IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 18 GUDU-ABUJA
ON THURSDAY THE 28TH DAY OF NOVEMBER, 2024
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO: FCT/HC/CR/18/2022

BETWEEN

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

AND

KUNLE IJABODEDE ……………………………… DEFENDANT

JUDGMENT

The defendant was arraigned on the 14th December, 2022 on a one Count charge of unlawful carnal knowledge contrary to Section 7(1) of the Violence Against Persons (Prohibited) Act (VAPP), 2015 and punishable under Section 1(2) VAPP Act 2015.

The count reads as follows:-

> "That you Kunle Ijabodede "35" of Zuba, Abuja on 1st August, 2022 at about 9.00 hours, at YimiZuba, Abuja and within the Jurisdiction of this Hon. Court did have unlawful carnal knowledge of Funmilayo Emmanuel "F" 27 years old without her consent, thereby committed an offence contrary to Section 1(1) of the Violence Against Persons (Prohibition) Act, 2015 and punishable under Section 1(2) of the Violence Against Persons (Prohibition) Act, 2015."

The defendant pleaded not guilty to the one count charge. Trial commenced with prosecution calling two witnesses, PW1 and PW2.

The case of the prosecution is as follows:-

That PW1 (Funmilayo Emmanuel) was in her house when defendant on 1st August came to her house. That defendant greeted her twice and she came out in order to see who was greeting her. That she had never met defendant before. That defendant started prophesying to PW1 that God would bless PW1 in that particular month and that the month (August

2022) was the month of “enlargement” for PW1. That defendant had told PW1 that he would pray on a bucket of water with which PW1 would bathe with. That after bathing with the water, God would “enlarge” PW1. That prior to praying on the water, defendant had requested PW1 to pick three (3) stones outside and hold the 3 stones enclosed in her right fist. PW1 did as instructed and was surprised to see saliva on the fist with which she held the stones. PW1 testified that the saliva appeared on her right fist.That she was surprised but defendant reassured her that it was a “Miracle from God”. That at that stage she believed defendant and defendant told her that they should both go inside her room. That PW1 obeyed and led defendant into her room. That defendant had told her that he would pray on the water inside defendant room and also give PW1 some bible verses to read into the water. That defendant had fetched water as instructed and took the water inside her room. That the three stones were still tightly gripped by PW1 in her fist. That once they were in the room, defendant had asked PW1 if she had any money on her to which PW1 replied that she only had N750 (Seven Hundred and Fifty Naira). That she gave defendant N200 out of the N750 and defendant thereafter collected the 3 stones from PW1 alongside the N200. That defendant instructed her to close her eyes and put the three stones alongside the N200 on her chest and PW1 obeyed. That defendant proceeded to pray for PW1. That after prayers, PW1 opened her eyes and realised that the 3 stones and the N200 had disappeared. That defendant told PW1 that both the stones and money had entered the body of PW1 and that henceforth, if PW1 failed to obey defendant PW1 would likely go insane. That PW1got scared and promised to obey defendant. That defendant told PW1 that in order not to run mad, he had to remove the money and stones from inside the body of PW1where it was lodged. That defendant in a bid to extract the money and stones from inside the body of PW1 had ordered PW1 to lie down on her bed and raise up her clothes to which PW1 obeyed by lying down and raising her clothes. That defendant had forcefully opened the laps of PW1 and inserted his hand into her vagina and brought out the N200 and the stones. That defendant then proceeded to rape PW1. That after the incident PW1 saw blood trickling down from her private part. That 5minutes after defendant left, it dawned on PW1 that defendant had actually raped her. That she immediately ran to her pastor’s wife whose house was nearby and also

called her mother who lives in Kaduna and reported the incident to them. That her mother had instructed that she go to the police station to report.

In the words of PW1.

> "He put his manhood into my vagina and after he removed it, I started feeling pain and blood started coming out. I was a virgin he was the one that disvirgin me. After that he left and I reported to the police station the second day".

