

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GARKI
BEFORE HIS LORDSHIP S. B. BELGORE**

**CLERK: CHARITY ONUZULIKE
COURT NO. 9**

**SUIT NO: FCT/HC/CR/52/2016
DATE: 21/1/2025**

BETWEEN:

COMMISSIONER OF POLICE.....PLAINTIFF

AND

EZEKIEL USHAHEMBA ABUA.....DEFENDANT

**JUDGMENT
(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

The prosecution commenced this case by way of a charge. The charge contains two counts namely:

- (a) Unlawful Carnal Intercourse
- (b) Sexual abuse

The gist of the charge is that on the 3rd day of November 2016 about 1500hrs at Wesley Nursery and Primary School Wuse Zone 3 FCT, Abuja, the defendant, sexually abused one Onyedikachi Ekuma-Oko female, aged six (6) years by having unlawful sexual intercourse with her inside the toilet of Wesley Nursery and Primary School Wuse Zone 3 FCT, Abuja.

FACTS

That the defendant, on the same 3rd day of November 2016 about 1500hrs at Wesley Nursery and Primary School Wuse Zone 3 FCT, Abuja, the defendant, sexually abused one Onyedikachi Ekuma-Oko female, aged six (6) years by inserting his finger into her vagina inside the toilet of Wesley Nursery and Primary School Wuse Zone 3 FCT, Abuja.

The case was formally reported to the Wuse Police Station in the Federal Capital Territory (FCT) on November 11th, 2016, leading to the defendant's arrest and subsequent detention at the station. Nearly three months later, on February 13th, 2017, the defendant was arraigned in Court and pleaded not guilty to the two charges brought against him. To secure his release, the defendant submitted three separate bail applications. The Court denied the first, filed on December 28th, 2016, with the motion number M/1930/16. Undeterred, the defendant filed a second application on March 13th, 2017, bearing the motion number M/4203/17. However, this too was rejected due to insufficient fact in his affidavit. Not giving up, the defendant filed a third bail application later that same March, with the motion number M/4417/17. Fortunately, this final attempt was successful, and the Court granted the defendant bail.

The trial commenced on February 13th, 2017, with the prosecution calling PW1 (Onyedikachi Ekuma-Oko). The evidence of PW1 was unsworn and taken on camera in line with the provisions of sections 260 and 261 of the Administration of Criminal Justice Act 2015. PW2 (Dr. Uche Collin) testified and was cross-examined by the defence Counsel, as well as PW3 (Mrs. Grace Ekuma-Oko), PW4 (Dr. Gloria Tsubenya Yisa), PW5 (Nweze Eudda Adanaya and PW6 (Inspector Onwumi Azu Amaka). The documents tendered by the six prosecution witnesses are:

- (a) Medical Report dated 18/11/2016 signed by one Dr. Uche Collins for HOU Paediatrics marked as Exhibit 'A'.
- (b) Medical Report dated 21/4/2017 headed "To whom it may concern" Re: Ekumaoko Onyedikachi, Female, 6 years, Hospital No. 400414" signed by one Dr. G. T. Yisa marked as Exhibit 'B'.
- (c) Statement of PW5 made at the Police Station on 21/11/2016 marked as Exhibit 'C'.
- (d) Statement of the defendant made at the Police Station marked as Exhibit 'D'.

The summary of the prosecution's case is that on November 3rd, 2016, the defendant allegedly sexually assaulted a six (6) year-old student (PW1) at Wesley Nursery and Primary School around 15:00hrs. PW1 testified that the defendant took her to the school toilet, wore a glove, and inserted his fingers into her "bum-bum", instructing her to keep the incident secret. PW2, a medical doctor, suspected abuse after conducting a medical examination on PW1. PW3's testimony was limited to information communicated to her by PW1, and she had no firsthand knowledge of the case. PW4, a medical expert, performed a physical examination of PW1 and found no evidence of bruising or trauma. PW5 and PW6 provided testimonies based on information relayed to them by PW1, constituting hearsay evidence.

Upon the prosecution's closure on February 17th, 2020, the defence submitted a No-Case Submission pursuant to Section 303 of the Administration of Criminal Justice Act 2015. The submission contended that the prosecution failed to establish a prima facie case, as the testimony of the six prosecution witnesses did not sufficiently connect the defendant to the alleged offences. On March 9th, 2022, the Court rendered its decision, granting the No-Case Submission on

Count one while directing the defendant to present a defence on Count two.

