IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 18 GUDU-ABUJA
ON THURSDAY THE 14TH DAY OF NOVEMBER, 2024
BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO: FCT/HC/CR/783/2020

BETWEEN

FEDERAL REPUBLIC OF NIGERIA ... COMPLAINANT/APPLICANT

AND

JAMES FRANCIS ..... DEFENDANT/RESPONDENT

JUDGMENT

James Francis was arraigned before this Honourable Court on a 1 count charge as follows.

COUNT 1:
That you, JAMES FRANCIS (M) 16 years old, of FHA, Berger CampKubwa, Abuja, Federal Capital Territory, sometimes in September, 2019, at FHA, Berger Camp Kubwa, Abuja, Federal Capital Territory, within the jurisdiction of this Honourable Court, intentionally penetrated the vagina of one THERESA TITUS (F) 13 years of FHA, Berger Camp Kubwa, Abuja, Federal Capital Territory, with your penis, without her consent, by means of force and thereby committed an offence contrary to Section 1(1) and punishable under Section 1(2) of the Violence Against Persons (Prohibition) Act, 2015.

Defendant pleaded not guilty.Trial commenced and prosecution called four witnesses.The case of the prosecution is as follows:
PW1 who is an intelligence officer with NAPTIP testified that father of prosecutrix had reported a case of rape at NAPTIP office. The complaint was that Defendant raped the prosecutrix who is the 13 years old daughter of the PW2 (a police officer). That PW2 had lodged a complaint that defendant not only raped his daughter but got her pregnant and in prove PW2 provided a positive pregnancy medical report to NAPTIP. That NAPTIP also took the prosecutrixto the hospital and confirmed that she was indeed pregnant. PW1 testified that she investigated and

discovered that PW3 who is brother to the prosecutrix had come home one day and saw a strange pair of shoes in front of the entrance to his father's house. That PW3 asked prosecutrix who feigned ignorance of the shoes but PW3 noticed a movement behind the door and forcefully got hold of defendant. That PW3 realized that defendant was the one who owned the shoes. That PW3 had asked defendant why he was hiding behind the door and held unto him. PW2 asked defendant to pull off his cloths and defendant obeyed and that was how PW3 came to be in possession of defendant's jacket. That PW3 "detained" defendant with a neighbour and went to call PW2 (his father) but the neighbour told him shortly after that defendant had escaped. That prosecutrix had explained to PW1 that the first day defendant raped her was in the house of defendant's brother. That prosecutrix had gone to visit the sister-in-law to defendant's brother and in the process, the sister-in-law had excused herself and that was when defendant seized the opportunity to force himself on prosecutrix and raped her. That this singular incident was the first time prosecutrix would have sex because prosecutrix had informed PW1 that she had blood stains on her pants after which prosecutrix went back home to wash up and thereafter alerted defendant's sister-in-law of the incident. That defendant's sister-in-law had told her to keep quiet and threatened to kill her and wipe out her whole family if she told anyone. That defendant had also threatened prosecutrix with a gun. That the gun belonged to defendant's brother who is a serving policeman. That in the process of raping her, defendant tore her grey skirt (Exhibit K). That the sex was painful. That prosecutrix (PW4) started seeing blood coming out of her private part. On the second occasion prosecutrix testified that she had just returned from having her bath when defendant entered her room and demandedfor sex and threatened her with a knife hence, she had no choice than to succumb. That she went back to defendant's sister-in-law called Mrs. Paulina who repeated her threat and told her not to tell anyone. That on a particular day her brother (PW3) had gone to work when defendant appeared in her room again around 9-10pm. That prosecutrix enquired from defendant what he wanted and it was at that point that PW3 came back from work and PW3 asked her why defendant was present in the same room with prosecutrix and she replied that:

> "He is the person that we normally learn computer lesson together"

