

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT NO. 18 GUDU-ABUJA**  
**ON THURSDAY THE 14<sup>TH</sup> DAY OF NOVEMBER, 2024**  
**BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-ADEBIYI**  
**SUIT NO: FCT/HC/CR/309/2023**

**BETWEEN**

**FEDERAL REPUBLIC OF NIGERIA..... COMPLAINANT**

**AND**

**LAMINU AHMED..... DEFENDANT**

**JUDGMENT**

Defendant was arraigned before this court on an eight (8) count charge of rape, sexual abuse and bodily injury.

**COUNT ONE:**

Unlawful sexual intercourse with a child, contrary to **Section 31 of the Child's Right Act and Punishable under the same section of the same Act.**

**COUNT TWO:**

Rape, contrary to **Section 1 of the Violence Against Persons Prohibition Act and punishable under the same section of the same Act.**

**COUNT THREE:**

Sexual Abuse of a child, contrary to **Section 32 of the Child's Right Act and Punishable under the same section of the Act.**

**COUNT FOUR:**

Sexual Abuse of a child, contrary to **Section 32 of the Child's Right Act and Punishable under the same section of the Act.**

**COUNT FIVE:**

Sexual Abuse of a child, contrary to **Section 32 of the Child's Right Act and Punishable under the same section of the Act.**

**COUNT SIX:**

Criminal force contrary to **Section 263 of the Penal Code Act and punishable under Section 265 of the same Act.**

**COUNT SEVEN:**

Intimidation contrary to **Section 18 of the Violence Against Persons Prohibition Act** and punishable under the same section of the same Act.

**COUNT EIGHT:**

Infliction of bodily injury contrary to **Section 2 of the Violence Against Persons Prohibition Act** punishable under the same section of the same Act.

Defendant pleaded not guilty to all the charges. Trial commenced and prosecution fielded 3 witnesses. PW1, PW2 and PW3. A summary of the prosecution's case is as follows:

The investigating police officer (IPO) while serving at Zuba Police Station received and documented a complaint from one Faridat Abdullahi who reported that the Defendant had raped her daughter named Maryam Abdullahi, 7 years old. Both statement of Faridat and her daughter (AB) were recorded by the PW1 and after administering words of caution to the Defendant he willingly volunteered his statement. The IPO took the alleged victim to the hospital where the doctor on duty confirmed that the victim's vagina had been penetrated. That the victim told him that Defendant had lured her to a public bathroom where he raped her. That despite her shout nobody came to her rescue as Defendant had covered her mouth with his hand. That she thereafter went to report to her mother who sells food within the vicinity of the crime scene. IPO further testified that due to the nature of the case being a rape case the police station she is attached at Zuba do not investigate rape cases hence PW1 had to transfer the case file with the initial enquiry documented file to police force headquarters Abuja. That shortly after, PW1 got information that Faridat and her daughter had relocated from their place of business and residence and all efforts to locate both mother and child proved abortive. That at the stage of initial enquiry the mother of the victim had taken the PW1 to the scene of crime (a fruit market) and pointed at the Defendant as the culprit; that the victim also pointed at the Defendant. That Defendant denied the allegation of rape but after he was arrested and brought to the police station, Defendant confessed to the crime in the presence of PW1 and a certain Rebecca Amos who was/is a colleague of PW1.

PW2 on the other hand testified that he is a medical doctor working at Zuba General Hospital Abuja. PW2 testified that the victim was brought to the hospital where he works and confirmed that victim had

been sexually assaulted and was brought into the hospital on 4/1/2023 at about 1pm. That according to the victim, the person who raped her covered her mouth with his hand making it difficult for her to scream and removed “something from his trousers which he forced into her vagina”. On conducting medical examination, PW2 testified that victim’s hymen was no longer intact and victim’s vagina had a tear at the floor of her vagina which is synonymous with forceful entry into the victim’s vagina. The medical report was tendered and admitted in evidence as Exhibit B1. That further tests were conducted on the victim for various sexually transmitted diseases but it all came back negative. PW2 testified that victim would have suffered intense pain and bleeding from the look of the tear in her vagina.

