IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 18TH NOVEMBER, 2020.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.:-FCT/HC/CR/150/2017

BETWEEN:

COMMISSIONER OF POLICE:…….....COMPLAINANT

AND

ABBAH DANIEL.....DEFENDANT

John Ijagbemi with Gabriel Adeosun for the Prosecution.
Mathew Echo for the Defendant.

JUDGMENT.

On the 25th day of January, 2018, the Defendant was arraigned before this Court on a two counts charge as follows:

COUNT 1:

That you Abbah Daniel "M", aged 35 years, on or about 26th January, 2017 at about 1300hrs respectively (sic) at Shine-light International School, Jikwoyi Phase 1, Abuja within the Abuja Judicial Division did sexually abuse one Blessing Mbatoon, female, aged 8 years, by having unlawful carnal intercourse with her inside the school toilet at the above named address, and you thereby committed an offence contrary to Section 31(1) and punishable under Section 31(2) of the Child Rights Act, Cap 50 Laws of the Federation of Nigeria, 2003.

COUNT 2:

That you Abbah Daniel "M",aged 35 years, on or about 27th January, 2017 at about 1300hrs, at Captain Street, Jikwoyi Phase 1 Extension, Abuja, within the Abuja Judicial Division did sexually abuse one Blessing Mbatoon, female, aged 8 years, by having carnal intercourse with her in her parents' house in the sitting room at the above named address, and you thereby committed an offence contrary to Section 32(1) and punishable under Section 32(2) of the Child Rights Act, Cap 50 Laws of the Federation of Nigeria, 2003.

The Defendant, upon arraignment, pleaded not guilty to the charge and the case proceeded to trial.

On the 22nd day of February, 2018, the Prosecution opened its case with the evidence of one Evelyn Mbatoon who testified as PW1.

In her evidence in Chief, the PW1 told the Court that on the 27th day of January, 2017, when she came home from her daily activities after 2pm she met her daughter, Blessing Mbatoon and her brother Praise Mbatoon, and unlike her daughter who usually runs to her to welcome her upon her return home, she sat still where she was and only Praise came to welcome her. She observed that Blessing was unable to stand up from where she sat, she hurried to her and asked her what was wrong and Blessing told her that her body was paining her. That around 4pm she instructed her son to set the table for their lesson in anticipation of their lesson teacher the Defendant, but to her surprise, she was told that the Defendant had already come and gone, contrary to their agreement.

The PW1, Evelyn Mbatoon testified that she proceeded to church by 5pm with her family and on getting to the church, her daughter, Blessing sat throughout the service and could not dance or clap her hands. That while going home after the

Church service, Blessing slept in the car all through the journey. That on getting home, she carried her inside the house and then inquired from her again, what was wrong with her, whereupon, Blessing explained that her laps, buttocks and lower abdomen were in pains and that there was injury on her hand. That she took Blessing inside the room for further observation, and that on removing her pants, she observed that all around her vagina were wounds. That she persuaded Blessing to tell her what happened to her and Blessing said that she does not want to die, that she would be killed by her uncle - that is the Defendant. That she encouraged Blessing to open up and promised her that nobody would kill her and that she would not let the Defendant know of this.Blessing then opened up and said immediately after closing from school, the Defendant asked her to run home, and that while she was alone in the house, she heard a knock on the door, she peeped through the door, she saw the Defendant at the protector, she was afraid and ran through the kitchen door. That the Defendant pursued her and dragged her, in the process of which the protector injured her. That she told the Defendant that it was not yet time for lesson and that her mother had warned her not to do lesson alone without her brother, but the Defendant convinced her to do her homework before her elder brother comes back.

The PW1 stated further that, when Blessing brought her homework to do in the parlour, the Defendant pushed her onto the cushion, covered her mouth to prevent her from screaming, removed her pant and inserted his penis into her vagina and had sexual intercourse with her. That the Defendant used the rag lying in the house to clean his private part.That the rag was smeared with human sperm. When asked by the court how she knew it was sperm. She said as a married woman who lives

with her husband that she observed that the rag was smeared with sperm because she perceived the odour of sperm on that rag used by the Defendant to clean himself.

That She further asked Blessing if that was the first time it had happened, and Blessing told her that on 26th January, 2017, she took permission to go and ease herself in the school, and unknown to her, that the Defendant followed her to the toilet. That the Defendant closed the door and asked her to keep quiet and not scream, otherwise he would bring out his knife from his pocket and kill her, and that she must not mention it to anybody otherwise, he would cut off her neck.

That in the processthe Defendant turned a bucket in the toilet upside down and ordered her to sit on it, and the Defendant then knelt down, removed his trouser and put his penis into her vagina and had sexual intercourse with her. The PW1, Evelyn Mbatoon, told the Court that on hearing that, she screamed and called her husband into the room, and together, they went to the Police Station in Jikwoyi. That at the Police Station, they were told that it was late and that there were not enough Police officers on ground. That on the Police's instruction, they left their phone numbers with the Police and left.

She stated that on 28th January, 2017, the Defendant was arrested, and then her daughter, Blessing was taken to Karshi General Hospital for treatment by the Police. That on Monday of the following week, the IPO took them to a Lab Scientist who took samples to conduct a test from Blessing and they were told to come back in three days for the result. That they also went to Maitama General Hospital to do the test, but on 30th January, 2017, at the instruction of the IPO, they went back to Karishi General Hospital and had tests done.

She further stated that they were asked to go to the Police headquarters, from where they were referred to Garki General Hospital for hymen test and there at the Hospital, Blessing was examined by a doctor.

Statements made by the PW1 to the Police at the Jikwoyi Police Station and CIID were tendered and admitted in evidence as Exhibit PW1A-A1.

Under cross examination, the PW1 told the Court that her evidence before the Court was based on her observations on her daughter. She however, admitted that she was not present in any of the instances in which her daughter was allegedly raped by the Defendant.

She told the Court that the rag recovered from her room and her daughter's skirt which were both full of sperm, were taken to the Police station. That she did not immediately take her daughter to the hospital on that day because the Police advised them to go home and wait for their phone call before going to the hospital.

Under cross examination, the PW1 further told the Court that they went to Karishi General Hospital on 28th January, 2017 where her daughter was examined and a medical report issued to the IPO. That on 30th January, 2017, they went back to Karishi General Hospital where further sample was taken for medical examination and report also issued.

She maintained that she had confidence in the Defendant as a teacher and as a second parent before engaging him as a lesson teacher to her children, and would not therefore, imagine tarnishing his image since she had nothing against the Defendant.

On the 27th day of April, 2018, Blessing Mbatoon, the victim testified. She told the court that she could not understand what it takes to swear to an oath and therefore, she testified as an unsworn child, but she understood the essence of telling the truth. She told the Court that *"when you speak the truth you go to heaven, when you speak lies you go to hell."*

Testifying as PW2, she told the Court that she is 9 years old. She stated that she was in her class copying note on a certain day in January, 2017 when the Defendant told other pupils to go home and insisted that she must complete her work. That thereafter, the Defendant closed the door and hushed her; telling her to keep her mouth shut. That he then told her to lie down on the desk and removed her pants and put his penis on her vagina; and thereafter told her to go home.

She stated again that on another day, while the pupils were in their classes, she took permission to go and ease herself, not knowing that the Defendant was following her. That when she entered the toilet, the Defendant opened the toilet door, warned her to keep quiet, that the Defendant turned the bucket in the toilet upside down for her to sit on it and then he brought out his penis and put into her vagina.

That on another day, she was at home watching cartoon with the door closed but unbolted, when she heard a knock on the door. That she peeped and saw that it was Defendant and she ran through the back door and the Defendant opened the door and pursued her to come and do her lesson. She told the Defendant that her mother said she should not do any lesson without her brother or without her mother being present at home, but the Defendant told her to bring her homework. That when she brought her homework from the room and went to open the door to the parlour, the Defendant pushed her into the

cushion and put his penis in her vagina. And when he heard her brother coming, he used the rag which she had used to clean water which poured on the flour to clean his penis. That the Defendant pretended as if they were having lesson, and then had lesson with her and her brother, after which he went to church.

The PW2, Blessing Mbatoon, told the Court that when her mother returned, she was not able to welcome her as she was having pains all over her body. That when her mother asked her what was the problem; she told her that she had pains all over her body. That it was after they came back from church that her mother (PW1) woke her from sleep and took her into the room and asked her what happened, that she told her everything. That they went to the Police station to report. She told the Court that she did not tell her mother initially what happened because she was scared and did not want the Defendant to use knife to cut her head.

Under cross examination by the defence counsel, the PW2 told the Court that apart from the Defendant, no other person has put his penis inside her vagina. She insisted that the Defendant did put his penis inside her vagina.

When asked the size of the Defendant's penis, the PW2 told the Court that she wanted to see it but the Defendant covered her mouth and nose and pushed her head backwards and that made it impossible for her to see his penis.

When asked why she ran through the back door on sighting the Defendant, the PW2 stated that it was because she knew the Defendant was going to do the same thing to her and so she was scared. She admitted that she did not shout or call for help.

On 30th day of May, 2018, one Christiana Otasanya, an Inspector of Police, gave evidence for the Prosecution as PW3. She told the Court that on the 28th day of January, 2017, the PW1, Evelyn Mbatoon, reported a case of molestation of her daughter by the Defendant, who was her daughter's class teacher and home teacher. That when the PW1 reported the case to the DPO, she was assigned to investigate same. That in her investigation, she examined the PW2 and discovered that she was running temperature and she complained of pains all over her body.