Prosecutrix said she had to tell her brother (PW3) that defendant was her computer classmate because she was still scared from defendant's earlier threat. That her brother (PW3) upon seeing the defendant took his phone and jacket and dragged defendant to their neighbour from where defendant ran away. That few days later she fell ill and the hospital confirmed that she was pregnant. PW3 had also corroborated testimony of prosecutrixthat he came back from work and met the door locked. That he initially thought prosecutrix was asleep because he had knocked repeatedly without any answer. That he had sighted strange shoes outside the door and when defendant eventually opened the door prosecutrix told PW3 that the shoes belonged to one of her friends, that he eventually sighted someone behind the door but prosecutrix had informed him that the "person" behind the door was a computer classmate of hers. That it turned out to be defendant and defendant confessed that his name is James and came to collect "something" from prosecutrix. That when PW3 asked defendant why he was present with prosecutrix at such an odd hour of the night, defendant was unable to give a satisfactory answer. That PW3 collected one of defendant's clothing which was defendant's jacket in order to inform their father of the incident. PW2 is the nominal complainant and the father of prosecutrix. PW2 also testified that his son (PW3) had called him around 10-11pm and informed him that he had caught defendant in the room with prosecutrix. That defendant had told PW3 that he a classmate of prosecutrix and they were in the same computer class. That he had told PW3 to go and wake up his neighbour who assisted in apprehending defendant but defendant had escaped. That by the time he came back after 2 weeks his daughter had fallen ill and was later confirmed pregnant. That defendant had denied the pregnancy and said he was not the only person having sex with prosecutrix. That prosecutrix had told him that defendant was responsible for her pregnancy and she was afraid to tell her father due to the threats she received from defendant. PW2 also testified to what prosecutrix had testified in open Court stating that both defendant and defendant's sister-in-law had threatened to kill her and wipe out her family and also that defendant sister-in-law had tactfully left prosecutrix and defendant together in their living room thereby making it easy for defendant to rape her.

Under cross-examination, Defendant Counsel asked whether the family of the defendant had made an undertaking to the family of prosecutrix

to which PW2 replied that they made a promise but that the family of defendant was yet to give his family money promised to date.
It is essential that I reproduced the particular question posed to the PW3 by Defendant Counsel.

"Q: You had a meeting and there was an understanding and there was a promise from defendant family.
A: They promised that out of N233,000 they would give N150,000 and that I should forgive them but till date, nobody has called nor given me any money till date".
Q: After birth till date, has defendant contributed anything?
A: None. It was after my daughter gave birth that Chigozie, the Igbo man arranged a meeting where Onoja (defendant's elder brother) the defence counsel and the defendant came to my room and it was then defendant apologized and owned up that he was the one that got my daughter pregnant-----".

Defendant testified as a sole witness for defence. Defendant testified that prosecutrix and himself were friends but he never had sexual intercourse with her neither did he rape her. That he does not live with his brother but merely visits once in a while. That he does not have access to his brother's guns. That the exhibited Jacket belongs to him and he had given it to prosecutrix on a particular occasion when she said she was feeling cold. That he had gone to collect his jacket when PW3 walked in and enquired what he was doing there. That he had told PW3 that he came to collect his jacket from prosecutrix but he refused and said he would not release the jacket till when their father PW2 returned. That shortly after he was informed that PW3 insisted that he was the person that impregnated his daughter but he had denied insisting that they were mere friends and no rape or sexual intercourse had taken place between them. Under cross-examination defendant said he was aware that his family had a meeting with family of prosecutrix but there was no discussion about money.

The prosecution tendered the following exhibits;

a. Interim report on suspected cases of rape of Theresa Titus (13years) signed by PW1. **Exhibit A.**
b. Statement of Theresa Titus dated 10/12/2019. **Exhibit B.**
c. Statement of Mr. Titus Zizor dated 10/12/2019. **Exhibit C.**
d. Letter of complaint from Mr. Titus UpharZizor addressed to the Director General (NAPTIP) dated 3/12/2019. **Exhibit D.**
e. Statement of Theresa Titus dated 15/12/2019. **Exhibit E.**

f. Statement of Francis James dated 17/12/2019. **Exhibit F.**
g. Pregnancy positive test conducted at Kings Care Hospital on Theresa Titus **Exhibit G**attached are 3 receipts of payment of N1,500, N1,500 and N500 from Kings Care Hospital. **Exhibit H1, H2 & H3.**
h. **3 pages of pregnancy** Scan report dated 29/02/2020 conducted on Theresa Titus. **Exhibit I**[1]complete with picture of scan payment of money receipt issued by blossom scan for the sum of N2, 500.00 and N4, 000.00 **Exhibit I**[2] **& I**[3]**.**
i. Red jacket. **Exhibit J.**
j. Grey skirt. **Exhibit K**

Thereafter defendant closed its case and case was adjourned for adoption of final written address. Learned counsel to the defendant raised a sole issue in his written address for determination to wit:

> "Whether given the evidence adduced by the parties, the prosecution has established the elements of rape against the defendant beyond reasonable doubt".

