

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 18 GUDU-ABUJA
ON THE 10TH DAY OF DECEMBER, 2024
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO: FCT/HC/CR/727/23

BETWEEN

COMMISSIONER OF POLICE..... COMPLAINANT

AND

SALISU MAHMOOD.....DEFENDANT

JUDGMENT

Defendant was arraigned on 13th February 2024 before this court on a one count charge of unlawful carnal knowledge.

COUNT ONE:

“That you Salisu Mahmood, male, 40years old of Angwan Hausa, Kabusa FCT-Abuja on or about the 20th September, 2023 at about 21:00hrs behind Angwan Hausa Kabusa, FCT-Abuja, within the judicial division of this Honourable Court did commit an offence to wit: Rape in that you forcefully had sexual intercourse with one Fatima Ibrahim, Female, 8years old of Angwan Hausa, Kabusa FCT-Abuja without her consent. You thereby committed an offence contrary to **Section 31 (22) of the Child Right Act Cap 50 Law of the Federation.**

Defendant pleaded not guilty to the charge. Trial commenced on the 28th February, 2024 with prosecution fielding 3 witnesses, PW1, PW2 & PW3. PW1 is the victim and is 8years old, her name is Fatima Ibrahim. Her testimony was unsworn and taken in open court, but everybody who was not connected to the trial was ordered out of the courtroom, PW1 who is the victim testified that she is in primary two (2). That she was walking home with black sugar when Defendant called her and took her to the public bathroom. That Defendant pulled off her clothes lay her down and inserted his penis into her

private part. That thereafter Defendant left her and she also left but rather than go home, she went to the house of her father's friend where she passed the night. That she got home the following day. Under cross examination, PW1 testified that it was the mother of her father's friend that eventually took her home. PW1 further stated under cross-examination that when she got home she did not tell her father the truth about what happened to her but rather told her mother the truth. That it was her mother that eventually told her father the truth about what happened to her. When asked by Defendant counsel what she told her father that was not the truth, PW1 kept quiet. PW1 said she did not tell her father's friend (in whose house she passed the night) that she was raped, neither did she tell the mother to her father's friend. When asked under cross-examination:

Defendant Counsel: What time did the incident happen?

PW1: I don't know time but it was in the night.

Defendant Counsel: Do you know the name of the person that raped you?

PW1: No.

Defendant Counsel: Before that day, have you seen Defendant before?

PW1: I don't know him before, I know him by his mark.

Defendant Counsel: The night of the rape, what was Defendant wearing?

PW1: Black

Defendant Counsel: Was there light in the bathroom?

PW1: None

Defendant Counsel: The first time you went to the bathroom, did you show your father who raped you?

PW1: No. It was when we were going away I told my father who in turn insisted that he will go and

bring the police. It was my father's friend that pointed out the Defendant.

From the above testimony of the victim elicited under cross-examination, it was at night when the rape happened, it happened in a public bathroom, the alleged scene of crime was pitch black as there was no light in the bathroom. That the first time she went back to the bathroom after the incident, she did not point at Defendant nor did she point at anybody. That it was her father's friend who eventually pointed at the Defendant.

PW2 and PW3 are both police officers. PW2 is Inspector Esabamen Augustine attached to Kabusa Division of the Nigerian Police while PW3 is detective Dennis Uke attached to the Gender Unit Criminal Investigation Department, FCT Command.

PW2 testified that a case of rape was reported by victim's mother by name Fatima Jubril accompanied by victim on the 22/9/2023 at 12:00hrs. That he took the victim to the scene of crime who immediately pointed out and identified Defendant as the alleged rapist who raped her and he arrested Defendant. That he took victim to the hospital where it was confirmed that her hymen had been broken by forceful entry due to bruises on the vagina of the victim. Thereafter, PW2 said he transferred the case file to Gender Unit of the FCT State Command Criminal Investigation Department (CID) because his police station which is the Kabusa Division do not investigate cases of rape that rather it is the FCT Command, State CID that has the jurisdiction to investigate cases of rape. Under cross-examination PW2 said he was informed by victim that the incident of rape occurred around 9pm. PW2 further testified under cross-examination that victim informed him that there was electricity and light was available during the incident.

Defendant Counsel: Did you ask her the lightening condition of the place where the incident (rape) took place?

PW2: She said there was light.