The defence commenced its case, presenting two witnesses. The defendant, DW1, provided testimony on June 11th, 2024, and underwent cross-examination on the same day. Subsequently, the defence filed a motion (M/1597/24) on September 20th, 2024, seeking to recall DW1 for the purposes of submitting video evidence, accompanied by a certificate of compliance. DW1's testimony asserted his innocence, detailing that he departed the school premises in the company of Mr. Abutu, the current head teacher, and accompanied a parent to alight along the way. DW2, Mrs. Esther Ajayi, former head teacher, testified on November 10th, 2024, and was subject to cross-examination by the prosecution.

The defence concluded their case, and the matter was adjourned to December 11th, 2024, for the submission of final written addresses.

The prosecution submitted in his written address one issue for determination to wit:

“Whether by virtue of evidence before this Honourable Court both oral and documentary, the prosecution has proved his case beyond reasonable doubt to warrant the Court convict and sentence the defendant herein”

While the defendant Counsel submitted two issues for determination to wit:

“(1) Whether the defence of alibi can avail the defendant in consideration of the surrounding circumstances.

“(2) Whether the prosecution has proved their case beyond reasonable doubt as required by law.

I adopt the issues as framed by the Defendant’s Counsel; to wit:

“(1) Whether the defence of alibi can avail the defendant in consideration of the surrounding circumstances.

“(2) Whether the prosecution has proved their case beyond reasonable doubt as required by law.

All written arguments are on record. We need not repeat them. Reference would be made to them at the appropriate time necessary.

ISSUE 1

“(1) Whether the defence of alibi can avail the defendant in consideration of the surrounding circumstances.

On the first issue, the defendant was in the company of a parent and the head teacher, Mr. Abutu, when he departed the school premises. The defendant categorically asserted that he did not interact with the prosecutrix on November 3rd, 2016.

Furthermore, his teaching assignments that day were limited to Primary 1A and Primary 1B, whereas the prosecutrix was a pupil in Primary 2A. He contended that in criminal proceedings, the onus lies

with the police to investigate an alibi defence raised by the defendant. The Court is to carefully examine this pivotal aspect in its deliberations. In the case of **EGBEREMATU VS. THE STATE (2014) LPELR-22615 (CA)**, per Ogunwumiju, JCA, held that:

“For the defence to exculpate the accused, it must be raised in accordance with certain rules. For the defence of alibi to be properly raised, it must be raised at the earliest opportunity when an accused person is confronted by the police with the commission of an offence so that the police will be in a position to check the alibi.

In the circumstances of this case, the defendant in adherence to the rules of the Court raised his defence of alibi during his arrest, and it was recorded in his statement which was admitted and marked in evidence as Exhibit ‘D’. **ATTAH VS. THE STATE (2010) 10 NW (Pt. 1201) 190 (P. 221, paras. G-H)**, the Supreme Court defined Alibi as:

“Alibi is a latin word meaning “elsewhere”. An alibi is a defence based on the physical impossibility of a defendant’s guilt by placing the defendant in a location other than the scene of the crime at the relevant time. The fact or state of bring elsewhere when an offence was committed. (P. 221, paras. G-H).

Did the Police investigate the alibi? The answer is No.

The defendant testified before this Honourable Court that, at the time of the alleged offence, he had completed his duties, left the school premises with the head teacher, Mr. Abutu, and accompanied “Mommy Chelsea” home in her vehicle. Notably, the prosecution has failed to establish a precise timeline for the alleged crime. PW1, the child victim, stated that the incident occurred after school closure,

which took place between 3:15pm and 3:30pm. This ambiguity leaves open the possibility that the alleged incident may have occurred as late as 4pm, still within the time frame of “after closing hours.”

It is a fundamental principle of physics that an individual cannot occupy two distinct locations simultaneously. Given the defendant’s corroborated alibi – having exited the school gate with the head teacher and entering Mommy Chelsea’s car – it is impossible for him to have concurrently lured the prosecutrix to the toilet and committed the alleged abuse. The defendant was not in proximity to the prosecutrix, did not interact with her, and therefore could not have committed the alleged act. I so hold.

In the case of **IBRAHIM VS. THE STATE (1991) 4 NWLR (PT. 186), 399**, the Supreme Court held that:

“Where an accused person raised a defence of his being elsewhere at the time the offense was committed for the first time before a trial judge, he has asserted that he must prove his whereabouts that is:

- a. Where he was at the time of the crime;***
- b. Who he was with;***
- c. Who saw him if he was not with anyone in particular;***
- d. What he was doing at the other place that he was at the time of the crime; and***
- e. Any other evidence that is likely to give credit to his defence.***

In view of the foregone, I resolve the first issue in favour of the Defendant.