Learned counsel to defendant argued the sole issue for determination under the following subheads.

i. The burden of proof in criminal cases lies on the prosecution.
ii. The standard of proof of a crime is beyond reasonable doubt.
iii. The prosecution has not established the elements of the crime for which the Defendant was charged.
iv. The prosecution has not discharged the burden of proof on it.
v. The Defendant is entitled to an order of discharge and acquittal.

Summarily learned counsel submitted that it trite law that in criminal cases, the burden of proof lies on the prosecution as provided in **Section 135(1) & (2) of the Evidence Act, 2011** and relying on **Manu v state (2023) 10 NWLR (Pt. 1892) 231 @ 245-246, paras. H-A and Adisa v State (2023) 9 NWLR (Pt. 1888) 85 @ 108 paras. F-G.** Hence that the burden of proving that the Defendant forcefully and without consent of the prosecutrix had sexual intercourse with her is on the prosecution.Counsel submitted that it must be proved beyond reasonable doubt as provided under **Section 35(1) of the Evidence Act and cited Sanusi v. State (2023) 10 NWLR (Pt. 1892) 253 @ 280 paras D-H**. Counsel submitted that in reliance on the case of **Yau v. State (2022) 18 NWLR (Pt. 1863) 601 at 635 paras D-G** that the prosecution did not establish any of the vital elements of the offence of rape as

settled by statutes and case laws. That the prosecution did not call any eye witness or tendered any medical evidence in proof of its allegation that there was sexual intercourse between the defendant and the prosecutrix. Hence the allegation must fail. Counsel further submitted that the prosecution failed to establish that the Defendant had sexual intercourse with the prosecutrix without her consent or that her consent was obtained by fraud, force, threat, intimidation, deceit or impersonation. Counsel submitted that the prosecution failed to tender any evidence of threat to the prosecutrix flowing from the defendant. That no evidence of vaginal penetration was presented by the prosecution before this court. Also, that there is no confessional statement as the defendant from the onset denied having sexual intercourse with the prosecutrix. Counsel submitted that where the prosecution fails to establish or prove the existence of all the elements of an offence, it has failed to discharge the burden of proof of the offence beyond reasonable doubt and the Defendant is entitled to an order of acquittal. In conclusion counsel urged the court to dismiss the prosecution's charge against the Defendant and discharge and acquit the Defendant as the prosecution has not proved all the essential elements for the offence of rape for which the Defendant was charged before this court. counsel relied on the following authorities amongst others; **Ali v. State (20121) 12 NWLR (Pt. 1789) 159 @ 185, Paras G-H; Danladi v. State (2009) 16 NWLR (Pt. 1698) 342 @ 392 para A; Posu v. State (2011) 2 NWLR (Pt. 1234) 393 @ 417 paras F-H; State v. Masiga (2018) 8 NWLR (Pt. 1622) 383 at 402-403 paras E-E; C.O.P v. Ogor (2022) 14 NWLR (Pt. 1849) 49 at 96 paras F-G and Simeon v. State (2018) 13 NWLR (Pt. 1635) 128 at 142 paras D-E.**

The Prosecution in their final written address raised two (2) issues for determination to wit;

1. Whether the Prosecution proved this instant suit beyond reasonable doubt against the accused person to warrant a conviction?
2. Whether the defense has successfully cast doubt in the mind of the Court to secure an acquittal of the charge?