PW3 also said he conducted an identification parade by mixing up Defendant with about 5 (five) male suspects and victim immediately pointed out the Defendant. That the 5 male suspects had tribal marks. That the identification parade was done on 22nd September, 2023, that the Complaint was lodged on 22nd September, 2023 and

Defendant arrested on 22nd September, 2023 and crime scene visited on the same date being 22nd September, 2023. PW3 on his part testified that the case of rape was transferred from Gender Unit of Kabusa Division to FCT CID Command where PW3 was detailed to investigate the crime. That he recorded statement of the Defendant and victim and Defendant's statement was recorded in Hausa language which PW3 stated that he interpreted the contents of the statement in Hausa. That he visited the scene of crime along with Defendant who denied that he had never set his sight on the victim. When asked if he interviewed the people he met at the public toilet (scene of crime) PW3 replied in the negative.

Defence opened his case on 11th July, 2024 with 3 people testifying for defence. DW1 by name Hassan Adamu testified that he sells tea and has his shop beside the public bathroom which is the scene of crime. That on the day of the incident both himself and Defendant were seated with other people. That he was selling tea on that day when the police stormed the scene of crime on motorcycle and arrested Defendant upon a man pointing at Defendant. That Defendant was immediately arrested and taken to the police station. That DW1 and other people present boarded different motorcycles and followed the police and Defendant to the police station. That the victim did not follow the policemen to the scene of crime, rather it was a man that pointed at the Defendant and said "this is him" whereupon the police arrested Defendant. That he has known Defendant for a longtime and he's been an honorable man. DW2 by name Lawani Husseini testified that he sells provision (groceries) in the front of the public bathroom and Defendant is his neighbour. That he witnessed all that happened on the day Defendant was arrested. DW2 testified that he asked the victim who had come there with some men to identify who raped her among the 3 people present on that day, which included the Defendant but the victim said she would be able to identify who raped her but the alleged rapist was not around. That the men had left with the little girl but about 30 – 40 minutes later, the men had come back with policemen and the friend to the father of the victim had pointed at the Defendant as the alleged rapist. DW2 in his evidence-in-chief narrated what an Okada man told him about the incident and what the mother to the friend of victims father told him about the incident, however, this court would discountenance same as it is hearsay evidence.

Defendant finally gave evidence as DW3. That on the day of the incident he was with other people, particularly motorcycle riders washing their motorcycle at the scene of crime when 2 people came with a female child. That the female child is the victim. That she was asked to point and identify the person that raped her but she looked at all of them (including Defendant) and said she was unable to identify the rapist. That they left and came back with another man. That one of them pointed at him and identified him as the rapist. That he was thereafter arrested and taken to Kabusa police division. That he was severely beaten by the police and tortured but he refused to confess to a crime he knew nothing about. That the police officers asked questions about his Bio-data which he gave them. That he signed the statement based on the interpretation read to him. DW3 said he signed Exhibit B2 but the statement contained in Exhibit C2 was not his signature. DW3 under cross-examination said that he did not rape the victim. That the victim was forced to say he has a mark on his face and conclude hastily that he was the rapist. That Fatima the alleged victim was brought to face him at the police station, that when she was asked on two (2) different occasions if Defendant was the person who raped her, she kept quiet. That thereafter, Fatima and her father plus the friend to her father went out, conversed and came back and told Defendant "Fatima identified you by the mark on your face". That he has never seen Fatima prior to the day of arrest.

The prosecution tendered the following documents which were admitted as Exhibits

- (1) Exhibit A – Medical report dated 26/09/2023
- (2) Exhibit B1 – statement of Fatima Ibrahim at Kabusa FCT- Abuja dated 28/9/2023.
- (3) Exhibit B2 – statement of Defendant dated 22/9/2023.
- (4) Exhibit C1 – statement of Fatima Ibrahim at FCT Command dated 28/9/2023.
- (5) Exhibit D1 – statement of Fatima Jubril dated 28/9/2023
- (6) Exhibit C2 – statement of Defendant at FCT command dated 28/9/2023.

Both counsels thereafter filed their respective written addresses.