Ordinarily, this should put an end to this case in favour of the Defendant. Meaning I should hold that he has no case to be said to

be guilty since it was proved that he was not at the MATERIAL time at the locus of the alleged offence.

But in order to be safe, let us consider the 2nd issue which is:

“(2) Whether the prosecution has proved their case beyond reasonable doubt as required by law.

For proof beyond reasonable doubt is not synonymous with proof beyond shadows of doubt. In the case of **EZEUGOVVS STATE (SUPRA) RATIO 5@569 PARAGRAPH F-G**, the Supreme Court held that; Proof beyond reasonable doubt does not mean proof to a scientific certainty or proof beyond any shadow of doubt.

Again, in **ANEKWE VS. STATE (2014) 10 NWLR (PT. 1415) 353@378 paragraph E-F, NGWUTA JSC** held “proof beyond reasonable doubt does not mean proof to rigid mathematical demonstration because that is impossible that it must mean such evidence as will induce a reasonable man to come to a particular conclusion. The learned Justice further held; the prosecution who has the burden of proof and the duty to attain a proof beyond reasonable doubt does not have to proof his case to the point of mathematical certainty”.

Coming to the offence of child abuse as provided by **section 32(1) and punishable under section 32(2) of Child’s Right Act, 2003**. The provision of the offence is to the effect that whoever does or omit to do any act against a child sexually other than the provision as in **section 3 (1) and (2) of the same Act** commits an offence and punishable upon successful prosecution for fourteen years imprisonment.

A close perusal of this provision of **section 32 (1) and (2)** shows that it is a complete sexual abuse other than rape or unlawful carnal

knowledge of a child. While **section 31 (1) and (2) of the Child's Right Act**, provides for rape and its punishment i.e. life imprisonment, **section 32 of the sane Act** goes further to accommodate all other unlawful acts towards sexual abuse of a child, which in our humble view is quite different from having unlawful sexual intercourse/carnal knowledge by way of the two main sexual organs embedded in man and a woman (Penis and Vagina); typically called rape. Section 32(1) provides:

- a. A person who sexually abuses or sexually exploits a child in any manner not already mentioned under this part of this Act commits an offence.
- b. The punishment section which is section 32(2) provides:
- c. A person who commits an offence under subsection (1) of this section is liable on conviction to imprisonment for a term of fourteen years.

Wikipedia defines Sexual abuse or Sex Abuse as the sexual behaviour by one person upon another. It is often perpetrated using physical force, or by taking advantage of another. It is also a term used for a persistent pattern of sexual assault. The term sexual abuse also covers behaviour by an adult or older adolescence towards a child to sexually stimulate the child involved. Wikipedia goes further to divide child's sexual abuse into two main types thus: touching and non-touching. Touching includes touching a child's genitals, making a child touch someone else's genitals, putting objects or body parts inside the vulva or vagina of a child for sexual pleasure **as in the instant case** underline mine.

From the definition obtained from Wikipedia and the provision of **section 32 (1) of Child's Right Act, 2003**, the following among others are the ingredients that the prosecution must prove in a charge of Child Sexual Abuse other than rape.

- a. That the prosecutrix is a child

- b. That the prosecutrix (male or female child) is under the care of another who is in a local parents or guardian
- c. That the guardian or the person in loco parentis does any act to sexually stimulate the child
- d. That the prosecutrix was sexually abused by the assailant by any other thing other than the assailant's sexual organ (penis and vagina).

From the evidence of the prosecutrix who as at the time of this alleged abuse on her was only six years old and a pupil of Wesley Nursery and Primary School, Wuse Zone 3 Abuja (the defendant herein sexually abused her in a toilet around the closing hours at about 3:00pm on the 3/11/2016. Being a child as she was, she quickly informed the nearest person to her; Miss Adanaya Nwaneze Euordia, who was the closest person to her taking care of her by way of bathing her while her biological mother (PW3); Mrs. Grace Ekuma Oko travelled out of jurisdiction. Under cross-examination by the learned defence counsel, the prosecutrix maintained her evidence before this Honourable Court. The prosecution counsel submitted that the evidence of the prosecutrix was not corroborated by any other independent and convincing evidence before the Honourable Court. He submitted that corroboration is evidence independent of that which it strengthens and discloses not only the commission of an offence, but equally links or tends to link the accused persons with the commission of the offence. It could also mean evidence which confirms in some material particular, not only that the crime had been committed but addedly, that it is the accused who committed it. **See the case of OMISADE VS. THE QUEEN (1964) 1 ALL NLR (233) @ page 253. See also OKABICHI VS. STATE (1975) 3 (SC).**

