



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



CHARGE NO: FCT/HC/CR/150/12

BETWEEN:

COMMISSIONER OF POLICE.....COMPLAINANT

AND

APOSTLE BASIL PRINCEWILL.....DEFENDANT

JUDGMENT

The Defendant in this case, Apostle Basil Princewill, is the founder and Senior Pastor of Mountain Movers Fire Ministry International, a Church located in Nyanya within the Federal Capital Territory, Abuja.

The 1st prosecution witness Mrs Ngozi Offor is the mother of the PW2, Miss Favour Iwuoha who is the victim of rape allegedly committed by the Defendant. Both of them were members of the Mountain Movers Church upto the period the incident which led to this prosecution occurred. While in the Church, the first and second prosecution witnesses were very dedicated to the service of God.

The PW1 was one of the *Ushers* in the Church and the PW2 belonged to the *Choir* group. As a result of their conduct the two of them became very close to the Defendant such that the PW2 was always referred to as the Defendant's last child.

At a point the PW2 moved to the Defendant's house to help the Defendant's fiancée in the domestic work. This continued even after the fiancée left. The PW2 would come to the Defendant's house to work for some days before going back.

Sometimes on the 01/02/2012 the PW1 noticed that the PW2 was bleeding and thereafter experiencing itching in the private part. The bleeding did not stop after a week. The PW1 took the PW2 to the Xtra Scan and Diagnostic Centre where she was told to her surprise that the PW2 had just undergone abortion.

The PW1 threatened to kill herself unless the PW2 told her what happened to her. It was then the PW2 told her that it was the Defendant who slept with her under the pretext that he was carrying out deliverance on her to cleanse her and threatened her with death if she told anybody. The PW2 also told the PW1 that when she became pregnant the Defendant gave her drugs to abort the pregnancy and later took her to *Fountain Head Medical Centre* where Dr. Ogunlade Felix (PW3) carried out a process on her. The PW2 gave the Hospital Card to the PW1 who used the card to trace

the Hospital. At the Hospital the PW1 met PW3, who is the Doctor in charge of the Hospital wherein she was told that the Defendant brought the PW2 and told the Hospital he was the father of the PW2. The case was reported to *National Agency for the Prohibition of Trafficking in Persons* (NAPTIP) which investigated the case and later the police.

Based on the above facts the Defendant was arraigned before this Court on a three count charge to which the Defendant pleaded not guilty. In the course of trial the charge was amended twice and the Defendant maintained his plea of not guilty.

The final amended four count charge dated and filed on the 22/09/2017 reads as follows:

COUNT 1

That you Apostle Basil Princewill 'Male' 33 years of No. 5 Movers Avenue, Nyanya, Abuja on or about 27th July, 2011 to 31st December, 2011 at Mountain Mover Fire Ministry International and your house in Nyanya, Abuja within the jurisdiction of this Court raped one Miss Favour Iwuoha 'female' 14 years by forcefully having sexual intercourse with her against her consent having put her in fear of hurt and when you impregnated her, you gave her drugs to take and abort the pregnancy and when the drug caused

bleeding, you took her to Fountain Head Medical Centre Nyanya where you paid Dr. Felix Ogunlade to procure abortion on her and there committed an offence contrary to section 282 and punishable under section 283 of the Penal Code.

COUNT 2

That you Apostle Basil Princewill 'Male' 33 years of No. 5 Movers Avenue, Nyanya on or about 23rd January, 2012, at Fountain Head Medical Centre, Nyanya within the jurisdiction of this Court falsely personated that you are Favour Iwuoha's father when you took her to the Medical Centre to procure abortion on her. You thereby committed an offence contrary to section 179 of the Penal Code Law.

COUNT 3

That you Apostle Basil Princewill 'Male' 33 years of No. 5 Movers Avenue, Nyanya, Abuja on or about January, 2012 at Nyanya within the Jurisdiction of this Court attempted to cause miscarriage on Miss Favour Iwuoha 'Female' when you gave Favour Iwuoha 'female', 14 years drugs to take and abort the pregnancy you gave her which resulted to her bleeding with the knowledge that miscarriage will be the consequence of your act and thereafter you took

her to Fountain Head Medical Centre Nyanya where you paid money and miscarriage (sic) was carried out on her. You thereby committed an offence contrary to section 95 of the Penal Code.

COUNT 4

That you Apostle Basil Princewill 'Male' 33 years of No. 5 Movers Avenue, Nyanya, Abuja on or about 23rd January, 2012, at Fountain Head Medical Centre Nyanya within the jurisdiction of this Court abetted the commission of offence causing miscarriage by taking one Miss Favour Iwuoha, 'Female' 14 years to Fountain Head Medical Centre Nyanya where you paid money to the Doctor to cause miscarriage on her, which miscarriage was committed in consequence of your abetment. You thereby committed an offence contrary to section 85 of the Penal Code.

In the course of trial of this case, five witnesses were called by the prosecution to prove its case. At the end of the case for the prosecution the accused testified on his behalf and one witness, a staff of the Magistrate Court Wuse was called as second defence witness to tender some documents which issued from the Court. All

the witnesses were fully cross examined. Documentary exhibits were also tendered from either side.