Learned counsel to the Defendant in his written address raised two issues for determination:

- (1) Upon thorough scrutiny of the totality of the testimonies of the witnesses, has the prosecution proved the essential elements of the offence of rape contrary to Section 31(1) Child's Right Act and punishable under Section 31(2) of the Child's Right Act beyond reasonable doubt to enable this Honourable Court to safely convict the Defendant;
- (2) In consideration of the circumstances in which Exhibit D1, the extra – judicial statement of one Fatima Jubril, was obtained and the fact that she was not presented by the prosecution as a witness in this case: can the court having admitted same as an exhibit attach any weight to the said Exhibit and if doing so will not occasion a miscarriage of justice.

Summarily, defence counsel argued that prosecution has failed to prove the essential elements of the offence of Rape as the evidence adduced by the prosecution is weak. That prosecution failed to establish the guilt of the Defendant through:

- (1) Confessional statement of Defendant
- (2) Direct eye witness account of a witness/witnesses
- (3) Circumstantial evidence.

That Defendant did not make a confessional statement and the statement of Fatima Jubril should be accorded little weight by the court as the said Fatima Jubril was not presented as a witness in order to be cross-examined. Learned counsel to the Defendant further submitted that the IPO failed to investigate nor call the father to victim and the friend to victims father as vital witnesses. Defendant counsel concluded that there are a lot of contradictions in the case of the prosecution and the doubts should be resolved in favour of the Defendant. Counsel relied on the following cases in proof his submissions: *ADUN VS OSUNDE (2003) 16 NWLR PT. 847, 643 @ 674; EDWIN EZIGBO VS STATE (2012) LPELR – 7855 (SC); STATE VS EWANEGWAN (2015) LPELR – 24837 (SC); OCHIBA VS THE STATE (2007) 17 NWLR Pt. 1277 @ Pg. 663; USUFU VS THE STATE (2007) 3 NWLR (1020) 94 @ 121 – 122. GEORGE VS STATE (2009) 1 NWLL Pt. 122 Pg. 325 @ Pg. 352; FSTAI BALOGUN VS STATE (2024) LPELR – 62548 (CA); R VS OGBUEWU (12 WACWAS 483); ALIU VS STATE (2015) 2 NWLR Pt. 1442 @ Pg. 51 @ 60*

The learned counsel to the prosecution in his final written address raised the following issues for determination:

- (1) Whether the prosecution proved the case of the rape of the victim – a minor aged 8 years against the Defendant beyond reasonable doubt.
- (2) Whether Exhibit D1 rightly admitted by the court deserves to be attached weight in the consideration of the evidence adduced by parties in this suit.

Summarily, prosecution submitted that the only duty expected of the prosecution is to link Defendant to the commission of the offence by proving same beyond reasonable doubt. That the PW1 was able to identify the Defendant from an identification parade. The mark on Defendant's face was what the PW1 was able to utilize in identifying the Defendant. Prosecution submitted that questions thrown to the Defendant shows that Defendant was not telling the truth. Prosecution made heavy weather about the testimony of the 3 Defendant witnesses, however a criminal case is won on the strength of the case of the prosecution and not the case of the defence. Prosecution urged the court to consider the statement of Fatima Jubril, not minding that she was not fielded as prosecution witness. Prosecution concluded that circumstantial evidence has proved beyond reasonable doubt that Defendant raped the victim. Prosecution relied on the following authorities: *MTN VS MUNDRA VENTURES (NIG) LTD (2016) LPELR – 40343 (CA) Pg. 46 – 48; KASA VS STATE (1994) LPELR – 1671 (SC). EMOGA VS STATE (1997) LPELR – 1134 (SC) P.10; OFFOR & ANOR VS STATE (2012) LPELR – 19658 (SC) PP. 26-27; OKOYE VS STATE (1972) LPELR – 2510 (SC) PP. 15-16; ODOGWU VS STATE (2013) LPELR – 42802 (SC) P. 23; SANI VS STATE (2017) LPELR- 43475 (SC) PP. 16-19; YOLA VS NKIRE (2014) LPELR – 24202 (CA) PP: 34 – 35 Paras. F-A; NATASHA VS STATE (2017) LPELR – 42359 (SC) P. 24 Paras. B-E*

I will adopt the first issue for determination as raised by prosecution:

“Whether the Prosecution proved the case of rape of Fatima Ibrahim – a minor aged 8 years against the Defendant beyond reasonable doubt”