PW3 works with the Gender Unit of State Criminal Investigation Department (CID) Abuja where the case was eventually transferred. That on 9/1/2023 at about 13:00 hours, a case of rape was transferred from Zuba police station to state Criminal Investigation Department (CID) by PW1. That all 3 parties were interviewed i.e. the victim, her mother, and Defendant, they were all interviewed by the Assistant Commissioner of police Criminal Investigation Department (CID) “Chike Nwaba” and also interviewed/interrogated by the officer in charge of gender unit after which file was transferred to PW3 for further investigation. PW3 recorded another statement from both victim and her mother. That the victim told PW3 that on 3/1/2023, at around 14:00 hours, her mother, Faridat gave her food to take to the Defendant who was by the public convenience close to her mother’s shop (her mother Faridat sells food). That when she got to Defendant, he lured her into one of the public bathrooms (the 2<sup>nd</sup> toilet was identified by the victim as the scene of the incident). That Defendant closed the door, put his hand around her mouth to prevent her from screaming and threatened to kill her if she told anyone. That Defendant had penetrated her vagina with his mouth (sic) and inserted his forefinger into her vagina. That Defendant had raised her up to his waist level and inserted his penis into her vagina. That Defendant forced his penis into her vagina and had sex with her. PW3 confirmed that the scene of the crime is a public convenience within the fruit market. That in furtherance of her investigation, she visited the scene of crime with the complainant. That PW3 had taken down statements from all parties prior to visiting the scene of crime. That PW3 had cautioned Defendant in Hausa language before recording his statement and statement was read over to Defendant who confirmed same and signed;also PW3 and a senior police officer countersigned. PW3 testified that Defendant confessed to raping the victim covering her mouth with his hand, inserting his finger and penis into her vagina

and stated so in a confessional statement which Defendant signed and likewise Defendant signed a suspect compliance form. PW3 further tendered a video recording where Defendant confessed in Hausa language to raping the girl inserting his finger and penis into her vagina and also his tongue. That Defendant was not coerced, threatened nor forced to confess to the crime. That the last time PW3 saw the victim and her mother, Faridat was on 5/1/2023 after which PW3 was told that Faridat and her daughter had relocated to the village due to stigmatization and shame. PW3 recorded the confessional statement of the Defendant both in video and written form and Defendant in both confession was similar to what the victim and her mother Faridat wrote in their statement. The video recording was burnt into a compact disc and played in open court. In the video recording, Defendant was seen begging for forgiveness and confessing to using his tongue and hand on the victim and inserting his penis into the victim's vagina in the public toilet; Defendant in the video also described the sexual position he adopted while having sex with the victim as "standing up". In the video, Defendant was asked if he was forced or threatened or coerced into confessing to the crime and Defendant replied in the negative. Under cross-examination PW1 confirmed that he was present when statement of the Defendant was recorded but there were no video recording facilities at Zuba police station, however a written statement was recorded for Defendant. That at the time of taking the statement a lot of Defendant's friends and "people" followed Defendant to Zuba police station and later followed Defendant to police command but there was no lawyer present during the recording of Defendant's statement. PW2 who is a medical doctor testified under cross-examination that victim was not in distress neither was the victim bleeding when she was brought to the hospital. PW2 confirmed that the victim had a tear in her genitalia and her hymen had been broken. When asked by Defendant's counsel whether the absence of hymen was recent or not, the doctor testified that it was difficult to determine whether the absence of the hymen was recent or not but the tear in her vagina was recent. PW3 under cross-examination confirmed that she only got statement from the victim and her mother and a certain CSP Funmilayo did the interview with the Defendant while PW3 confirmed that she recorded the video and also interpreted to the Defendant. PW3 also testified under cross-examination that the interview recorded on video was not a question and answer session, rather the Defendant was given the opportunity to explain how the rape transpired. When questioned under cross-examination why the date of the video recording was shown as having been recorded in April, PW3 replied that April was the month she had

gone to the ICT Unit to transfer the video from her phone into a compact disc for purposes of tendering it as evidence. PW3 insisted under cross-examination that the video recording of Defendant's confessional statement was made the same day he was transferred to force Criminal Investigation Department (CID) department being the 9<sup>th</sup> day of January, 2023.

Prosecution tendered Exhibit A1 to E2:

1. Statement of Faridat Abdullahi dated 4/1/2023 and statement of Mariam Abdullahi dated 4/1/2023 - Exhibit A1 & A2.
2. Statement of PW1 dated 4/1/2023 - Exhibit A3
3. Medical report dated 10/1/2023 in respect of Abdullahi Mariam - Exhibit B1.
4. FCT Hospital Management Board Zuba General Hospital Report form – Exhibit B2.
5. Statement of Faridat 9/1/2023, statement of Mariam Abdullahi dated 9/1/2023 – Exhibit C1 & C2
6. Statement of Defendant dated 9/1/2023 – Exhibit D1, statement dated 4/1/2023 – Exhibit D2.
7. Confessional statement form, suspect statement compliance police investigation report – Exhibit D3, D4, D5.
8. C.D admitted in evidence with certificate of compliance – exhibit E1 & E2.

At the close of prosecution case, Defendant counsel filed a no case submission which was overruled by this court.