She stated that she took PW2 to Karishi General Hospital where a doctor examined her but that laboratory test could not be carried out as there were no staff on ground to take the samples. That because of the need to get all the semen within 24 hours, she took them to Maitama District Hospital. That she also recovered a rag and skirt stained with sperm. The PW3 told the Court that the Defendant was invited by the Police; his statement taken and he was taken to a medical facility for medical test. She stated that her DPO later ordered her to transfer the matter to the state CID for further investigation.

In the course of evidence, the following documents were tendered by PW3 and same admitted in evidence;

1. Statement of Abbah Daniel – Exh PW3A.
2. Medical Report on Daniel Abbah – Exh PW3B.

On whether the PW3 obtained any direct evidence linking the Defendant to the alleged crime, the PW3 stated that she recovered a black skirt and rag used by the Defendant in cleaning up himself.

On whether she obtained the sample of the Defendant's sperm in the course of her investigation, the PW3 stated that it was

the blood and urine samples of the Defendant that were obtained and that report was issued after conducting tests.

On the 3rd day of June, 2019, one Dr.Chinonyerem Loretta Awele, the Medical Director of Police Hospital, Area 1 gave evidence for the Prosecution. Testifying as PW4, Dr.Awele told the Court that one Dr.Onyekwere who worked with her, but presently studying abroad, brought to her notice the case of defilement and called her to re-examine the victim. She stated that physical examination was conducted and laboratory investigation conducted. That in the course of the physical examination, it was noticed that the hymen of PW2 has been breached and when she was questioned, she insisted it was her teacher. The PW4 tendered a medical report on the victim in evidence as Exhibit PW4A.

Under cross examination by the defence counsel, the PW4 admitted that it is medically true that as a woman grows older, the hymenal opening widens, but she maintained that the hymenal tissue does not thin out with age. She further maintained that apart from sexual intercourse another thing that can break the hymen is a kind of exercise that requires stretching of the lower limbs.

On whether a victim of sexual molestation of such tender age could sustain bruises around the regions of the vagina or hymen on account of the sexual molestation, the PW4 stated that in most cases, there are bound to be bruises, but because the hymen is an elastic tissue, some victims of rape or defilement may not be visibly seen with bruises, but that there would be tenderness in the region. She explained “tenderness” to mean pain which the victim may not be aware of until at examination of that region.

The PW4 further stated under cross examination that pain is not a diagnosis of rape or defilement, but that same could be suggestive symptom that rape or defilement may have occurred. That diagnosis of rape or defilement can only be made from adequate history taking and examinations conducted on the victim.

At the end of the evidence of PW4, the Prosecution closed its case and the Defendant opted to make a no case submission. However, following a considered ruling of the Court in which the no case submission was dismissed, the Defendant entered his defence and opened his case on the 19th day of February, 2020.

Testifying as DW1, the Defendant told the Court that he was engaged as a home teacher to the Prosecutrix and her brother by their mother. That by their agreement, he was to go to their house on Mondays, Wednesdays and Fridays by 4pm to teach the children.

He stated that on the Friday of the first week, he went there earlier than the scheduled time because he usually had church meetings most Fridays. That the Prosecutrix's mother, the PW1 was present at home when he got there on that first Friday, and he taught the children and left.That on the Friday of the 2nd week, he got there earlier because of his church programme, and that he did not have carnal knowledge of PW2, the Prosecutrix.

Testifying further, the DW1 stated that in the school where he works, he was usually very busy. That after school hours, they usually organise clubs and societies for the children until about 3pm, after which he and the other members of staff ran their private lesson in the school until about 4pm.

He stated that due to the way the school is run, there is no way the crime he is alleged to have committed could have happened in the school. Also, that cleaners are assigned to be in charge of the toilets and to be there at all times so that children will not mess up the place.So, that he did not do such shameful thing as sexually molest the Prosecutrix.

The DW1 stated that in the course of the investigation by the Police, he was not medicallyexamined, neither was his semen taken, but that the PW2 was medically examined at the General Hospital, Karshi, and a medical report issued to the Police.

Under cross examination, the DW1 admitted that the PW2 at 8years of age could identify persons, including him, her class teacher.

He stated that the allegation bythe PW2 that he sexually abused her on 26th January, 2017 was a fabricated lie. He also stated that he was surprised at the testimonies of the 5 prosecution witnesses.

The DW1 further stated that on 27th January, 2017, was alleged that he molested the PW2, a second time was another fabricated story that he taught her and her brother at home. That the only mistake he made was to come earlier than 4pm for the commencement of the lesson as agreed with PW1.

He stated that the PW2 did not run away on sighting him when he got to their house; that the allegation of her running away was a fabricated lie. He denied having anything to do with PW2 on 26th January, 2017. That the school was a busy place and such thing could not happen.

The DW1 tendered a copy of his statement made to the FCIID on 6th February, 2017 and same was admitted in evidence and marked Exhibit DW1A.

One Opara Robert, the Proprietor of the School where PW2 attended and where DW1 taught also gave evidence for the defence. Testifying as DW2, he told the Courtthat on 28th day of January, 2017, being a Saturday, the parents of PW2 came to school to complain to him as the proprietor of the school that their daughter was raped in the school on Thursday, the 26th day of January, 2017 and at their house on Friday, the 27th day of January, 2017. He stated however, that on the said Thursday, 26th 2017, the school had club activities which were anchored by the Defendant. That the Defendant was therefore, busy throughout that day on account of the club activities which ended by 3pm.

He told the Court that from 3pm to 4pm, the staff does their private lessons in the school, and that from his understanding, he knows the PW2 does not do extra lesson in the school.

The DW2 in his evidence, further told the Court that the toilet where the act allegedly took place, is attached to Primary 5 and that its window opens to the Primary 5 class. He stated that the school has 3 cleaners, and that a cleaner by name Gift Matthew, is always stationed at the toilet to monitor children using the toilet.

He told the Court that he was surprised that the PW2 did not let them know when the molestation happened, given her closeness to them.That if such a thing happened, the PW2 did not inform either him or the headmistress. He stated that the PW2 came to school on Friday the following day, and still did not complain or inform them.

On what he knows about the Defendant, the DW2 told the Court that prior to the report of the rape incident, he knew the Defendant to be academically, spiritually and morally sound.

Under cross examination, the DW2 told the Court that they have up to 3 male teachers in the school. He stated that he was sure that the cleaner, Gift Matthew stays at the passage of the toilet throughout the day.

While admitting that sexual activities usually take place in the secret, he told the Court that in his school, as far as the toilet is concerned, there are always children around there. He further stated that his purpose of coming to testify is not to redeem the image of his school, butto know the truth as the Defendant is his staff while the PW2 is his pupil.

The DW2 admitted that the PW2 is old enough to identify persons either by name or by facial appearance, and that among the male teachers in the school, only the Defendant was pointed out to have allegedly had sexual intercourse with the PW2.

The DW2 was later recalled bythe Court suomotu, pursuant to Section 256 Administration of Criminal and Justice Act and Section 246 of the Evidence Act, for purposes of clearing some ambiguities, during which he told the Court that the school has three toilets, out of which the pupils, comprising of Primaries 1-5 use two of the toilets.

One Matthew Gift, a cleaner at Child Light International School, Jikwoi, where the Defendant was a teacher, testified as DW3. She told the Court that she usually come to the school by 6:30am to tidy up the place, including the toilets. She stated that she always took care of the children so that whenever they defecate, she would wash and clean the place.

The DW3 told the Court that by her schedule of work, she is posted to the toilets. She stated that she was at work in school on 26th January, 2017 and that it is not true that rape can

happen in the toilet given that the toilet is close to the classroom, with a window close to the classroom, and that she always stays in the toilet, being where she is posted.

Under cross examination, the DW3 told the Court that she does not know the number of pupils in Primary 4,and that she does not know the PW2 her name and her age.

She insisted that she did not witness any sexual intercourse between the Defendant and the PW2 because the allegation is not true. She further maintained that she is always at the toilet and that she did not witness anything. Under cross examination, she admitted that there is a bucket in the toilet to keep water.

At the close of trial, the parties filed their respective final written addresses. The learned defence counsel, Matthew A. Echo, Esq, in his final written address dated 25th August, 2020 and filed on 26th August, 2020, raised a sole issue for determination, namely;

> "***Whether or not from the totality of the evidence placed before this honourable court, the prosecution has not failed to prove their case beyond reasonable doubt as required by law, entitling the Defendant to be discharged and acquitted?"***

Proffering arguments on the issue so raised, learned counsel relied on Section 135 of the Evidence Act to submit that in criminal proceedings, for the Prosecution to succeed in proving the charge against the Defendant, the Prosecution must, by cogent evidence, prove its case beyond reasonable doubt. He contended,with reliance on **Ukpong v. State (2019) LPELR-46427 (SC)** that the Prosecution in this case, has failed to prove its case beyond reasonable doubt as required by law.

Learned counsel posited to the effect that although the elements of the offence of sexual abuse and unlawful carnal knowledge were not stated by the Child Right Act, that the legally stipulated elements of the offence of rape were outlined in the case of **Idi v. State(2017) LPELR-42587 (SC)**. He argued that the essential elements required to prove the offence of rape and the nature of evidence required, are missing in the case of the Prosecution on the grounds that;

a) the evidence of and/or testimony of PW2 (the victim-Blessing Mbatoon) in Court, who was a minor, was not taken under oath and as such, need corroboration as her uncorroborated evidence cannot ground a conviction– Section 209 (1) & (3) of the Evidence Act, 2011.
b) theevidence of PW1 as to how the Defendant (DW1) sexually molested the victim is hearsay. Section 37(a) & 38 of the Evidence Act, 2011.
c) the Defendant throughout his statements at the Police Station, and despite the gruelling condition he was put through, remained steadfast and consistent in his denial of the allegation.
d) the result of the examination as shown in the medical report shows “a young child in no obvious distress, afebrile, not pale, anicteric, acyanosed, not dehydrated” and that the vagina shows “Normal vulvovagina, and Nil bruises”.