First and foremost, I must address the raging issue between the two learned counsels which featured prominently in their written addresses which is Exhibit D1, the statement of Fatima Jubril. Fatima Jubril is the mother of Fatima Ibrahim and her statement

was admitted into Exhibit by this court despite the objections raised by Defendant counsel at the stage of tendering the Exhibit. Objection of Defendant was that the court ought not to admit the said Exhibit as Fatima Jubril did not give evidence before this court. This court had immediately given a bench ruling and admitted the said statement as exhibit. In my ruling, I had stated that statements and items obtained by a police officer in the discharge of his duty as an investigative police officer was not hearsay. However Defendant counsel in her written address has submitted that the court must attach little or no weight to such an exhibit. I refer to the case of **SUBRAMANIAN VS PUBLIC PROSECUTOR (1956) 1 W.R.N 956 @ 969** the court in this case held that “Evidence of a statement made to a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is however not hearsay and admissible when it is proposed to establish by evidence, not the truth of the statement but the fact that it was made. See also **NWOSIS VS ACB LTD (1995) 6 NWLR (Pt. 404) Pg. 658 @ 679, Para F-G.** also in **OLAOGUN & ORS VS BENSON (2011) LPELR – 56210 (CA)** the court of Appeal held that a witness who testified of what he did not know personally, such evidence will be deemed as hearsay and inadmissible, however if such evidence was not to establish the truth of the statement but the fact that statement was made, this is not hearsay and admissible.

The above decisions is also provided for under **Section 37 Evidence Act. Section 37 “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, documents or any record whatever, proof of which is not admissible in evidence for the purpose of proving the truth of the mater stated in it.*

Consequently from the authorities cited above I re-iterate that the statement of Fatima Jubril known as Exhibit D1 is admissible only to prove the fact that it was made and not to prove the truth of contents therein. Therefore this court will only acknowledge the fact that Fatima Jubril made a statement to the police, however the contents of the statement will be discountenanced as this court cannot decide the truth or otherwise of the said Exhibit D1 without fielding Fatima Jubril for cross-examination. This section of the Evidence Act and the

position of the court on such statement is in accordance to the doctrine of fair hearing as the Defendant is not able to cross-examine the maker of the statement on the truth or otherwise contained in the said exhibit. In essence, I agree with defence counsel that notwithstanding that the court adopted it as exhibit, the said Exhibit D1 has very little weight attached to it and I so hold.

On the one and only issue for determination, the case of the prosecution is that the Defendant had unlawful carnal knowledge of Fatima Ibrahim, the alleged victim. The Defendant was charged under **Section 31 (1) and punishable under Section 31(2) of the Childs Right Act.**

Section 31(1): No person shall have sexual intercourse with a child.

Section 31(2): A person who contravenes the provisions of subsection (1) of this section commits an offence of rape and is liable on conviction to imprisonment for life.

Prosecutrix being a child (8years old) the prosecution has the onus of proving the ingredients of rape

In **ISA VS KANO (2016) LPELR – 40011 (SC)** The Supreme court held as follows:

“The prosecution has the burden and duty to prove the accused person guilty of the following ingredients in order to sustain the conviction of the offence of rape.

- (1) That the accused had sexual intercourse with the prosecutrix.
- (2) That the act of sexual intercourse was done without her consent or consent obtained by fraud threat or intimidation.
- (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.
- (5) That there was penetration.

It is worthy to note that the Childs Right Act (2003) is the law that guarantees the rights of all children in Nigeria. Hence unlawful carnal knowledge of a child is an act that is not only criminal in nature but also contravenes the fundamental human rights of a child.

It is trite that a child who is 8years old has not attained the age of consent and under the Childs Right Act, it is immaterial whether or not the prosecutrix gave her consent.

Consequently I will go ahead and evaluate the evidence of prosecution in this case, in order to ascertain whether the prosecution has proved that the accused had unlawful carnal knowledge of the prosecutrix by penetration, no matter how slight the penetration is. Secondly that the accused had the mens rea i.e. the intention of having unlawful carnal knowledge of the prosecutrix. From the evidence before me prosecutrix in her evidence had testified that she had been raped by the Defendant while running an errand for her father. That rather than go home after the rape, she had gone to the house of her father's friend where she passed the night and had only gone home in the morning where she told her mother that she was raped.

Section 209 (1) Evidence Act – In any proceeding in which a child who has not attained the age of 14 years is tendered as a witness such child shall not be sworn and shall give evidence otherwise than on oath or affirmation.