Now, the law is clear that corroborative evidence may be direct or circumstantial in whatever forms it comes, the Court must ensure that the corroborative evidence is not only independent of the main

evidence it seeks to corroborate, but also supports the main evidence by rendering the story of the latter implicating the accused more probable in some material particular. **See the case of MBELE VS. STATE (1990) 4 NWLR (PT. 145) 484 and STATE VS. JAMES GWONGWAN (2015) LPELR 24837 (SC). Per Musa Datijo Muhammad JSC.** The evidence of the prosecutrix in this case has not found corroboration satisfying the requirements of the law. Evidence of PW2; Dr. Uche Collins, PW3; Mrs. Grace Ekuma Oko, PW5; Miss Nwaneze Adanaya Euordia who testified that the prosecutrix complained of pains in her vagina while she was bathing her and mentioned the name of the defendant as the culprit. The evidence of PW4; Dr. Gloria Tsypenya Yisa, a medical doctor from the National Hospital Abuja, she also testified before this Honourable Court and tendered **‘Exhibit B’, also Exhibits A and C** tendered by the prosecution before this Honourable Court, were no corroborative evidence which this Honourable Court can rely on. The former Chief Justice of Nigeria, Hon. Justice Onnoghen as he then was, while giving the nature of evidence required as corroboration for the offence of rape in the case of **EDWIN EZIEGBU VS. STATE (2012) LPELR – 7855 (SC), held as follows: “Corroboration in respect of the offence of rape is evidence which tends to show that the story of the prosecutrix that the accused committed the crime is true”.** In the instant case, no evidence of another saying they saw what happened. What they were saying was that the victim complained to them about is the pain she was having.

The learned defence counsel also made a heavy weather on sworn evidence of the prosecutrix herein pursuant to **section 209 of Evidence Act, 2011 as Amended.** He submitted that no law prevents a competent Court from accepting the unsworn evidence of a child under the age of 14 years. The Court is only required not to solely act and convict an accused upon such evidence without corroboration,

this is the intendment of section 209 (1), (2) and (3) of Evidence Act, 2011 as Amended. Section 209 (1) provides:

“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, if in the opinion of the Court, he is possessed of such intelligence to justify the reception of his evidence and understands the duty of speaking the truth”.

Learned Prosecution Counsel urged the Court finally, to convict the Defendant.

The learned defence counsel in his own address made submission on the issue of “Hear say” evidence, submitting that by virtue of section 37 of Evidence Act, PW3, PW5 and PW6 i.e. Mrs. Grace Ekuma Oko, Miss Nwaeze Euordia Adanaya and the investigating police officer Inspr. Nwume Azuamaka all gave hearsay evidence and urged the Court to discountenance their evidence. He submitted that the learned prosecution Counsel has misconceived the position of law particularly regarding the evidence of the investigating police officer as in PW6 herein. The PW6 in evidence before this Honourable Court, indicated that he was the investigating police officer, and that he went in company of a woman police: Inspr. Juliana to Wesley Nursery and Primary School, Wuse Zone 3 Abuja, and that the first place they visited in the school was the Principal/Head Teacher’s office, and that interviewing the parties, he and Inspr. Juliana had already taking the Prosecutrix to National Hospital, Abuja, and the two of them thereafter took the Prosecutrix to Wuse General Hospital, Abuja. This piece of evidence is contained in the records of this Honourable Court, dated 28/1/2020. The same PW6 completed his evidence before this Honourable Court on the 17/2/2020, wherein he re-affirmed that he and Inspr. Juliana visited the scene of the crime (The

Toilet), and explained how the prosecutrix demonstrated how she was sexually abused by her teacher. The submission of the learned defence counsel that the evidence of the IPO (PW6) herein amount to hear say, is very correct.

Furthermore, Mr. Ijagbemi had urged this Court to discountenance the submission of the learned defence counsel regarding not only the evidence of the Investigating Police Officer (PW6) herein, but also the evidence of PW2, PW3, PW4 and PW5 in this case. Their evidence in totality is according to law relevant to the facts in issue in this case, and having been relevant, are admissible. **See section 4 – 7 of Evidence Act, 2011 as Amended.** He therefore urged me to attach probative value to all the evidence.