At the end of the case for both sides the parties filed their final written addresses which were adopted at the plenary. In the final written address filed on behalf of the Defendant by his learned counsel Mr. S. G Kekere-Akpe of counsel he identified one issue as arising for the determination of this case:

Whether the prosecution has proved the three count charge/offences against the Defendant beyond reasonable doubt to secure the conviction of the Defendant by the Honourable Court.

The learned counsel to the prosecution also submitted one issue for determination which is essentially similar to the issue submitted on behalf of the Defendant. It is couched thus:

Whether from the totality of the evidence before the Court the prosecution has proved beyond reasonable doubt the four count charge against the Defendant.

After considering the evidence led in this trial and the exhibits tendered, I agree that the issue raised by the parties would conclusively determine this case. However if the issue is properly reframed it would read:

Whether the prosecution has proved its case beyond reasonable doubt in respect of the four charges to enable the Court convict the Defendant upon them?

The position of the law is that in criminal cases the onus of proof is on the prosecution to establish the guilt of the accused for the offences charged beyond reasonable doubt.

See Section 135 (1) and (2) of the Evidence Act, 2011. There are a plethora of case law to the effect that such burden placed on the prosecution does not shift.

See:

- 1. ARUNA VS THE STATE (1990) 6 NWLR (PT. 155) 125 AT 137;**
- 2. AMEH VS THE STATE (1978) 6-7 SA 27; and**
- 3. YONGO VS C. O. P (1992) 4 SCNJ 113**

In fact the list of judicial authorities on this important legal principle is inexhaustive.

CONSIDERATION OF THE CHARGE

The 1st count of the charge against the Defendant is rape contrary to Section 282 of the Penal Code and punishable under Section 283 of the same Law.

In the case of **EZIGBO VS THE STATE (2012) 16 NWLR (PT. 1326) 318** the Supreme Court stated thus:

“It is settled law that for the prosecution to sustain a conviction against the appellant under Section 283 of the Penal Code, the following ingredients of the offence must be established by evidence:

- (i) that the accused had sexual intercourse with the woman;**
- (ii) that the act was done in circumstances envisaged in any of the five paragraphs of Section 282 (1) of the Penal Code;**
- (iii) that the woman was not the wife of the accused or if she was the wife she had not attained puberty;**
- (iv) that there was penetration.**

However Section 282 (1) of the Penal Code provides as follows:

“A man is said to commit rape save in the case referred to in Sub-Section (2) had sexual intercourse with a woman in any of the following circumstances.

- (a) against her will,**
- (b) without her consent,**
- (c) with her consent when her consent had been obtained by putting her in fear of death or hurt,**
- (d) with her consent when the accused knows that he is not her husband and that her consent is given because she believes that the accused is another man to who she is or believes herself to be lawfully married,**
- (e) with or without her consent when she is under fourteen years old or of unsound mind.”**

From the charge against the accused it is clear that the PW2 (the prosecutrix) was not below fourteen years when the alleged offence was committed and that the circumstance set out in paragraph (d) of the Penal Code is excluded.

Therefore to sustain conviction for the offence the prosecution would be expected to establish the following ingredients:

- (i) that the accused had sexual intercourse with the prosecutrix (PW2),
- (ii) against her will,
- (iii) without her consent,
- (iv) with her consent when her consent has been obtained by putting her in fear of death or of hurt.

To determine if the evidence led by the prosecution met the above conditions it is essential to consider the evidence of the witnesses called.

I find it very convenient to begin with the evidence of the PW2 (prosecutrix) who is the victim of the alleged offence. She was very detailed in her testimony of what happened to her in the hands of the accused person beginning from the 27/07/2011. She testified as follows:

“My names are Favour Iwoha. I stay in Nyanya. I am a student of *People Comprehensive Academy*. I am going to 17 years in April, 2014. As at 2011, I was 14 years old. I know the accused person. On the 27th of July 2011 at about 8:00pm we were in the Church, *Mountain Movers Fire Ministry* at Nyanya having choir rehearsals. The date was also the Church counseling service day. The accused sent for me to come. He sent

MISS CALISTA AFOKU to call me. I went to his office to see him. There he told me he got a revelation about me that my foundation is dirty and that my father's wife was planning to kill me. He also told me I had a bright future and he needed to carry out deliverance on me. That he needed to purge me for which I needed a white handkerchief and a bottle of anointing oil. I told the accused I had no money and he asked me to go and ask my mother to get the items for me. He thereafter told me not to go to my mother again as he had those items in his office. The accused directed me to pull my clothes and when I asked if that was the way I was going to be delivered the accused slapped me saying that I do not question God. Out of fear I pull down my clothes. The accused asked me if I was menstruating and I said no and he said it was very good as that was the best time to do the deliverance. The accused poured the oil on my head and started using the handkerchief to wipe it out.