Section 209 (3) Evidence Act – provides that a Defendant shall not be convicted for an offence on the unsworn testimony of a child unless such testimony is corroborated by another material witness. Clearly from Section 209 of the Evidence Act, the testimony of prosecutrix must be corroborated before the court can rely on it. I have to state that standard of proof in criminal cases is proof beyond reasonable doubt and this is the main burden of proof in criminal cases. This burden of proof lies on the prosecution and it never shifts.

Section 135(1) Evidence Act “If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt”

In **ANKPEGHER VS STATE (2018) LPELR – 43906 (Sc) @ Pgs 24 - 25**, Kekere – Ekun JSC held as follows:

“There is no doubt that in criminal proceedings, the onus of proof lies in the prosecution throughout the trial and does not shift. In other words, there is no burden on the accused person to prove his innocence. It is also trite that the standard of proof in criminal proceeding is proof beyond reasonable doubt, but not proof beyond a shadow of doubt”.

I had also interviewed the Prosecutrix (PW1) before she gave evidence and I am of the opinion that she possesses adequate intellect to give evidence in this circumstances. I had earlier stated that evidence of PW1 (being a child) must be corroborated by another material witness. PW1 in her testimony before the court said she was sent on an errand to buy black sugar but was raped by Defendant in a public bathroom. PW1 said the incident happened at night and there was no electricity lightening in the bathroom. When asked how she was able to identify the Defendant PW1 responded that by the mark on his face” PW2 although corroborated evidence of PW1 to the extent that the rape happened at night (9pm) but said there was electricity lightening. I will reproduce the segments of the cross-examination of both PW1 and PW2 below:

Defendant counsel: What time did the incident happen?

PW1: I don't know the time but it was at night

Defendant counsel: Was there light in the bathroom?

PW1: None

Defendant counsel: Before that day, have you seen Defendant before?

PW1: I don't know him before. I know him by his mark.

On the other hand snippets of cross-examination of PW2 is as follows:

Defendant counsel: Did they inform you of the time the alleged rape took place?

PW2: Yes

Defendant Counsel: What time?

PW2: At about 9pm.

Defendant counsel: Tell the court the details of identification she gave you?

PW2: She said the rapist had tribal mark.

Defendant Counsel: Did you ask her the lightening condition of the place where the incident took place?

PW2: She said there was light.

From the above snippet culled from cross-examination of both PW1 & PW2, it is unchallenged that Prosecutrix was raped at night in an enclosed place being the public bathroom but there is inconsistency as to the lightening of the place. While PW1 testified that there was no light, PW2 testified that there was electrical lightening. This piece of evidence is a major inconsistency in the case of the prosecution. It is not rocket science that the PW2 would have gotten his testimony as to the lightening effect of the scene of crime from the PW1 and this is because the IPO was not present at the scene of crime when it happened. Also there is no circumstantial evidence in the case of the prosecution to suggest that there was electrical lightening at the time the incident occurred. The prosecution also failed to lay foundation as to whether the PW1 was timid or scared while giving her evidence and as a result had given a wrong testimony as to the lightening effect at the time of rape. I refer to **ONUBOGU VS STATE (1974) NSCC Vol. 9 Pg. 358 @ 366** where the court held: "We are also of the view that where one witness called by the prosecution in a criminal case contradict another prosecution witness on a material point the prosecution ought to lay some foundation such as showing that the witness is hostile before they can ask the court to reject the testimony of one witness and accept that of another witness in preference for the evidence of the discredited witness". However, the testimony of PW1 who is a child was at variance with that of PW2 on the lighting of the scene of crime and it is not the duty of the court to pick and choose which evidence to believe. Also the PW1, PW2 and PW3 are all in one accord that the PW1 had never met the Defendant prior to the incident of rape but the only way she was able to identify

the Defendant was by the mark on Defendant's face. PW1 in her statement to the police (which was written by the IPO on behalf of PW1) is to the effect that "that the name of the man is Mahmud Salisu. I took my father to the scene of crime and I pointed at Defendant. I can identify him by his tribal mark" this part of the statement of PW1 written by PW2 and marked as Exhibit C1 is at variance with testimony of PW1 before this court. Under cross-examination the following ensued:-

Defendant counsel: Did you tell the police the name of the person that raped you?

PW1: I don't know his name

Defendant counsel: The bathroom (scene of crime) did you show your father who raped you?

