

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 28 JABI, ABUJA.
BEFORE HIS LORDSHIP: HON JUSTICE JOSEPHINE E. OBANOR
THIS 15TH DAY OF JULY, 2024**

SUIT NO: FCT/HC/CR/490/2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA **COMPLAINANT**

AND

BINTA AMINU - DEFENDANT

JUDGMENT

The Defendant was arraigned on a two count charge dated 4th day of October 2021 and filed on the 8th day of October, 2021. The charge reads as follows;

1. That you Binta Aminu (business Woman) (f) 36 years old, of No. 7 Bewa Crescent, Wuse 2, Abuja sometimes in May, 2020 at No. 7 Bewa Crescent Wuse 2 Abuja, within the jurisdiction of this honourable court, willfully inflicted physical injury on Happiness Dauda (f), 25 years old of No 7 Bewa Crescent, Wuse 2 Abuja by hitting her severally on her body with mopping stick, wooden spoon (turning stick) and electric cable wire and thereby committed an offence punishable under Section 2(1) of the Violence Against Persons (Prohibition) Act, 2015.

2. That you Binta Aminu (business Woman) (f) 36 years old, of No. 7 Bewa Crescent, Wuse 2, Abuja sometimes in May, 2020 at No. 7 Bewa Crescent Wuse 2 Abuja, within the jurisdiction of this honourable court, psychologically abused, Happiness Dauda (f), 25 years old of No 7 Bewa Crescent, Wuse 2 Abuja by hitting her severally on her body with mopping stick, wooden spoon (turning stick), electric cable wire and by starving her, and thereby committed an offence punishable under Section 14(1) of the Violence Against Persons (Prohibition) Act, 2015.

The Defendant pleaded not guilty to the two counts and the Prosecution was allowed to open its case. The Prosecution in a bid to prove its case fielded 7 witnesses.

PW1, David Dogo, a businessman, testified under oath and stated that on the day of the incident, he was at work when his wife called to inform him that her cousin had been admitted to the hospital and needed assistance. He could only go the following day. Upon arriving at Wuse General Hospital, he found Happiness lying on a chair. He inquired with Rahab (PW3), who explained that Happiness had been beaten by her madam while searching for her phone. Rahab detailed that the madam used a mopping stick, and when it broke, she switched to a turning stick and an electric wire, causing injuries. Rahab also mentioned that Happiness had been locked in a toilet for six days, which led to an infection in her injuries.

David Dogo recounted making payments for Happiness's treatment before she was admitted. He encountered a friend of the Defendant, who advised him to drop any case against the Defendant due to her influence. While sourcing for blood, he learned that the Defendant's husband had distributed money to other patients, and although they initially refused it, the money was eventually thrown onto the bed. David Dogo subsequently lodged a complaint with NAPTIP.

Under cross-examination, David Dogo stated that he did not witness Happiness being dropped at the roadside and that he was not present when she was locked up. He also mentioned that he had never been to the Defendant's house and that the Defendant was not present when they gave the complainant N5000 (Five Thousand Naira). He added that it was Godiya who gave a statement to the Police.

PW2, Godiya S. Kato, stated that the complainant informed her that the Defendant had seized her phone and jotter, which contained people's contact information, and locked her in a toilet for six days, during which she survived only on water inside the toilet. She mentioned that the husband was aware of the situation and had called for the girl to be released so she would not die in the toilet. When the Complainant was finally released, she was in a terrible condition. Godiya immediately took her to the Mpape police station but was redirected to the Wuse police station since the incident occurred in Wuse. Subsequently, she was instructed to take the Complainant to the hospital. While at work, Godiya was connected with someone from NAPTIP, who then assisted in locating and apprehending the Defendant. Godiya also reported to NAPTIP that the Defendant had threatened to kill and bury the Complainant.

Under cross-examination, she stated that the Complainant, Happiness, told her she had been locked up for six days and reached her house on the very day she was released. She mentioned that it took her three days to report the matter to NAPTIP. Although Happiness came to her house on May 19, 2020, she could not recall the specific date she took her to NAPTIP. She also disclosed that she cannot read her statement due to an eye problem that developed after the incident, rendering her unable to read or write. Additionally, she admitted she cannot spell words like "Wednesday" or "turning stick" and that her brother, David, wrote the statement for her.