The accused person continued to do this and at a point he told me that if I knew what was coming out of my body I would be grateful to him. That there were some other things remaining in my body that only my

husband can carry out the deliverance. I told the accused that I was not married and the accused replied that it was the reason he was there. The accused instructed me to go to the bathroom attached to the office and I went. The accused went outside and when he came in he locked the door and came into the bathroom.

He requested me to stretch out my palms and I did. He poured out the oil in my hands and instructed me to rub some over his body. I was afraid and this led to the oil pouring out of my hands. As a result of this the accused slapped me and asked if I thought he was going to do anything with me. That if he wanted to do anything he knew where to go to. He also asked me to close my eyes and I did. He brought out white handkerchief and placed it over my head. At this point I became very weak and could not move. The accused then climbed on me and had sexual intercourse with me. After sometime I got up and he said I told him I was not on my period how come I have stained him with blood. I was very weak and did not say anything. He thereafter said he could understand.

Actually the accused had pulled his trouser and said I should rob the oil on his manhood. I could not shout during the whole thing because the accused had placed handkerchief on my month and so could not move. After this the accused brought out another clean handkerchief and cleaned the floor and after which he helped me to wear my clothes.

The PW2 also testified:

“On getting in the accused asked me if I saw what happened to me in his office and I said yes that I saw blood. The accused then brought out a small knife and warned me not to tell anybody including my mother. He told me that as I knew he is a prophet and that he follows me everywhere I go and sees all that I do and that if I told anybody he would kill me. He made me take Oath of secrecy and that I now belong to him. He told me that the deliverance was not yet over and that he was going to call me again some other time. He then instructed me to go.

I went away but because I was afraid of death I could not tell my mother. After about three days the accused called my mother to inform me to come to

the Church that he had a revelation. When I returned from the School my mother told me and I went to the Church. On getting to his office the accused told me he needed to purge me again. He brought out a handkerchief and a bottle of oil and kept them on the table. He ordered me to pull my clothes. I refused and he brought out his cane and started flogging me. He accused me of being stubborn and that I was possessed. The accused then pushed me out of his office. I returned to the house. The next day the accused called me to come back for deliverance. I went to the Church in his office. He threatened that if I resisted he would kill me and bury me in his office and nobody would know. He poured the oil on my head and started using the handkerchief to clean. He brought out another handkerchief and placed same on my head and I became weak. The accused made love with me again. He helped me to dress up. The accused later called a female Pastor Pauline Odey to take me to the altar.”

The PW2 further testified:

“In December period the accused sent for me and I went there to see him. He asked if I had seen my period and I said no. He started beating me and saying I wanted to destroy him. He was using harsh words on me. He warned me not to tell anybody and asked me to go.

When I got home my mother asked me but I could not tell her. Each time I wanted to talk I got confused. In the same December 2011 the accused called me to the Church. When I got there he brought out some drugs and forced me to take them. He still warned me not to inform anybody. The accused called me on another day. When I got to his office he brought out an alcoholic drink which he forced me to take.”

The PW2 also gave evidence of how the accused took her to the *Fountain Head Medical Centre* where a procedure was carried out to remove some blood from her vaginal.

The PW1 is the mother of the PW2. She also was down to earth in her testimony. She told the Court how she noticed on the 01/02/2012 that the PW2 was bleeding. When she asked the PW2

told her she was menstruating. After a week the PW2 requested for money to buy pad for the menstruation and she told her the menstruation ought to have stopped since. The PW1 demanded to see the place and she saw the blood and screamed. She bought pad and used it on the PW2. She further told the Court that after some days she noticed the PW2 was also experiencing itching. She took the PW2 to *Xtra Scan and Diagnostic Centre* where the Doctor examined the PW2 and confirmed to her that the PW2 had undergone abortion.

The PW1 further told the Court how she reported the incident to the accused as their Pastor and the accused asked if the PW2 called anybody's name and she replied no. She testified how the PW2 later told her it was the accused who slept with her and told her details of her encounter with the accused as presented to the Court by the PW2.

The PW1 further testified that the PW2 gave her the registration card of the Hospital the accused took her to for evacuation at Mararaba. PW1 told the Court how she went to the Hospital to confront the PW3 who told her that it was the accused who brought the PW2 and told the Hospital that it was the son of a former Pastor who raped the PW2. The PW3 admitted carrying out an inevitable abortion on the PW2.

Both the PW1 and PW2 remained firm during cross examination by counsel to the Defendant.

The PW3 is the Medical Director of *Fountain Head Medical Centre* where the inevitable abortion was carried out on the PW2. He testified that on the 21/01/2012 the accused brought the PW2 to his Clinic and told him he was the father. He testified that the accused told him that the PW2 was raped two months previously by the son of a senior Pastor who was at large.

The PW3 told the Court how he made a diagnosis of inevitable abortion which means that the product was on its way out of the womb.

The PW4 is the police who investigated the case. He told the Court how the case was transferred from NAPTIP to the Criminal Investigation Department of the FCT Command where he was attached.

