

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON THURSDAY, THE 23<sup>RD</sup> DAY OF JANUARY, 2025**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**CHARGE NO: FCT/HC/CR/1101/2020**

**BETWEEN:**

**COMMISSIONER OF POLICE**

**COMPLAINANT**

**AND**

**WILLIAMS DANIEL**

**DEFENDANT**

**JUDGMENT**

The Defendant is standing trial on a one-count charge of unlawful carnal knowledge of a minor. Specifically, the Charge reads as follows:-

*Count 1: That you Williams Daniel male adult of TugaMaje, Zuba, FCT Abuja within the Abuja Judicial Division committed the offence of rape, in that on or about 13<sup>th</sup> of July you lured one TemitopeBankole, female, 8 years old, to your mother's kitchen and had sexual intercourse against her consent, you thereby committed an offence punishable under section 31 of the Child Rights Act.*

The Defendant was arraigned on the 11<sup>th</sup> of February, 2021 when this case came up for the first time in this Court. The Defendant entered a no guilty plea and the court adjourned the case for trial. The Prosecution opened its case on

the 3<sup>rd</sup> of March, 2021 and called the PW1, one Denis Uke, an Inspector in the office of the Prosecution.

On the 30<sup>th</sup> of March, 2023, however, the Prosecution brought an application for the amendment of the Charge. This Court heard the Motion on Notice with Motion Number M/4716/2023 dated and filed on the 13<sup>th</sup> of February, 2023 on the said 30<sup>th</sup> of March, 2023 and granted the reliefs sought. The Amended Charge reads thus: *“That you Williams Daniel, male, 24 years of TungaMaje, Zuba, FCT Abuja within the Abuja Judicial Division committed the offence of rape, in that on or about the 13<sup>th</sup> day of July, 2020 you lured one TemitopeBankole, Female, 8 years old, to your mother’s kitchen and had sexual intercourse with her against [her] consent, you thereby committed an offence punishable under section 31 of the Child Right Act.”* The Defendant was re-arraigned on the amended Charge and he entered a no guilty plea just like the first time he was arraigned.

On the 6<sup>th</sup> of June, 2023, the PW1, Sergeant Dennis Uke of the Gender Unit of the Criminal Investigation Department of the Federal Capital Territory, Abuja Command of the Nigerian Police Force testified. He was cross-examined and discharged. On the 21<sup>st</sup> of March, 2024, the PW2 testified. He was DrAliyuYahayaAbubakar, a medical doctor at the General Hospital Zuba. He testified as a subpoenaed witness. He was cross-examined and discharged. The case was adjourned to the 16<sup>th</sup> of May, 2024 for the Defendant to open his defence.

On that day, however, the Defendant made a no case submission. On the 18<sup>th</sup> of September, 2024, the Prosecution and the Defence adopted their written addresses in the No Case Submission. On the 22<sup>nd</sup> of October, 2024, the Court delivered its Ruling on the No Case Submission and ordered the Defendant to enter his defence. On the 5<sup>th</sup> December, 2024, the Defendant

entered into his defence. He testified as DW1. He was cross-examined and discharged. The Court thereafter adjourned to the 18<sup>th</sup> of December, 2024 for adoption of Final Written Addresses. On the 19<sup>th</sup> of December, 2024, the Prosecution and the Defence adopted their Final Written Addresses.

The Defendant, in his Final Written Address filed on the 12<sup>th</sup> of December, 2024, distilled a sole issue for determination, to wit: “*Whether or not the Prosecution has proven the alleged offence against the Defendant beyond reasonable doubt to warrant the conviction/sentencing of the Defendant?*”

In his submissions on the sole issue, learned Counsel for the Defendant, C. A. Oboh, Esq., contended that the Prosecution had been unable to discharge the evidential burden of proof incumbent on it by virtue of section 131 of the Evidence Act, 2011 and established in a plethora of cases such as ***Oteki v. State (1986) 2 NWLR (Pt. 24) 648***. He added that the evidence adduced by the Prosecution in proof of his case could not link the Defendant with the alleged offence. It was his case that neither the victim of the crime nor her mother was called as a witness in proof of the offence of rape, adding that PW2 was not in the team that conducted tests on the victim when she was brought to the hospital.

