Rape in that you had Sexual Intercourse with one Dorcas Istifanus ‘F’ 4 years old against her wish, you thereby committed an offence contrary to Section 282 and punishable under Section 283 of the Penal Code.

The Defendant pleaded not guilty to the charge.

In proof its case, the Prosecution called three witnesses, Sgt. Esther Paul attached to Kubwa Police Station, the I.P.O, Inspector David Dauda the I.P.O at the FCT Police Command CIID and Martha Istifanus, the mother of

the victim. The Prosecution tendered four (4) Exhibits, marked as "A", Confessional Statement of the Defendant made at Kubwa Police Division, "B" Written Statement of the Defendant, Exhibit "C" – Doctor's Report from Kubwa General Hospital, Exhibit "D1" & "D2" is the Statement of the Defendant recorded by PW2 – Inspector David Dauda. Exhibit "E", Statement of the PW3.

The Defendant testified as DW1 on his Defence, but called no witness. Both learned Counsel filed and adopted their Final Written Address. It is settled law that the burden of proof lies on the Prosecution, to establish its case beyond reasonable doubt. In Criminal Trials, the Prosecution can establish its case in three ways;

1. By direct evidence of an eye witness
2. By circumstantial evidence, and
3. By confession.

In this instant case, there is no evidence of an eye witness.

The PW1 Sgt Esther Paul –Force No 033408 of the Kubwa Police Division, the I.P.O and attached to the Juvenile and Women Center, testified that on 29/3/2015, a case of rape was reported by one Martha Istifanus, mother of the victim and was detailed to investigate, that on 29/3/15, the Defendant a security staff working close to the Nominal Complainant house, came visiting the Complainant while the husband was sleeping outside. The complainant, asked the Defendant to look after the children, while she goes out to buy bread and mineral, on her return she did not see the Defendant, but called him thrice but no response, instead saw him coming

out of the room the children, where sleeping. She inquired from the Defendant what he went to do inside, he said nothing. On getting into the room discovered that net covering the children had been tampered with. She checked the children and discovered that watering substance was coming out from private part of the victim. She raised alarm and heeded to advice, to alert the Police. Thereafter the Defendant was arrested and voluntary Statement was obtained and she countersigned it. The victim was taken to the Hospital for examination and a Medical Report was issued. Also that the Defendant was taken to the Hospital for screening. Later the Defendant Statement was countersigned by a superior officer. The witness stated that the Statement of the Defendant made by the PW1 was admitted as Exhibit "A" and the other Statement made by the Defendant was admitted as Exhibit "B". The Medical Report from the Hospital dated 21/4/15 signed by one Dr. Okunongbe Frank and the attached document was received as Exhibit C<sup>1-6</sup>.

Cross examined, the witness stated, that it is the victims' family alone that lives in the Batcher with only one room. She said the father of the victim was sleeping outside when the incident happened. She stated that the Confessional Statement was obtained by an SPO. She said nobody else saw the Defendant coming out of the victim's house on the date of the incident. She said that the victim was not walking straight when the case was reported and that it is not true that the Defendant was playing ludo game with the victim's father on the day of the incident.

PW2 – Insp. David Dauda of the Anti-Human Trafficking Sector, of SCID FCT Command, Abuja stated that a case of rape was transferred from

Kubuwa Police Station, along with the Defendant on 13/4/15 at about 17.00hrs. That the Defendant admitted to him of having carnal knowledge with the victim twice, first on the 26/2/15 and the second time on 29/3/15. He said he recorded the Statement of the Defendant and was taken before this Superior Police Officer – Asp Gerald Udechukwu who endorsed it and signed by the Defendant. The Statement was admitted as Exhibit D<sup>1-2</sup>. He confirmed visiting both the victims' house – a Batcher and the Defendant. He stated that he visited the Hospital in Kubwa and confirmed the Medical Report issued.

Cross – examined, he confirmed that he met only the victim's family at the Batcher where they live. He stated that the Defendant understood the said Statement before signing it.

The PW3 – Martha Istifanus; she stated that she is the mother of the victim – Dorcas now 7 years old. She said on 29/3/15 at about 11.30pm, the Defendant came to where they live a Batcher, while the husband was sleeping and asked the Defendant to wait for her that she was going to buy bread and Minerals and took about one(1) hour to return. That on her return could not find the Defendant and had to call him three (3) times, but found him coming out of their house and inquired from him, what he went to do in their house and the Defendant said nothing. That on getting to the room, found substance like sperm around the victim and went to confront the Defendant, that it was alleged by one Mama Zainab that the Defendant was going after the victim, but he denied it. Later went to report the incident at the Police Station. She stated that the Defendant confirmed that he has been touching the victim for over a period before he

was caught. She said Mama Zainab lives in the same house with them. She confirmed that the Mama Zainab had earlier reported the closeness of the Defendant to the victim. But that the Defendant denied this story. Her Statement was admitted as Exhibit "E". She said the victim – Dorcas was 4 years old when the incident occurred.