Defence opened its case on 26<sup>th</sup> March, 2024 with Defendant being the sole witness. Defendant testified that he is a motorcycle mechanic. That he was suddenly arrested by vigilante in December of 2022 and taken to the police station, that the vigilante accused him of raping a “girl”. That it is a false allegation which is likely to have emanated from mechanic colleagues who ganged up against him because he was more knowledgeable in mechanical works than they were and as a result he had a large inflow of customers coming to fix their motorcycles with him which resulted in jealousy and envy. That the vigilante people that arrested him beat him up which made his teeth fall out in the process. That the vigilante people tied him up and told him that they will lay false accusation against him. That the vigilante brought a woman and a little girl that he had never met nor seen in his life and accused him of raping the little girl. That the confession in the video tendered in court was elicited from him because he was threatened to cooperate else, he will be killed. Under cross-

examination, Defendant confirmed some of the contents contained in his statement which includes the fact that Defendant hails from Daura local government in Katsina State. That Defendant attended Daura Secondary School, that Mallam Ahmed Yusuf is the name of Defendant's father. Defendant confirmed that all these statements are true. Also, Defendant under cross-examination insisted that he was not at the fruit market on the day of the incident, that he was at the cinema watching a football match. Defendant also said he was not beaten up by the police but rather the vigilante beat him and forced him to confess to the crime. In another vein, defendant made a U-turn and said he was also beaten by the police but that the beating of the police was not as "heavy" as the one he received from the vigilante. Defendant under cross-exam further contradicted himself and said the police did not threaten him but he confessed to the crime because the vigilante had beaten him badly. Defendant said under cross-examination that his statement was taken in Zuba police station after 3 days of him being locked up in Zuba police station (the said statement is dated 4/1/2023). Defendant also said he spent 7 months in detention at SARS (CID) and in the process the injuries inflicted on him by the vigilante had healed. When defendant was asked why he confessed to the crime at CID Command where he was neither beaten nor forced to confess particularly as the vigilante did not follow him to CID Command, defendant replied that he still had the fear and trauma of the vigilante's prior beating hence he confessed to the crime. Both prosecution and defendant counsel thereafter filed their final written address.

The Defendant counsel in their final written address filed 15/5/2024 raised a sole issue for determination to wit;

"Whether from the totality of the prosecution's case the prosecution has discharged the burden of proof beyond reasonable doubts to warrant the conviction of the Defendant?"

Summarily, learned counsel submitted that the prosecution has failed to lead credible evidence to show that Defendant had unlawful sexual intercourse, rape, sexual abuse, criminal force, intimidation and/or infliction of bodily injury on the victim. That the evidence of the prosecution witnesses falls short of establishing the offences charged as the medical report alone is not conclusive that the Defendant committed the alleged offence as Exhibit B1 and B2 does not in any way state that the Defendant committed the alleged offences. Further that there is no evidence from the prosecution establishing the identity of the victim and the alleged victim was never called to testify with regards to penetration which is an essential ingredient of the charge of

rape. Counsel relied on the following cases **THE STATE VS BLESSING AJULO & ANOTHER (1989) 1 CLRN 249 @ 256 paras. E-F, EDET OKON IKO VS THE STATE (2001) FWLR (PART68) 1161 @ 1185-1186 paras: F-B, HEMBA UKERSHMA VS THE STATE (2003) FWLR (PT. 137) 1117 @ 31127paras A-C and HEMBA UKERSHMA VS THE STATE (Supra) @ 1128-1129 paras H-b.**

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

“Whether in the circumstances of this case, the prosecution has discharged the burden of proof to establish its case against the defendant as required by law”.

In summary, learned counsel submitted that the burden of proving the guilt of the defendant is on the prosecution, however, that it is pertinent to note that proof beyond reasonable doubt is not proof beyond every iota of doubt. That the lack of consent in this case, is a settled matter that requires no proof in view of the age of the victim who, under the law is unable to give consent. Counsel submitted that the Evidence of PW2 about his examination of AB, the medical report issued thereof, the evidence of PW I and PW3 before this honourable court on their findings during the investigation of this case; as well as the confessional statement of the defendant in writing and on video that he penetrated the victim's vagina first with his fore finger and thereafter with his penis are proof beyond reasonable doubt of the fact of penetration of AB by the defendant. That the testimony of an IPO about his/her findings during investigation cannot be regarded as hearsay, as an IPO, particularly the lead, can competently tender all documents recovered by her team in the course of an investigation. Counsel submitted that the defendant during cross examination had admitted making the said confessional statements voluntarily. Counsel furthermore submitted that the defendant during cross examination had admitted that AB identified him as her rapist in front of the vigilantes thereby clearing all doubt about the existence of the victim. Counsel submitted that there is no evidence stronger than a person's own admission or confession. Counsel also submitted that in view of the unequivocal and consistent extra-judicial confessions of the defendant and his very clumsy and irreconcilable story at trial, no probative value is attributable to his evidence particularly in the light of other evidence admitted and witnesses assessed by the honourable court in the trial of this case. Counsel relied on the following authorities amongst others; **Section 138 of Evidence Act 2011; EDUN v. FRN (2019) 13 NWLR (Part 1689) 326 at 365 Para E-F; ONYEDIKACHI OSUAGWU V THE STATE (2016) LPELR 40836**