Summarily learned counsel submitted that the prosecution has proven this case beyond reasonable doubt as that is the standard of proof in criminal proceedings. Counsel submitted that the testimony of the prosecutrix outlined the tragic event or series of rape the Defendant committed against her person which was corroborated by the IPO

(PW1) in her testimony which were neither controverted nor contradicted. Counsel also submitted that it would defer reasoning to suggest that the Defendant only made a casual visit to a friend up and around that time only under the pretext of collecting a sweater of which he could have gotten during the day. That it would show his queer intentions towards PW1 who was always left alone all the time. That where the evidence of a witness remains unchallenged, not contradicted or controverted under cross-examination, the court has no option than to act on it. Counsel submitted that the testimonies of the PW2 and PW3 do not amount to hearsay evidence. Counsel further submitted that the Defendant did not meet the requirements to be taken seriously as a credible witness in any way as his evidence is riddled with inconsistences. Hence counsel urged the court to discountenance the evidence adduced by the Defendant. Counsel submitted that the Defence has failed during cross examination or during this case to refute and rebut these facts as testified by PW1 and urged the court to convict the Defendant as charged. Counsel relied on the following authorities amongst others; **ONWUTA v. STATE OF LAGOS (2022) LPELR-57962 (SC); AKPAKPAN v. STATE (2021) 17 NWLR PART 1805 at 258 (Para. G-H) SC; HARUNA v. STATE (2022) 16 NWLR (PT. 1855) 1 SC. Pg.23 Para.B, OFFOR v. COP (2022) 9 NWLR (PT. 1835) 266 SC; UTTEH V. STATE (1992) LPELR-6239 (SC); IBRAHIM V. STATE (2023) LPELR-61065 (CA); IshayakuHabibu v. State (2023) LPELR-60351 (SC) and Onuoha v. State (1989) 2 NWLR (Pt. 101) 25**.
The defendant's reply on points of law is hereby discountenanced because it is basically a reply on facts and law.

Having listened to evidence of witnesses and having watched their demeanour, the issue for determination is;

> **"Whether prosecutrix has been able to prove its case against the defendant beyond measure or doubt".**

First and foremost, parties gave a lot of evidence concerning the pregnancy of the prosecutrix and the fact that prosecutrix eventually had a child for the defendant. It is pertinent to note that the issue of prosecutrix pregnancy and the fact that she eventually delivered a baby allegedly for the defendant is not before me. A Court of Law in a criminal case as this is guided by the charge before it. The charge before this Court is that of defendant intentionally penetrating the vagina of prosecutrix with his penis without her consent, by means of force contrary to **Section1 (2) and punishable under Section I (2) of Violence**

Against Persons (Prohibition) Act, 2015. Nowhere in the charge does it mention that defendant by the act of penetrating prosecutrix vagina got prosecutrix pregnant. Therefore, this Court will discountenance the issue of prosecutrix pregnancy.

Going to the lone issue for determination, it is the duty of prosecution to prove the offence of rape beyond reasonable doubt in order to secure a conviction.**Section 1 (1) and of theViolence Against Persons (Prohibition) Act, 2015** provides that:-

1. *The offence of rape is committed 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 or*
    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 taking away the will of such person or in the case of a married person by impersonating his or her spouse.*

It is the law that a child shall not be sworn before giving evidence in Court, it is also the law that such unsworn evidence must be corroborated by evidence of another person. However, the evidence Act provided an exception under **Section 209 evidence Act**.

> *S. 209 (1): - 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 an oath or affirmation, if in the opinion of the Court, he is possessed of sufficient intelligence and understands the duty of speaking the truth.*
>
> *S. 209(2): A child who has attained the age of 14 years shall, subject to Section 175 and 208 of this Act give sworn evidence in all cases.*

From the above, **Section 209(1)** gives an exception that a child who is above the age of 14 years can give sworn evidence in which case the child's evidence would not need to be corroborated if in the opinion of the Court the child is possessed with sufficient intelligence and understands the duty of speaking the truth.

In the course of this trial, I had taken note of the fact that the prosecutrix was 15 years at the time of giving evidence. I had also interviewed the prosecutrix and of the view that prosecutrix possessed

sufficient intelligence and I also hold the view that prosecutrix understands the duty of speaking the truth having been delivered of a baby and being shouldered with the responsibility of taking care of a baby successfully at a tender age, prosecutrix is not of unsound mind neither was she nursing a disease of mind or body that would have prevented her from understanding the essence of taking an oath, moreover prosecutrix as at the time of giving evidence was above 14 years old (she was actually 15 years old). It was on this basis the prosecutrix gave evidence on oath and was duly cross-examined. Both learned counsel in their written address made heavy weather about the need of corroborating the evidence of prosecutrix. This is not the law, the need for corroboration of evidence ina case of rape was provided for under the old evidence Act and same was expunged in the current **Evidence Act of 2011**.**Section 209 (3)** provides that a person under the age of 14 years who gives unsworn evidence shall be corroborated by some other material evidence in support of such testimony implicating the defendant. Clearly the prosecutrix does not fall under this category and her evidence does not necessarily need to be corroborated by the testimony of another person. In **ABDU MOHAMMED VS. STATE (1991) NICC265**Karibi –Whyte held that;