During investigation he visited *Fountain Head Medical Centre* where he met the PW3. That the PW3 told him that it was the accused who brought the PW2 to the Hospital and paid for the services rendered. He also corroborated all other stories that the PW3 told the Court

relating to parental claim by the accused. He also discovered that the accused left his cell phone no. 08065269490 with the hospital.

The accused in his testimony before the Court denied raping the PW2. He testified that one morning while the PW2 was living with him he noticed her shivering and when he asked the PW2 told him nothing was wrong with her. The accused told the Court that the following day while he was going to the office the PW2 ran towards him and held his trousers and complained that she had not seen her period. That the PW1 suddenly came knocking. The accused further testified that when he confronted the PW1 with the story the PW2 told him the PW1 confirmed that the PW2 told her the previous week that she was raped by a son of our former Pastor. That the PW1 begged him to keep the story secret to protect the name of the PW2.

The accused told the Court he was annoyed and left the PW1 and PW2 behind in the house and went to work. The accused further testified that about 2:00pm in the afternoon the PW1 called him to inform him that the PW2 called her that she was in the Hospital and that she was scared.

According to the accused the PW1 described the location to him and when he went there he saw the PW1 outside. That he ran inside and was asked if he was the father of the PW2 and he said he was not the

biological father but her Pastor and that the PW2 was living with him. He agreed he knew what brought the PW2 and that he settled the Hospital bill before he left. The accused also denied buying drugs for the PW2 to abort the pregnancy.

Under cross examination the accused admitted that he told the nurses in Fountain Head Hospital and PW3 that he was the father of the PW2 and that he also stated so in his statement to the police admitted as exhibit P2. He also admitted paying for the Hospital registration card in the name of the PW2.

I have considered the testimonies of the witnesses who testified in this case, and I must say with all honesty that I am impressed with the testimonies of the witnesses for the prosecution especially the PW1, PW2 and the PW3 as witnesses of truth. I have also reflected in detail on the evidence of the PW2, the sequence of event and the ordeal she went through in the hands of the accused and I believe her stories.

For example, the Defendant never disputed her testimonies in respect of the several invitations she received from the accused for the purpose of deliverance. He did not deny the ritual which the PW2 said he went through on the 27/07/2011 and the subsequent days. All that the Defendant said in response to the allegation was that he never raped the PW2. Although he tried to deny before the

Court that he did not carry out deliverance on the 27/07/2011, this evidence was contradicted by exhibit P5 which is his extra judicial statement to NAPTIP. When he was asked to narrate what happened between him and the PW2 on the 27/07/2011 he stated thus:

“I can’t exactly remember what happened but I know that I counsel on Wednesdays. We carry out our counseling services. We use olive oils, anything that the spirit of God directs. So I can’t exactly say of what transpired but I know that I counsel and carry out prayers on the sick and so on.”

The law is that when evidence is given of a material fact to the case and a party who has the opportunity to deny or contradict fails to do so the Court is bound to believe the fact and to take such fact as established.

See **ODUNSI V. BAMGBALA (1995) 1 NWLR (PT.374) 641** where it was stated that:

“The law is also settled that where evidence is led by a party to any proceedings as in the instant case and it is not challenged by the opposite party who had the opportunity to do so, it is always open to the court seised of the proceedings to accept the unchallenged evidence before it”.

See also:

- 1. FASEUN V. PHARCO (NIG.) LTD. (1965) 2 ALL NLR. 216 AT 220;**
- 2. NWABUOKU V. OTTI (1961) 2 SCNLR 232; (1961) 2 ALL NLR. 487;**
- 3. ASAFA FOOD FACTORY LTD V. ALRAINE NIGERIA LTD (2002) 5 S.C (PT.II) 1.**

I therefore believe the PW2 that on the 27/07/2011 the accused person while pretending to carry out deliverance on her had sexual intercourse with her. I also believe that the intercourse was without her consent as the consent was obtained by putting the PW2 in fear of death or hurt which the accused put the PW2 that if she told anybody of the intercourse she would be killed; and also that she needed to be delivered or else her father's wife would kill her.

It is also my view and I hold that the act of slapping the PW2 when she attempted to ask questions constitute an act of threat to hurt her. There is no doubt also that all the stories by the accused that the PW2's step mother was after her life for which she needed to be delivered was bound to put her in fear of death or hurt.

The evidence of what transpired between the accused and the PW2 was perfectly corroborated by the PW1 in all material particulars as she told the story exactly as the PW2 told in her testimony before the Court.

The implication of the accused in the rape allegation was further corroborated by the PW3 who told the Court that it was the accused who brought the PW2 to his Clinic and requested for the inevitable abortion to be carried out to save the life of the PW2. The fact that the PW2 became pregnant gives credence to the story that the PW2 had sexual intercourse.

The conduct of the accused in bringing the PW2 to the Hospital and requesting for evacuation without the knowledge of the PW1 who is the biological mother to PW2 shows that he knew something about the circumstances leading to the PW2's pregnancy and that he had something to hide.