(SC); Section 738 of the Evidence Act, 2011; State v. Masiga (2017) LPELR-43474 (SC) (Pp. 17 paras. A); Charles v. State (2018) LPELR-43663 (CA) (Pp. 13-14 paras. A); DANLADI V STATE (2019) 16 NWLR (PT. 1698) 342 @ 392, para A; Nwabuoku V. Ottih (1967) All NLR 487 @ p. 490; State (2008) LPELR-67(SC) (Pp. 15 paras. E-E); ANYASODOR V STATE (2018) LPELR- 43720 (SC); Section 15(4) of the Administration of Criminal Justice Act; Shuaibu Abdu V. The State (2016) LPELR-41461 (SC); Isong vs. state (2016) LPELR- 40609 (SC); Tajudeen vs. state (2017) LPELR- 43159 (CA); Yisa v. state (2019) LPELR-47474(CA) (Pp. 30-36 paras. D-D); SANI V STATE (2015) LPELR — 24818 (SC); Yanor v. State (1965) NWLR 337 and Chukwu V. state (1996) 7 NWLR (Pt.463) 686 at 702 and ADEGBITE V STATE (2017) LPELR- 42585 (SC).

Having listened to evidence of witness and read submissions of both learned Counsels;The issue for determination is;

*“Whether from the totality of the prosecution case, the prosecution has discharged the burden of proof beyond reasonable doubts to warrant the conviction of the defendant”.*

The defendant before this court is being charged with the offence of rape of a minor (7 years old) under the **Child’s Right Act, 2003**; under the **Violence Against Persons Prohibition Act, 2015** and under the **Penal Code**. The **Violence against Persons (Prohibition) Act, 2015(VAPP) Act** provides as follows:

- Section 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 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.*

Clearly from **Section 1 of the VAPP Act, 2015** as stated above, the 3 ingredients of rape that the prosecution must prove against the defendant are:

- (i) Penetration of the vagina, anus or mouth of the prosecutrix with any other part of defendant's body or anything else
- (ii) That the prosecutrix did not consent to the penetration
- (iii) That consent of the prosecutrix was obtained by force.

Clearly the prosecution only has the duty to prove the ingredient of rape as spelt out in **Section 1 (a) VAPP Act** i.e that the defendant intentionally penetrates the vagina anus or mouth of the prosecutrix with any other part of defendant's body or anything else. However, prosecution is not obliged to prove lack of consent of the victims. This is purely because the alleged victim is a minor who is not capable of consenting to sexual intercourse. **Section 31 of the Child's Right Act** provides that it is immaterial that a person charged with the offence of rape of a minor believed the child to be above the age of 18 and also immaterial that the child gave her consent.

**Section 31 Child's Right Act, 2003**

*31 (3) where a person is charged under this section, it is immaterial that: -*

*a. The offender believed the person to be of or above the age of eighteen years or*

*b. The sexual intercourse was with the consent of the child.*

This Court will therefore go ahead and evaluate evidence of prosecution in order to determine whether prosecution has been able to prove the only ingredient required under the VAPP Act in respect of a child which is "that defendant penetrated the vagina or mouth or anus of the prosecutrix with any other part of his body or anything else".

It is necessary to observe that the VAPP Act does not only provide for proof of penetration of the vagina by the penis but also provides that the offence of rape is complete upon penetration of the mouth, or anus of the prosecutrix with any other part of defendant's body. This case is a peculiar case where the alleged victim and her mother identified the defendant went to the police station, and it is unchallenged that the victim and her mother were involved and co-operated with the police from the inception of investigation to the end of investigation.

It is also unchallenged and uncontroverted that both victim and her mother made/wrote statements at the police station after allegedly identifying the defendant as the person who raped the victim. During the course of investigation, defendant was alleged to have confessed to the crime wherein he allegedly signed confessional statement and likewise confessed to the crime on a video recording which was played

in open Court. I use the word peculiar because the Pw1 and PW3 testified in Court that at the end of investigation, both the victim and her mother had to run out of Abuja due to shame and stigmatization and both are alleged to have relocated to the village. All effort to trace mother and daughter failed and even the phone number of the mother was no longer going through. This piece of evidence was also unchallenged and uncontroverted. As a result, the peculiarity of this case stems from the fact that both the mother and alleged victim did not come to this Court to give evidence due to their running away and relocating out of Abuja in order to avoid stigmatization and shame. It is further uncontroverted and unchallenged that the investigating Police officer took down statement of both mother and child before they relocated.