Mr. Ijagbemi urged the Court to convict the Defendant.

Whereas on the part the defendant's learned Counsel who has distilled two issues for determination. It is his arguments that whether the defense of alibi can avail the defendant in consideration of the surrounding circumstances.

Arguing on the 1st issue submitted by him, which is the defence of alibi, he responded affirmatively to the first issue for determination. He respectfully bring to the Court's attention a material fact overlooked by the prosecution, which bears significantly on the outcome of this case.

On the date of the alleged offence, the defendant was in the company of a parent and the head teacher, Mr. Abutu, when he departed the school premises. The defendant categorically asserted that he did not interact with the prosecutrix on November 3rd, 2016. Furthermore, his teaching assignments that day were limited to Primary 1A and Primary 1B, whereas the prosecutrix was a pupil in

Primary 2A. He contended that in criminal proceedings, the onus lies with the police to investigate an alibi defence raised by the defendant. He urged the Court to carefully examine this pivotal aspect in its deliberations. In the case of **EGBEREMATU VS. THE STATE (2014) LPELR-22615 (CA)**, per Ogunwumiju, JCA, held that:

“For the defence to exculpate the accused, it must be raised in accordance with certain rules. For the defence of alibi to be properly raised, it must be raised at the earliest opportunity when an accused person is confronted by the police with the commission of an offence so that the police will be in a position to check the alibi.

In the circumstances of this case, the defendant in adherence to the rules of the Court raised his defence of alibi during his arrest, and it was recorded in his statement which was admitted and marked in evidence as Exhibit ‘D’. **ATTAH VS. THE STATE (2010) 10 NW (Pt. 1201) 190 (P. 221, paras. G-H)**, the Supreme Court defined Alibi as:

“Alibi is a latin word meaning “elsewhere”. An alibi is a defence based on the physical impossibility of a defendant’s guilt by placing the defendant in a location other than the scene of the crime at the relevant time. The fact or state of bring elsewhere when an offence was committed. (P. 221, paras. G-H).

The defendant testified before this Honourable Court that, at the time of the alleged offence, he had completed his duties, left the school premises with the head teacher, Mr. Abutu, and accompanied “Mommy Chelsea” home in her vehicle. Notably, the prosecution has failed to establish a precise timeline for the alleged crime. PW1, the child victim, stated that the incident occurred after school closure, which took place between 3:15pm and 3:30pm. This ambiguity leaves

open the possibility that the alleged incident may have occurred as late as 4pm, still within the time frame of “after closing hours.”

It is a fundamental principle of physics that an individual cannot occupy two distinct locations simultaneously. Given the defendant’s corroborated alibi – having exited the school gate with the head teacher and entering Mommy Chelsea’s car – it is impossible for him to have concurrently lured the prosecutrix to the toilet and committed the alleged abuse. The defendant was not in proximity to the prosecutrix, did not interact with her, and therefore could not have committed the alleged act.

He reaffirmed this stance with the case of **IBRAHIM VS. THE STATE (1991) 4 NWLR (PT. 186), 399**, the Supreme Court held that:

“Where an accused person raised a defence of his being elsewhere at the time the offense was committed for the first time before a trial judge, he has asserted that he must prove his whereabouts that is:

- f. Where he was at the time of the crime;*
- g. Who he was with;*
- h. Who saw him if he was not with anyone in particular;*
- i. What he was doing at the other place that he was at the time of the crime; and*
- j. Any other evidence that is likely to give credit to his defence.*

The prosecution is required to prove beyond reasonable doubt, but it is also an implicit duty on the prosecution to prove every ingredients of the offence charged as laid down in the case of **YISAU VS. STATE (1995) 2 NWLR (PT. 379) 636**. **Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** provides for the presumption of innocence of a defendant, the defendant cannot be

made to prove his innocence until the prosecution has established his guilt. See the case of **NWANKWOALA VS. STATE (2006) 14 NWLR (PT. 1000) 663** where the Supreme Court of Nigeria held:

“In a criminal charge as in the instant case the prosecution has a duty to establish beyond reasonable doubt its case against the accused person. This burden remains on the prosecution to the end of the case and never shifts. It is a general burden to rebut the presumption of innocence constitutionally guaranteed to the citizen. This burden must also be discharged before the accused person can be called upon to make his defence.