That on the 4th day of the incident, PW1 had sighted the defendant at Madalla Junction within the FCT Abuja. That she immediately called the police and police instructed that she should continue watching him and note which house defendant eventually enters. That PW1 had instructed one of her friends who was at Madalla junction to follow defendant in order to trail and confirm the house defendant enters. That while trailing defendant, the friend of PW1 who was trailing defendant along Madalla had called her to inform her that he had enlisted the help of the local vigilante who had in turn apprehended defendant. That defendant was handed over to the Police station where both their statement were taken. That a woman selling food in front of the police station had told PW1 that she knew defendant as a prophet who had once prophesied toher that she should give alms to people. That the police took both defendant and PW1 to the general hospital in Zuba where tests were conducted on both of them. That at the general hospital, the doctor who attended to them confirmed that defendant had also done something similar to another lady who was likewise brought to the hospital and treated by the same doctor.

Under cross examination, PW1 testified that she did not understand why she gave defendant audience at the initial stage.

> "That immediately I saw the defendant, I simply started obeying everything he said. Also, when asked under cross-examination whether she screamed or shouted while the rape was ongoing PW1 replied "I did not".

PW2 by name Mary Andrew testified that she is the Investigating Police Officer (IPO) who investigated the case. That on 2/8/2022, the PW1 had come to the police station to report a case of rape and narrated the same modus which PW1 testified that defendant deployed in allegedly raping her. That on a particular day. PW1 sighted defendant

on the road wherein she raised alarm and he was arrested. PW2 concluded by saying:

> "I recorded his statement under caution. I also recorded complainant. <u>We had to transfer it to command because we don't treat rape cases.</u> We took both of them to hospital for a medical report."

Under cross-examination when defendant counsel asked PW2 to tell the Court how the complainant was able to convince her that she was raped, PW2 replied,

> PW2 "Her emotions and the way she appeared to be disoriented.

Defendant Counsel further asked PW2 under cross-examination.

> Q. How long was defendant in your custody before transfer to FCT Command.
>
> A. About 5 days.

The prosecution tendered the following exhibits;

i. Two statements of the PW1, one taken atFCT Abuja and the other taken at FCT command Station marked Exhibit K1 & K2.
ii. Statement of defendant given at Zuba Police Station dated 4/8/2022 marked K3.
iii. Statement of defendant dated 11/8/2022 marked Exhibit K4.
iv. Police investigation report dated 26/9/2022 marked K5.
v. Medical reports ofEmmanuel Funilayo, both dated 11/8/2022 (2 pages) marked Exhibit K6 & K7.
vi. Two test results of Victim marked Exhibit K8 & K9.

Defendant thereafter opened his defence with defendant as a sole witness. Defendant testified that on the 4/8/2022, he had gone to Madalla market to buy rice and thereafter was waiting to board a motorcycle when he saw 2 women and a man approaching him. They enquired if he knew PW1 and he answered in the negative. They then accused him of forcefully raping the lady but defendant insisted that he had never seen the lady. That the vigilante in that area came and took both of them to their office. That the PW1 had gone to bring the police who arrested the defendant and took both of them to Zuba police station in FCT Abuja. DW1 further testified that at the police station he was not forced to write his statement but wrote it voluntarily. That the police took both himself and PW1 to the hospital to conduct tests.

Defendant under cross-examination further testified that he was not in Abuja on the day of the alleged incident and he told the IPO that much. At the conclusion of trial both learned Counsels filed their respective written addressed.

The Defendant counsel in their final written address filed 15/5/2024 raised three (3) issues for determination to wit;

1. Whether prosecution has proved all the ingredients of the alleged charge/offence against the defendant beyond reasonable doubt to secure a conviction.
2. Whether the self-contradictory, corroborative evidence of the prosecutrix (PW 1) before the court is sufficient in law to sustain the defendant's conviction for the offence charged.
3. Whether the documentary Evidence adduced by the prosecution had supported the charge against the defendant.