Now, going to the sole issue for determination, the matter was initially reported to the Vigilante by the mother of the alleged victim. The Vigilante arrested defendant and handed him over to the Police station at Zuba. The Pw1 who was the investigating police officer at Zuba took down statement from both the mother and the daughter and also recorded the statement of defendant. The PW1 testified that statement of defendant was recorded without duress. Pw1 took the alleged victim to the hospital where she was treated by Pw2. Pw2 confirmed that victim had indeed been raped and there was a tear due to forceful entry of an object or penis or anything. That the victim identified defendant as the person who raped her. That Pw1 thereafter arrested defendant around the scene of crime being the fruit market. The rape allegedly took place inside the public bathroom of the fruit market where the mother of the victim sells food inside the same food market. That defendant confessed to the crime and same was reduced to writing. Pw1 thereafter transferred the case file to state Criminal Investigation Department (CID) FCT Command where the Pw3 who was the investigating police officer likewise recorded statement from victim, her mother and defendant. Pw3 testified that victim informed her that her mother (who sells food) had given her food to take to the defendant who was seated close to the public toilet. That defendant had lured her into one of the public toilets, closed the door, put his tongue into her mouth, inserted his fore finger into her vagina, raised her up to his waist level and inserted his penis into her vagina. That defendant used his hand to cover victim's mouth and threatened to kill her if she told anyone. The victim showed Pw3 the scene of crime and pointed at the 2<sup>nd</sup> bathroom as the place where the rape occurred. That the bathroom had about 8 bathrooms in total with four numbers of bathroom on each side but victim was specific that the rape occurred in the 2<sup>nd</sup> bathroom. Pw3 also recorded a confessional statement from the defendant in both

written and video form and testified that defendant was not forced or coerced nor tortured into confessing to the crime. That the defendant confession was in line with the victim's narration. Defendant Counsel objected to the confessional statement and told the Court that defendant told him that he was made to write and sign the confessional statement under duress.

It is worthy to note that when the confessional statement was shown to the defendant, he denied signing the statement. In his word, defendant said in open Court.

“Defendant: I did not sign, I have never seen this (statement) before, it was not read to me, I did not sign, it is not my signature. I have never seen it before. I don't know anything about it. Nothing was read to me; I'm just seeing it (statement) for the first time ever in Court”.

This Court had immediately delivered a bench ruling and held that defendant had not laid foundation for a trial within trial. The main foundation for a trial within trial is where a defendant Denies the voluntariness of an extra-judicial statement on grounds of coercion, threat, bodily harm etc, but in this case defendant's denial of the statement was that he did not sign the statement neither had he ever seen the statement before. Defendant went ahead and testified that he only saw the statement for the first time in Court. Consequently, this Court ruled that issues raised by defendant are issues for oral evidence and not for the Court to conduct a trial within trial hence this Court admitted the confessional statement as exhibit.

It is trite that in a criminal case, the case is not won on the weakness of defendant's case but on the strength of Prosecution case, hence the burden of proof lies with the Prosecution and this never shifts. The prosecution is to prove beyond reasonable doubt that the accused person committed the alleged offence. In **ANKPEGHER VS. STATE (2018) LPELR -43906 (SC) kekere- Ekun JSC @ pages 24-25** held.

*“There is no doubt that in criminal proceedings, the onus of proof lies on 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 proceedings is proof beyond reasonable doubt but not proof beyond the shadow of doubt”.*

I had earlier stated in the body of this Judgment that both Pw1 and Pw3 stated that the victim and her mother shortly before arraigining the defendant relocated out of Abuja back to their village due to stigmatization and shame. All efforts to contact them proved abortive. The prosecution is however relying on the evidence of the Pw1 who first investigated the allegations of the mother at the initial police

station at Zuba, the evidence of the Pw2 who likewise investigated the mother at state CID Command where the matter was later transferred to and the evidence of the medical doctor who examined the victim at the hospital. Prosecution is likewise relying on the confessional statement of the defendant which he volunteered at both Zuba Police station and the FCT Command. The confessional statement at the FCT Command both comes in a video and written format.

First, I will determine whether the confessional statement was indeed from defendant and likewise the video evidence. Defendant specifically said he was never beaten nor rough handled by the police, that it was the vigilante that beat him up but defendant made a U-turn and stated again that the police threatened to kill him.

However, the assertion that police threatened to kill defendant was only mentioned by defendant once, rather all through his testimony defendant repeatedly said that the Vigilante who were the initial people that arrested him beat him up severely and in the process, he lost his front teeth. Under cross-examination when prosecution asked:

Prosecution: You testified that you were beaten by the Police to confess to having committed the crime.

Defendant: Not the police but vigilante

In another question prosecution asked:

Q Police did not beat you?

Defendant: I was beaten by the police but not as heavy as the vigilante. The vigilante beat me seriously.

Prosecution further probed defendant under cross-examination.

Q: Did the police threaten to kill you if you did not co-operate?

A: It was the vigilante that threatened me, not the police and that was why I confessed to the crime.

When asked by Prosecution that:

Q: In your statement at Zuba police station, you said you only inserted one finger inside the victim's vagina

A: It was the vigilante that threatened me. I did not confess such willingly. I was forced to say it at the police station because the Vigilante threatened me. It was the Vigilante that took me to police station.

Prosecution further asked under cross-examination.

Q: But in your statement at FCT Command you explained that you kissed victim, inserted your forefinger into her vagina and then your penis.