PW3 Rahab David, a tailor and cousin to the Complainant, stated under oath that on the day of the incident, she received a call at her shop informing her that her brother's daughter was being maltreated, abused by her madam, and was now sick at Wuse General Hospital. Upon her arrival at the hospital, she found her father already there. The consultant informed her that the Complainant's condition was critical and required urgent attention. She called the Defendant's husband, as the doctor mentioned that three pints of blood were needed, and her husband came and paid the bill. The Defendant's husband arrived with a friend and attempted to give them money, which she rejected, and he threw it on the bed. The treatment continued, and due to the severity of the injury, the Consultant recommended a skin graft, which the Defendant's husband paid for, and the surgery was performed. The Complainant's mother was the one staying in the hospital with her.

Under cross-examination, she stated that she dropped out of school in JS 2 and that an officer at NAPTIP, whose name she does not know, wrote the statement for her. She confirmed that she does not live in the same house and that all the information she has was told to her by the Complainant. She mentioned that the Complainant had a child who died before coming to Abuja. She became involved in the matter only when they were at the hospital. Additionally, she does not live with Godiya and is unaware of any illness Godiya may have.

PW4, Happiness Dauda, testified under oath in Hausa, with a sworn court interpreter translating. She stated that the Defendant asked her about her phone and, upon not receiving it, began to beat her. That the Complainant asked her if she wanted to kill her and she said yes and they will not find her corpse. When Happiness requested to swear on the holy bible to prove her innocence, the Defendant refused. Happiness also asked for her own phone, but the Defendant declined and pushed her into the toilet, locking her inside for seven days. During

this period, Happiness began to smell, and the Defendant used a mopping stick and later a turning stick to beat her after the mopping stick broke.

The Defendant insisted on not returning the phone and eventually forced Happiness to gather her belongings and took her to a shop, calling an agent and accusing her of theft. Happiness denied stealing the phone. The Defendant threatened to kill her, recorded a video calling her a thief, and eventually sent her out of the car, giving her N1000 for transportation. Happiness used the money to reach her sister's place and recounted the events to her aunt, who then took her to the police station. The police questioned her about the Defendant's mental state and directed them to Wuse 2 police station. They searched for the Defendant but only found her husband, who was told by the police to ensure Happiness received medical treatment.

Happiness' sister's husband facilitated her treatment. The Defendant's husband attempted to distribute money, which Happiness and her sister refused, placing it under the mattress and later giving it to the police. Happiness stayed in the hospital for two weeks, during which her sister's husband contacted NAPTIP to have the Defendant arrested. Happiness gave her statement to NAPTIP at this time.

Under cross-examination, Happiness Dauda stated that she worked with the Defendant for three months, from March 3, 2020, to May 7, 2020. She was taken to the hospital the day after she left the Defendant's house. Her wounds were stitched, and her flesh was taken to cover the wound. She mentioned that she does not know what diabetes is and would be surprised if a medical report indicated she had diabetes, as she has no illness. She also stated that she was not paid while working with the Defendant. She confirmed that Michael was not called to NAPTIP. Happiness clarified that it was her shop NAPTIP took her to, not the

Defendant's house. Although NAPTIP went to the Defendant's house, she was not with them at the time.

PW5 Yasri Aliyu Bello testified under oath, stating that he is a Senior Intelligence Officer at NAPTIP, responsible for investigating cases of human trafficking and child labour. In May 2020, a case was reported to their office, and they went to the General Hospital to see the victim. The doctor advised that they could not obtain her statement that day but allowed them to take pictures of her injuries. They returned four days later, but due to her condition and the doctor's medical advice, they still could not take her statement. They waited until she was discharged, and she came to their office and gave her statement in Hausa. Since she could not write, she authorized him to take down the statement, which he did.

Under cross-examination, Bello stated that the investigation was conducted by a team comprising Mr. Izu, himself, and a counselor responsible for the rehabilitation center. They visited the crime scene, but he did not enter the toilet where the victim was allegedly locked; it was Mr. Izu who entered the house.

