IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ZUBA, ABUJA

ON FRIDAY THE 9TH DAY OF MAY, 2025

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CR/057/2022

BETWEEN:

COMMISSIONER OF POLICE ---- COMPLAINANT

AND

PRAISE OKPOKO ---- DEFENDANT

JUDGMENT

In this case premised on rape and/or indecent carnal knowledge of a minor aged 3 years old, the Defendant, Praise Okpoko was charged for the offence and he pleaded Not Guilty. The offence is thus:

> **"That you Praise, male, 14 years, of Abbey Street, Gbazango, Kubwa, Abuja, FCT, within the jurisdiction of this Honourable Court committed a criminal offence to wit: Unlawful Sexual Intercourse with a child in that on or about the 28th day of November, 2021, at about 1700 hours at the above mentioned address you did have unlawful sexual intercourse of one Aisha**

Mohammed Sanni, female, a minor of three (3) years old, by luring her with biscuits. You thereby committed an offence contrary to Section 1 of the Violence Against Persons (Prohibition) Act 2015."

In this case the Prosecution called 2 Witnesses and tendered 2 documents – Confessional Statement of the Defendant as well as Medical Reports. The Confessional Statements were admitted after Trial-within-Trial. The Defendant tendered some documents through the PW1 & PW2 during Cross-examination. The Defence called one Witness – the Defendant himself.

In the case it was alleged that the Defendant rapes a 3 years old baby through her anus. The report was made by the father and mother of the victim (name withheld). It was alleged that the Defendant lured the girl with biscuits, and after the act the girl cried and went home, and her mother observed that there was blood running down her legs. She checked her private part and discovered that she has been defiled, injured and wounded. She was rushed to the hospital and subsequently was taken to Police Station, and Police directed them to go to General Hospital. That since the incident the victim has been stooling uncontrollably as a result of the injury she sustained in the rape.

That the Defendant confessed to having unlawful sexual intercourse with the girl. The Court refers to the Confessional Statement of the Defendant.

The case was later transferred from Kubwa Police Station to CID FCT Command, and detailed investigation was

carried out. That Medical Report showed that there were wounds and bruises on the anus of the victim. That the Defendant confessed of doing the act in his bedroom in their house. There was a visit to the crime scene and it shows that the victim and the Defendant live adjacent to each other in the same compound.

In their Final Written Address the Prosecution raised a sole Issue for determination which is:

> **"Whether having regard to the totality of evidence before this Court in this case the Prosecution has proved the charge of unlawful sexual intercourse against the Defendant beyond reasonable doubt."**

They answered in the **affirmative**, that they did so with the testimonies of their 2 Witnesses and documents tendered before the Court. That they did so by the Con fissional Statement of the Defendant which was voluntarily given in the presence of his mother/relatives and the circumstances evidence. That there is no doubt that the Defendant committed the offence contrary to **S. 1 of the Violence Against Persons (Prohibition) Act, 2015.**

That they proved the case based on **EXH 1 & 2 –** Confessional Statement of the Defendant and oral testimony of PW2 and through the Medical Report tendered before this Court.

That conviction can be secured on the strength of the Confessional Statement made at Kubwa Police Station as

well as the one made at the State CID, all of which were admitted after Trial-within-Trial.

That the Confessional Statements were direct, unequivocal, pointing to the fact that the Defendant committed the offence he is charged with. That the PW2 testified all she saw, heard and discovered during the course of investigation, and that such evidence is not a Hearsay, and that it should be treated as positive and direct evidence as required by law.

That the Medical Report – **EXH 2 & 3** further established the case of the Prosecution and it also corroborates the Confessional Statements made voluntarily by the Defendant. They relied on the following cases for all the above submission:

Emmanuel Tometin V. The State
(2014) LPELR – 22788 (CA)

Nasiru V. State
(2022) 14 NWLR (Pt. 1849) 38

Nseudoh V. State
(2022) 1 NWLR (Pt. 1787) 236

Adebayo V. State
(2014) LPELR – 22988 (SC)

Anyasodor V. State
(2018) 8 NWLR (Pt. 1620) 125 Para C – E

That the Medical Report from Kubwa General Hospital was admitted without objection from the Defendant

Counsel/Defendant. So also the Medical Report from KMC Hospital where the girl was first taken to before the case was reported to Police. That the both Reports showed penetration and the injury was as a result of the force used on the victim without her consent. That they are sufficient to establish the offence against the Defendant.

That with the evidence and the documents the Prosecution has proved the case against the Defendant. Besides, the victim is a child aged only three (3) years old and not capable of giving her consent.

That the Prosecution has proved the case against the Defendant through the documents tendered, testimonies of PW & PW2 as well as the Medical Reports and the circumstance of the case – proving the ingredients of the offence of rape. That the Prosecution has proved the case beyond reasonable doubt.

That on the argument of the Defendant Counsel that the Medical Reports ought to have been tendered by the Medical Doctors who prepared the Reports, the Prosecution submitted it is not sine qua non for the admission of the Medical Reports that it must be tendered by the Medical Doctor who prepared it. They referred to the cases of:

Mu'azu V. State
(2022) 12 NWLR (Pt. 1845) 581 – 582

Ali V. State
(2021) 12 NWLR (Pt. 1789) 186

They urged Court to discountenance the argument of the Defendant Counsel in that regard and hold that the Prosecution have proved the case of the Complainant in that regard.