Learned counsel submitted, with reliance on **Posu&Anor v. State (2011) LPELR-1966 (SC) and Lucky v. State (2016) LPELR-40541(SC),** that in view of the denial of the charge by the Defendant, a medicalreport is essential to corroborate the evidence of the prosecutrix, as to prove the offence of rape. He argued that juxtaposing the consistent denial of the offence by the Defendant, with the evidence adduced by the prosecution

before this Court, it becomes apparent that there is no factual, cogent and verifiable evidence of fact that the PW2 was raped, or that the Defendant had sexual intercourse with the victim (PW2), or that the Defendant in fact raped her.

He further argued that aside the fact that the evidence of PW1 was basically hearsay evidence and the absence of any material evidence corroborating the unsworn evidence of the prosecutrix, that there seems to be contradiction in the testimony of PW1, PW2 and PW3 as to how the Defendant raped and/or sexually molested the PW2. That the testimony of PW1 and PW3 who were narrating what they were purportedly told by PW2, that the first time the Defendant raped the PW2 was on 26th January, 2017, followed by 27th January, 2017, contradicted the testimony of the PW2 that the Defendant raped her on two consecutive days before the last time he raped her at the house. He argued that the PW1 and PW3, as adults, could not have missed or forgotten such vital occurrence as rape on 25th January, 2017, and that their failure to so state in their statements at the Police Station and their testimony before the Court, leaves much to wonder whether in fact the allegation happened, and goes to show that the PW2 is on a free fall narration of what she was told to say or anything that comes to her mind. He contended that this position further compounded the fact that the charge itself did not support this allegation of rape of PW2 in the classroom by the Defendant on the 25th January, 2017.

Learned counsel further argued that the inconsistency in what actually happened and how the Defendant allegedly raped the PW2, has raised a reasonable doubt as to whether the purported raped even happened at all. He relied on **Okebata v. State (2013) LPELR-22473-(CA),** to urge the Court to resolve the doubt in favour of the Defendant. Also that the testimony

ofPW3 and PW4 did not help the case of the prosecution as there was nothing concrete to establish the offence ofrape or sexual abuse of the PW2. He contended that from the evidence of PW1 and PW3, together with the exhibits tendered through them, some vital links were missing. In this regards, he argued as follows;

a. That whereas the PW3 testified thatthey took the PW2 to Karshi General Hospital a day after the alleged rape, where she was examined and they were issued a report; the prosecutiondecided to supress the said report, which was the report based on the examination of the victim at the earliest point in time after the incident. Referring to Section 149(d) of the Evidence Act, he contended that the only reason why the prosecution would suppress/withhold such vital evidence is because the report is against their interest and may actually exonerate the Defendant.
b. That despite testifying that she recovered a rag stained with sperm during investigation, the said rag which according to PW1 was full of sperm, was not taken for laboratory examination to scientifically prove that the sperm indeed belongs to the Defendant, nor was it tendered in Court during trial.

Learned counsel posited that by the authority of **Posu&Anor v. State (supra)** and **Lucky v. State (supra)** the only evidence the Court has to turn to in the circumstances, to corroborate the evidence of PW2, which according to him was discredited under cross examination, are the Laboratory Report (Exh. PW3B) and the Medical Report (Exh.PW4A). He submitted however, that these pieces of evidence did not help the case of the prosecution as they did not in fact, point to the fact the PW2 was raped and in fact by the Defendant. He argued that there is nothing in the reports to conclusively prove that there was any

sexual abuse, let alone rape (unlawful sexual intercourse). Furthermore, that the medical report further erodes any possibility of rape when it should the result of the vagina examination as "Normal Vulvovagina, and nil bruises…".

He posited that the inescapable conclusion that any reasonable person will reach from the diagnosis, is that there was neither sexual abuse nor rape, and urged the Court to so hold.

Learned counsel referred to **Upahar&Anor v. State (2002) LPELR-5937 (CA)** on what a medical report should state. He argued that the fact that the Medical Report, Exhibit PW4A, stated that the hymen is "not intact", but stated nothing more as to why and how it could have happened, nor linked it to the Defendant,is not sufficient proof of penetration. That no examination was carried out on the Defendant to link him by way of fluid match, to the victim's fluid. He therefore, contended that in line with the reasoning in **Upahar&Anor v. State (supra),**the Medical Report, Exh PW4A, is not proofof penetration nor of sexual abuse, and therefore, should not be relied on by the Court as a corroborative evidence in proof of the offence of rape and sexual abuse for which the Defendant is charged. He urged the Court to so hold.

He further contended to the effect that if indeed the Defendant, a 35 years old man, raped the PW2, a child of 8 years, there must beevidence of laceration or injury to the vagina or the vagina region, in line with the holden of the Court in **Danladi v. State (2017) LPELR-43627 (CA).** He argued that the medical report did not support the testimony of PW1 to the effect that upon her examination of PW2's vagina, she found that the vulva and vagina were full of wounds.

Relying on **State v. Masiga (2017) LPELR-43474 (SC); Natsaha v. State (2017) LPELR-42359(SC);** and **Francis**

Okpanefe v. The State (1969)1 All NR 420, he posited that the evidence as presented by the Prosecution before the Court, is bereft of any medically proven evidence aside the concocted stories, that no reasonable Court can conclusively say that any of the essential element/ingredient of the offence has been proved.

He argued that assuming, without conceding, that the hymen is not intact; that it is not a conclusive proof of penetration,or that it was the Defendantthat penetrated the hymen, as there is no evidence linkingthe Defendant to the penetration. He urged the Court to hold that penetration was not proved or linked to the Defendant, and to discharge and acquit the Defendant.

The learned prosecution counsel, John Ijagbemi, Esq, in his ownFinal Written Address, dated 15th September, 2020 and filed on the 17th day of September, 2020, also raised a sole issue for determination, namely;

> ***"Whether by virtue of evidence before this Honourable Court, both oral and documentary, the prosecution hasproved his (sic) case beyond reasonable doubt warranting the conviction and sentencing of the defendant herein?"***

Arguing the issue so raised, learned counsel posited that for the Defendant to be convicted of the offence of unlawful sexual intercourse with a child pursuant to Section 31(1) and (2) of the Child's Right Act, a bit similar to Section 283 of the Penal Code; the Prosecution is required to establish the following ingredients:

a. That the Defendant had sexual intercourse with the prosecutrix.

b. That the act of sexual intercourse was done without her consent,or that the consent was obtained by fraud, force, threat, intimidation, deceit or impersonation.
c. That the prosecutrix was not the wife of the Defendant.
d. That the Defendant had the *mensrea*; the intention to have sexual intercourse with theprosecutrix without her consent or that the accused acted recklessly, not caring whether the prosecutrix consented or not.
e. That there was penetration.

He referred to **Posu v. State (2011) 3 NWLR (PT 1234) 393 at 416.**

While conceding, with reference to **Ezeugo (Rev. Dr. King) v. State (2013) 9 NWLR (Pt.1360) 508 at 564-565,** that in criminal cases, the burden of proof of the guilt of the Defendant rests squarely on the prosecution who must prove the material allegations against the Defendant beyond reasonable doubt, he submitted that proof beyond reasonable doubt is not synonymous with proof beyond shadows of doubt. He referred to **Anekwe v. State (2014) 10 NWLR (Pt 1415) 353 at 378.**

Learned counsel urged the Court to hold that the evidence of PW1, PW3 and PW4, corroborated the evidence of PW2 that the Defendant had sexual intercourse with her, both in the school and at home during the home lesson. He referred to **Habibu Musa v. State (2013) 8 NCC 464 at 481,**and urged the Court to discountenance the argument of the learned defence counsel to the effect that the unsworn evidence of the PW2 was never corroborated by any other witness.

He contended that the prosecution has, by material, compelling and convincing evidence established not only that the Defendant had the opportunity to sexually abuse the prosecutrix, but also pinned him to the act. He argued that by

first-hand information, the prosecutrix, was able to show the detectives, including the PW3, the classroom and toilet within which the Defendant sexually abused her in the Child Light International School, Jikwoi, Abuja.

Also that the medical doctor, the PW4, who examined the prosecutrix, testified in her evidence in chief to the fact that the hymen of the prosecutrix was breached, and that under cross examination, she affirmed that even though physical exercise like running, jumping and engaging in athletics activities, as well as self-exploration, could lead to the breach of hymens, that such was not the case in the instant case.

He argued that notwithstanding the outright denial of the offence by the Defendant, that the evidence before the Court, are material, compelling and convincing to the effect that the Defendant had sexual intercourse with the prosecutrix. He urged the Court to so hold, as he referred to **Idi v. State (2017) LPELR-42587 (SC).**

Arguing further, learned counsel contended that the prosecutrixin this case is a child/minor who cannot give consent and whose consent cannot be obtained by my means, fraud or otherwise, and therefore could not have given consent to the sexual intercourse. He referred to Section 277 of theChild's Right Act and Section175of the 209 of the Evidence Act, 2011.