PW6 Izuchukwu Ilikannu testified under oath, stating that he is an Assistant Chief Intelligence Officer at NAPTIP and works in the investigation department, often conducting surveillance and leading investigation teams. In May 2020, FIDA reported a case of assault on Happiness Dauda. Upon arriving at Wuse General Hospital, they found the victim in severe pain. Since she did not understand English, a team member who spoke Hausa was able to get the Defendant's address. They quickly went to the house but found the Defendant absent, so they left a letter. They took pictures of the injury with their official camera, and the doctor explained the situation because the victim could not speak. The Defendant later came to their office and voluntarily gave her statement. PW3 also gave her

statement, noting that the Defendant's husband left N5,000, which they rejected, but he dropped it on the bed.

Under cross-examination, Ilikannu stated that he went to the Defendant's house and met the husband and three children. He went up to the flat and entered the visitor's toilet in the parlor. Since it was in 2020, he could not recall the exact position of the toilet but remembered it had a window. He did not check whether the tap was running, and it was the husband who led them into the house. He did not question the children as they were minors, nor did he go with the victim. The Defendant was out of town at the time, and he did not see any of the items used on the victim. He mentioned that the victim stayed in the hospital for over four months.

PW7 Dr. Mbaleme Samuel Okechukwu a medical practitioner testified on oath and stated that as at 2020 he was at Wuse General Hospital, his attention was called to a case of assault and multiple injuries as the head of the team, she was admitted under accident and emergency and the female surgical ward, she was treated but when they saw the wound was really large they opted for skin grafting and she was discharged after she healed. He wrote a medical report based on a request made.

Under cross-examination, PW6 stated that the Complainant was admitted to the emergency ward on May 21, 2020, and she informed them that she had been beaten up a week prior to her hospital visit. Exhibits E to M show the healing process of her injuries, which does not reflect the condition she was in when she first presented at the hospital. He explained that a full blood count, urine culture, and x-rays on her leg were conducted. Given that the victim was 23 years old, there was no need for a blood sugar test based on her age. He also noted that while one can generally assess a fresh wound, it is difficult to determine the exact cause of an injury once an infection has set in. The pictures only represent a snapshot of about

two weeks into the healing process, and he could not ascertain the age of Exhibit I or provide details about the events leading up to the victim's hospital admission.

The following documents were tendered by the Prosecution and admitted in evidence;

1. NAPTIP statement of David Dogo exhibit A
2. NAPTIP statement of Godiya S. Kato as exhibit 1A.
3. NAPTIP statement of Rahab David as exhibit B.
4. NAPTIP statement of the complainant (happiness Dauda) as exhibit C
5. NAPTIP statement of Binta Aminu as exhibit D
6. Pictures of the victim lying on bed as exhibits E to M
7. NAPTIP Statement of kamal Ibrahim exhibit N
8. N5000 naira in N500 naira notes exhibit N *
9. FCTA District Hospital Medical Report on Request Re: Happiness Dauda as exhibit O.

DEFENCE

In proof of its case the Defence called a sole witness which is the defendant herself. DW1 testified on oath and stated that in May 2020, she applied to Mr. Mike for a househelp and was introduced to Happiness, a 27-year-old mother of one. She noticed blood stains in her bathroom after two weeks, and when she inquired, Happiness explained that she had a family planning issue, which DW1, as a fellow woman, chose to overlook. However, in the third week, DW1 discovered that her ₦50,000 and her Samsung phone worth ₦250,000 were missing. Happiness initially denied taking the items but later admitted that she had given them to someone who lived in Bwari and worked in Gwarinpa. DW1

reached out to the agent for assistance, but he did not show up. Happiness then mentioned that the person she gave the phone to had a mother who worked near Exclusive Store. Despite searching over six streets in Gwarinpa, they could not find the person. They eventually left Gwarinpa for Mpape, where DW1 recorded a video of her dropping Happiness off at Mpape Junction and gave her ₦7,000.