Cross – examined. She stated that she does not have any relationship with the Defendant. She maintained that her husband was sleeping on the day of the incident. She stated that she told the husband that she was going out to buy something and the Defendant was far away from the Husband. She stated that 4 persons were leaving in the compound. She stated that on the date of the incident, she was with Mama Zainab and the Husband. She said on her return from where she went to buy something at about 12.00pm midnight, the Defendant was in her house, while the Husband was sleeping outside. She said she told her Husband of the incident but refuse to act because he was drunk. She stated that the Defendant was beaten by the Police upon his arrest.

The Defendant – Desmond Iorkyumbur, in his evidence, stated that he is a security man working in a compound close to the victim's house. That he has been assisting the victim's mother PW3 who comes to fetch water in the compound where, he works, that consequent upon the directives of his boss not allow anybody to come in to fetch water, he had to collect the Jerry can of the PW3 inside, fetch and take it back to their house. He stated that on the 29/3/15, he went to the house of the victim, sat with the PW3 and the husband, playing ludo game he brought. Later the PW3, informed the Husband that she want to go and buy something and at the

time the children were sleeping. That the PW3, told the husband to look after the children sleeping in the room. That on the return of PW3, she report to her husband that he – Desmond had raped her daughter – Dorcas. He stated that the Husband did not believe her, alleging that he was with the Desmond playing ludo game when she left. That later, the PW3 went and reported to the Police, who came and arrested him. He stated that the Police asked him for money, when he could not offer any, they started to beat him and was forced to signing a Statement written by another Policeman allegedly admitting the commission of the offence of rape on the victim. He said he admitted to committing the offence because he was beaten by the I.P.O and promised to let him off the hook if I admitted committing the offence. He maintained that he was forced to sign the Statement.

Cross – examined, he admitted visiting the house of the victim every other day. He stated that he never had any issued with the victim’s family before that incidence has never been accused of committing any offence against the victim’s family. He admitted that the signature on Exhibit “B” is his own, but the Statement was not written by him. He confirmed Statement at Kubwa Police Station and SARS.

At the close of evidence, both the Prosecution and Defence counsel filed and adopted their closing Final Address.

In the said of Prosecution’s Address J.C. Idachaba Esq, formulated one (1) issue for determination, which is whether the Prosecution has proved his charge against the Defendant as required by law.

In the Defendant Written Address, Nnaemeka Oguaju Esq, formulated two (2) issues for determination;

- a. Whether the Prosecution has proved the case of rape against the Defendant beyond reasonable doubt in view of evidence before the court.
- b. Whether the Confessional Statement of the Defendant was made voluntarily.

Having carefully considered the evidence of the parties, Exhibits, submission of both counsel and the judicial authorities cited, the court finds that only one (1) issue calls for determination;

“Whether the Prosecution has proved a case of rape against the Defendant as prescribed by the law based on evidence before the court”.

The Defendant is charged with an offence of rape under Section 282 of the Penal Code and punishable under Section 283 of the Act. It is settled law that the Prosecution in proof of the case of rape beyond reasonable doubt must establish the basic ingredient, such as;

1. Against her will.
2. Without her consent.
3. With consent, when her consent has been obtained by putting her in fear of death or hurt.

4. With her consent when the man knows he is not her husband and that her consent is given because she believes that he is another man to whom she is or believe to be lawfully married.
5. With or without her consent when she is under fourteen years of age or of unsound mind. See Okoh Vs The State(2009) All FWLR (PT.453).

In all, that it is settled law that the burden of proof lies on the Prosecution to establish its case beyond reasonable doubt. In criminal trials the Prosecution can establish its case in three ways namely;

- a. By direct evidence of an eye witness.
- b. By circumstantial evidence and.
- c. By confession.