A: Yes, it was the threat of Vigilante that made me say it.

From the above answers elicited by the prosecution from the defendant, defendant majorly insisted that it was the fear of the

vigilante that made him confess to the crime debunking his earlier testimony that police had beaten him up. It is worthy to note that indeed the vigilantes were the initial group of people that arrested defendant and handed him over to the police at Zuba police station. However, defendant testified in his examination in Chief that when he was arrested, he did not make any statement at the police station but merely asked question's and he gave his replies to the question and the vigilante were not present at the time he was giving his statement to the police. Defendant testified that vigilante were not around him at the time he gave his statement contrary to his earlier testimony that he did not make any statement. This statement by defendant gives credence to the prosecution's case that the vigilante were not around when defendant made his statement at Zuba police station. Defendant also confirmed that the Vigilante were not aware that his matter was later transferred to FCT Command. At the FCT Command, defendant confirmed that the vigilante were not present but said he confessed to the crime due to the fear of the beating he experienced from the vigilante group. I have looked at both statements from Zuba and FCT Command (Exhibit D1 and Exhibit D2) in both statements, defendant confessed to raping the victim in the way and manner described by Pw1 and Pw3 in their testimony before the Court. Also, in the video recording done at FCT command, defendant likewise confessed to the crime and described the same modus he explained in his confessional statement as the way and manner in which he raped the victim. It is worthy to re-iterate that the vigilante were not around nor within the vicinity when defendant made his confession via video and written form to the police.

As I had earlier stated, both the statement of defendant recorded at Zuba and FCT Command are the same in the mode and style of raping the victim. Whilst defendant is insisting that the prior beating and threat he received from the Vigilante made him confess to the crime at Zuba police station; however, there was a 5 days period in between when the defendant was taken to FCT command by the vigilante. There is no evidence before me that the vigilante followed defendant to FCT Command and defendant in his own words testified that there were no vigilante around when defendant made his statement. It is therefore hard to believe that the absence of the vigilante presence and threat, defendant was able to record exactly the same mode and style of raping the victim at both Zuba police station and FCT Command bearing in mind that there was a period of 5 days apart. Defendant confession in the video also tallies with his confessional statement at FCT Command and Zuba police station. There was not a single diversion in all three statements of defendant (i.e FCT Command, Zuba

police station and video recording). I am also convinced by the argument of prosecution that defendant wilfully volunteered his statement as against defendant's testimony that he only saw the statement in Court for the first time, this is because under cross-examination when prosecution read out the Bio-data part of defendant's statement defendant confirmed it as true. The Bio-datapart of defendant's statement includes the name of defendant, that defendant is from Daura in Katsina State, that defendant attended Daura secondary school, that the name of defendant's father is Mallam Ahmed Yusuf and defendant confirmed all these information as accurate also both the confessional statements at Zuba and FCT Command are materially consistent and similar despite defendant's testimony that vigilante were not around when he made the statement and police did not threaten, coerce or beat him. Hence defendant's insistence that he never saw the statement and that the IPO simply wrote on it and he only saw the statements in Court for the first time is an obvious falsehood as there was no way all these information would have found its way into the defendant's statement except defendant volunteered the information himself.

It is on this basis that I hold that the defendant's confessional statement at Zuba police station, his confessional statement at FCT Command (state CID) and his video confession are all direct, positive and unequivocal and amounts to an admission of guilt. I have come to this conclusion because the three basic and fundamental factors required before a statement can be regarded as confessional are present in the circumstances surrounding this case and they are authenticity, legitimacy and reliability. All statements of the defendants are authentic and there is no doubt that it was not fabricated particularly because of the similarity of all 3 statements, all statements are legitimate because the defendant himself corroborated the prosecution's case that the police did not beat, coerce or threaten him to write the statements or make the video and thirdly the confessional statement is reliable as it is a true reflection of the circumstances surrounding the crime. The question that comes to fore is "whether a Court can convict an accused person based solely on the confessional statement?"

Before I answer this question, it is necessary for this Court to touch on the implications of a confessional statement. A confessional statement closes every door of defence against the defendant, it is the strongest evidence of guilt and it is a true reflection of the truth of the crime see: **OBASI VS. THE STATE (2015) 12 NWLR (pt. 1473) 213 @ 218**. I therefore answer the question in the positive and confirm that a Court can convict an accused based solely on a confessional statement and

such confessional statement does not necessarily need to be corroborated. In the case of **OKEKE VS. STATE (2016) 7NWLR (pt. 1512) 417** the Supreme Court per Muhammed JSC upheld the lower Courts decision of convicting the accused solely on the confessional statement without corroborative evidence. Also, in the case of **BRIGHT VS. THE STATE (2012) 8 NWLR (pt. 1302) 297** the Supreme Court per Ngwuta JSC at page 321-322 held as follows.