DW1 further testified that Happiness had told her about a pre-existing sickness she had for the past four years, characterized by intermittent bleeding. DW1 claimed to have a recording of this conversation. On May 23rd, she received a call from Wuse Police Station accusing her of beating Happiness with a turning stick and cable, and was shown a picture of Happiness with blood coming out of her leg. DW1 denied any knowledge of the incident. She also went to NAPTIP after the officers came to her house but could not find her, and there she was accused of locking Happiness in the toilet for six days. DW1 was later asked to pay ₦2,000,000 for a settlement, which she refused.

Under cross-examination, DW1 testified that the complainant was responsible for sweeping, mopping, and cleaning the house. She stated that she lived in the house with her husband and children, and she did not report the stolen phone to the police. DW1 also mentioned that PW4 was not charged with theft, and she did not give any money to retrieve the phone, although she later admitted to giving her ₦10,000 for that purpose. DW1 acknowledged that she saw blood stains but did not take the complainant to the hospital or investigate the cause of the bleeding, explaining that she only noticed the blood stains on the day the complainant was leaving. She maintained that the complainant appeared to be in good health when she first arrived at the house, and the bleeding was only observed on the day of her departure.

There was no re-examination.

Exhibit tendered by the Defendant is a flash drive admitted as exhibit Z.

The Defendant closed its case after the testimony of their sole witness and the matter was adjourned for address.

ADDRESSES OF COUNSEL

In its written address the Learned Counsel for the Prosecution formulated a sole issue for the determination of the court to wit; *‘whether the prosecution has proved the instant case against the Defendant beyond reasonable doubt to warrant conviction of the defendant’*.

They argued that it is trite law that in criminal proceedings the onus is on the Prosecution to prove the guilt of the Defendant beyond reasonable doubt but this does not mean beyond all shadow of doubt and referred the court to the cases of *DIBIE v STATE* (2007) 3 SC (PT.1) 176, *BAKARE v STATE* (1987) 1 NWLR, 519 AT 587, *ALKALEZI v STATE* (1993) 2 NWLR (273) 1, *ONAKOYE v FRN* (2002) 11 MWLR (779) 595, *AGBO v STATE* (2006) 6 NWLR (977) 545, *UWAGBOE v STATE* (2007) 6 NWLR (1031) 606.

They argued further quoting Sections 2 (1) and 14 (1) of the Violence Against Persons (Prohibition) Act 2015 under which the Defendant was charged and the two-count charge against the Defendant and submitted that in order to determine whether or not the charge requirement exists and is proven it is necessary to identify the essential elements of the offence and how the Prosecution has proved same.

They submit that;

1. The Defendant willfully inflicted physical injury on the Complainant stating that she stole her money and phone which means she has labelled her a thief and made up her mind to deal with the Complainant mercilessly as demonstrated in the evidence of PW4.
2. The marks on PW4 were inflicted on her by the Defendant as the marks of the physical injuries inflicted on her were seen by concerned relatives who reported to NAPTIP, and that the evidence of PW4 corroborated by the evidence of the other witnesses is overwhelming in this regard.
3. The Defendant flogging the victim with a wooden stick, mopping stick or electric cable wire caused her physical injuries and psychologically traumatized her and argued that PW4 gave a coherent narration of her ordeal in the hands of the Defendant despite being subjected to cross-examination.

The Counsel to the Prosecution further argued that the position of the defence that evidence of PW1, PW2 and PW3 are hearsay is false and misleading and relied on the case of *SUBRAMNIAM v PUBLIC PROSECUTION* (1956) 1 WRN 956 AT 969. They also disagreed with the argument of the defence that the evidence of PW5, PW6 and PW7 does not support the case of the Prosecution and opined that the picture evidence of injuries and statement and evidence given by the witnesses were obtained during investigation and are consistent with their duties and commended the case of *EDET OBOT v STATE* (2014) LPELR-23130 (CA). They argued that the failure of the Prosecution in calling a particular witness is not fatal to her case and their inability to secure the attendance of the Defendant's husband and children to testify in Court does not amount to withholding evidence and commended the case of *PIUS v STATE* (2016) LPELR-40657 (SC). He concluded by stating that the recorded video played and tendered by the Defendant is not helpful to her case since in

the said video the voice of PW4 could not be heard by the interpreter and the flies all over PW4's legs could be seen and urged the court to hold that the Prosecution has proved its case beyond reasonable doubt.