Learned Counsel enumerated the elements of the offence of rape and insisted that the Prosecution has not proved any of the elements as it touched on the Defendant. He cited the cases of ***Uzoagba v. C.O.P. (2012) LPELR-15525; (2014) 5 NWLR (Pt. 1401) 44, Asidegba v. I.G. of Police (1958) SCNLR 60, Okoro v. The State (1988) 12 SCNJ 191, OluOnagoruwa v. The State (1993) 7 NWLR (303) 49***. Zeroing on the evidence of the Defendant, Counsel submitted that the confessional statement of the Defendant was obtained under circumstances the law frowned at, adding that it was not voluntary. Citing the cases of ***Dawa v. State (1980) 8-11 SC 236, Nsofor & Anor v.***

***State (2005) All FWLR (Pt. 242) 397 at 411 -412, Queen v. IGP (1957) NCLR 25*** he urged the court not to act on the confessional statement of the Defendant.

In conclusion, he urged the Court to discharge and acquit the Defendant pursuant to the provisions of sections 301 and 302 of the Administration of Criminal Justice Act, 2015.

In the Prosecution's Final Written Address filed on the 16<sup>th</sup> of December, 2024, learned Counsel for the Prosecution, Odion Peter Odia, Esq., formulated a sole issue for determination, which is, "*Whether from the totality of the evidence led by the Prosecution and the Defence put up by the Defendant in this Charge, whether the Prosecution has proved the offence of rape charged beyond reasonable doubt to entitle this Honourable Court to convict the Defendant as charged.*"

In his legal arguments, Counsel prefaced his submissions with the iteration of the principles that guide a court in a rape trial. He cited the case of ***State v. Musa (2018) LPELR-46318 (CA), Idi v. State (2018) 4 NWLR (Pt. 1610) 359 at 38-39***. He contended that the Prosecution had been able to establish the offence contained in the Charge. He referred the court to the evidence of PW1 and insisted that the Prosecution had established all the elements of the offence of rape.

Responding to the submissions on the voluntariness of the evidence of the DW1, he submitted that the confessional statement of the Defendant was unimpeachable and was consistent with the other evidence tendered in the course of the trial. He cited the cases of ***FataiBusari v. The State Legalpedia Electronic Citation (2015) SC 364/2012, Idowu v. State (1998) 13 NWLR (Pt. 582) 391, Obasi v. Chief of Naval Staff (2002) 2 NWLR (Pt. 751) 400 at 418 and Shade v. State (2005) 1 NWLR (Pt. 218) at 221***.

In conclusion, learned Counsel for the Prosecution, relying on the cases of ***Attah v. The State (2005) 4 LRCNC 236, Nwaturuocha v. The State (2011) 3 SCNJ 148, NnamdiOsuagwu v. The State (2013) 1 SCNJ 33, Isma'il v. The State (2011) 17 NWLR (Pt. 1277) 601 SC and Olude v. The State (2014) 7 NWLR (pt. 1405) 89***, submitted that the Prosecution has proved its case against the Defendant beyond reasonable doubt. He therefore urged the Court to find for the Prosecution and convict the Defendant accordingly.

I have taken the time to bring out the evidence as well as the legal submissions for the Prosecution in proof of its case as well as those of the Defendant in defence of the one-count Charge that has been preferred against him. The sole issue that presents itself for determination is this: ***“Whether the Prosecution has not been able to establish the offence of unlawful carnal knowledge of the minor mentioned in the Charge, to wit, TemitopeBankole?”***

The *terminus a quo* in the resolution of this issue is the relevant provision of the Child Rights Act, 2003 which created the offence of unlawful sexual intercourse with a child. The section is section 31 of the Act and it provides that:-

***“(1) No person shall have sexual intercourse with a child.***

***(2) A person who contravenes the provision of Subsection (1) of this section commits an offence of rape and is liable on conviction to imprisonment for life.***