Summarily learned counsel submitted that under our criminal Law, it is not the duty of the defendant to prove his innocence because the standard of proof is prove beyond reasonable which demands that it is not enough for the prosecution to suspect or allege the defendant of having committing a crime. Counsel submitted that by the entire evidence before the court of the prosecution's witnesses, the prosecution has failed to prove beyond reasonable doubt, the essential ingredients of the offence. Counsel submitted that the prosecution has failed to lead credible evidence before the Court to prove that the defendant actually committed the offence charged. Counsel also submitted that the PW2's evidence is grossly insufficient to prove the charge against the defendant as it has failed to constitute substantial evidence that this court can rely upon to convict the defendant. Counsel submitted that the alleged medical reports does not prove the necessary or complete analysis of a thorough medical forensic examination of rape such as the DNA test for both of them to link the defendant with the alleged crime. That there was no clear impression of finding at the end as to whether there was sexual assault or molestation. That the mere statement of a broken hymen, is, not proof of rape by this defendant. Counsel further submitted that there exists the possibility, had those thorough tests been carried out on the PW 1, the prosecution may have been in a better position to substantiate therein and the honourable court, cannot arrive at any direct conclusive decision based on the incomplete evidence of

the medical reports and urged the honourable court to hold that from the totality of the evidence of the prosecution, the prosecution has failed to prove as alleged against the defendant. Counsel submitted that the prosecution has failed to call essential & vital witnesses that were necessary to give corroborative evidence & to prove the charge before the court. That it is settled law that where there is some element of doubt in criminal Proceedings, the doubt inevitably has to be resolved in of the defendant favour, where the allegations of his commission of the crime have not been proved beyond reasonable doubt. Counsel further submitted that the evidence of PW I and PW2 with the medical reports (exhibits) which was tendered are not capable of corroborating the evidence of PW I and urged the court to discharge the defendant and acquit the defendant on the one count charge against him. Counsel relied on the following authorities amongst other; BELLO V. THE STATE (2012) 8 NWLR (PT. 1302) 207; Sections 122(m) and 135(1) of the evidence Act, 2011; Section 36(5) of the 1999 constitution (as amended); EMEKA V. THE STATE (2001) 14 NWLR (PT.736) 666 @ 683; OKOH V. STATE (2014) 8NWLR (PT. 1410) 502; ADEKOYA V. STATE (2012) 9NWLR (PT. 1306) 539 @ 565; AKPAN V. STATE (1991) 3 NWLR (Pt. 186) 646; ARCHIBONG V. STATE (2006) 14 NWLR (PT. 1000) 371; GEORGE V. STATE (2009) 1 NWLR (PT. 1122) 325 @ 352, paras E-H; DAMINE V. AKPAN (2011) ALL FWLR (PT. 580) 1298 @ 1301; FRN V. USMAN (20112) 8 NWLR (PT. 302) 142 @ 156-157; BASSEEY V. STATE (2012) NWLR (PT. 1314) 209 @ 234 and STATE V. GWANGWAN (2016) SC;

Likewise, the Prosecution in their final written address also raised a sole issue for determination to wit;

1. Whether having regard to the facts and overwhelming evidence before this honourable court, the prosecution has proved the offence of rape against the defendant to warrant a sentence of guilt against the defendant.
2. Whether the defendant has raised any defense to the allegations against him to exonerate him from being convicted as per the charges proved against him by the prosecution.

Summarily on the first issue, learned counsel submitted that it is very pertinent to note that lack of consent is one of the most important elements to consider in a charge of rape against a Defendant.