The learned Counsel for the Defendant in its written address formulated a similar issue with the Prosecution; *whether the prosecution proved its case beyond reasonable doubt.*

They argued that some of the evidence of the witnesses particularly PW1, PW2 and PW3 on how the Defendant inflicted physical injury on the Defendant amounts to hearsay evidence and as such inadmissible and relied on the Supreme Court case of OJO v GHARORO (2006) ALL FWLR (PT. 316) 197 and Sections 37 and 38 of the Evidence Act. They argued that PW2 and PW3 did not write their statement, that PW2 told the Court that she did not write Exhibit A but there is nothing on record to show that the statement was written by David and PW3 stated that she did not know the name of the staff of NAPTIP who wrote Exhibit B on her behalf. They referenced the case of OKONKWO v STATE (1998) NWLR (PT. 561) 210, 258 and AZEEZ OKORO v STATE (1998) NWLR (PT. 584) 181 in urging the court to hold that Exhibits A and B are inadmissible documents.

They are also of the view that there are irregularities in the oral evidence of PW4 and Exhibit C, as she stated in Exhibit C that she was beaten by the Defendant and got injured on her back and lost a tooth but she did not give oral evidence to establish the allegations, that her evidence in Court is contrary to her statement to the police thus making it unreliable and referred to EMOGA v STATE (1997) NWLR (PT. 519) 25 and DOGO v STATE (2001) NWLR (PT. 699) 192. They further argued that there are inconsistencies in the evidence of

PW2, PW4 and PW7 as to when she left the Defendant's house and when she was admitted in the hospital and opined that the Defendant is entitled to the benefit of doubt arising from these contradictions. They referred to OGAOLA v STATE (1991) 2 NWLR 9PT. 175) 509, 525.

The Defence contends that the Prosecution's failure to call witnesses who were present during the alleged incident undermines their case. They argue that the testimony of Kamal Ibrahim, the Defendant's husband who wrote Exhibit M, or Michael, the agent who was present when PW4 was allegedly beaten, would have been crucial to establishing the facts of the case and referred the court to the cases AMUSA v THE STATE (1986) 2 CA (PT. 1) P. 395, OPEYEMI v THE STATE (1986) VOL ii QLRN. They stated that the position of the law is that where a material witness is not called there is a presumption that his evidence would have been more favourable to the accused. See also COP v UDE (2011) 12 NWLR (PT. 1260) 189 and ONWUJUBA v OBIENU (1991) 4 NWLR (PT. 183) 15. They argued that it is essential for the court find out the vital ingredients or elements of the offence charged and it is trite that once the court is left in a state of doubt the accused is entitled to an acquittal and commended the cases of UDOSEN v STATE (2007) 4 NWLR (PT. 1023) 125 and DEBIE v STATE (2007) 9 NWLR (PT. 1038) page 30 @ 56 and urged the court to acquit the defendant.

In consideration of the oral evidence of witnesses, exhibits tendered and arguments canvassed in the respective addresses of counsel, the issue that calls for determination in this suit is *“whether the prosecution has proved the case against the defendant in this suit to secure a conviction.”*

Before delving into the substance of this case the defence counsel raised the issue of Exhibits A and B being documentary hearsay thus inadmissible. PW2 stated that she could read and write but developed eye problem, she stated under cross-examination that she wrote it and later changed her story when confronted with writing under cross-examination.

In legal proceedings, evidence must meet certain standards of admissibility to be considered valid in court. One crucial aspect of this is ensuring that evidence is not hearsay. Hearsay was defined in Section 37 of the Evidence Act 2011 as follows:

Hearsay means a statement-

(a) oral or written made otherwise than by a witness in a proceeding; or

(b) contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it.

Section 38 of the Evidence Act goes on to state that:

Hearsay evidence is not admissible except as provided in this Part or by or under any other provision of this or any other Act.