At this point I need to re-echo the position of the law that corroboration need not consist of direct evidence that the accused committed the offence charged, nor need it amount to a confirmation of the whole account given by the prosecutrix. It only needs to corroborate the said evidence in some respect material to the charge in question. It is also settled that corroborative evidence must in itself be completely credible evidence.

See **IKO V. STATE (2001) 7 S.C (PT.II) 115** where Kalgo, JSC succinctly captured this point of law thus:

“It is trite law that evidence in corroboration must be independent testimony, direct or circumstantial,

which confirms in some material particular not only that an offence has been committed but that the accused has committed it.”

See also:

- 1. OKABICHI V. STATE (1975) 1 ALL NLR 71; and**
- 2. REX V. BSTERVILLE (1916 2 K.B 658.**

The PW3 is the medical doctor who examined the PW2. In his report which was tendered in evidence as exhibit P1 and his oral evidence before the Court he expressed opinion that on examination that the PW2 was pregnant and need inevitable abortion. The assessment by the PW3 and the story by the PW2 that it was the accused who had sexual intercourse with her, I am satisfied that the above assessment by the PW3 and exhibit P1 sufficiently corroborated the testimony of PW2 that the accused had sexual intercourse with her.

On my view on the corroborative effect of the evidence of PW1 and PW3 see the following cases:

- 1. SAMBO VS THE STATE (1993) 6 NWLR (PT. 102) 399;**
- 2. UPAHAR VS THE STATE (2003) 6 NWLR (PT. 816) 230;**
and
- 3. EZIGBO VS THE STATE (2012) 16 NWLR (PT. 326) 318.**

Corroboration in the offence of rape is evidence which tends to show that the statement of the prosecutrix that the accused committed the crime is true. It is therefore not true that the evidence of PW2 was not corroborated. Such a submission is a thorough misunderstanding of the nature of corroboration.

On the other hand I am not impressed with the story of the accused relating to his invitation to the Fountain Head Hospital. This is because his account of the story is multiple, confused and contradictory.

In his ipsi dixit before the Court he stated that when the PW1 and PW2 broke the story of the PW2's pregnancy to him he was so shocked and annoyed that he left both of them behind in his house and went to work. He also testified that at about 2:00pm in the afternoon of the same day the PW1 called him to inform him that the PW2 was in Fountain Head Medical Centre, Mararaba and he moved there immediately.

However in his statement to NAPTIP which was made on the 25/06/2012 he gave a different account of how he became aware that the PW2 was pregnant and how he was invited to Fountain Head Hospital. His testimony:

“One day she was shivering and her mother entered and confirmed to me that Favor confided in her that

she was raped. She cried that she didn't want the name of her only child to be dragged to the mud in her age. I have been paying her school fees and taking care of her as my daughter. Two weeks later Favor called me from the Hospital that she was sick and shivering. I got there, someone asked me "Are you the father I said yes."

The contradiction here is that contrary to his evidence before the Court he stated in exhibit P5 that it was after two weeks that the news of PW2's pregnancy was broke to him that he was invited to Fountain Head Hospital. He also contradicted himself when he said that it was the PW2 herself who called him that she was in the Hospital contrary to his testimony before the Court that it was the PW1 who invited him.

In the same vein he stated before the Court that when he paid the Hospital bill for the treatment of PW2 and was going away he could no longer see the PW1 who was standing outside the Hospital premises and her number was not going. However in his statement admitted as exhibit P5 he stated that after seen the prosecutrix he left the Hospital with the PW2's mother (the PW1) to collect money for the PW2's school fees.

In the face of all these contradictions is a bogus story that when he got to the Hospital he merely paid the Hospital bills without asking what services were rendered and that the services were rendered before he came to the Hospital to pay.

Finally this story of how the accused got to the Hospital and what transpired is a case of one against three.

I appropriate more weight to the testimonies of PW1, PW2 and PW3 on this point than the story of the accused. In fact I find it difficult to believe the accused because of its incoherency and riddled falsehood.

The learned counsel to the accused has argued that the evidence of the PW1 about what the PW2 told her is hearsay which should not be reckoned with but rather expunged as inadmissible evidence. This submission is misconceived. The testimony of the PW1 relating to what the PW2 told her about the accused is a direct evidence and is admissible. It was a direct account of what she heard with her ears.

In the case of **AROGUNDADE VS THE STATE (2009) ALL FWLR (PT. 469) 409** the PW5 gave evidence that the appellant had confessed the crime to him. After quoting the locus clasicus in **SUBRAMANIA VS PUBLIC PROSECUTOR**, the Supreme Court held that the purpose for which a statement made by a person to a

witness is tendered in Court determines its admissibility. Since if the intention of introducing the evidence is to establish the truth of the statement/evidence, it would be hearsay and inadmissible but that it would be admissible if the purpose or intention is to establish the fact that the statement was made by the person concerned.