On proof of *mensrea*, the learned counsel argued that the evidenceof PW2, which was corroborated by the evidence of PW1, PW3 and PW4, go to show that the Defendant had the intention of having sexual intercourse with the Prosecutrix.

Learned counsel contended to the effect that penetration was established in this case, as the PW2 gave a graphic state of the penis of the Defendant under cross examination when she

described it as not so strong.He posited that the reasonable conclusion that can be drawn from the oral and documentary evidence before the Court, is that there was penetration, and he urged the Court to so hold. He referred to**Habibu Musa v. State (2013) 8 NCC 464 at 481.**

On the nature of evidence required as corroboration for the offence ofrape, he posited that such corroborative evidence may include, but not limited to: (a) Medical evidence showing injury to the private part or other parts of the prosecutrix's body which may have been occasioned in a struggle; or (b) semen stains on her clothes or the clothes of the accused, or on the place where the offence was alleged to have been committed. He referred to **Edwin Ezeigbo v. State (2012) LPELR-7855 (SC):Natsaha v. State (2017)LPELR-42359(SC); Posu v. State (supra).**

He argued that corroboration need not be direct evidence that the Defendant committed the offence charged. That it need not amount to a confirmation of the whole account given by the prosecutrix, but that it must be completely credible evidence which corroborates the prosecutrix's evidence in some aspect material to the charge. –**Lucky v. State (2016) LPELR-40541 (SC).**

On the issue on contradictions in the case of the prosecution, learned counsel submitted, with reliance on **Musa v. State (2009) 15 NWLR (Pt 1165) 465 @ 489,** that it is not every miniature of contradiction in the prosecution's case that will vitiate its case.

He urged the Court in conclusion, to convict and sentence the Defendant according to law as the prosecution has proved its case beyond reasonable doubt.

The Defendant was charged on twocount charge of the offence of unlawful carnal intercourse and sexually abusing a child contrary to Section 31(1) and punishable under Section 31(2)for Count Iand Section 32(1), and punishable under Section 32(2) respectively of the Child's Rights Act Cap 50 LFN 2003.

The Defendant was alleged to have raped an 8 year girl within her school premises and at her home while giving her extra mural lessons. This allegedly happened on 26th January, 2017 and 27th January, 2017 respectively.

Upon arraignment, the Defendant pleaded not guilty. At trial the PW1 Evelyn Mbatoonthe mother of the PW2 Blessing Mbatoon the Prosecutrix testified to the effect that the Defendant a teacher in the Child Light International School Jikwoi, was employed by her as a home teacher to her twochildren PW2 Blessing Mbatoon andher brother.

That the Defendant had raped the Prosecrutrix PW2 on the 26thJanuary, 2017in their school toilet.That contrary to their agreement, and understanding to commence the lessons by 4pm from Monday, Wednesday and Friday each week, so that she would be home during their lessons, that the Defendant visited her house on 27th January, 2017 before 2pm and raped the Prosecutrix and left before 4pm of her arrival.

That when she came back, she observed that the PW2 the Prosecutrix was looking dull,sick and complained of body ache.That on their return from evening church service on 27th January, 2017, she discovered that the PW2 was running a high temperature and complained of pain on her laps, buttocks and lower abdomen and she observed injury on her hand and her vagina. On questioning the PW2, she told her that the

Defendant had raped her twice on the 26th January, 2017 in the school toilet and on 27th January, 2017.

That on the 26th January, 2017, in the school toilet that the Defendant followed her to the school toilet overturned the bucket in the toilet, made her to sit on it and raped her. On the 27th January, 2017, that the Defendant came earlier to the house to have an early lesson in their house and raped her, by pushing her into the cushion chair, covered her mouth with his hand and raped her by inserting her penis in her vagina. That the Defendant threatened to kill her with the knife in his pocket and warned her notto mention it to anyone. She reported the matter to the Police station but no test was carried out on that 27th January, 2017 because it was late in the night and also a weekend. That the tests were carried out on the 30th January, 2017, she also made statement to the Police.

PW2 did not understand the nature of swearing an oath and she gave unsworn evidence.

On 27th April, 2018, the Prosecutrix, Blessing Mbatoon(PW2) aged 8 years testified. During examination in chief PW2 pointed to the Defendant in the dock as the person who raped her 3 times. The charge only captured two counts of unlawful carnal knowledge and sexual abuse.

In carrying out the preliminary investigation for purposes of ascertaining whether the PW2 understood the duty of speaking the truth as prescribed by Section 209 Evidence Act 2011. In addition to other questions by the prosecutor, the PW2 answered intelligentlyandrationallyto these questions;

> ***Court: "Do you know the reason why you should always speak the truth?***
>
> ***PW2: Yes.***

Court: Why.

PW2: When you speak the truth you go to heaven and if you speak lies, you go to hell."

In compliance with Section 209 Evidence Act, it is in my opinion that the PW2 understood the duty of speaking the truth and is possessed with sufficient intelligence to understand the questions.Reference to **John Okoye v.The State (1972) LPELR 2510 (SC).**

The Prosecutrix (PW2) proceeded in her evidence with such relaxation and comportment that very few adults can exhibit. At the point of identifying the Defendant as her class teacher, I clearly observed the Defendant blushing and dropping his face. For ease of reference I would painstakingly reproduce the evidence in chief and cross examination of the PW2.

"Prosecution:

Do you know the Defendant?

PW2:

Yes.

Prosecution:

Who is he?

Court:

I observed the demeanour of the Defendant at the moment the prosecutor asked PW2,(the Prosecutrix)thisquestion.The Defendant blushed.

PW2:

He is my class teacher and also my lesson teacher.

Prosecution:

Can you remember what happened between you and your class teacher the Defendant in January, 2017?

PW2:

Yes I do.

Prosecution:

How?

PW2:

I was in my class copying notes when the Defendant told other people to go home that I must complete my work. Then he closed the door and he did like this "shhh", putting his hand on his month; that means that I should shut up. Then he told me to lie down on the desk. Then he removed my pants and he put his penis on my vagina. And then he told me to go home. Then the next day, they exchanged the students and I was in another class. While other people were in another class I gave excuse to ease myself without knowing that Defendant was following me and when I entered the toilet, he opened the door and told me to sit on the bucket and he put his penis in my vagina.

And then another day, again I was in my house watching cartoon. I locked the door with the lock without bolting it. Water poured on the floor, I used a rag to clean the water and then I heard a knock and I peeped and then I saw it was the Defendant. I ran through the back door and he opened the door and pursued me. I told him that my mummy said I should

not do any lesson without my brother or my mummy being present.

He told me to bring my homework. When I brought the home work and I wanted to open the door to the parlour, Defendant then pushed me unto the cushion chair and put his penis in my vagina. When he heard my brother coming he used the rag that I used to clean water that poured on the floor to clean his penis. Then he pretended as if we were doing lesson. And then he had lesson with me and my brother and then he went to Church. And then when my mummy came back, I was not able to welcome my mummy because I was having pains all over my body. Then my mummy asked me what the problem was. I told her I was having pains all over my body. My mummy rushed to prepare food for us to go to Church and we went to Church after eating. And when praise worship was going on I was unable to stand and worship. When we went home, I went to sleep. My mummy woke me up and took me to the room and asked me what happened and I told her everything and they took me to the Police Station.

They told us to come back the next day because it was night. When we went back the following day, they took me to the Hospital and they put me in another school.

Prosecution:

When you said you took permission from your teacher to ease yourself; was it the Defendant?

PW2:

No, it was another teacher.

Prosecution:

You said you locked the door without bolting it and he eventually put his penis in your vagina before he heard your brother coming; what is the name of your brother?

PW2:

Praise Mabtoon.

Prosecution:

Didn't you feel any pain while he was putting his penis in your vagina?

PW2:

I felt pain in my body. All my body was paining me.

Prosecution:

Why did you not tell mummy?

PW2:

Because I was scared and I did not want him to use knife to cut my head.

<u>CROSS EXAMINATION.</u>

Defence counsel:

Your name is Blessing Mbatoon and you are nine years old.

PW2:

Yes.

Defence counsel:

You also told the Court that you are in primary five.

PW2:

Yes.

Defence counsel:

Being in primary five, nobody has put his penis inside your vagina?

PW2:

No, apart from the Defendant.

Defence counsel:

The Defendant has never put his penis inside your vagina?

PW2:

He has.

Defence counsel:

How did he put it?

PW2:

I do not understand your question.

Defence counsel:

How did he do it?

PW2:

He removed my pants and put his penis in my vagina.

Defence counsel:

Was the penis big or small?

PW2:

I wanted to see it but he covered my mouth and nose (she demonstrated how the Defendant threw her neck backwards with his hands so she could not see the penis).

Defence counsel:

When he put the erected penis into you, you felt it?

PW2:

No.

Court:

Do you understand what erection is?

PW2:

No.

Defence counsel:

Was the penis strong or soft?

PW2:

A little bit strong.

Defence counsel:

Everything you told the Court was what your mother told you?

PW2:

No.

Defence counsel:

Your mother asked you?

PW2:

Yes she did I told her everything.

Defence counsel:

Why were you running through the back door?

PW2:

Because I know he was going to do the same thing to me and I was scared so I ran through the back door.

Defence counsel:

You did not shout or call anybody?

PW2:

Yes."

On 30th May, 2018 the IPO, PW3 Christiana Otasanya testified, tendered Exh PW3A and PW3B as the statement of Defendant and laboratory report on the Defendant. She was cross examined.