In this case, the defense counsel raised the issue of **Exhibits A and B** being documentary hearsay, challenging their admissibility. For clarity, Exhibit A is the extra-judicial statement of PW 2 which she claimed was written for her by her brother, however there is nothing to indicate that the said statement was written by her brother while Exhibit B is the extra-judicial statement of PW3 which she claimed was written by a staff of NAPTIP (whose name she does not know) on her behalf.

Exhibit 1A, which was recorded by PW2's brother, presents significant issues regarding its admissibility as evidence in this case. Specifically, it was not indicated that PW2's brother wrote the statement for her, nor was it established that the statement was read to PW2's hearing, understood by her, agreed to by her, and then signed as her statement. These procedural deficiencies are critical because they categorize Exhibit 1A as hearsay evidence, which cannot be relied upon by this court. Hearsay evidence, by its very nature, involves statements made out of court and presented in court to prove the truth of the matters asserted, which inherently lacks the reliability of direct testimony from the person who made the statement. The failure to establish that Exhibit A was properly recorded, read, and signed according to legal standards means that the document does not meet the requirements for admissibility under the hearsay rule as defined by Sections 37(a) and 38 of the Evidence Act. Since Exhibit 1A fails to meet the procedural and legal requirements for admissibility as evidence and remains fundamentally hearsay, it cannot be considered reliable or used to support the prosecution's case. Therefore, the court must expunge Exhibit 1A from the record to adhere to the principles of justice and ensure that only admissible and credible evidence is used to make legal determinations.

I hold that the statement made by PW2 and admitted as Exhibit 1A was not written by her and it is accordingly expunged.

PW3 explained that a staff member from NAPTIP, whose name she cannot recall, wrote her statement for her, and she signed it. For the same reasons adduced in expunging Exhibit 1A, Exhibit B is equally expunged.

Exhibit N which is the statement of Kamal Ibrahim the husband of the Defendant who did not testify as a witness in this case. Section 37 (a) and 38 of the Evidence Act provides that statement written other than by a witness is hearsay evidence and is inadmissible. In *ASUMOGHA V. STATE* (2015) LPELR-24534(CA) (Pp. 21-23 paras. E-E) the court held Per IKYEGH, J.C.A

"...I think the Court below was in error in making use of the statements of the witnesses to the police who did not testify in the case to find that the appellant was responsible for the death of the deceased by deliberately pushing the deceased to death from a balcony of a two storey building. For it was held by the Supreme Court (majority judgment of Fatayi Williams, J.S.C., later C.J.N., now of blessed memory) in the case of Onwe v. The State (1975) N.S.C.C. 375 at 381 -382 that -

"The written statement of a prosecution witness is only relevant to the proceedings at which he gives evidence where the witness proves "adverse" or is shown to have made, at other times, a statement inconsistent with his present testimony. Such a statement is not evidence against the accused with respect to the allegation it contains; it is relevant only as to the credibility of the witness (see R. v. White (1924) 17 CR. App. R. p.60, and also Section 208 and 209 of the Evidence Law of the East Central State (Cap.49). Dealing with the same point in The Queen v. Yesufu Akanni (1960) 5 F.S.C. 120 at page 123, where a statement made by a prosecution witness was tendered and admitted in evidence without any foundation being laid for its admission, the Federal Supreme Court observed -

"This document should never have been tendered or received in evidence. The only proper use to which it could have been put was the cross-examination on it

of the witness, if he had said anything in his evidence which was contrary to what he had said to the Police..... It would not have been any evidence of its own truth (Phipson, 9th ed.503). The learned trial judge, however, referred to the statement and apparently treated it as corroborating the witness. This, with respect, was an improper use to make of it." It is sufficient for us to say that the learned trial Judge was in error in admitting the statement in evidence as he did and also in making use of it." See also Aigbe and Anor. v. The State (1976) N.S.C.C. 487 at 490. In addition, the witnesses whose statements were compiled in Exhibit P7 were not presented for cross-examination at the Court below."See also IKE V. STATE OF LAGOS (2019) LPELR-47712(CA) (Pp. 42-46 paras. B).

Consequently, Exhibit N statement of Kamal Ibrahim is expunged from the record of the court.