PW1: No; it was when we were going away I told my father who insisted that he will go and bring the police. It was my father's friend that pointed at the Defendant

The testimony of PW1 was definite that she had never seen nor met Defendant prior to the alleged incident. PW1 repeated several times in her testimony that she had never seen the Defendant and it was her father's friend that eventually pointed at the Defendant as the culprit. In an attempt to corroborate evidence of PW1 the IPO (PW2) testified that the prosecutrix at the time of recording her statement gave him the name of the Defendant as Mahmud Salisu.

Q: In other words she gave you the name of the Defendant as at the time?

PW2: Yes

Rather than corroborate testimony of PW1, the inconsistency seems to be growing wider with regards to the testimony as to the identity of the Defendant. While PW1 testified that she never knew the name of the Defendant, that she had never seen him before and she was not the person who pointed at Defendant rather it was her father's friend who pointed at Defendant. PW2 on the other hand gave evidence that PW1 already knew the name of Defendant at the time of writing statement. It is pertinent to point out that all through

testimony of PW1 before this court she was only able to refer to Defendant as “he” and could not call out the name of Defendant. It is the case of prosecution that the PW1 was able to identify the Defendant by the tribal marks on his face. PW2 testified that he conducted an identification parade by mixing Defendant with 5 men from the police cell and all five men had tribal marks. That the PW1 was able to point at Defendant easily. This part of evidence also contradicts the testimony of PW1 that she was not the person that pointed out the Defendant, rather it was her father’s friend who pointed at the Defendant.

It is the law that for any inconsistency or contradiction in evidence to negatively affect its veracity, it must be materially significant to impact the case of a party. See **JOHN VS STATE (2011) 18 NWLR (Pt. 1278) 353 @ 374**. It is worthy to note that prior to testifying this court had asked the PW1 (victim) preliminary question in order to test the intelligence of PW1 and also test her veracity. Upon being satisfied that the child is able to understand questions and answer intelligently. This court commenced trial and PW1 answered questions to the best of her knowledge, also whenever the same questions were put to PW1 in different forms, PW1 was able to give consistent answers not minding that the questions were the same but being twisted at various times.

The question that comes to fore is whether the inconsistency/contradiction in evidence of prosecution witness is materially significant to impact its case? The inconsistency/contradiction of prosecution witness as to whether there was electrical lighting or not at the time of incident is materially significant in the sense that it is unchallenged that PW1 (victim) had never met the Defendant prior to the day of the alleged crime. Prosecution witnesses are adidem that the incident occurred at night and in an enclosed place which is a public bathroom. It is very significant to know whether there was electrical lightening in other to identify the face of the victim or not. PW2 testified that there was electrical lightening while the victim herself was persistent that there was “no light”. The presence or absence of electric light at the scene of a crime that occurred at night is very material in order to convince the court that victim was able to positively identify the Defendant. Secondly, the testimony of PW2 is that the crime was reported on the 22nd September, 2023, Defendant was arrested by PW2 on that same 22nd September, 2023, PW2 testified that he conducted an identification parade on the same

22nd September, 2023 and also visited the scene of crime on the same 22nd September, 2023. While PW1 (victim's) testimony is that she does not know the name of Defendant and that it was her father's friend that pointed at Defendant as the culprit, PW2 who is the IPO on the other hand testified that on that same 22nd September, 2023 the victim was able to mention the name of Defendant as "Salisu Mahmood" and also point at Defendant. This evidence is materially inconsistent/contradictory as to the positive identification of the Defendant. It is vital to note that Defendant in his testimony said that the victim did not point at him at the police station that rather it was the friend to the victim's father that pointed him out. This piece of evidence is in tandem with victim's testimony and it is worthy to note that all Defendant witnesses DW1 & DW3 are in tandem with testimony of PW1 that it was her father's friend that pointed at Defendant as the culprit.

From the above, it is apparent that the inconsistency in the case of the prosecution is materially significant as it deals with the substance of this case and fundamental to the main issues in question before this court. See **EGWUMI VS STATE (2013) 13 NWLR (Pt. 1372) 525 @ 555 Paras D-F** where Rhodes-Vivour JSC held as follows:

"When two or more persons are called as witnesses to say what they saw on a particular day, there are bound to be discrepancies in their testimonies. The court is only concerned with testimony on material facts and not peripherals that have no bearing on the substance in issue".