On 3rd June, 2019 Dr.Chinonyem Loretta Awele testified as the Medical Director of Police Hospital Area 1, Abuja (PW4). In her evidence in chief, she testified that on examination of the PW2 the Prosecutrix, her hymen was breached and she tendered the medical report on PW2 as PW4A. The cross examination evidence of the PW4 is better reproduced for clarity sake.

Cross Examination:

"Defence counsel:

I will also be correct to say medically during childhood, growing up most hymen tissues wear away

as a result of washing of the private part, walking, engaging in athletic activities and in challenging self-exploration including masturbation.

PW1:

Walking, washing and athletic exercises will not cause the hymen to be broken.

The exercises that would cause the hymen to breach would be exercises that require stretching out of the two lower limbs.

Defence counsel:

From your answer I would be right to say that running around, jumping involves the stretching the two lower limbs.

PW4:

The two lower limbs will have to be (with emphasis) really be stretched apart before the hymen is breached.

Defence counsel:

In answer to my question, you stated that running, walking, jumping cannot breach the hymenal tissue. Assuming it cannot breach it, does it wear it away?

PW4:

No, walking cannot wear the hymen tissues out.

Defence counsel:

It is medically correct, that if a hymen is intact and there is any especially for the tender child of the age

we are dealing with, and such a tender age is raped or molested severally by having sexual intercourse by a grown man, it is medically correct that there is bound to be bruises around the region of the vagina or hymen.

PW4:

In most cases there are abound to be bruises but because the hymen is an elastic tissue, sometimes victims that are raped or defiled may not be visibly seen with bruises but there would be tenderness in the region.

Defence counsel:

What do you mean by being 'tender'?

PW4:

Tenderness means pain which the victim may not know until at examination of that region.

Defence counsel:

From your answer it is true to conclude, that assuming the victim does not have bruises and did not feel pain until examination. it is correct to say that no onewill know that such a child is raped until examined.

DW4:

I said that bruises may not always be there but the patient knows that she is raped but may not present any pain.

Defence counsel:

As a follow up question, merely looking at a victim without medical examination will not conclude that a victim is raped.

PW4:

Pain is not a diagnosis of rape or defilement. But it is a suggestive symptom that rape or defilement may have occurred. But diagnosis of rape or defilement can only be made from adequate history taking and examinations conducted on the victim."

At the close of the Prosecution's case, the defence commenced his case and the Defendant testified as DW1. His evidence was a total denial of the commissionofthe alleged offence. He generally described the allegation as a fabricated lie against him. He admitted he was a home teacher to the Prosecutrix, Blessing Mbatoon.

He admitted that he was employed by PW1 to teach PW2 and the brother at their home. He admitted that the lesson was to commence at 4pm when the PW1 their mother would be at home.

He admitted that he came at 2pm instead of 4pm on 27th January, 2017, contrary to their agreement. His reason was that he had a fellowship by 4pm. He denied having anything to do with the PW2 on 26th January, 2017.

In support of the evidence of DW1 one Opara Robert DW2 and promoter of the school testified to the effect that the Defendant is a good Christian, very active with the school club which normally ends by 3pm. He stated that the school has 3 toilets and the toilet belonging to primary 5 which is the prosecutrix class had only one window opening into the class. That they have 3 cleaners and each attended to each 3 toilet.That one

Gift Mathew always stays at the passage of the toilet throughout the day.

DW2 was recalled for re-examination, to clarify ambiguous issues, in his further evidence the DW2 said that primaries 1-5 use two toilets contrary to his earlier statement that primary 5 has a toilet.

Gift Mathew DW3, testimony was that she always stays in the toilets" being where she is posted.That her duty time begins by 6:30am and ends by 4pm.

Secondly DW3 opined that because she was always there in the toilet that the allegation of sexual abuse is not true. Under cross examination DW3 told the Court that she does not know the victim of the alleged offence. She also admitted the existence of a bucket in the toilet.

The facts of this case have been meticulously set above with the addresses of the learned counsel on both sides detailed accordingly. The questions for consideration that arise are;

1) Whether given all circumstances of the case the prosecution proved the offence of unlawful carnal intercourse beyond reasonable doubt to earn a conviction or not?
2) Whether there was or not material corroboration of the evidence of the Prosecutrix.
3) Whether the Court can convict on the evidence of the Prosecutrix and other prosecution witnesses.

In considering the issue one, it is the duty of the prosecution pursuant to the decision in **Posu&anor v. The State (2011) 3 NWLR 393**to establish these ingredientsto earn conviction;

1) That the accused had sexual intercourse with the Prosecutrix.
2) That the act of sexual intercourse was done with at her consent or that the consent was obtained by fraud, force, threat, intimidation, deceit or impersonation.
3) That the Prosecutrix was not the wife of the accused.
4) That the accused had the mensrea, the intention to have sexual intercourse with the Prosecutrix without her consent or that the accused acted recklessly not caring whether the Prosecutrix consented or not.
5) That there was penetration.

In other to establish the first ingredient for proof of rape, the question is**whether there was evidence of having sexual intercourse?**

The unsworn evidence of the Prosecutrix,BelssingMbatoon (PW2) was that the Defendant had sexual intercourse with her on the 26th January, 2017 and 27th January, 2017 respectively.

Her evidence was that the Defendant her lesson teacher and also a teacher in her school followed her to one of the toilets in the school when she took permission from her class teacher to ease herself.

That the Defendant opened the toilet door entered and motioned to her to keep quiet. She demonstrated how he said SHHEE, using his hand on his own mouth.He closed the door and turned the bucket upside down, madeher to sit on the bucket, brought his penis out and inserted it into her vagina. That the Defendant threatened to kill her by cutting off her neck if she let anybody knew about it.

This evidence was not rebuffed by the Defendant in the course of his evidence. In evaluating truth in this piece of evidence,the

DW2 the proprietor of the school was asked during cross examination whether there was bucket in the toilet. He replied in the affirmative. Further the DW3, Gift Matthew the cleaner equally confirmed the existence of the toilet bucket for storage of water.

In evaluating further this crucial piece of evidence, it is my finding from the two statements of the Defendant,Exh PW3A and DW1A that the Defendant never rebuttedthis evidence. The Defendant merely said that the evidence of the Prosecutrix was “fabricated lies”.

The DW3 affirmed that she does not personally know the Prosecutrix.In furtherance to her evidence she said that she stays in the toilet from 6:30am when she arrives at work as a cleaner till 4pm when the school is over and therefore, did not see the Defendant with the Prosecutrix. On the contrary,the DW2 said that the DW3 stays along the corridor of the toilet throughout and not in the toilet. These are clear cut contradiction between the two witnesses of the Defendant.

If DW3 stays in the toilet all day,**how would the pupils and teachers have their privacy in the use of the toilets?**

The evidence of DW2 and DW3 that a cleaner would either be along the passage or in the toilet from 6:30am to 4pmare contradictory and sounds unbelievable. Their evidence is not credible and reasonable. The effect of this contradiction was resolved in the decision of **ElochukwuOkafor v. Mrs Eunice Ilukwe&anor (2012) LPELR-19939 (CA),**the Court of Appeal held;

> ***“Where the contradiction and discrepancies are on material point, such witness shouldnot be relied upon.***

See also <u>The State v. Musa Danjuma (1997) 5 NWLR (Pt 506) 512</u>" per Okoro JCA.

I therefore consider thesecontradictions and discrepancies in the evidence of DW2 and DW3 of material effect and therefore, unreliable.

The evidence of the Prosecutrixsounds more crediblethat she took permission from her class teacher to use the bathroom when classes were on-goingand was followed by the Defendant who opened the toilet door and turned the bucket upside down,made her to sit on the bucket to have sex with her. Theexistence of the bucket in the toilet was evidence of DW2 and DW3 which goes to support the case of the prosecution.A question begging for answer is;**what is the essence of turning the empty bucket upside down?** I have observed that the Defendant is about 6 feet tall and to have sexual intercourse with an 8 year old girl he needs to prop up the Prosecutrix to a comfortable level of his height to have access to her vagina and that was why he turned the bucket upside down to elevate the Prosecutrix. Theexistence of the bucket in the toilet was corroborated by Defendant's witness DW2 and DW3. I believe the evidence of the Prosecutrixthat the turning of the bucket was an evidence of necessity for the Defendant toachieve his aim. It is true that the unsworn evidence of a child should be treated with some suspicion. In my opinion, I pause to state that such suspicion, however, has been based on untested assumptions like immaturity. It should be noted these daysthat many children retain accurate facts and should not be judged on immaturity.

Thus, in the instant case, the Prosecutrix, Blessing Mbatoon fluently and consistently without any aid from the Prosecutor

confronted the Defendant with her evidence with a strong demeanour without any anxiety.

Further under cross examination, the Prosecutrixstated:

> ***"Defence counsel:***
>
> ***Being in primary 5, nobody has put his penis inside your vagina before?***
>
> ***PW2: (Blessing Mabtoon).***
>
> ***No, apart from the Defendant.***
>
> ***Defence counsel:***
>
> ***The Defendant has never put his penis inside your vagina?***
>
> ***PW2:***
>
> ***He has."***

Her evidence under cross examination strongly suggested that she had never had sexual intercourse with any man. She firmly stated that it was only the Defendant that put his penis in her vagina.

In my opinion, the Prosecutrixwho had no knowledge of such sexual acts,therefore,would have no motive to fabricate the story of turning the bucket upside down for her to sit upon to have sex with the Defendant. This was all the Defendant's ploy. I repeat from my observation that the Defendant is about 6 feet tall and considering the height of an 8 years old girl, as at the time, he needed something to prop up the Prosecutrix in order to have access to her vagina. I have considered the demeanour, boldness, intelligence and understanding of this little child and I found no reasons for her to fabricate this story

of turning thebucket upside down.This unchallenged but corroborated evidence sounded very credible.