***(3) Where a person is charged with an offence 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.”***

Sexual intercourse is not defined in section 277 of the Act, that is, the interpretation section of the Act. However, the courts have provided a working definition of the term as used in the domesticated Child Rights Law of the various states. For instance, in the case of ***Adenekan v. The State of Lagos (2021) 1 NWLR (Pt. 1756) 130 CA at 189, paras. E-F*** which was decided within the context of the Criminal Law of Lagos State, 2015, the Court of Appeal held thus: ***“The Criminal Law of Lagos State, 2015 does not define what constitutes “sexual intercourse” for the purpose of the offence of defilement. Sexual intercourse has, however, been defined as the physical activity of sex, usually describing the act of a man putting his penis inside a woman’s vagina.”***

Central to the offence created and defined in section 31 of the Act is that the victim must be a child within the meaning of the Act. Section 277 of the Act defines “child” as “a person under the age of eighteen years”. This definition has been accorded judicial approbation in a number of cases such as ***Adenekan v. The State of Lagos (2021) 1 NWLR (Pt. 1756) 130 CA at 189, paras D-E, Onyegbu v. State (1994) 1 NWLR (Pt. 320) 328 CA at 339, paras E-F.***

Subsection (2) of the section explains that the offence of having sexual intercourse with a child is rape. The punishment stipulated therefor on conviction is imprisonment for life. In proving the offence of unlawful sexual intercourse with a child, the Prosecution is required to establish the existence of the same elements, or ingredients, required to ground the offence of rape. These elements, or ingredients, within the peculiar circumstances of the Child Rights Act, 2003, are these:-

- (1) That the Defendant had sexual intercourse with the woman, or, as in this Charge which is brought under the Child Rights Act, 2003, the child in question;
- (2) That the act was done when the victim was a child within the meaning of the Child Rights Act, 2003;
- (3) That there was penetration.

As in the case of rape, there must be evidence linking the Defendant in the case of sexual intercourse with a child with the offence alleged. In the case of ***Francis Okpanefe v. The State (1969) 1 All N.R. 420***, the Supreme Court held, in a case of rape and attempted rape preferred under section 282(1)(e) of the Penal Code applicable to the northern parts of Nigeria including the Federal Capital Territory, Abuja and which deals with a minor, that the evidence of commission of the offence must be such that it connects the Defendant effectively with the offence.

In ***Yau v. State (2022) 18 NWLR (Pt. 1863) 601 SC at 635, paras. D-G; 647, paras. C-H***, the apex court laid down the ingredients that must be proved before rape can be said to have been proven. The Court enumerated the ingredients thus:- ***“For the prosecution to succeed in proving the offence of rape, it must be proved that:(a) the accused had sexual intercourse with the woman; (b) the act of sexual intercourse was done without her consent or that the consent was obtained by fraud, force, threat, intimidation, deceiver impersonation; (c) the woman was not the wife of the accused; (d) the accused had the mens rea, the intention to have sexual intercourse with her without her consent: or that the accused acted recklessly not caring whether the prosecutrix consented or not; (e) there was penetration.”***

In the case of *Nseudoh v. State (2021) 11 NWLR (Pt. 1787) 234 CA at 246, paras A-C*, the Court of Appeal explained that “**Sexual intercourse is deemed complete upon proof of penetration of penis into vagina. Even the slightest penetration constitutes the act of sexual intercourse. The fact that a prosecutrix who is allegedly defiled is found to be virgointacta (i.e. a virgin) is not inconsistent with partial sexual intercourse, and the court will be entitled to find that sexual intercourse has occurred if it is satisfied on that point from all the evidence led and surrounding circumstances of the case. Where a penetration was proved but not of such a depth as to injure the hymen, it was held to be sufficient to constitute the crime of rape. In other words, proof of the rupture of the hymen is therefore unnecessary to establish the offence of rape.**”