The Defendant was charged under Sections 2 (1) and 14 (1) of the Violence Against Persons (Prohibition) Act 2015 for willfully causing and inflicting personal injury by means of weapon and also inflicting emotional and psychological abuse on her, in this case the use of mop stick, wooden stick (turning stick), electric cable wire to beat her and locking her up in the toilet for six days without access to food and clean water.

The Evidence Act Section 135 (1) provides that the standard of proof in criminal cases is proof beyond reasonable, it is trite that there are three ways by which the Prosecution can prove the guilt of an accused person (1) By confessional statement (2) By evidence of eye witness or witnesses (3) by circumstantial evidence. See YUSUF VS. STATE (2020) LPELR - 51158 (CA) (PP. 9 - 10 and C.O.P V. ATER (2023) LPELR-60426 (CA)

The prosecution, in proving its case, called seven witnesses: PW1, PW2, and PW3 are relatives of the Nominal Complainant (PW4) who testified about the ordeal described to them by PW4, as well as the subsequent care, treatment, and formal report made to the police. PW4 is the Nominal Complainant and the victim of the alleged assault. PW5 and PW6 are NAPTIP officers who were involved in the investigation of the case, while PW7 is a medical practitioner who treated PW4 and issued a medical report detailing her condition. There are no confessional statements in this case, and the only eyewitness account of the assault is that of PW4. Mr. Kamal Ibrahim, the defendant's husband, and Mr. Michael, the agent who brought PW4 to the defendant, were alleged to be eyewitnesses to parts of the assault but were not called to testify, which necessitates the use of circumstantial evidence to prove the case.

Unfortunately, the Prosecution did not deem it fit to call the individuals who witnessed the said incident but instead fielded individuals as witnesses who were merely informed of the occurrence by PW 4.

I shall at this point refer to the case of POPOOLA v. STATE(2018) LPELR-43853(SC) wherein my noble Lord KUMAI BAYANG AKA' AHS, JSC at (Pp 26 - 27 Paras D - A) stated thus:

"My learned brother, Rhodes-Vivour properly dissected the evidence adduced by the prosecution and sifted the grain from the chaff. The extra judicial statement of PW3 admitted as Exhibit C and his oral evidence pointed to the fact that he was not present at the scene when the appellant attacked the deceased with the iron rod. He gave an account of what happened after the fight and not before or during the fight. His evidence therefore is hearsay evidence and inadmissible. The same goes with Exhibits F3 - F4 which PW6

recorded with the help of an interpreter who was not called to testify. It became hearsay documentary evidence. See: Kajubo v. State (1988) 1 NWLR (Pt. 73) 721; Erekanure v. State (1993) 5 NWLR (Pt. 294) 385; Anthony Nwachukwu v. State (2007) 17 NWLR (Pt. 1062) 31.”

Although there are some discrepancies concerning the dates of the Nominal Complainant’s hospital admission—where PW4 stated that she left the Defendant’s house on May 7, 2020, and was admitted to the hospital the following day, while PW7 indicated that PW4 presented at the hospital on May 21, 2020—such date discrepancies are generally not material, as dates can easily be misremembered.

However, the inconsistencies concerning the timeline between when PW4 left the Defendant’s house and when she was admitted to the hospital are more significant and casts serious doubt on the prosecution’s case. PW2 testified that she took PW4 to the police station immediately upon her arrival, and was advised to take her to the hospital, whereas PW4 claimed she was taken to the hospital the following day. Additionally, PW7’s testimony suggests that PW4 presented at the hospital about a week after the alleged assault. This discrepancy in the timeline is material to the case.

The discrepancy in the timeline is significant because it affects the credibility of PW4’s account of the events and the prosecution’s ability to establish a clear and consistent narrative of the alleged assault. PW2’s testimony that she took PW4 to the police station immediately upon her arrival, where she was advised to go to the hospital, directly conflicts with PW4’s claim that she was taken to the hospital the following day. This difference in accounts creates a gap in the

prosecution's timeline of events and raises questions about the accuracy of the statements made by PW4 and PW2.