Onnoghen JSC concluded in this case on pages 423 to 424 thus:

“In the instant case, is the evidence of PW5 hearsay evidence? I think it is not particularly as it was to confirm the fact that the appellant made the statement credited to him to PW5. The truth of the appellant making the statement is enhanced by the fact that the appellant did not testify at the trial though he had the opportunity to deny what the PW5 said that he said neither did his counsel cross examine PW5 at all..... The testimony of PW5 as to what the appellant told him is positive and direct - it is a direct evidence of what the appellant said or confessed to the PW5 which was narrated to the Court in the presence of the appellant who failed to challenge it as to either the making of the statement attributable to him or the truth of its contents.”

On the account of the above authority it is my respectful view that the evidence of PW1 about what the PW2 told her is a direct and positive evidence.

It is a positive and direct evidence of what the PW1 heard with her ears about the ordeal the PW2 suffered in the hands of the accused and circumstances in which she was raped.

See:

- 1. OLADEJO Vs state (1994) 6 NWLR (PT. 348) 101;**
- 2. R VS ITULE VS THE STATE (1961) ALL NWLR 162 and**
- 3. IBINA VS THE STATE (1989) 5 WWLR (PT. 120) 238 at 248.**

I have also read and considered the argument of learned counsel to the accused which he canvassed that the prosecution's case is full of contradictions. This is not true. Some of the facts pointed out in his address are not material and some are mere discrepancies.

In **EGWUMI VS THE STATE (2013) ALL FWLR (PT.678) 824** the Supreme Court held that:

“A piece of evidence contradicts another when it affirms the opposite of what the other evidence has stated and not when there is just a minor discrepancy between them. Two piece of evidence contradicts one

another when they are by themselves inconsistent. A discrepancy may occur when a piece of evidence stops short of or contains a little more than what the other evidence says or contains some differences in details.”

From this authority it can be seen that all the energy dissipated by the learned counsel to the accused on contradictions in the case of the prosecution amounts to much ado about nothing.

This now takes me to the argument of counsel that the story of the accused that it was a son of a former Pastor who raped the PW2 and not him was not investigated by the police. With all due respect to the learned counsel there was no direct, concrete and categorical evidence from the accused on this evidence to be investigated. According to the accused in his evidence before the Court it was the PW1 who told him that the PW2 confided in her. Both the PW1 and PW2 have strongly denied this as the PW2 identified the accused as the culprit. As a matter of fact when the PW2 had not called anybody's name and the PW1 reported the incident of abortion to the accused the accused suggested that someone else may have raped the PW2. The PW1 disagreed with him.

Having held on to the accused as the person who perpetrated the rape the accused became duty bound to lead the police to discover the son of the Pastor but he did not. As a matter of fact he did not know the boy and the PW2 knew no body apart from the accused. This defence is so bad that in one breath the accused would say it is a son of a Senior Pastor of his Church, in another breath it was a son of a Pastor of the PW2's former Church. Further still he told the Hospital that the boy was at large. This type of story is difficult to believe.

For example he loved PW2 so much yet when he was told that a son of his Pastor or any other Pastor for that matter raped her he did not bother to ask the identity of the Pastor, his so called son and their where about. To me the defence of the accused is not tenable and it is rejected.

From all that had happened in this case I am satisfied that the prosecution has led sufficient evidence to convince me that the accused raped the PW2 on the 27/07/2011. It has proved the case of rape beyond reasonable doubt and I hereby convict the accused as charged.

COUNT TWO

This count alleges that the accused falsely personated at Fountain Head Hospital that he was the father to the PW2 when he took her to the Medical Centre for abortion on the 23/01/2012. The offence is said to be contrary to Section 179 of the Penal Code Law.

That Section provides: “Whoever falsely personates another whether that other is an actual or fictitious person, and in such assumed character makes any admission or statement, or causes any process to be issued or becomes bail or surety, or does any act in any suit or criminal prosecution, shall be punished with imprisonment for a term which may, extend to three years or with fine or with both.”

The elements of the offence which must be proved to secure conviction are:

- (i) That the accused falsely personated another.
- (ii) That he made an admission or statement while in the character and in the name of the other person.
- (iii) That the admission or statement was made in a civil or criminal proceedings.

I have read the argument of the learned counsel to the accused on this count and I agree with him that an essential element that the

personation must have been made in civil or criminal proceeding is missing. Even from the particulars of the charge it is clear that the alleged personation was committed at the Fountain Head Hospital when the accused brought the PW2 there for treatment.

The point is that while it is true from evidence available before the Court that the accused personated the father of the PW2 before the PW3 at Fountain Head Medical Centre, Mararaba and made statements to him that it was a Pastor's son who impregnated the PW2 there is no evidence that the representation was made in the course of civil or criminal proceedings. As a matter of fact the learned counsel to the prosecution was not forceful in his written submission in support of this head of count. The law is settled that where the prosecution has failed in its onerous duty to prove the essential ingredients of the offence against the accused person the Court has no alternative than to discharged and acquit him.

See:

- 1. ONACHUKWU VS THE STATE (1998) 4 SCJN at 49 ;**
- 2. ALIYU VS THE STATE (2009) 10 NWLR (PT. 1148) 31 at 46;**
- 3. OFOLETE VS THE STATE (2000) 12 NWLR (PT. 681) 415 and**
- 4. OBIODE & ORS VS THE STATE (1970) ALL NLR 35.**

I therefore hold as I should that the prosecution has failed to prove the offence of personation under Section 179 of the Penal Code and the accused is discharged and acquitted.