By virtue of subsection (3) of the 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. See the case of *Anyigor v. State (2019) 14 NWLR (Pt. 1691) 45 CA at 56, paras D-E* where the Court of Appeal considered similar provision under the Ebonyi State Child Rights and Related Offences Law and held that “**The general defence of consent does not avail a person accused of having sexual intercourse with a child under section 34 of the Ebonyi State Child Rights and Related Offences Law or wherever a child is the prosecutrix as the law is clear that a child is incapable of giving sexual consent.**”

It is against this backdrop that I return to the case at hand. The Defendant, Williams Daniel, is standing trial for having sexual intercourse with one minor, Temitope Bankole, who at the time of the incident was eight years old. The

victim of the offence qualified as a child within the meaning of the word under the Child Rights Act.

In proof of the allegation, the Prosecution called two witnesses. The PW1 narrated how he and his team investigated the allegation of the offence of rape against the Defendant. He explained how the statement of the Defendant was obtained in compliance with the law and in the presence of his mother. He further narrated how the investigating team took the Defendant to the scene of the crime and the Defendant gave a graphic description of the events and how he lured the victim to his mother's kitchen, after he had found that his mother's room was locked. It was the evidence of the PW1 that the Defendant overpowered the victim and forcibly had sexual intercourse with her, resulting in excruciating pain for the minor.

The confessional statement of the Defendant which was sought to be tendered in evidence was challenged by the Defence and this precipitated a trial within trial to determine the voluntariness of the confessional statement. Upon the conclusion of the trial within trial, this court found that the confessional statement was made voluntarily. It therefore admitted it in evidence and marked it as **Exhibit B1-B2** after a considered Ruling on the 1<sup>st</sup> of February, 2024.

This evidence of PW1 was not shaken under cross-examination.

The PW2 testified as to the medical findings following the report of the incident at the General Hospital, Zuba. The PW2 established his credentials as a medical doctor and tendered the medical report that was prepared after a medical examination of the victim. The medical report was admitted in evidence in the absence of any objection from the Defence and marked as **Exhibit C1**.

He was cross-examined. Under cross-examination, he conceded that certain factors other than sexual intercourse could damage the hymen.

The Defendant testified in his defence as DW1. He denied culpability in the charge. No exhibit was tendered through him. He insisted that his confessional statement that was tendered and admitted in evidence as **Exhibit B1-B2** was not made voluntarily.

Under cross-examination, he responded that he did not know that the statement he made in court was different from the statement he made during trial within trial. He also denied knowledge that the court had ruled in the trial within trial that his statement was made voluntarily.

I have pondered on the body of evidence before me. I have also paid attention to the submissions of the learned Counsel for the Defendant that the failure of the victim of the offence and her mother to testify in court was fatal to the case of the Prosecution. I must start by saying that in rape cases, it is desirable that the prosecutrix, or the victim of the offence of rape, gives evidence in a rape trial. This, however, is not a rule of law. It is not even a rule of practice that prosecutrices testify in rape trials. In ***Western Publishing Company Ltd v. Fayemi (2017) 13 NWLR (Pt. 1582) 218 CA at 265, paras A-F***, the Court of Appeal held that ***“There is no necessity for a party to appear in court and give evidence so long as the claims are proved to the satisfaction of the court. There is no rule of law or practice which requires a plaintiff in a civil suit to be physically present in court to testify if he can prove his case. There is also no such rule which compels a defendant to appear before the court and to testify before he may successfully defend an action against him. Accordingly, a plaintiff or defendant can prove his case without presenting himself or testifying before the court. Indeed,***

***judgment in an appropriate case may be entered in a suit with or without the presence of the parties so long as they are duly represented.”***

This principle applies *mutatis mutandis* to criminal proceedings. In ***Darlington v. F.R.N. (2018) 11 NWLR (Pt. 1629) 152 SC at 165, paras F-G***, the apex court held that ***“Even though in most cases the complainant starts the burden of proof by leading evidence to substantiate his complaint that is the basis of the charge, there is no rule of evidence or criminal procedure that makes it compelling or mandatory that the complainant must adduce evidence personally in proof of his complaint.”***