I would also rely on the holding of "**OPUTA JSC in IKEMSON VS STATE (1989) LPELR – 1473 (SC) @ Pg. 44** where the learned Jurist of blessed memory held as follows:

"Two witnesses who saw the same incident are not bound to describe it in the same way. there is bound to be slight differences to their accounts of what happened. When their stories appear to be very similar, the chances are that they were tutored or tailored witnesses. Minor variations in testimonies seem to be a badge of truth. But when the evidence of witnesses violently contradicts each

other, then that is a danger signal. Contradictory means what it says –contra – dictum – say the opposite”.

The medical report tendered by prosecution to the effect that the victims hymen is no longer intact will not aid the case of the prosecution as prosecution failed to link Defendant to the broken hymen of the victim.

From the above it is apparent that prosecution witnesses has certainly cast doubts in the mind of a reasonable person. Section 31 of the Child's right Act under which the Defendant is charged provides for life imprisonment upon conviction. The court faced with such probable sentence is duty bound to ensure that the prosecution has proven its case beyond any reasonable doubt, however prosecution in this case has casted more than a reasonable doubt in the mind of this court. I will not be kind with words, prosecution in my view has casted tremendous doubt in the mind of this court and I so hold.

I will now go into the role played by the friend to the victim's father and the investigation carried out by the police. From evidence of prosecution witnesses it is unchallenged that victim was sent by her father to buy "black sugar", that on her way back she was allegedly raped inside the public bathroom. That rather than head back home to report the incident to her parents, victim had gone to the house of her father's friend and passed the night there without informing her parents. That her parents were getting worried when she arrived home the following day. That immediately she got home, the mother noticed she was limping and ultimately got victim to relay to her that she had been raped the night before. The police failed to investigate what transpired at the house of the father's friend the night before. Police practically cut off the house where victim slept after the alleged rape and failed to investigate that angle. Police also failed to investigate the aged woman that escorted victim home from the house of her father's friend. It is very vital for the police to investigate and clear the doubts as to whether victim got to the house of her father's friend raped and limping or she only started limping after she left the house of the friend to her father. It was when her mother who noticed that victim was limping that she enquired and got to know that she had been raped. It is however surprising that it was this particular friend of her father who led them to report at the police station and who also pointed at the Defendant as the culprit.

The chain of events started from going to buy black sugar to being allegedly raped at the public bathroom, to going to pass the night at the house of her father's friend, to the aged woman who escorted the victim home and her mother upon sighting victim at home raised an alarm that victim had been raped. While police investigated the scene of the crime which is the public toilet and the allegation that Defendant allegedly raped the victim, police failed to completely investigate the chain of event of that day by neglecting to investigate the house the victim claimed she slept (i.e. house of the friend to victim's father), what time she got to the house, who occupied the same room where victim slept as I am of the view that an 8 years old would not have been left to sleep all alone in the house of her father's friend; police failed to investigate and interrogate the people present in the house where victim passed the night and what transpired between the time the victim got to the house of her father's friend and when she left in the morning. It is of grave concern that the father's friend in whose house victim passed the night did not deem it fit to call victim's parents to inform them that victim was in his house in order to allay the fears of victim's parents who were worried. It was the following morning when victim came back home, escorted by the elderly and aged woman (mother to the friend of victim's father) that the parents of the victim were relieved. How and why the police failed to investigate how an underage girl would pass the night in the house of an adult male without the said adult male calling the girl's parents is unbelievable, police also failed to investigate how and why an under aged girl would unilaterally decide to pass the night at a house which was not her usual practice, police failed to investigate and conduct a search of the room she slept in and who were the other occupants of that room and also question the occupant of the house the victim passed the night. In my view, there is a huge void in the investigation of the police, a void the police failed to concretize via investigation and which ultimately crumbled the case of the prosecution.

From the above, it is obvious that investigation was not only shoddy but badly done. Prosecution on its part was left with no choice than to prosecute on the shoddy investigation done by the police and this has made the case of the prosecution a bad one as prosecution failed to prove its case beyond reasonable doubt.

In view of the above, I am of the view that Defendant did not commit the crime as charged and Defendant is hereby found not guilty. Defendant is consequently discharged and acquitted.

PARTIES: Defendant present,

APPEARANCES: Ameh O. Ameh for Prosecution, O. B. Ibenegbu with Kera.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
10THDECEMBER, 2024**