In this instant case, there is no evidence of an eye witness. The PW3, mother of the victim – Dorcas, gave evidence of the alleged facts, that she said before she left the house on the day of the incidence, her husband was sleeping outside, while the Defendant was around and she asked the Defendant to look after the children while away. She came back and found the Defendant coming out from the house were the children were sleeping and on investigation found that the net was opened and found sperm substance on the body of the victim, she later raised alarm. She said one Mama Zainab has earlier warned her of the Defendant relationship with the victim, the said Mama Zainab lives with them in the same house. The PW3, confirmed under cross – examination that she informed her husband that

she was going out to buy something. She also confirmed that apart from their family, 4 other persons are living in the compound with them. She confirmed reporting the incident to her husband, but refused to react because he was drunk and sleeping. Both the PW1 and PW2, investigating Police Officer, simply stated their role, investigating the case and activities from arrest of the Defendant to obtaining the said Confessional Statement and subsequent arraignment. The Prosecution did not call any other witness to corroborate the evidence of the PW3, despite the mention of some other persons, like the Mama Zainab, the Husband – father of the victim and the medical doctor who examined the victim and the no medical report on the screening of the Defendant was tendered. Worse still the victim – Dorcas did not give evidence on account of her age. Granted that it is law that prosecution, is not under any duty to call all witnesses in proof of its case, but it would be appropriate to call all necessary witness in proof of its case.

The Defendant in his evidence denied the charge and further stated that at all times, was with the father of the victim, outside playing ludo game, while the PW3 went out to purchase the items claimed. He also denied the alleged Confessional Statement obtained from him, that it was obtained after harassment and beating by the Police before signing the Statement. This fact was confirmed by the PW3 under cross-examination.

From the evidence before the court, there is nothing to corroborate the evidence of the PW3, even though there were other persons as alleged by the PW3, who could have given evidence to support the testimony of the PW3, even the father of the victim, who as a father is expected to have

reacted and be willing to give evidence. The Prosecution did not find it necessary to call any of these persons to give evidence in this instant case. The law is settled that a person cannot be convicted of rape of a girl under 14 years of age upon the uncorroborated testimony of one witness. See Section 179(5) of the Evidence Act and the case of Jos Native Authority Police Vs Allah Na Gani (1967) NWLR 107 CA.

The Prosecution placed heavy reliance on the Exhibit "B" - the alleged Confessional Statement, which was stoutly denied by the Defendant as having been obtained by harassment and beaten by the Police. The Prosecuting Counsel argued that the alleged Statement was taken voluntary and not by any form of inducement. However, it is the duty of the court to test the veracity or otherwise of the Confessional Statement. The test for determining the truth or otherwise of a Confessional Statement is to seek any other evidence, be it slight of circumstances which make it probable that the confession is true. In doing so the court will consider the following;

1. Whether there is anything outside the confession to show that it is true.
2. Whether the Statement is corroborated.
3. Whether the Statement made in the Confessional Statement of fact so far as can be tested as true.
4. Whether the Defendant had the opportunity of committing the offence charged.

5. Whether the confession of the Defendant was possible, and.
6. Whether the confession is consistent with other fact which proved has been ascertained and which have been proved. See Akpan Vs State (1992) 6 NWLR (PT. 248) 439, Ikpasa Vs A.G Bendel State (1981) 9 S.C 7.

In this instant case, there is no evidence outside the confession to show that it is true, because there is no corroboration of evidence of the PW3, even when she led evidence to show that other persons were around at the time the alleged incident occurred and also no evidence to corroborate the Confessional Statement.

It is important to note, that in this case, the medical doctor was not called, the report of the screening done on the Defendant was not tendered in evidence. This failure in my view goes to support the contention of the Defence counsel when he urged the court to invoke the Provision of Section 167 (d) of the Evidence Act 2011 (As Amended) to the effect that the Prosecution knew that it would be against them if tendered.

In the case of Posu Vs State (2001) 2 NWLR (PT. 1234) @ 393, the court stated thus;

“As a Rule of prudence and the settled course of practice, the court should seek for corroboration in all cases of rape”. This is so because it has been found to be unsafe to convict for offence of rape on the uncorroborated testimony of the prosecution”

From all the above findings, I come to the irresistible conclusion that the Prosecution has failed to establish its case against the Defendant. Having failed to provide any evidence to corroborate the Confessional Statement, therefore the court cannot say whether or not the Confessional Statement is true. Whether or not the Defendant had the opportunity of committing the offence or whether the confession was possible. The Confessional Statement is not consistent with any fact which have been proved or ascertained. It is on this basis, that I hereby discharge and acquit the Defendant of this one count charge.

This is the judgment of the court.

Signed

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

14/2/2019

APPEARANCE

H.I.S BOB – MANUEL FOR THE PROSECUTION HOLDING THE BRIEF OF  
J.C.A IDACHEBA ESQ.

NNAEMEKA OGUAJU ESQ FOR THE DEFENDANT