*“A conviction in a criminal trial is not a function of the number of witnesses called by the prosecution. What is material is the quality of the evidence adduced. In the case at hand, the appellant who knows the facts better than anyone other than his partner in crime convicted himself without any prompting by anyone. He offered the best evidence of his involvement in the crime.”*

As stated earlier in the body of this judgment, there was no objection as to the voluntariness of the statement of defendant at the time of tendering the confessional statement. The only statement the defendant made from the dock was that he had never seen the confessional statement, he did not write it, he did not sign it and the day it was tendered in court was the first time he was seeing the statement. Although the defendant counsel objected that defendant told him it was not voluntarily obtained, defendant himself did not state so but rather insisted that he had never seen the statement before and was setting his eyes on it for the first time in court. I refer to the case of **OKEKE VS STATE VS STATE (Supra)** where Muhammad JSC he

*“The issue was that the appellant had denied making those statements to the police, which rendered the trial-within –trial UNNECESSARILY. As the trial court and the court of Appeal correctly found, the trial-within-trial procedure in the instant case, where the issue was not whether the appellants confessional statement were voluntarily made but whether they were made by him at all, was unnecessary”*

Also, in the case of **LASISI VS THE STATE (2013) 9 NWLR (PRT.1358) 74** the Supreme Court per ONNOGHEN JSC held as follows:

*“Where an accused person denies making the statement sought to be tendered, the issue of trial-within-trial is not relevant”*

Hence the defendant’s failure to secure a trial within-trial at the stage in which the statements were being tendered cannot be remedied after the close of prosecution’s case. Defendant attempt in his examination-in-chief and cross-examination to raise the involuntariness of his confessional statement will not avail the defendant as a retraction or

denial of a confessional statement by a defendant during his defence is an afterthought and does not affect its admissibility. However, the defendant's attempt at retracting his confessional statement and labelling it as involuntary was so watery and weak. Defendant in an attempt to retract his confessional statement ended up contradicting himself. Defendant's contradiction stems from his insistence that the police did not torture or beat him, to testifying that the police beat him but not as much as vigilante and testified again that it was only the vigilante that beat him to further testifying in open court that both police and vigilante beat him up; in the same vein, defendant testified that he had never seen the statement before and only saw the statement for the first time in court. Defendant insisted that he knew nothing about his statement but under cross-examination when the prosecution asked

**Prosecution:** "On the 9/1/2023 when you got to the FCT Police Command you confessed to the crime and statement taken and a video of you was recorded confessing.

**Defendant:** "I cannot recall the date but I can confirm that my statement was taken at FCT Police Command.

It is apparent that defendant is not a witness of truth as his testimony is riddled with contradictions. I will now look at the circumstances surrounding the crime in which defendant was charged. It is uncontroverted and unchallenged that the mother of the child sells food at fruit market, the mother had sent the girl to defendant to deliver food and defendant had raped the girl by penetrating his penis into the vagina of the minor, defendant penetrated his finger by inserting it into the girl's vagina and defendant also penetrated the girl by inserting his tongue into her mouth. The PW2 who is a medical doctor gave evidence that the victim had been raped and she had a tear in her vagina synonymous to a big and strong object forcefully inserted into her vagina. PW2 testified that the hymen of the victim was absent and the victim had a fresh tear on her vagina. I had earlier stated that a defendant can be convicted solely on his confessional statement without corroboration. See **OBASI VS STATE (Supra)**. However, the courts before convicting on a confessional statement has the duty to look at the facts / evidence outside the confession which would make it probable that the confession is true. This test includes the issue of whether the defendant had the opportunity of committing the offence as in rape of the victim and whether the confession was consistent with other facts that has been ascertained and proved at the trial. In the case of **ILLIYASU VS STATE (2015) 11 NWLR (PT. 1469) 26 @ 56**, the

Supreme Court in determining the veracity of a confessional statement held as follows:

*“Firstly, there are independent facts outside the statements which showed the confession to be true.....also the corroboration of the statements of the appellant by the evidence of the prosecution witnesses PW1 to PW6. Then came the part showing that the appellant had the opportunity of committing the offence and the doctrine of ‘last seen’ to which he offered no counter explanation.”*