> *"Unless corroboration is required by law, the evidence of a single witness of the right probative value has always been accepted as sufficient proof for the offence as charged".*

From the provision of **Section 209 of the Evidence Act 2011**, the implication is that in cases where there is need to prove commission of any sexual offences, corroboration is no longer required, however it is my view that corroboration may add to the weight of evidence of prosecutrix as a whole but not a necessity.

Defendant was charged under **Section1 (1) of theViolence Against Persons (Prohibition) Act**, **2015** which I have reproduced in the earlier part of this Judgment. From **Section1 (1) ofViolence Against Persons (Prohibition) Act**, **2015**the ingredient of rape as culled from that section which prosecution needs to prove beyond reasonable doubt are:

1. That defendant intentionally penetrated the anus, mouth or vagina of prosecutrix.
2. That victim did not consent to the penetration.
3. That consent was obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false or fraudulent re-presentation.

From the above the second and third ingredient to wit:- consent of victim was not obtained is hereby struck out as the victim is a minor "13 years" as at the time of incident. According to the Child'sRight Act, the age of consent in Nigeria is 18 years old and victim being only 13 years at the time of incident was incapable of giving consent. Whether or not victim gave her consent is immaterial as victim had not attained the legal age of consent under our law which is 18 years old.

Therefore, prosecution has the duty of proving beyond reasonable doubt that defendant intentionally penetrated the vagina of the victim. From evidence of prosecution, PW1 who is the investigating officer testified that the PW3 who is the brother of the victim came back home and saw the defendant in the room alone with the victim. That defendant hid behind the door but PW3 was smart enough to apprehend the defendant and even got hold of defendant's jacket which is Exhibit J. That defendant had been having series of sexual intercourse with the alleged victim. That the first one took place at the house of defendant's brother and defendant threatened victim with a gun belonging to his brother who is a serving police officer. The said gun was not tendered in evidence neither is there proof before me that the investigating team conducted a search of the house of defendant's brother. That the second time of rape was when defendant followed victim to her house and had sex with her forcefully and also threatened victim. Under cross-examination PW1 said she and her team visited the scene of crime but met nobody at home hence they were unable to conduct any examination of the scene of crime or any search. There is no evidence before this Court that the investigating team went back to the scene of crime, having met nobody at home the first time. It is safe to conclude that there was no search nor investigation of the scene of crime for the flimsy reason that the investigating team met nobody at home the first time they visited.When asked under cross examination: -

> Q: This means apart from the statement taken in your office, you did not carry out investigation at the scene of crime.
>
> PW1 – yes.

Further questions under cross-examination as to whether PW1 made effort to find out the source of the gun allegedly used to threaten victim was answered by PW1 with an emphatic "No!!"

Nowhere in evidence of PW1 did she prove that defendant penetrated the vagina of prosecutrix rather all the evidence of PW1 was tied to hearsay without conducting concrete investigation. PW2 being the father of the alleged victim gave hearsay evidence of what his son and

the daughter told him. The majority of testimony of PW2 was tied to the pregnancy of his daughter which his daughter told him was fathered by defendant and the fact that PW2 spent a lot of money taking care of his daughter's pregnancy and paying for caesarean surgery for birth of the child. PW2 also gave evidence that the family of the defendant had come to see him, apologized and promised to give him some money for the upkeep of his daughter. I had earlier stated in the body of this judgment that the issue of the pregnancy of the prosecutrix is not a charge before me.