Penetration, no matter how slight will amount to rape, once there is lack of consent or where such consent is obtained by fraud or misrepresentation as in this case. Counsel submitted that with the testimony of the Prosecution's witnesses before this Court and the exhibits tendered, the Prosecution has been able to establish clearly that PW 1 was raped on the 1st of August, 2022 by a person who fraudulently had carnal knowledge of her without her consent. Counsel objects to the Defendant contention that PW1 did not call some named persons to corroborate her testimony and posit expressly that in a criminal trial, there are no number of witnesses to be called by the Prosecution in the prove of its case, all that is required of the Prosecution is to call only key witnesses to prove its case. Counsel submitted that in the instant case, because the identity of the Defendant was not at any point confusing to PW 1, it suffices to state that prove of one of the elements of rape is enough to grant a conviction of rape against the Defendant. Counsel opposed the contention of the Defendant in his Written Address that there was no evidence of semen or pubic hairs or any prove of such before this Court with the already established principle of law that penetration is enough to convict a Defendant in an offense of rape. That there is no requirement as to the degree of penetration required for the act to be termed rape. Counsel submitted further that the position of the law is that once the content of a medical report is not objected to by a Defendant it can be admitted when tendered through the IPO or any other witness.

On the second issue, counsel submitted that where the Prosecution has successfully discharged the evidential burden placed on its shoulders, the burden is then shifted to the Defendant to enter a very valid defense to the allegations levelled against him. That the Defendant has not put up any defense to the Charge against him. That a mere denial of an alleged offence without more cannot operate as a defense to a criminal charge. Counsel submitted that whenever a defendant in a criminal trial has to prove a fact, be it in the form of a special defense to the charge levelled against him, or of any other particular or peculiar fact, the Defendant discharges this burden merely by preponderance of evidence just as in an ordinary civil suit. That the Defendant has failed to meet this standard. The issue in question with due respect, be resolved against him. Counsel then submitted that the evidence of the prosecution witnesses is unshaken and the true position of how PW 1

was taken advantage of by the Defendant and raped. That it is settled law that where there are circumstantial evidence corroborating an act, same should be resolved in favour of the prosecution. Counsel submitted that based on the evidence of PW 1, the evidence is in consonance with the evidence of PW2 and all the exhibits tendered has sufficiently corroborated the testimony of the PW 1 that, the Defendant committed the offence. Counsel submitted that the circumstantial evidence before this Honourable court are positive, compelling and with mathematical precision pointing to the guilt of the Defendant. That prove beyond reasonable doubt does not in any way mean prove beyond every shadow of doubt. Counsel submitted that it is the position of the law that no court can speculate on evidence not before it. Counsel then submitted that the DWI failed to pinpoint the areas of conflict in the testimony of PW 1 and all exhibits tendered in court, hence the court cannot just imagine those conflicts, hence such documents should be discountenanced. Counsel submitted that the prosecution has succeeded in establishing by cogent and credible evidence the ingredients for offence of rape and criminal intimidation under Section 1 of the Violence Against Persons (Prohibition) Act, 2015 and Sections 282, 283 and 397 of the penal code and urged the court to convict and sentence the defendant on the one count charge. Counsel relied on the following authorities amongst others; ANAYO ANYIGOR V. STATE (2019)14 NWLR CPT. 1691) PG 47; OKOH V. NIGERIAN ARMY (2018) 6 NWLR PT. 1614 PG. 1 80; Section 1 of the Violence Against Persons (Prohibition) Act, 2015; OFORDIKE V. THE STATE 5 (2019) NWLR PT. 1666 PG. 406; ABIMBOLA V. STATE (2021) 17 NWLR (PT. 1806) S.C; MOHAMMED V THE STATE (2018) 13 NWLR PT. 1635 pg. 90; BENJAMIN V STATE (2019) 15 NWLR (PT. 1696) PG. 544; ALI V STATE (2021) 12 NWLR (PT 1789) 159 S.C; ADENEKAN V. THE STATE OF LAGOS (2021)1NWLR (1756) 130 C.A; GABA V. TSOLDA (2020) 5 NWLR (PT. 1716) S.C 1 (PG.25 PARAS F-H); IKENNA V. BOSAH (1997) 3 NWLR (PT.494) 439; IKENNA V. BOSAH (1997) 3 NWLR (PT.494) 439.

Having listened to testimony of witnesses and read submissions of learned counsels, the lone issue for determination is;

> "Whether prosecution has proved its case beyond reasonable doubt?"