COUNT THREE

This count bothers on attempt to cause miscarriage to Miss Favor Iwuoha the prosecutrix. The particulars of the charge is that the accused gave some drugs to her when it was discovered that she was pregnant sometimes in January, 2012 with the aim of causing miscarriage of the pregnancy. The charge is contrary to Section 95 of the Penal Code Law. The accused pleaded not guilty to the charge.

To secure conviction of an accused under this Section the prosecution must prove the following essential elements:

- (a) An attempt to commit an offence by the accused or that he attempted to abet the commission of an offence.
- (b) That the accused in the attempt did some act not of an ambiguous kind directly towards the commission of the offence.

To prove this charge the PW2 testified that sometimes in December, 2011 the accused called her and when she went, the accused asked her if she had seen her period and she said no. That the accused started beating her that she wanted to disgrace him. She also

testified that the accused used harsh words on her and asked her to go away. She further testified that in the same December the accused called her and when she got there the accused brought out some drugs and forced her to take them and also warned her not to tell anybody.

The PW2 told the Court that on another day the accused invited her to his office and forced her to take a certain alcohol. The PW2 also told the Court how the accused invited her and took her to the Fountain Head Medical Centre with an instruction that if any question was asked he would be the one to give explanation. That at the Hospital the accused told the PW3 (the Medical Director) that he is her father and that she was raped by the son of their Pastor. This story was corroborated by the PW1 in all material particulars.

The PW3 the Medical Director of Fountain Head Medical Centre in his testimony also corroborated the PW2 to the extent that it was the accused who brought the PW2 to the Hospital. He also told the Court that the accused told him he was the father and that the PW2 was raped by a son of a Pastor. He further told the Court that all questions put to the PW2 were answered by the accused. PW3 continued in his testimony thus:

“The accused told me she was raped two months ago. That she took Postanol to abort the pregnancy. I performed ultra sound scanning and discovered the girl was pregnant for 8 weeks and two days. She was bleeding and so she was transferred for manual vacuum aspiration. The scanning result was not printed. It was for my use. In the labour room we tried to view the mouth of the womb. We discovered that the mouth of the womb was opened and that there was active bleeding.

He also told the Court that:

“The product of the conception had plunged the cervix meaning that the product was on its way out of the womb. I returned to my office and called in the accused and told him of my findings and diagnosis of inevitable abortion. The accused told me he wanted the girl saved. I told him what needed be done to remove the foetus and stop the bleeding. The accused agreed that this be done and I did evacuation on the girl and gave medications.”

The defence of the accused to this allegation is an outright no. That he did not give any drugs to the PW2 to terminate the pregnancy.

I have considered the evidence of parties on this allegation and the written addresses of counsel and must state that while the PW1,

PW2 and PW3 were coherent and honest in their demeanor, the accused on the other hand did not impress me.

First the testimonies of all the three witnesses who gave material evidence on this count of charge are thoroughly corroborative.

In particular, I believe the witnesses that it was the accused who brought the PW2 to the Fountain Head Medical Centre. I believe the PW3 that when he asked the PW2 to explain her condition it was the accused person who offered all the explanations relating to the fact of rape, pregnancy and the name of the drug taken by the PW2 to terminate the pregnancy.

To me there is no way the PW3 could have come by the name of the drug if the accused did not tell him. The accused told the PW3 the age of the pregnancy. Looking at the entire scenario the act of bringing the PW2 to the Clinic was in furtherance of his intention to terminate the pregnancy which started with the administration of postanol and alcohol on the PW2.

Under cross examination the PW3 told the Court that the postanol taken by the PW3 had effect on the pregnancy. I do not have reason to doubt the testimony of the PW3 which he gave as an expert witness.

To me from the moment the accused administered postanol on the PW2 the offence of attempt had been completed. All the questions to the PW2 as to whether she had seen her period prepared ground for the intention to do something.

In all there can be no merit in the denial of the accused person as I find the offence proved beyond reasonable doubt. The accused is accordingly convicted on the third count.

COUNT FOUR

This is the final count charge against the accused. The count alleges the offence of abetment to the offence of causing miscarriage contrary to Section 85 of the Penal Code Law.

The statement of the offence is to the effect that sometimes on or about the 23/01/2012, at Fountain Head Medical Centre the accused abetted the commission of offence of causing miscarriage by taking the PW2 to the Centre where he paid money to the Doctor to cause miscarriage on her which miscarriage was committed in consequence of his abetment.

The explanatory note to Section 85 of the Penal Code under which the accused was charged states that:

“An act or offence is said to be committed in consequence of abetment when it is committed in

consequence of the instigation or in pursuance of the conspiracy or with the aid which constitute the abetment.”

From the way this Section is constituted, it would appear that for a person to be liable for abetment under Section 85 of the Penal Code the principal offence must have been committed as a consequence of the instigation.