Furthermore, PW7's testimony, which indicates that PW4 presented at the hospital around May 21, 2020, adds another layer of inconsistency. If PW4 had indeed left the Defendant's house on May 7, 2020, and was taken to the hospital the following day, she should have been admitted to the hospital around May 8 or 9, 2020, rather than on May 21, 2020. This substantial gap between the alleged date of the assault and the medical examination creates a significant discrepancy that is not easily explained away as a simple error or misremembered date.

This inconsistency in the timeline is more than a minor detail; it undermines the entire sequence of events presented by the prosecution. If the prosecution cannot provide a coherent and reliable timeline of when the alleged assault occurred and when medical care was sought, it challenges the credibility of the entire case. A reliable timeline is crucial in establishing the facts of the case, as it helps to corroborate or refute the allegations made by the complainant.

The failure to align these critical dates calls into question the accuracy of PW4's testimony and the prosecution's overall case. If there are significant discrepancies in the timeline of the events, it suggests that the prosecution's narrative of the assault might be flawed or unreliable. The court must consider these inconsistencies as they are not merely about dates but about the factual basis of the complainant's claims. When a case relies on the coherence and credibility of witness testimonies and the sequence of events, significant deviations from the established timeline can indicate that the case against the defendant has not been proven beyond a reasonable doubt.

It was held in EMEKA v. STATE(2014) LPELR-23020(SC)Per SULEIMAN GALADIMA, JSC (Pp 16 - 17 Paras G - D) that:

"The general principle in a criminal trial is that the prosecution's case must not be so riddled with material contradictions and inconsistencies that would make it unsafe to convict the accused person. See PHILIP OMOGODO v. THE STATE (1981) 5 SC. 5; R v. SAMUEL ABENGOWE 3 WACA 85 and RAYMOND OZO v. THE STATE (1971) 1 ALL NLR III. It follows therefore that every contradiction or inconsistency would be fatal to the prosecution's case. See JOHN AGBO v. THE STATE (2006) 6 NWLR (Pt. 977) 545 at 563, contradictions or inconsistencies to be fatal, it must go to the substance of the case and not to be of minor or trivial nature. The contradictions and sometimes mix-ups in the evidence of prosecution witnesses must be substantial and fundamental amounting to a disparagement of other pieces of evidence adduced: See UDOSEN v. THE STATE 4 NWLR (Pt. 1023) 125 at p.161 and the case of UWAEKWEGHINYA v. THE STATE (2005) 1 NWLR (Pt. 930) at 250."

Exhibit Z captures the moment when the Defendant dropped off the Nominal Complainant and the Complainant retrieved her bags from the boot of the car. However, due to the Complainant being fully covered by her clothing in the video, it is not possible to determine if she had deep wounds or not. Additionally, the conversation between the Defendant and PW4 in the video is not clear enough to discern PW4's side of the conversation.

The position of the law is that where there are doubts as to the guilt of the accused arising from contradictions in the evidence of the prosecution on material points it must be resolved in favour of the accused. It was decided in FRN v.

ABUBAKAR(2019) LPELR-46533(SC)Per WALTER SAMUEL NKANU ONNOGHEN, JSC (as he then was) (Pp 22 - 22 Paras C - D) that:

"It is settled law that in a criminal trial, where there is doubt. as to the commission of a crime by an accused person, the doubt must be resolved in favour of the accused person - in this case the respondent." Seealso ZAKARIAH V. STATE (2018) LPELR-44736(CA), JOHN V. STATE (2022) LPELR- 59067 (CA), MAGAJI V. STATE (2022) LPELR-58157 (CA).

After reviewing the entirety of the Prosecution's case, including witness testimonies and documentary evidence, it is evident that there are crucial issues that undermine the reliability of the evidence. The discrepancies in testimonies, the missing testimonies of potential key witnesses, and the problems with the evidentiary exhibits lead to the conclusion that the Prosecution has not met the standard of proof required to establish the Defendants' guilt beyond a reasonable doubt.

To this end, the Defendant is hereby discharged and acquitted.

HON. JUSTICE J. ENOBIE OBANOR

Hon. Judge

APPEARANCES:

For the Prosecution: Maliki-Esonu Justina Ihuoma, Esq.

For the Defendant: Ibrahim Idaiye, Esq.