The learned counsel for the Defendant, laboriously argued that the evidence of the Prosecutrixwas that she was raped on the 25th January, 2017, 26th January, 2017 and 27th January, 2017 but that the charge bore only the alleged rape on 26th January, 2017 and 27thJanuary, 2017. Defence counsel contended that that amounted to an inconsistency in the prosecution's case and failure to add the third rape incident should also raise doubt in the mind of the Court.He urged the Court to resolve the case in the favour of the Defendant. He relied on **Okebata v. State (2013) LPELR 22473 (CA).**

I have this to say, that the fact that the Prosecutor failed to add a third count of rape would not invalidate the two count charge of rape upon which evidence was led.

Again, the learned counsel failed to point to the Court the inconsistency in the evidence of the Prosecutor, merely stating that there was inconsistency is not enough without pin pointing the pieces of evidence that wereinconsistent.Putting the pieces of evidence led on Count I, and critically assessed,I am convinced that the Defendant had sexual intercourse with the 8 year, Blessing Mbatoon on 26th January, 2017, therefore, I concludethat the prosecution has proved Count Ibeyond reasonable doubt.

On second count, it is in evidence from both sides that on the 27thJanuary, 2017, being a Friday, the Defendant was to engage the Prosecutrix and her brother in home lessons from 4pm-6pm as agreed with their mother (PW1). This was to enable their mother be at home during the lessons.

In evidence in chief, the Defendant said he came to the Prosecutrix house earlier than 4pm at about 2pm and that he had been earlier for lessons on the previous Friday because he usually had church programmes on Fridays. PW1, Mrs Mbatoon the mother of the Prosecutrix stated both in her oral evidence and statement to Police,Exh PW1A and I quote;

> ***"Our usual time we agreed for the lesson is 4pm but the teacher came earliereven before 2pm… I came after 2pm … he left my house in less than an hour before my arrival…"***

Under cross examination she stated;

> ***"Defence counsel:***
>
> ***You never specifically told the Defendant not to come before 4pm?***
>
> ***PW1:***
>
> ***We both agreed for 4pm, any other time was not agreed upon between myself and the Defendant."***

The Defendant in his first statement at Jikwoi Police station, Exh PW3A, dated 28th January, 2017 stated;

> ***"I went to their house because the mother employed me to be her home-lesson teacher so I went there on Friday by 1-2:30pmto discharge my duty of teaching which I did and left…"***

In Defendant's second statement dated 6th February, 2017,Exh DW1A made at FCT CIID, he stated;

> ***"I went to the house, taught them effectively without any casualty and left them I actually told them that I will be coming more earlier cause of the programme I***

will be having on Friday. The first Friday I was there by 2pm while the second Friday I went there by 1pm… at the time I got there, I actually met her alone…"

In his additional statement attached to Exh DW1A dated 13th February, 2017 he stated thus;

"On 25/2/17, I taught both the girl and her brother, Blessing and Promise Mbatoon. The mother was around on that day but was inside the house I did not tell their mother, I will be coming to the house to teach them on Friday earlier than usual because their mother did not come out by the time I was through with the teaching. I got there after one and left there getting to 2:30pm. Other days I got there 4pm or few minutes past 4pm…"

Let us have a look at the Defendant's cross examination answers;

"Prosecution:

You did not inform the mother of the victim that you were coming earlier on that fateful date to lecture the children at home.

DW1:

Yes I did not tell the mother that I would come earlier than scheduled but I told the PW2 that I would be coming home to teach them earlier and she should get prepared.

Prosecution:

Do you remember that the victim PW2 said that when she saw you so early that day, she ran away.

DW1:

There was nothing like that, it is all fabricated lies.

Prosecution:

It is in your statement that you got to the victims' house by 2pm on that day.

DW1:

I got there by 1pm not 2pm.

Prosecution:

Since you always teach both of them together, I will be correct to say that you know the time the brother comes back from school by 2pm.

DW1:

On that fateful Friday hereturned from school about past 1pm."

The evidence of the PW1, mother of the Prosecutrix both oral and in her statement Exh PW1A, was that she agreed with the Defendant to commence lessons for her children by 4pm and not before 4pm.

Now, in evaluating the statements of the PW1, PW2 and DW1.I recapitulate the evidence of PW2, in respect of 27/1/17;

PW2:

"…I heard a knock and I peeped and then I saw it was the Defendant. I ran through the back door and he opened the door, and pursued me. I told himthat my mummy said I should not do any lesson without my brother or my mummy being present… He told me to

bring my homework. When I brought the home work and I wanted to open the door to the parlour, the Defendant then pushed me unto the cushion chair and put his penis in my vagina"

The above was the evidence in chief of the PW2 in respect of the alleged rape on 27th January, 2017,after the incident on 26th January, 2017, in the school. The question again, is,**why would the Prosecutrix run at the sight of her teacher?**

In the statement of PW1, she categorically stated that the time agreed with the Defendant to visit their house for home lessons was 4pm. The Defendant confirmed that 4pm was the agreed time both in his statements DW1A tendered by himself and the earlier statement PW3A tendered by the IPO. It was also in his oral evidence that the agreed time to take the children on lessons was 4pm. In his first statement PW3A he never said that he informed the children and their mother that he would come on Fridays by 1pm. It was in his second additional statement DW1A comprising of two additional statements dated 6th February, 2017 that he said;

"I actually told them that I will be coming more earlier…"

Also in his 3rd additional statement attached to DW1A dated 13th February, 2017, he stated;

"On 25th February, 2017… I taught both the girl and the boy… the mother was around … I did not tell their mother, I will be coming to the house on Friday earlier than usual … I got there after one and left there getting to 2:30pm"

In evaluating the Defendant's statements, he admitted he did not inform their mother PW1 that he would be coming earlier

than 4pm as agreed. The PW2 in her evidence said she reminded the Defendant that he should not be in the house that early when her mother and brother were absent. The Defendant admitted that he unilaterally changed the time for the Prosecutrix lesson from 4pm to 6pm without the consent of her mother PW1 who made the contract with him. Defendant told the Court that he informed the Prosecutrix of the change of time on Fridays because he had fellowship to attend. The unanswered question is, **why did the Defendant agree to teach the children by 4pm on Fridays when the Defendant was already engaged in the church by 4pm on Fridays?**

Again, in his first statement Exh PW3A, Defendant said he did the lesson on Friday between 1-2:30pm for both of them.During cross examination he said the brother to the Prosecutrix came back after 1pm on the day of incident, in other words confirming the absence of the brother when he resumed the lesson with only the Prosecutrix. It is clear that he started the lesson with the Prosecutrix alonebefore the brother arrived at home tojointhem. This goes to confirm the evidence of PW2, that her brother was absent when the Defendant arrived at their house and it goes further to confirm the evidence of PW2 that whenthe Defendant heard the footsteps of the brother coming home he pretended to be doing the lesson with her.

Deeply sieving the statements of the Defendant made on the 6th February, 2017 and 13th February, 2017 respectively, which is Exh DW1A,I observed conflicting dates on them. The alleged rapes incidents happened on the 26th January, 2017 and 27th January, 2017.

In Defendant's additional statement of 13th February, 2017 he said that he went to their house on 25th February, 2017 to teach the children. The 25th February, 2017 happens to be a month

after the incident of the alleged rapes on 26th January, 2017 and 27thJanuary, 2017.**How does the Court resolve this contradiction which was not explained?**

The Court of Appeal in **Mohammed Auwal&Ors v. FRN (2013) LPELR 20776(CA)** defines contradictory evidence as;

> ***"A piece of evidence is said to be contradictory when it asserts or affirms the opposition, or where two sets of evidence are themselves inconsistent to each other or they are mutually repugnant and cannot both stand or be true."***

My lord Bdliya, JCA, further stated in the above case by making reference to Supreme Court decision in the case of **Ehienwe v. The State (2011) 7 NWLR (Pt 1246) 402 @ 413** that;

> ***"…for a statement to be contradictory it should be direct opposite of what was earlier spoken or stated. There can be material and immaterial contradictions in the evidence relating to any of the essential ingredients of the offence which the Prosecution in by law bound to prove…"***

The question then is **how would contradictions in evidence of Defendant affect the case of Defendant?**

In answer to this, the Court of Appeal in **The State v. Thomas Ereyitomi (2017) LPELR 43573 (CA)** held;

> ***"In anoffence of this nature, the material contradiction is indeed of the essence and cannot be glossed over by any reasonable tribunal which by law does not enjoy the luxury to pick and choose which of the two testimonies to rely upon in justifying a proof beyond reasonable doubt."***

Same applies to the defence of the Defendant. The position of the law is that such contradictions in the testimony of a witness with that of his extra judicial statement to the Police on material facts is liable to be regarded as unreliable and be rejected. – **AlhassanMaiyaki v. The State (2007) LPELR 3742 (CA).**

It is my finding that the additional statement of the Defendant DW1A dated 13th February, 2017 is in direct conflict with his oral evidence and also his first statement Exh PW3A dated 28th January, 2017.There was no explanation on the part of the Defendant to clear the conflicting dates on his 3rd additional statement Exh DW1A tendered by him. He said he visited and taught the Prosecutrix on 25th February, 2017 when the offences were allegedly committed on 26thJanuary, 2017 and 27th January, 2017 respectively.