This explains why the evidence of prosecutrixes often than not require corroboration; though there are instances where the uncorroborated evidence of a prosecutrix can ground a charge of rape. See ***Yau v. State (2022) 18 NWLR (Pt. 1863) 601 SC at 648, paras A-D***. The absence of the evidence of a prosecutrix, in my considered view, is not fatal to the case of the Prosecution. What matter is that the Prosecution is able to establish that the offence of rape has been committed. This the Prosecution can do without necessarily calling the Prosecutrix, or the victim of the offence of rape, to testify. In ***Ali v. State (2021) 12 NWLR (Pt. 1789) 159 SC at 199, paras F-G***, the Supreme Court held that ***“Generally, corroborative evidence of rape must confirm the following: (a) that sexual intercourse has taken place; (b) that it took place without the consent of the victim; and (c) that the accused was the person who committed the offence.”*** The argument of learned Counsel for the Defendant on this point therefore goes to no issue. I so hold.

The question that agitates the mind of this Court is whether the Prosecution has been able to prove the allegation contained in the charge without the evidence of the prosecutrix *vis-a-vis* the evidence required to convict for the

offence of rape. The nature of the independent evidence required to ground the offence of rape outside the evidence of the prosecutrix must be compelling and must tie the Defendant inexorably to the offence. This independent evidence could be circumstantial. It could also be direct, such as the confession of the Defendant.

In the case of **Aiwuyor v. State (2022) 13 NWLR (Pt. 1846) 89 SC at 156-157, paras. G-E**, the apex court had reason to consider what amounted to circumstantial evidence and the nature of circumstantial evidence required to ground a conviction. The court held thus: ***“Circumstantial evidence requires an inference to be made to establish a fact, and in certain cases, circumstantial evidence may be even more powerful than direct evidence, which proves or disproves a fact directly. Circumstantial evidence is very often the best evidence. It is said to be evidence of surrounding circumstances, which is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say it is circumstantial. But the circumstantial evidence sufficient to support a conviction must be cogent, complete, and unequivocal. It must be compelling and must lead to the irresistible conclusion that the accused person, and no one else, was the offender. The facts must be incompatible with innocence of the accused and incapable of explanation on any other reasonable hypotheses than that of his guilt.”***

Section 28 of the Evidence Act, 2011 defines a confessional statement as follows: ***“A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.”*** Section 29 makes ample provisions on when confessional statement is relevant and when the court is not required to act on it. It provides thus:

***“(1) In any proceedings a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.***

***(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained –***

***a. by oppression of the person who made it; or***

***b. in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.***

***(3) In any proceedings where the prosecution proposes to give in evidence a confession made by a defendant, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in either paragraph (a) or (b) of subsection (2) of this section.***

***(4) Where more persons than one are charged jointly with an offence and a confession made by one of such persons in the presence of one or more of the other persons so charged is given in evidence, the court shall not take such statement into consideration as against any of such other persons in whose presence it was made unless he adopted the said statement by words or conduct.***

***(5) In this section "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence whether or not amounting to torture."***

In ***Ofordike v. State (2019) 5 NWLR (Pt. 1666) 395 SC at 415-416, paras. G-A***, the apex court placed a judicial imprimatur on the provisions of section 29 of the Evidence Act, 2011 when it explained that ***"A confessional statement is a statement by an accused person which unequivocally confesses to the commission of an offence charged. Such a statement to be of any probative value, must be clear, precise and unequivocal. It must also be direct, positive and should relate to the accused person's own acts, knowledge or intention, stating or suggesting the inference that he committed the crime charged. Where a confessional statement is voluntarily made, it is the best evidence on which the trial court can rely to convict an accused person."***

On the probative nature of confessional statements, the Supreme Court in ***Aliyu v. State (2019) 11 NWLR (Pt. 1682) 108 SC at 128, para. G*** succinctly held that ***"Confessional statement is the best evidence to ground conviction, and it can be relied upon solely where voluntary."***