From the above holding of the Apex Court, this court has the duty in cases such as this to string all material circumstantial evidence together in order to point to a high probability that the defendant was the only person who had the opportunity to rape the victim. This court will now proceed to weave all the circumstantial evidence outside the confessional statement to point at the probability that defendant committed the offence of rape and prove that his confession was a true enactment of what transpired on the day of the incident. First it is unchallenged that victim’s mother sells food at the fruit market; secondly, it is unchallenged that the mother sent victim to give food to defendant at the public bathroom. Thirdly, victim took the food to defendant at the public bathroom. Fourth, victim told IPO that defendant pushed her inside the public toilet and inserted his mouth into her mouth, inserted his finger into her vagina and picked her up to his waist level where he inserted his penis into her vagina and proceeded to rape her. It is worthy to note that defendant was not a random person whom victim had never seen, rather defendant had called victim’s mother and placed an order for food which victim delivered the food. Fifth, all these sequence of events all happened at the fruit market as victims mother sells food at the fruit market and defendant was a regular at the fruit market and was seated in front of the public bathroom on the day he ordered food from the victim and raped her. It was definitely easy for victim to identify defendant as he was not a random person neither was he a stranger at the fruit market. Therefore, from the above sequence of events by ordering for food and the victim went back to deliver the food, there is only one probable person who had the opportunity of raping the victim inside the public toilet and that would be the defendant who was the last person to order for food and whom the mother sent victim to deliver food. Also, defendant was seated in front of the scene of crime which was the public bathroom. There is unchallenged evidence that the victim helps her mother to sell and deliver food to people in the market, hence the victim is not a stranger in the fruit market but definitely familiar with all the nooks and crannies and familiar with people within the fruit

market. From evidence before me, victim had told her mother that she was on an errand to deliver food to the defendant and shortly after cried to her mother that defendant had raped her. The PW2 who is a medical doctor confirmed that victim had a fresh tear on her vagina synonymous with use of force by inserting a forceful object into the small vagina of a 7 years old. Defendant had confessed at the first police station he was taken to. Defendant had also confessed to the same rape describing the same mode and style at the 2<sup>nd</sup> police station which was the FCT CID; defendant had further confessed to the same thing describing the same mode and style he used in raping the victim in a third confession on video. From the sequence of events outlined above, there is circumstantial evidence from prosecution witnesses that established the guilt of the defendant as the only probable person who had the opportunity to rape the victim and who raped the victim. It is therefore my view that the ingredient of rape of a minor (7years old) by penetration has been successfully proved by the persecution with defendant penetrating the victim's vagina with his penis and also penetrating the victim's vagina with his forefinger and penetration by tongue. In the light of the above, I therefore find as follows:

#### JUDGMENT

On the first count charge, I find the defendant guilty as charged  
On the second count charge, I find the defendant guilty as charged  
On the third count charge, I find the defendant guilty as charged  
On the fourth count charge, I find the defendant guilty as charged  
The fifth count is a repetition of the 2<sup>nd</sup> count and is hereby struck out.  
On the sixth count charge, I find the defendant guilty as charged  
On the seventh count charge, I find the defendant guilty as charged

#### ALLOCUTUS

Defendant counsel: we plead that the court be lenient with sentencing as he is a first time offender.

Defendant: I beg for leniency. The court should forgive me, I am an orphan. I have children. The offence is not true. The court should forgive me and help me.

#### SENTENCING

I have considered the Allocutus of the defendant and his plea for mercy; defendant was charged under the **Child's Right Act; the Violence Against Persons (Prohibition) Act and the Penal Code**. A plea for mercy is a plea for leniency but the **Child's Right Act** under which defendant was charged does not avail the court any discretion. Moreover, rape of a minor or an adult in whatever form is a despicable act and one which should not be tolerated.

- (1) On the 1<sup>st</sup> count charge of rape of a child contrary to **Section 31(2) of the Child's Right Act**, defendant is hereby sentenced to life imprisonment.
- (2) On the 2<sup>nd</sup> count charge of using his finger to penetrate the vagina of a minor (7 years old) contrary to **Section 1 Violence Against Persons Prohibition Act**, defendant is hereby sentenced to life imprisonment.
- (3) On the 3<sup>rd</sup> count charged of sexual abuse of 7 years old contrary to **Section 32 Child's Right Act**, defendant is hereby sentenced to 14 years imprisonment
- (4) On the 4<sup>th</sup> count charge of sexual Abuse by using his tongue to lick victim's vagina, contrary to **Section 32 of Child's Right Act**, defendant is hereby sentenced to 14 years imprisonment.
- (5) On the 6<sup>th</sup> count charge of using your hand to cover victim's mouth to prevent her from shouting while sexually abusing and raping her contrary to **Section 263 Penal Code**, defendant is hereby sentenced to 3 years imprisonment.
- (6) On the 7<sup>th</sup> count charge of intimidating the victim by threatening to kill her if she shouts while raping her and that she must not tell anyone contrary to **Section 18 Violence Against Persons Prohibition Act**, defendant is hereby sentenced to one year imprisonment.
- (7) On the 8<sup>th</sup> count charge of inflicting bodily injury on the victim (7 years old) by tearing her vagina with your penis which resulted in severe pain to the victim contrary to **Section 2 of the Violence Against Persons Prohibition Act**, defendant is hereby sentenced to 5 years imprisonment.

All sentences are to run concurrently.

**Parties:** Defendant is present.

**Appearances:** K. I. Ojei appearing for the prosecution holding brief of Temitayo Lawal. Ogbenyi O. Ogah appearing for the defendant.

**HON. JUSTICE M. OSHO-ADEBIYI  
JUDGE  
14<sup>TH</sup> NOVEMBER, 2024**