I must emphasise that the content of his statementExh DW1A has rather raised material contradictory facts against Defendantsevidence in respect of the date of the commission of the offence of which the Court cannot gloss over. Therefore I conclusively hold the ExhDW1A as an unreliable statement and is hereby discountenanced. It is not in doubt that the date of the alleged offence was committed was on 26th January, 2017 and 27th January, 2017 respectively.

I believe the PW1's evidencethat the time agreed to lecture the Prosecutrix and her brother, at home was from 4pm-6pm.The Defendant's visit to the Prosecutrix's home before the 4pm with the knowledge that the Prosecutrix will be alone in the housewithout the permission of the PW1 is with some ulterior motives.

Another ingredient for consideration is whether the Defendant on 27th January, 2017, had sexual intercourse with theProsecutrix and if there was sexual intercourse,

whether there was corroborative evidence.

The evidence of the Prosecutrix was that the Defendant visited the home of the Prosecutrixbefore 4pm on 27th January, 2017. When she saw him, she ran but Defendant pursued her, pushed her into the cushion chair and put his penis into her vagina, that he cleaned himself with a rag in the house. That when the Defendant heard the footsteps of her brother coming back from school he pretended to be having lesson with her.The Defendant in defence said her story was “fabricated lies”. PW2 further in cross examination stated thus;

“Defence counsel:

How did he do it?

PW2:

He removed my pants and put his penis in my vagina.

Defence counsel:

Was the penis big or small?

PW2:

I wanted to see it but he was covering my mouth and nose so that I could not see the penis.”

The Prosecutrix without being urged to explain how, demonstrated spontaneously, showing how the Defendant threw her neck backwards and it was impossible for her to see the penis.

“Defence counsel:

When he put the erected penis into you, you felt it?

PW2:

No.

Court:

Do you understand what erected penis is?

PW2:

No.

Defence counsel:

Was the penis strong or soft?

PW2:

A little bit strong."

Learned counselfor Defendant however,argued that the rag recovered at the scene of crime was not tested for the existence of sperm. Secondly, that the Police suppressed the report gotten from the first hospital.That the only reason why the Police suppressed the report was because it was against his interest. Learned counselfor Defendant relied on Section 149(d) Evidence Act.

Thirdly, Defendant's counsel argued emphatically that the evidence of the Prosecutrix was not corroborated. That PW1's (PW2's mother) evidence was hearsay reporting what the Prosecutrix told her.

He further argued that the only medical report PW4A produced by the PW4 merely described the situation of the Prosecutrix as "normal Vulvovagina, nil bruises and hymen not intact".

He contended that the medical report showed neither sexual abuse nor rape and urged the Court to so hold,relying on **Upahar&anor v. State (supra).**

Defence counsel further relied on the case of **Posu&anor v. State (supra)** and **Lucky v. State (supra),** to submit that there was no corroboration of the evidence of the Prosecutrix since Exh PW3B and PW4A have been discredited during cross examination.He submitted and relied on the case **Upahar&anor v. State (supra)** that the medical report Exh PW4A is not proof of penetration nor sexual abuse and therefore, should not be relied upon by this Court.

In furtherance to his contention,learned defence counsel urged the Court to hold that for rape to be proved, thatthere must be evidence of laceration or injury to the vagina in line with the decision in **Dalandi v. State (supra).**

That the prosecution's evidence is bereft of medically proven evidence of rape. He conclusively urged the Court to hold that there was no conclusive proof of penetration and that there is no evidence linking Defendant to the offence.

In response, the prosecutor argued that;

- PW1, PW3 and PW4 corroborated the evidence of the PW2. He relied on of **Posu&anor v. State (supra)** and **Habibu Musa v. State (supra)** and urged the Court to hold that the evidence of the Prosecution witness are materially corroborative.
- That by the evidence of the PW2 under cross examination that the penis was a bit strong indicated that there was penetration.
- That the medical report corroborated the evidence of PW2 that there was penetration.

- That corroboration need not be direct evidence but evidence that is credible.

On whether there was any material corroboration of the Prosecutrix evidence as established in the case of Posu&anor v. State (supra).

The Prosecutor has an important role to play in ensuring that the above ingredients are proved beyond reasonable doubt.Beyond reasonable doubt means that the Prosecutor must prove that there is greater likelihood that the Defendant committed the offence.

Sexual intercourse is a phrase interchangeable with carnal knowledge. Thus meaning the act of a man putting his penis inside a woman's vagina.–See Oxford Advanced Learner's Dictionary 6th Ed. The role of the prosecution is to prove with corroborative evidence the existence of sexual intercourse and/or whether there was penetration.

The Prosecutrix,(PW2)evidence was that the Defendant her lesson teacher and also a teacher in her school on the 26th January, 2017 sexually abused her by having intercourse with her in one of the school toilets. For clarity purposes, I need not reproduce again and again the pieces of evidence of Prosecution's witnessPW2.Rather in summary, the PW2 testified that the Defendant followed her to the toilet turned the toilet bucket upside down sat her on it and had sexual intercourse with her by putting his penis into her vagina.

Under cross examination by learned counsel for defence, PW2 emphatically repeated that it was the Defendant that had put his penis into her vagina.

The demeanour of this eight year child was firm, expressing to the Court how the whole incident happened. The

Prosecutrixevidence was not punctured during cross examination. She maintained her consistency.

By the consistency in the description of the events,from turning the toilet bucket which the DW3 the cleaner and the DW2 confirmed was always in the toilet to keep water,obviously these are very strong circumstantial evidence against the Defendant who is about 6feettall.The unchallenged evidence of the existence of the bucket and the purpose for which it was used was not impeached under cross examination rather it was confirmed and corroborated by the Defendant's witnesses.

This child had no motive to fabricate that story and it was clear that she had not had any knowledge of sexual intercourse.Her demeanour showed innocence.Whenever she said that Defendant put his penis in her vagina, I watched the demeanour of the Defendant andobserved him blushing.

The evidence of the Prosecutrix was not in any way demolished by the cross examination, rather the answers she gave during her cross examination strengthened her case and made it more credible than expected.

The Court in compliance with Section 209 Evidence Act discovered that she has not only shown competence in answering questions reasonably, but has also shown sufficient intelligence in understanding and answering the questions.I have no reasons to doubt her credibility.

-**NgwutaMbele v. The State (1990)LPELR – 1854 (SC).**

- **IhemegbulamOnyegbu v.The State (1995) LPELR 2728(SC).**

In proof of the ingredient of penetration,the defence counsel contended that since there was no evidence of laceration or

injury or bruises to the vagina or the vagina region by Exh PW4A.That relying on the decision in **Danladi v. State (supra)** that, the Prosecution has failed to prove penetration because Exh PW4A showed "Nil Bruises".

That the PW4 examination on the victim was carried out on the 7thFebruary, 2017 while the alleged rape was on 26th January, 2017 and 27th January, 2017 which is 12 days after the alleged incident andthat the breaching of the hymen was not linked to the Defendant.

On the contrary, the Prosecution argued and relied on **Habibu Musa v. State (2013)8 NCC 464 @ 481,** that the graphic description of strength of the Defendant's penis posited a reasonable conclusion that there was penetration. He urged the Court to accept the evidence of PW4 the medical doctorand Exhibit PW4A the medical report as a material fact or particular to convict the Defendant. He relied on the case of **Natasaha v. State (supra)** and**Lucky v. State (supra)** tourge the Court that he has establish a material evidence in corroboration of the unsworn evidence of the Prosecutrix.

In assessing the evidence before the Court, I took a critical look at the PW4's evidence and Exh PW4A, the medical report.Under cross examination by the Defence counsel, whether running, walking, and jumping which involve stretching of the two limbs, can breach the hymen tissue.

The PW4 answered in the negative and further said;

> ***"The two lower limbs will have to be really stretched apart before the hymen is breached."***

She emphasised on the stretching of the two limbs.

In furtherance to the question as to whether bruises could be found around the region of the vagina or hymen during rape. PW4 replied that in most cases ofrape that there are bound to be bruises but because the hymen is an elastic tissue, sometimes bruises may not be visible but there would be tenderness. She further described tenderness as "***pain which the victim may not know until at examination of that region".*** Also she said pain may not be a diagnosis of rape but it would suggest that rape or defilement may have occurred.

The question that follows is,**was there penetration and to what extent?**

The Court of Appeal, per Alagoa, JCA, in **NdewenuPosu&anor v. The State (2010) LPELR 4863 CA,**which both counsel relied upon stated,

> ***"In Iko v. The State (supra) p.245the Supreme Court was emphatic that it is not necessary to prove an injury or rupture of the hymen to constitute the crime of rape and re-emphasised that penetration however slight insufficient."***

The defence counsel was of the view that there was no evidence of rape since there was no proof of penetration. This assertion is very difficult for me to accept because the evidence of the Prosecutrix as emphatically stated earlier is that the Defendant inserted his penis in her vagina on 26th January, 2017 and 27th January, 2017, respectively. This was the evidence of 8 years old. Coupled with the evidence of PW4 and the medical report Exh PW4A that established a breached hymen, evidencing penetration.All pieces of evidence put together go to point at the Defendant whom the Prosecutrix has been pointing at.