Section 135(d) of the Evidence Act states as follows;

> *"If the commission of crime by a party to any proceeding is directly in issue in any proceedings civil or criminal, it must be proved beyond reasonable doubt".*

Going by the provision of **Section135 of the Evidence Act**, the burden of proof in a criminal case is on the prosecution and the standard of proof is "proof beyond reasonable doubt". This presupposes that the prosecution evidence must be so convincingthat there is no reasonable doubt that the defendant is guilty.

In**OMOREGIE VS. STATE (2017) LPELP-42466 (S.C)** the Supreme Court held as follows:

> *"The law is settled that in criminal cases the burden of proof that the accused committed the offence for which he is charged lies squarely on the prosecution, who must prove its case beyond reasonable doubt and a general duty to rebut the presumption of innocence constitutionally guaranteed to the accused person. This burden never shifts".*

Therefore, it is the duty of the prosecution in this case to prove all elements of the offence for which defendant is charged.Defendant in this case is being charged under **Section 1 (1) of the Violence Against Persons (Prohibition) Act, 2015**. The section states as follows:

> *S.1(1) A person commits the offence of rape if;*
>
> *a. he or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else.*
>
> *b. The other person does not consent to the penetration.*
>
> *c. The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of takingaway the will of such person or in the case of a married person by impersonating his or her spouse.*

From the above, the elements of rape which the prosecution has the burden of proving under the VAPP Act is as follows:-

1. That defendant intentionally penetrated the vagina, anus or mouth of PW1 with any part of his body.
2. That PW1 did not consent to the penetration.

3. That the consent was obtained by force or means of threat or intimidation or fear of harm or by means of false and fraudulent representation as to the nature of the act or by use of substance or additive capable of taking away the will of PW1.

I will take both three elements simultaneously as they are interwoven.Prosecution in its case testified that PW1 was at home when defendant came to her compound. That there were 4 people at home in their respective rooms while PW1 was also in her room (Each tenant occupying the house occupied a room respectively).That PW1 had come out and defendant had fraudulently told her that he would help her with prayers in order to make the month of August, 2022 her "month of enlargement". That PW1 had obeyed all the instructions of defendant up till the time defendant raped her forcefully in a bid to remove the three stones and two hundred Naira (N200.00) which had mysteriously entered her body. That defendant had forced himself on PW1 and forcefully raped her without her consent. However, evidence before this Court is to the effect that the defendant allegedly told PW1 to lie down on the bed and raise up her clothes and PW1 obeyed on the premise that defendant had allegedly made her believe that she would run mad if he did not have sex with her. Prosecution did not prove the element of force and non-consensual sex.

In the words of PW1:

> "He said for the money to come out, I should lie down on the bed and he instructed that I raise up my clothes, I obeyed, he opened my laps, by force, he brought out the N200.00 with the stones and showed me the money then he raped me. He sleep with me (sic) and after that blood came out from my private part."

Under cross-examination the following ensued:

> Q: All the while you didn't scream or shout!
> PW1: I did not.
> Q: Do you know the defendant?
> PW1: Never!!
> Q: So why give him audience?
> PW1: I didn't know how it happened, immediately I saw him anything he says, I answer him"

From the above, by the testimony of PW1 there was no force used by the alleged rapist and PW1 consented by lying down on the bed and raising her dress for the stranger whom she had never met to have sex with her

by penetrating her vagina.Prosecution in this caseis alleging fraudulent misrepresentation. That if the defendant had not allegedly misrepresented facts to the PW1 it would not have been possible for the defendant to allegedly rape PW1.I have read the alleged misrepresentation which includes 3 stones and N200.00 and the alleged misrepresentation that the 3 stones and N200.00 which PW1 believed had mysteriously entered her body would make her run mad if defendant did not remove it from the Body of PW1 and which defendant allegedly removed from the body of PW1 by penetrating her vagina with his penis.To say I am surprised is to say the least. PW1 at the time of incident was 27 years old. The testimony of PW1 about why and how she allegedly succumbed to having sex with defendant is nothing short of absurd; it is not only absurd, it is unbelievable. Nevertheless, there is a saying that "wonders shall never end". I use the phrase "wonders shall never end" because at times what seems absurd and unbelievable might actually be true. I will now beam my searchlight on the investigation carried out by the police, as it is presumed that the police must have carried out detailed investigation and found the defendant capable before charging him before this Court.