Although the pregnancy of the prosecutrix can be used as proof that defendant actually raped the prosecutrix by fathering a child with her at the tender age of 13 years, however, the prosecution argument in his written address that the time of commission of the rape tallies with the time the prosecutrix gave birth will not avail the prosecution as nowhere in the evidence of all four prosecution witnesses did they attempt to merge the time of sexual assault to the resultant pregnancy. Moreover, prosecutrix furnished the Court with medical evidence to prove that defendant actually got pregnant and had a baby. This evidence is unchallenged and uncontroverted, however investigators failed to conduct the most important medical test which is a DNA to prove that the child was actually fathered by the defendant.

In the light of this, I hereby re-iterate that all evidence regarding the pregnancy of the victim will be discountenanced by this Court.

There is evidence before me that defendant actually went to the house of the victim and PW3 met him there. In the course of meeting defendant alone with his sister in the room PW3 seized defendant's jacket as proof that he met him in the room with his sister the alleged victim. Evidence of defendant that prosecutrix was cold and he had borrowed prosecutrix his jacket some days earlier will not avail defendant as that defence is watery. However, according to PW1 who is the investigating officer, defendant had raped prosecutrix on 2 different occasions the first was in the house of defendant's brother and the second was inside the room of prosecutrix when his brother and father were not at home.

However, from evidence of prosecutrix, defendant had raped her two times, the first being in the house of defendant's brother, the second being in her room after she had just finished bathing and defendant barged into her room with a knife hence, she had to succumb on the night Defendant came to the room of PW1, there is no evidence of sexual intercourse on that night.

From testimony of prosecutrix, defendant had raped her on 2 different occasions and this is consistent with testimony of PW1 that investigation revealed that defendant had raped the prosecutrix on 2 different occasions. PW4 (prosecutrix) also identified her torn skirt which was admitted as Exhibit K, the said torn skirt was allegedly torn by the defendant when he forcefully had sex with prosecutrix the first time which she said happened sometime in 2019. Prosecutrix at the time her skirt was torn by defendant and defendant allegedly had forcefully sex with her did not tell anybody. PW1 who is the investigating officer did not give details of her investigation unravelling the torn skirt of the prosecutrix neither is there proof before me that the said torn skirt was torn by the defendant in the process of having forceful sex with prosecutrix.

Now to the lone issue of whether prosecution has been able to proof penetration of prosecutrix through the vagina with his penis. I have looked at the statement of prosecutrix and I will reproduce part of the statement: -

> "On the third occasion, that was when he came into my house again, but my elder brother just came back home and James (defendant) ran behind the door, my brother saw his shoes and grabbed him, he held his clothes and took him to a neighbour but before he came back, the boy James (defendant) ran away."

The above statement of prosecutrix given at NAPTIP on 10th December, 2019 describes the defendant's third visit to the house of prosecutrix. Clearly, the prosecutrix did not state that defendant raped her on the third occasion. It is worthy to note that it was this third occasion that defendant visited prosecutrix that defendant's jacket was seized by the prosecutrix brother (PW3), it was this 3rd occasion that prosecutrix father (PW2) reported the case to the police, however there is no evidence of penetration of prosecutrix by defendant on this third occasion. Also while giving oral evidence prosecutrix testified as follows:-

> "After some days my brother went to work and I was alone in the house around 9-10pm and that was the third time defendant came to my house. I enquired what he wanted <u>and immediately my brother came</u> in and asked what James Francis (defendant) was doing? I replied that he is the person that we normally learn computer lesson together. I said so because I was afraid of his threat. My brother immediately collected his jacket and dragged him to my neighbour"