In the administration of criminal justice, a paramount principle prevails: where the prosecution fails to establish the defendant’s guilt beyond a reasonable doubt, the benefit of the doubt must accrue to the defendant. This venerable doctrine, rooted in the presumption of innocence, holds that it is preferable to acquit 100 culpable individuals rather than unjustly convict a single innocent person. See **ADENEKAN VS. THE STATE OF LAGOS (2021) 1 NWLR 1756 (P176-177, paras. E-B.)**.

The defendant was charged under **section 32(1) and punishable under section 32(2) of the Child Rights Act Cap 50 Laws of the Federation 2003**. It states that:

- (1) A person who sexually abuses or sexually exploits a child in any manner not already mentioned under this Part of this Act commits an offence.
- (2) A person who commits an offence under subsection (1) of this section is liable on conviction to imprisonment for a term of fourteen years.

The terms ‘SEXUAL ABUSE’ and ‘SEXUAL EXPLOITATION’ as defined by the World Health Organization: Sexual abuse: Actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. “Sexual exploitation: Actual or attempted abuse of a position of vulnerability, power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially, or politically from the sexual exploitation of another.

The testimonies of the six prosecution witnesses and all of the prosecution’s evidence tendered before this Court is unable to adequately and sufficiently prove the offence of sexual abuse and sexual exploitation against the defendant. The provisions of **Section 209(3) of the Evidence Act 2011**, the unsworn evidence of a child requires corroboration, the prosecutrix at the time the crime was committed was six years old and gave her testimony before this Court. It was her testimony that the defendant touched her bum-bum, gave her sweets, and strictly warned her not to tell anyone what he had done to her. The testimonies of PW3, PW5, and PW6 are all based on hearsay, on what PW1 had told them what happened, as none of them were eyewitnesses to the crime. See the case of **ANYIGOR VS. STATE (2019) 14 NWLR (PT. 1691) 45:**

“Evidence of a witness which requires corroboration cannot provide corroboration for the evidence of another that also requires corroboration.

In law, no person is liable to be convicted solely on unsworn testimony. The unsworn evidence must be corroborated by some material evidence implicating the accused. In the instant case, of the prosecution witnesses, only PW1 gave unsworn evidence implicating the defendant. The prosecution has not provided independent evidence on record which corroborates the evidence of PW1. see **SAM VS. THE STATE (1991) 2 NWLR (PT. 176) 699.**

The medical report before this Court tendered by the prosecution, which is meant to corroborate the testimony of PW1, is dated the 18th of November 2016, nearly two weeks (15 days) after the alleged incident occurred. It also shows that there were no bruises or wounds on the vaginal area of the prosecutrix, and after medical investigations, everything was found to be normal.

In the testimony of PW2, he stated that the child was found to be unkempt, in no obvious pains, no loss of blood, no sign of bruises or wounds, and that a missing hymen cannot be concluded to be a result of sexual assault. The medical conclusion of PW2 after the medical examination was ‘suspected abuse’, leaving a huge gap of uncertainty. PW2 also testified that after all the medical examinations were concluded, everything was found to be normal with the child.

In the case of **DANLADI VS. STATE (2019) 16 NWLR (PT. 1698) 342:** The Court held that: The intendment or relevancy of a medical report in rape cases is, the establishment of the evidence of injury sustained to the person of a rape victim.

“The two medical reports submitted as evidence before this Court fail to provide any conclusive of sexual abuse of PW1. A thorough examination of these reports reveals no findings or indications that would suggest PW1 was subjected to sexual abuse. Furthermore, the medical reports do not document any physical injuries, trauma, or other medical conditions consistent with allegations of sexual abuse. The absence of such evidence raises significant doubts about the veracity of the allegations made against the defendant. In the absence of concrete medical evidence, the Court must approach the testimony of PW1 with caution and consider the possibility of

coercion, manipulation, or fabrication. The prosecution's reliance on uncorroborated testimony is insufficient to establish guilt beyond a reasonable doubt. Therefore, the defence submits that the medical reports, or lack thereof, create reasonable doubt regarding the allegations of sexual abuse, and it is incumbent upon the Court to carefully weigh this evidence in its deliberations.