Where a Defendant retracts his confessional statement, the Court is obligated to look for independent evidence that supports or lend credence to the allegation against the Defendant that they had committed the offence alleged against them. In ***Ali v. State (2019) 14 NWLR (Pt. 1692) 314 CA at 364, paras. C-G*** the court held that ***"Where a court is convinced that the confession of guilt was freely and voluntarily made and the court is satisfied as to its truth, the accused person can be convicted on it. It is however expedient and desirable that where an accused person has***

***denied making a confessional statement, the trial court should look for some evidence, however slight, outside the confession to confirm that it was a true confession.***

In other words, there is a difference between a claim that a confessional statement was made involuntarily and that it was never made at all, that is, that it has been retracted. While in the former a trial within trial is required to determine the voluntariness of the confessional statement, in the case of the latter, there is no need for a trial within trial; the court will act on it, even though it is required to look for a corroborative evidence that supports the facts contained in the confessional statement. See ***Onyenye v. State (2012) 15 NWLR (Pt. 1324) 586 at 619, paras A-C, Hassan v. The State (2001) 7 S.C. (Pt. 11) 85;Uwa v. State (2015) 4 NWLR (Pt. 1450) 438 CA at 457, paras. G-H; 465, paras. B-C.*** In ***Matthew v. State (2018) 6 NWLR (Pt. 1616) 561 SC at 579, paras. C-D,*** the apex court held that ***“Mere retraction of a voluntary confessional statement by an accused person does not render it inadmissible or worthless and untrue in considering his guilt. If the confessional statement is satisfactorily proved, a conviction founded on it, without more, will be sustained by an appellate court.”***

In the case of the Defendant in this case, he did not deny, or retract, his confessional statement. He asserted that he did make it voluntarily, as it was obtained under torture. This court had, in the trial within trial, heard proceedings whereby the voluntariness of the confessional statement of the Defendant was tested. Upon the conclusion of the trial within trial, this court found, in a considered Ruling delivered on the 1<sup>st</sup> of February, 2024, that the statement was made voluntarily and in a manner provided by the law. This confessional statement is before this Honourable Court as **Exhibit B1-B2**. The evidence of the Defendant that he was compelled to make the statement he

made at the Gender Unit of the Nigerian Police Force, Federal Capital Territory, Abuja Command under torture therefore goes to no moment. Ditto for the elaborate submissions of the learned Counsel for the Defendant urging this Court not to act on the said confessional statement on the ground that it was obtained from the Defendant under oppressive conditions.

The circumstances of the present case before me inexorably tied the Defendant to the offence contained in the Charge. On the basis of the body of evidence before this Court, I hold that the Prosecution has been able to prove the one-count Charge of sexual intercourse with a child contrary to the provision of section 31 of the Child Rights Act beyond reasonable doubt. I therefore resolve the sole issue in this Judgment in favour of the Prosecution and against the Defendant.

Accordingly, on the One-Count Charge of having sexual intercourse with TemitopeBankole, female, aged eight (8) years old on or about the 13<sup>th</sup> day of July, 2020 when the offence was committed, I hereby find the Defendant Williams Daniel guilty as charged.

### **SENTENCING**

Section 31(2) of the Child Rights Act, 2003 provides that “***A person who contravenes the provision of Subsection (1) of this section commits an offence of rape and is liable on conviction to imprisonment for life.***” On the basis of this statutory provision under which the Defendant is charged, I hereby sentenced the Defendant Williams Daniel to imprisonment for life for the offence of having sexual intercourse with TemitopeBankole aged eight (8) years at the time the offence was committed on or about the 13<sup>th</sup> day of July, 2020.

This is the Judgment and Sentence of this Court delivered today, the 23<sup>rd</sup> day of January, 2025 in this case.

**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**23/01/2025**

**APPEARANCE:**

**For the Prosecution:**

**Odion Peter Odia, Esq.**

**D. S. Danboyi, Esq.**

**Shafa'atu Ahmed, Esq.**

**For the Defendant:**

**Christy AigbudumheOboh, Esq.**

**P. A. Onuh, Esq.**