Evidently on the occasion when defendant was apprehended in the house of prosecutrix (PW3) there was no rape that occurred. That defendant was apprehended in the house of prosecutrix and his jacket seized by PW3 is not proof of rape. Prosecutrix has categorically stated that no rape occurred on that day but that the rape occurred on the 2 previous occasions. Hence the day PW3 caught defendant in their house, the day the father of prosecutrix heard defendant came to his house and reported to the police, no rape or penetration occurred on that day. The case of prosecutrix is that the rape had occurred on two different occasions prior to the 3rd time when defendant was apprehended. Prosecutrix on the 2 prior occasions did not report to the police, no investigation was carried out, no medical report was issued on these two prior occasions and neither the brother of prosecutrix (PW3) nor father nor any of the neighbour witnessed defendant going into the room of prosecutrix. Prosecutrix testified that she did not shout nor tell anybody because defendant threatened her with a gun on the first occasion and threatened her with a knife on the second occasion. Prosecutrix further testified that defendant's sister-in-law a certain Mrs. Paulina had also threatened her on the 1st and 2nd occasion when the rape occurred, however there is no evidence that investigation was carried out on the said Mrs. Paulina neither was she invited for questioning. Investigation by NAPTP, headed by PW1 was based on the 3rd alleged occasion but no rape occurred. Apart from evidence of prosecutrix that defendant raped her on two previous occasions, there is no proof no matter how slight before this Court save for a torn green skirt belonging to prosecutrix allegedly torn by defendant on the first occasion. There is no proof of penetration of prosecutrix vagina by the defendant for the 2 occasions prosecutrix said defendant raped her. Prosecutrix failed to report to her father, prosecutrix failed to report the two prior incidents to her brother (PW3), prosecutrix failed to report to her neighbour (who has been taking care of her in her father's absence). Prosecutrix said she only confided in Mrs. Paulina, however there is no investigation carried out on Mrs. Paulina by the investigating team, as I had earlier stated there is no DNA linking the baby of prosecutrix to defendant. How investigators got hold of prosecutrix torn green skirt allegedly torn by defendant during prior rape of the prosecutrix was not mentioned by the investigating officer (PW1); in fact PW1 as the investigating officer did not mention any torn skirt (Exhibit K) all through her testimony before this Court and PW1 also admitted under cross-examination that she did not carry out investigation at the scene

of crime and her investigation was based on statement taken at NAPTIP office.

> Q: Apart from statement taken in your office, you did not carry out any investigation at the scene of crime.
>
> PW1: Yes.

However, from all the testimony of PW1, there was no investigation carried out but rather relied on statement obtained from all prosecution witnesses. In **STATE VS. ISAH (2012) 16 NWLR (pt. 1327) 613** in this case RHODES VIVOUR JSC berated the two investigating police officers for not carrying out investigation but rather relying on the confessional statement from the accursed.

> *"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."*

From evidence before me particularly testimony of PW1 I would borrow the words of My Lord RHODES VIVOR JSC and state that the action of the PW1 as an investigating officer in indeed "a dismal effort that leaves much to be desired".This is because PW1 relied heavily on hearsay from the prosecution witnessed and dare I say was swayed by sentiments.

Proof of the Act of penetration is the backbone of a case of rape while I will not go into the definition of penetration, it is important that prosecution proves that the defendant's penis penetrated the vagina of the prosecutrix, no matter how slight.However, the prosecutrix was only able to testify albeit unconvincingly that defendant had prior sex with her on two different occasions. The occasion when defendant was apprehended by PW3 inside the room of prosecutrix, there is testimony of prosecutrix that no sex occurred on that day. Rather on the days when sex occurred, prosecutrix simply testified that defendant threatened her with a gun on the first day and threatened her with a knife on the second day. That due to the threats of these two days she succumbed to defendant having sex with her. Prosecutrix failed to testify to the mode of penetration, whether through the anus, vagina or mouth. As I had earlier stated in the body of this judgment investigation was shoddy and poorly carried out.

The poor and shoddy prosecution of this case is made worse by prosecution heavy reliance on the medical report tendered where it only shows that prosecutrix had a positive test for pregnancy. There is no

evidence tying defendant to the pregnancy of prosecutrix and it is only logical to state that the case of the prosecution was merely built on sentiments and hearsay.Section 131 Evidence Act places the standard of proof as to whether or not the accused is guilty of a criminal allegation as proof beyond reasonable doubt.
Also, the Supreme Court has warned severally that sentiments command no place in judicial deliberations rather it is the duty of the Court to put sentiments aside and dish out Justice.
Consequently, it is my view that prosecution failed to prove its case against the defendant and I hereby find the defendant "NOT GUILTY". Defendant is consequently discharged and acquitted.

Parties: Defendant is present.
Appearances: O. C. Atuegbu appearing with P. P. Okonkwo holding brief of Mr. Johnny Agim SAN for the prosecution. Sunday Onubi appearing for the Defendant.

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
14TH NOVEMBER, 2024