There was no DNA test conducted on the defendant to identify him as the sexual abuser, and the prosecution has failed to provide credible evidence before the Court, tying the defendant to the offence. PW1, PW2, PW3, and PW5 could not tell this Court how many times the incident had occurred. Corroboration need not consist of direct evidence that the defendant committed the offence charged, nor need it amount to a confirmation of the whole account given by the witness/prosecutrix. It must, however, corroborate the said evidence in some respects material to the charge in question. Corroborative evidence must in itself be completely credible evidence. See **ANYIGOR VS. STATE (2019) 14 NWLR (PT. 1691) 45.**

See the case of **ADNEKAN VS. THE STATE OF LAGOS (2021) 1 NWLR 1756** (P. Where the Court held thus:

“Section 209(3) of the Evidence Act 2011 simply prescribes that an accused person shall not be convicted for any offence on the evidence or testimony of a child under the age of fourteen years of age whose unsworn or un-affirmed evidence was received under the provision of section 209(1) of the Act unless it is corroborated by some other material evidence in support of such testimony or evidence implicating him. Simply put, an accused person cannot validly be convicted for an offence on the unsworn evidence or testimony of a child under the age of fourteen

years alone and without some other materials evidence in support thereof implicating the accused person. Corroboration is therefore statutorily required for the unsworn testimony or evidence of an accused person for any offence. The corroboration required is some other material evidence in support of the testimony or evidence implicating the accused person in the commission of the offence he was charged with.

In the testimony of PW4, one Doctor Gloria Tsubenya Yisa, she stated clearly that she found no evidence of trauma or bruising, and the hymen of the prosecutrix was partially breached. Upon examination, no vaginal discharge was observed in PW1, and all the prescribed tests returned negative findings. Her testimony goes further to solidify the testimony of PW2 and the medical report tendered before this Court.

In the case of **MOHAMMED VS. THE STATE (2018) 13 NWLR (P. 93-100)**;

“In a rape case, corroboration is evidence, which confirms the evidence of the prosecutrix. It is that evidence that tends to show that the story of the victim, the prosecutrix, is true and that it is the accused person who committed the crime. Such evidence need not be direct as this may not be possible as rape is not committed in the open. It is enough if it corroborates the said evidence in some material particular to the charge in question. However, where the child is a minor of some discernible age, her sworn evidence needs no further corroboration. There is no law or statutory provision that in rape cases, evidence of the prosecutrix must be corroborated. However, it is a rule of prudence and the settled course of practice by the Court to seek for corroboration in rape cases.

The same applies to the offence of sexual abuse and sexual exploitation, the Court is obliged to consider corroboration, especially in circumstances where the prosecution relies heavily on the unsworn testimony of a child. The prosecution in the circumstances of this case has failed to provide enough credible evidence before this Court to establish that the offense of sexual abuse and sexual exploitation was committed by the defendant. The testimony given by PW2, PW3, PW5 and PW6 is solely based on hearsay, on what PW1 reported told them.

Under **section 37 of the Evidence Act, 2011**, hearsay means a statement: oral or written made otherwise than by a (a) witness in a proceeding; or contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of the Evidence Act, which is tendered in evidence for the purpose of proving the truth of the (b) matter stated in it.

The defence submitted that a good portion of the prosecution's evidence consists of hearsay. PW3 (Mrs. Grace Ekuma-Okoko) and PW5 (Nweze Eudda Adanaya) both gave testimony based on what they were told by PW1. However, the law is clear that hearsay evidence is inadmissible unless it falls within certain exceptions. See **PUNCH NIG. LTD VS. JUMSUM NIG. LTD (2011) 12 NWLR (PT. 1260) 162.**

“Section 77 of the Evidence Act clearly makes hearsay testimony inadmissible in evidence, much as the evidence tends to establish the truth of what the witness was told. The circumstances of this case do not fall within the exception provided under the ambit of section 40 of the Evidence Act.

In this case, the testimony of PW3 and PW5 merely reiterates what they claim to have heard from PW1, without providing any firsthand knowledge of the alleged incident. Similarly, the testimony of PW5 and PW6, Inspector Onwumi Azu Amaka, primarily relies on statements made by the complainant, rather than direct evidence. **IDI VS. STATE (2019) 15 NWLR (PT. 1696) 448.**

“The evidence of a statement made to a witness by a person who is not himself called as 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 not hearsay and is admissible when it is proposed to establish by the evidence not the truth of the statement, but the fact that it was made.

The prosecution’s failure to call the police officer who investigated the case to testify is a significant omission. According to **Section 36(4) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)**, every person charged with a criminal offence has the right to adequate time and facilities for the preparation of their defence. Furthermore, **Section 35(2) of the Evidence Act 2011 (as amended)** states that all relevant facts must be considered in determining the guilt or innocence of the accused. The investigating officer’s testimony would have provided crucial insight into the investigation process, potentially shedding light on material facts and evidence gathered. The absence of the investigating police officer creates uncertainty regarding the authenticity and reliability of the evidence presented. The failure to call a key witness, the investigating officer in this case, creates doubts and the prosecution is unable to prove its case. This omission should lead to the acquittal of the defendant, as the court ought to deem the prosecution’s evidence insufficient.