From evidence of both prosecution witnesses, I have itemised the following:-

1. PW1 after allegedly being raped by the defendant ran to her pastor's wife who raised an alarm. That an Igbo woman that was outside the pastors house had asked PW1 that "Is it the man wearing red shirt" to which PW1 had answered "Yes" and the Igbo woman had said "If I (PW1) had shouted they would have held him". Apparently, the Igbo woman saw the alleged rapist but was not called by prosecution to give evidence neither did the police investigated the Igbo woman's claim, that she saw the rapist nor called the Igbo woman during investigation to identify the defendant in order to confirm the assertion of PW1 that the alleged rapist was the defendant.
2. The doctor who treated and carried outtests on both the defendant and PW1 had allegedly told PW1 that he was seeing defendant for the 2nd time as defendant had been arrested some time ago and brought to the hospital by the police to conduct the same tests on the allegation that he had raped another woman prior to that of the PW1. Again, the police failed to investigate this claim by the

doctor. The fact that the doctors report states that PW1 was no longer a virgin due to a broken hymen goes to no issue as there is no evidence before me linking the defendant to the broken hymen of the PW1.

3. The PW2 who was the investigating police officer at Zuba emphatically said in her examination-in-chief and cross-examination that the police station at Zuba do not have the powers to investigate a case of rape, hence the case was forwarded to the FCT Command. Again, there is no testimony from the IPO at FCT command who eventually investigated the matter. The only evidence linking this case to the FCT command is Exhibit K5 which is titled "Police investigation report of the allegation of rape against the defendant". The said Exhibit K5 emanated from the Gender Unit of the criminal Investigation department of the FCT Police command dated 26th September, 2022. The officer in charge of Gender Unit of FCT Command by name "SP Maraha Dauda" who signed the report and who allegedly investigated this crime at the FCT Command was not called as a witness.

I will however fulfil all righteousness and evaluate the findings of the said investigation report not minding that the maker of the document "SP Maraha Dauda was not called as a witness. It is interesting to note that page 4 of the investigation report states as follows:

> Paragraph (4ii) That the suspect Kunle Ijabodede performed some magic and eventually had carnal knowledge of her.
>
> (4iv) That the suspect Kunle Ijabodede was once arrested for a case of rape investigated by the same Zuba division and same IPO.

From evidence before me, there is no proof of "magic" used on the PW1 by the defendant. Furthermore, nowhere in the evidence of PW2 who is the IPO that investigated the matter at Zuba did she testify that she had once investigated a case of rape against the defendant at Zuba police station.

The act of the IPO of Zuba tendering the investigation activities report of the Gender Unit Department of FCT Command is nothing short of hearsay. It is a principle of Law that a matter is never proved by hearsay evidence. The evidence of a police officer who did not investigate a crime is inadmissible and hearsay evidence.

Section 126 of the Evidence Act provides:

Subject to the provisions of part iii oral evidence shall, in all cases whatever, be direct if it refers to-

a. a fact which could be seen, it must be the evidence of a witness who says he saw that fact:

b. To a fact which could be heard, it must be the evidence of a witness who says he heard that fact.

By **Section 126 of the Evidence Act 2011** the IPO who investigated the facts of a case has the duty of giving evidence of such facts, what he saw what he heard and what he perceived during investigation.