Placing reliance on the Court of Appeal decision in **Saninu Idi v. The State (2016) LPELR 41555 (CA),** the Court of Appeal held;

> ***"The Court will deem that sexual intercourse is complete upon proof of penetration of the penis into the vagina. Any or even the slightest penetration will be sufficient to constitute the act of sexual intercourse."***

It is the position of the law that emission or the rupture of the hymen is unnecessary to establish the offence of rape. See **State v. Ojo (1980) 2NCR 39**and **Ogunbayo v. State (2007) 8 NWLR (Pt 1035) 157.**

Learned counsel for defence argued that the medical report failed to establish bruises. It is in evidence that the medical examination was carried out 12 days after the incident. That number of days could suggest that the injury or bruises complained of must have healed. The decision in **Iko v. The State (supra),** also said, that it is not necessary to prove injury or rupture of the hymen to constitute the crime of rape.Therefore, in the instant case, existence of bruises is not an essential ingredient of proof.More so the evidence of the prosceutrix of thetender age of 8 years was that the Defendant inserted his penis in her vagina. The independent evidence of the PW4, medical doctor and PW4A, medical report was of a material corroborationto the evidence of the Prosecutrix. However,Ariwola, JSC in **Habibu Musa v. The State** held;

> ***"It is however settled law that the required corroboration must not merely establish that a crime has been committed but must go to identify the accused with the crime in some material particular."***

Evidence by PW4 was that the "hymen was not intact" and her assessment was "sexual defilement." The Prosecutrix insisted in all her testimony that it was the Defendant that inserted his penis into her vagina, that he did so in the school toilet and at her house. The Defendant admitted both in his statement to the Police and oral evidence in Court that on 27th January, 2017 he went to the Prosecutrix house between 1-1:30pm to give her lessons contrary to the agreement reached between him and the mother, PW1 to start lesson by 4pm. The question is **why did the Defendant visit the Prosecutrixbetween 1-1:30pm when he was aware that the Prosecutrixwould be alone in the house?**

From and evidence elucidated, I can conclusively saythat the Defendant had the motive to sexually abuse the Prosecutrix of 8 years. All evidence point to the Defendant who taught in her school and more closely visited her home to teach her on 27/1/2017.See **CPL Isah Ahmed v.The Nig Army (2010) LPELR 8069(CA).**

The ingredient of corroboration need not amount to confirmation of the whole account given by the Prosecution witnesses. The evidence of the medical doctor PW4 was that the hymen was breached on examination of the 8 years old girl within the period of the alleged crime and that penetration no matter how slight is penetration. The Prosecutrix pointed at the Defendant as the culprit. In**Ilko v. The State (supra),** the apex Court held that it is always difficult to secure corroboration from evidence of eye witness that the accused person inserted his penis into the vagina of the victim.Therefore, any material particular pointing at the Defendant is sufficient to sustain a conviction. This evidence of material particular was established over a decade ago in the case of **R v. Baskerville (1916-17) All ER RePort 38 at 43** per Lord Reading CJ;whodefined

corroborative evidence for the purpose of statutory and common law rules as:-

> ***"We hold that evidence in corroboration must be independent testimony which affects the accused being connecting or tendering to connect him with the crime. In other words it must be evidence which implicates him that is which confirms in some material particular not only the evidence that the crime has been committed but also that the prisoner committed it…"***

It is therefore mypositionthat the independent evidence of the PW4 and Exh PW4A corroborated and supported the main evidence of the Prosecutrix by implicating the Defendant who visited her house at an unholy hour. The evidence of PW4 is of a material particular. I therefore accept the evidence as being sufficient corroboration of the unsworn testimony of the PW2. The confirmation of the existence of the bucket in the toilet by DW2 and DW3 and the purpose for which the bucket was used added to the evidence of the Prosecutrixas a material particular in corroboration.

By the above evidence and findings, it is not in doubt that the Defendant had the intention to have sexual intercourse and also sexually abused the 8 year Blessing Mbatoon who of course was not his wife.

These issues having been resolved against the Defendant I do not hesitate in holding that the unsworn evidence of the Prosecutrix is corroborated with sufficientmaterial particular.

- Whether the ingredient of intention existed?

Intention to commit a crime exists where the offender manifests his intendment by executing his intention.TheDefendant by the evidence before me manifested his intention.

This intention was fulfilled not only on 26th January, 2017, and also on 27th January, 2017,by visiting the Prosecutrix(PW1) house earlier than scheduledwith the full knowledge that she would be alone in the house contrary to the agreement with the mother of Prosecutrix (PW1) to commence home lessons for her children between 4pm-6pm.

It is my finding that the Defendants early visit to the house without informing the Prosecutrix mother was of the intention to sexually abuse the Prosecutrix when nobody was at home.

- Another ingredient of proof is **whether there was consent?**

It is trite law that an unlawful carnal knowledge of a young person under 18 years with her consent amounts to rape.

It was an unchallenged evidence the PW2 that on 26th January, 2017, the Defendant followed her to the toilet signalled to her to shut up and threatened to cut off her neck.

On the second, day 27th January, 2017 PW2, stated that the Defendant held her neck backwards and covered her mouth with his hand. Obviously, the Prosecutrix of 8 years was threatened, intimidated and forced to have sexual intercourse with the Defendant who claimed to be a prayer intercessor. It is trite law that consent is IMMATERIAL in the instant case.

I therefore opine that;

a) The special nature of the victim who is 8 years and under 18 years, does not matter if she agreed or not. She cannot give consent.

b) It is without her consent and against her will because by law she is unable to communicate consent, consent being an unequivocal voluntary agreement.
c) The sexual intercourse between the Defendant and the Prosecutrix is unlawful because the Prosecutrix is below the legal age to get involved in sex whether consensual or not.Having sexual intercourse with her therefore, amounts to rape as the minor is considered incapable of giving her consent. Hence consent is irrelevant here.
d) The inability of the Prosecutrix to report to the parents or the fact that the victim maintained a seemingly normal routine is not to excuse the abuser (defendant) that the girl of 8 years consented as argued by the Defence counsel but her silence is because of the threat. The period of time between the commission of the offence and giving the account or reporting to the mother PW1 was only one day and that cannot be regarded as a defence and I would not consider it a reliable indication of incredibility on the part of the Prosecutrix.

It should be noted that, the trauma, shame and shock most of the time inhibit the victim of rape from complaining immediately. No matter how late the complaint comes, it does not and would not necessarily mean it is a false complaint nor does it imply consent.

Before I conclude I wish to share this view;

The Bible says a stolen bread is more enjoyable than the one you really worked for.That is why in many cases, the rapist carries his victim to a secret, secluded, obscure and inaccessible place to enjoy his victim and sometimeskill thereafter or threaten the victim with all manner of voodoo and

frightening spells. If an adult victim could succumb to such threats how much more a child.

In the instant case, I still visualise the PW2 (Prosecutrix)taking a seat in the witness box fully relaxed, twisting her finely braided hair, oblivious of the occupants of the Court. Her evidence flowed without interruption, except when the prosecutor cuts in. How would I not believe such a child whose evidence was not burst by cross examination but rather corroborated with material particular.

I have meticulously assessed the pieces of evidence before me and with great diligence, I equally considered the submissions of the Prosecution and the Defence counsel,and in conclusion, I can confidently say that the Prosecution proved his case beyond reasonable doubt.

Accordingly, the 5 ingredient enunciated in the case of **Posu&anor v. The State (supra)** were proved therefore,I hold that;

a) The Defendant DanielAbbah had sexual intercourse with theProsecutrixBlessing Mbatoona minor aged 8 years on 26/1/2017 and sexually exploited the Prosecutrix on 27/1/2017.Consent is immaterial.
b) That the said Blessing Mbatoon was not Defendant's wife.
c) That the said Blessing Mbatoon,theProsecutrix was threatened, intimidated by the Defendant Daniel Abbah.
d) That the saidDanielAbbah by the evidence before had intention to have sexual intercourse with the Prosecutrix.
e) That there was evidence in proof of penetration resulting in breaching the hymen of the Prosecutrix.
f) In terms of corroboration of the unsworn evidence of the Prosecutrix, I hold that, there wereeffective material evidence in corroboration that solidified the evidence of

the Prosecutrix. See **Lucky v. The State (2016) LPELR 4054(SC).**

Based on the above, the Defendant Daniel Abbah is found guiltyinCountIby having sexual intercourse with Blessing Mbatoon contrary to Section 31(2) Child's Right Act,Cap 50 Laws of the Federation of Nigeria, 2003.

Abbah Daniel is found guilty in Count IIby sexually exploiting Blessing Mbatoonby having unlawful carnal knowledge contrary to Section 32(2) of the Child's Right Act, Cap 50 Laws of the Federation of Nigeria, 2003.

I must commend the defence counsel in his steady and strong efforts in exploring all material compassto defending the Defendant.

Allocutus:

Relying on Section 310(1) and (2) Administration of Criminal Justice Act, 2015 the defence counsel addresses the Court as follows:

Defence counsel:

We are not unaware of the provision of the Childs Right Acts. That notwithstanding, we wish to plead with theCourt to reduce the term in view of the fact that the Defendant had not committed any offence before. In ensuring that the whole life of the Defendant is not removed,we pray the Court to tamper justice with mercy.

Prosecutor:

There is noprevious record of any offence against the Defendant.

Prosecutor:

It is clear that the prosecution has no previous records of criminal offence.

Having no record of previous offence, the Court in sentencing the Defendant considers the age of the Defendant who is 39 years, the fact that he is a first offender,I hereby reduces the life sentence in Count I to 14 years imprisonment as prescribed under Section 32(2) Child's Right Act 2003.

Sentencing:

Count I:

The Defendant having beenfound guilty is sentenced to 14 years in Count I.

Count II:

Defendant having been found guilty is sentence to 14 years in Count II. The sentences are to run consecutively with no option of fine.

HON. JUSTICE A. O. OTALUKA
18/11/2019.