In this case the principal offence for which the accused is alleged to have abetted is miscarriage of pregnancy which is prescribed under Section 232 of Penal Code. Therefore, the elements which the prosecution must prove to secure conviction would be:

- (1) that the woman was pregnant;
- (2) that the accused instigated or conspired with someone to commit miscarriage of the pregnancy;
- (3) that the miscarriage was committed as a consequence of the instigation or encouragement of the accused and;
- (4) that the miscarriage was not caused in good faith for the purpose of saving the life of the woman.

See Section 232 of the Penal Code which creates offence of causing miscarriage.

Now the evidence led by the prosecution is to the effect that the accused took the PW2 to the Fountain Head Medical Hospital to abort her pregnancy. On meeting the PW3 he assessed the condition of the PW2 and came up with an opinion that the pregnancy was already affected by the medication taken by the PW2 and needed to undergo inevitable abortion to save her life.

The evidence of the PW3 on this very important point is as follows:

“I took the girl to the labour room to physically examine the girl to determine if any damage was done to the pregnancy. I did what is called speculum examination to view the inside of the vagina and the mouth of the womb and I discovered that there was active bleeding from the vagina and the mouth of the womb had opened to about 3 cm in diameter. The product of the conception had plunged the cervix meaning that the product was on its way out of the womb.”

Under cross examination the PW3 told the Court that he did the evacuation to save the life of the PW2.

Learned counsel to the accused argued that based on the evidence adduced the prosecution has not established the offence of

abetment under Section 85 of the Penal Code against the accused for which he urged the Court to discharge and acquit him.

I have considered the submissions of parties on this count charge and it would appear that Kekere Akpe Esq is not correct when he said that the evidence of PW3 did not establish that the bills the accused paid was for miscarriage. As a matter of fact the accused from the entire circumstance of this case must be taken to know why he took the PW2 to the Clinic without her prompting.

Secondly the PW3 stated that after he examined the PW2 he told the accused what he saw and what needed to be done to save the life of the PW2. If the project of the abortion was not his project the accused ought to have disowned the whole process and called it a day. He instigated the PW3 to carry out the miscarriage to save the life of the PW2.

What has been established in this case is that the PW2 was pregnant, that the accused took her to the PW3 for miscarriage but am not satisfied that the pregnancy was still alive when the PW3 intervened. If the intervention of PW3 leading to miscarriage was done in good faith to save the life of the PW2, then this offence cannot be said to have been established. I have always stated from the beginning of this Judgment that I believed the testimony of the PW3 as a Medical Doctor (expert witness) as there is no element in

his testimony to cast any doubt on his credibility. The submissions of the learned counsel to the prosecution Mr. Simon Lough on this point has not impressed me as they are not borne out of evidence before me. Such argument goes to no issue.

At the end of it all my findings is that even on the evidence of the prosecution this offence has not been established against the accused person and I hold as such. As a matter of law he is entitled to a discharge on this count and he is discharged and acquitted.

The end result of this trial is that the accused is convicted on the 1st count of rape contrary to Section 283 of the Penal Code and attempt to cause miscarriage contrary to Section 95 of the Penal Code. Counts 2 and 4 of the charge are not proved. He is discharged and acquitted upon them.

SENTENCE

I have listened and considered the allocutus made on behalf of the convict. I have also considered the response of the learned counsel for the prosecution.

My view is that while considering the issues raised by Kekere-Akpe Esq on behalf of the convict it is also necessary to weigh the interest of the convict against the interest of the prosecutrix who went through pains and torture. I must also consider the interest of the

society at large against the rising cases of rape by people who call themselves men of God.

It is bad for anybody to indulge in a devilish conduct such as this. It is even more worrisome if the person involved is in the position where he is looked up to as next to God. The point is that those who serve in the Lord's vineyard are expected to live above board and be an example to the society. It appears to me that while the convict presided over the affairs of his Church he behaved as the Lord of the Manor and took unholy advantage of his followers. As a Court we have a duty to send a signal that this attitude should not be tolerated. It is regrettable that the convict who calls himself a man of God would indulge in such despicable, shameful, disgraceful and satanic act. The conduct of the convict is certainly a desecration of the Holy Sanctuary of God. By his conduct, he deserves to be kept away from the public. It is expected that he would take the prison wall like a monastery so that when he comes out he would have been born again.

I reckon with the fact that the convict is a first time offender. I will therefore not impose maximum sentence especially as am given a discretion under Section 283 of the Penal Code. Accordingly the accused is hereby sentenced to seven calendar years imprisonment without option of fine for the offence of rape (1st count) and five

years imprisonment (calendar years) for the 3rd count of attempt to cause miscarriage contrary to Section 95 of the Penal Code. The sentences shall run consecutively.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
25/06/2019

Appearance

Simon Lough Esq For the Prosecution
(Appearing with O.T. Lough)

S.G. Kekere-Akpe Esq For the Defendant
A.O. Agbonlahor Esq

(with U.C. Ikeji Esq and C. Saka Momodu Esq).....Holding
watching brief for the nominal complainant.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
25/06/2019