In **STATE VS. ISAH (2012) 16 NWLR pt. 1327) 613**, the Supreme Court per Justice Rhodes Vivor noted that there was no investigation conducted in that case by the two policemen who gave evidence for the prosecution as the only role they played was to obtain confessional statement from the respondents.RHODES-VIVOR JSC held that;

"The role played by the police which ought to have been a thorough investigation of a robbery case could best be described as administrative or institutional inertia. A dismal effort that leaves much to be desired".

In this present case, PW2 who was the IPO at Zuba only took statement from defendant. The circumstances and peculiarity of this case is on all fours with the case of **STATE VS. ISAH (supra)** as the police officer who gave evidence before this Court merely took statement of both defendant and PW1 at Zuba police station but did not investigate this matter as in the words of PW2 "we do not investigate cases of rape so I had to transfer to FCT Command". It is my view that evidence of PW2 is more hearsayand unreliable and I so hold.

I had in the earlier part of this Judgment stated that prosecution failed to call material witnesses in prove of its case. It is the duty of prosecution to call material witnesses to aid the discharge of the burden of proof placed on the prosecution which is proof beyond reasonable doubt. In the case of **USUFU VS. STATE (2007) 1 NWLR (pt. 1020) 94 @ 117-118** GALINJE JCA held as follows;

"Clearly from her extra judicial statement and her evidence, three persons namely Ibrahim Danyero and Alhaji Bala played prominent roles during the commission of the offence and subsequent arrest of the appellant. They are therefore vital witnesses where evidence would have conclusively shown whether or not the appellant was among those who attached PW1 or

> *whether there was indeed a robbery attack... This is a criminal trial. The prosecution is bound to call all the material witnesses in order that the whole of the facts may be put before the Court. Failure to call them is fatal to the case of the prosecution."*

In this instant case, I had earlier stated that prosecution failed to call the Igbo woman who lives in the same house with the Pastor of the church of PW1 as this Igbo woman confirmed she saw defendant walking from the direction of the house of PW1wearing a red shirt and walked past the pastor's house. Calling this Igbo woman would have been vital to prove that defendant was around the scene of crime on the date of incident.Prosecution also failed to call the medical doctor who conducted tests on both the defendant and PW1 because PW1 had given evidence that the medical doctor confirmed that defendant had prior to the incident of rape of PW1, had been brought to the hospital for medical tests on a separate crime of rape. The evidence of the doctor would have been very vital in proving that the defendant was a repeat offender.More damaging to the case of the prosecution is the evidence of PW2 who was the inital IPO at Zuba Police Station. The police investigation activities from Gender Unit of FCT Command stated that PW2 had prior to the incident arrested defendant on another charge of rape with a completely different person, totally unrelated to this crime. However, PW2 in her oral evidence before this Court never mentioned that the defendant was once arrested for a case of rape at Zuba police station which arrest was totally separate from the one leading to the charge before this Court.

In all, case of the prosecution was so watery and devoid of investigation. From facts before me, the police did not do any investigation not to talk of thorough investigation.It is unfortunate that the police in this day and age can carry out such careless, erroneous and deficient investigation. Investigation can best be termed as "mediocre" to say the least. It is made worse by the sloppy and tacky prosecution of this case. The prosecution should know that in this day and age the simplest way of securing the attendance of a witness in Court is to subpoene such a witness as failure to call vital witnesses linking the accused to an offence is fatal to the case of the prosecution.It is obvious that the case of the prosecution is built on suspicion, and it is trite that suspicion however strong cannot ground a conviction.In all, the prosecution has

created huge doubts in the mind of the Court and it is trite that such doubts should be resolved in favour of the defendant.It is the consideration of the weight of evidence before me that will decide the guilt of the accused.The case of the prosecution is simply based on sentiment, hearsay and speculation which have no place in law.

Consequently, I hereby hold that the prosecution having failed to prove its case against the defendant, the case of the prosecution hereby fails and the defendant is accordingly discharged and acquitted.

PARTIES: Defendant is present.
APPEARANCE: Comfort A. Akolo appearing for the prosecution. W. M. Koragoma appearing for the defendant.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
28TH NOVEMBER, 2024