In the case of **ONAFOWOKAN VS. THE STATE (2013) 14 NWLR (PT. 1374) 1**, the Court of Appeal held that the failure to call material witnesses can lead to an adverse inference against the prosecution. The prosecution has not discharged its burden of proof, and the Court ought to consider this significant omission when evaluating the evidence presented.

These testimonies do not establish a direct link between the defendant and the crime. The lack of direct, corroborative evidence from the prosecution undermines the reliability of these witnesses and renders their testimony insufficient to establish the guilt of the defendant beyond a reasonable doubt.

The principles governing hearsay evidence dictate that a witness cannot testify to an out-of-court statement alleging the defendant's culpability if the purpose is to establish the truth of that assertion. Such evidence is solely permissible to demonstrate that the witness received information from another person, not to prove the veracity of the statement itself (**ORJI VS. UGOCHUKWU (2009) 14 NWLR, Part 1161, p. 228 at p. 233**). The hearsay evidence given by the prosecution witnesses in this trial ought to be considered inadmissible and should be excluded from consideration. The testimonies of PW3, PW5, and PW6 should be expunged from the record of the Court.

The testimonies of PW2 and PW6 cannot be relied on as they substantially rely on statements made by PW3, who was not present at the crime scene and further relayed hearsay evidence. However, PW3's credibility has been called into question due to inconsistencies and contradictions in their testimony. PW2 and PW6's testimonies are based on hearsay, as they repeat statements made by PW3 without direct knowledge of the events.

Let me conclude by saying that the guilt of an accused person can be proved through any of the following method:

- (i) Through confessional statements
- (ii) Through circumstantial evidence or
- (iii) Through the testimony of eye witnesses. See **ITU VS. STATE (2016) 5 NWLR (PT. 1506) 443, ADEGBOYE VS. STATE (2017) 16 NWLR (PT. 1591) 248.**

Significantly, in the instant case what we have on record is the unsworn evidence a child which requires corroboration before the Court can conveniently convict a defendant. I therefore agreed intoto with the submissions and arguments of the learned Counsel to the defendant when he concluded thus:

- (1) The prosecution bears the burden of proving the defendant's guilt beyond a reasonable doubt. In this case, however, the evidence presented is insufficient to meet the standard laid down by law. The case against the defendant is based on hearsay evidence, lack of circumstantial evidence, and no direct evidence has been presented that conclusively ties the defendant to the alleged crime. As such, the prosecution has failed to establish the defendant's guilt to the degree required by law, and as a result, a conviction cannot be sustained.
- (2) The testimony of Prosecution Witness 1 (PW1) is critical to the prosecution's case, but it is unsupported by any independent evidence. The prosecution has failed to provide corroborating testimony or physical evidence to back up PW1's account. As a result, the reliability of PW1's testimony is highly questionable. In the absence of corroboration, the testimony cannot be considered sufficient to prove the

defendant's guilt beyond a reasonable doubt, as it stands as a solitary, unsworn and unverified statement.

- (3) Throughout the trial, the prosecution has relied heavily on hearsay evidence. Hearsay evidence is inadmissible under the laws of evidence because it cannot be verified and often lacks the reliability needed for it to be used in a court of law. The prosecution's reliance on such inadmissible evidence significantly weakens its case and renders the evidence presented as unfit to secure a conviction.

- (4) The prosecution has failed to produce any tangible or forensic evidence that directly links the defendant to the alleged crime. There is no physical evidence, such as DNA, fingerprints, or other trace materials, that connects the defendant to the crime scene. Similarly, there is no direct witness testimony placing the defendant at the scene of the crime. As a result, the evidence provided does not establish a clear connection between the defendant and the criminal act, further destroying the prosecution's case.

In light of the above, it is my firm view that the prosecution has failed to establish the guilt of the defendant beyond reasonable doubt as required by the law.

I therefore without wasting precious judicial time discharge and acquit the defendant in this case.

This is the Judgment of this Court.

APPEARANCES:

Ijagbemi John for the Prosecution

B. O. Akinseye-George for the Defendant

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S. B. Belgore

(Judge) 21/1/2025