That the circumstantial evidence placed before the Court by the PW2 is sufficient to convict the Defendant as the point strongly to the offence being committed by the Defendant and that the Defendant is guilty of the offence. That he confessed to the fact that the victim came to Defendant's house and after that it was found that she was raped by the Defendant. That the Defendant's Counsel submission of contradiction in evidence of PW2 should be disregarded. That contradiction as raised by the Defendant Counsel is immaterial and does not vitiate the evidence of PW1 who testified what was within her personal knowledge. They relied on the case of:

Kwenev V. State
(2022) 13 NWLR (Pt. 1847) 325 – 326 Para H – B

Atiku V. State
(2010) 9 NWLR (Pt. 1199) 241 @ 274 – 275

Ikemson V. State
(1989) 3 NWLR (Pt. 110) 455

That the inconsistencies raised by the Defendant as to contradiction were minimal and not material.

That the submission that the Confessional Statements of the Defendant were taken by two different Police Officers, does not cast doubt in the testimony of the Prosecution's

Witness – PW2 and the case of the Prosecution as the matter was investigated by 2 Police Divisions. That the officer who investigated the matter at Kubwa Police has since been transferred out of Abuja.

On the Medical Report not being in tandem as the Defendant raised, the Prosecution submitted that the Medical Report from the Private Hospital prompted the Police to direct them to go to General Hospital for proper and further medical report. That the Medical Reports are ad idem with the fact that there was rape and penetration. They urged the Court to discountenance the submission of the Defendant in that regard.

On the issue of withholding evidence as the Defendant raised, the Prosecution Counsel referred to the case of:

Ewugba V. State
(2017) LPELR – 43833 (SC)

and submitted that the provision of **S. 167 (d) of the Evidence Act 2011** applies to evidence which can be gotten and not ones which cannot be gotten as in this case. They referred to the case of:

PML Securities Company V. Federal Republic of Nigeria
(2015) 4 NWLR (Pt. 1450) 551 @ 568

That person invoking **S. 167 of the Evidence Act** must prove that the document in question exists and that it is the person that presumption is being invoked against that is in custody of the evidence. That since there is no evidence to show that the Prosecution is in custody of the

documents, that the provision of **S. 167 (d) of the Evidence Act** cannot be successfully invoked against the Prosecution. They urged the Court to discountenance the submission of the Defendant Counsel in that regard.

On the Defendant being a young person, they submitted that **S. 232 of the Child Rights Act 2003** provides that where a child is charged with offence and the Court is satisfied that the child actually committed the offence under the Act, that the Court can Order payment of fine, Community Service, parent or guardian to pay damages and compensation and cost, give security for proper behavior or enter recognizance etc. They urged the Court to convict the Defendant and sentence him bearing in mind that he is a minor and that the provision of **S. 221, 232 (d) of the Child Rights Act** provides for intermediate treatment to stop the Defendant from being a pedophile.

They finally urged the Court to find the Defendant guilty of the offence and sentence him accordingly.

The Defence in their own Final Written Address raised a sole Issue for determination which is:

> **"Whether from the totality of evidence before the Court the Prosecution has proved all the ingredients of the offence of unlawful sexual intercourse with the victim aged 3 years by luring her with biscuits and sweet contrary to S. 1 of the Violence Against Persons (Prohibition) Act, 2015."**

The Defendant Counsel submitted as follows:

That the Defendant is presumed innocent until proven otherwise by a Court of competent jurisdiction beyond reasonable doubt.

That the Prosecution did not prove the ingredients of the offence against the Defendant with credible evidence. They referred to the cases of:

Ogu V. Commissioner of Police
(2017) LPELR – 43832

Elizabeth Ogundiya V. The State
(1991) LPELR – 2333 (SC) as well as

S. 135 (1) of the Evidence Act

That the PW1 was not present when the incident happened, but she gave evidence as if she had eye-witness account. That she confirmed that in her testimony. That she said she wrote the Statement herself. That the mother of the Defendant was not present when the Statement was taken.

That the Defendant was molested and test conducted on both victim and Defendant. That the Prosecution could not present the biscuit before this Court. That the Confessional Statement was induced though that was overruled during the Trial-within-Trial.

That the PW2 does not have eye-witness account of the incident. That PW2 is also not the Medical Doctor that prepared the Medical Report and conducted the test at the Hospital. That PW2 confirmed he did not write the Medical

Report and could not prove the name of the Doctor who conducted the test. That the Confessional Statement was written by the Witness and not by the Defendant. That PW2 said that the mother and brother of the Defendant were present.

He further submitted that the Defendant was not allowed to write his Statement and that test result on him was not tendered.

That the Prosecution's evidence before the Court is only on suspicion and not on actual rape. That in her Statement, the mother of the victim said that the Defendant tried to rape her daughter, and in her testimony she said that he raped her daughter. That there is contradiction in the Statement of PW1. That PW1 did not witness the rape.

That **EXH 2 & 3** were not made by PW2 either. That the Prosecution did not tell Court the Doctor who conducted the tests and that there are different reports in the test so conducted.

That Court cannot pick and chose the Statement of PW1 & PW2 which one to chose or who is telling the truth. That Court cannot speculate. They referred to the case of:

Commissioner of Police V. Aruna
(1990) 6 NWLR (Pt. 155) 125 @ 134

Onubogu V. State
(1974) 9 SC 1

Princewill V. State
(1994) 6 NWLR (Pt. 353) 709 @ 714

That there is contradiction on account of how the victim went to the Defendant's house and that it attacked the truth of their testimonies. That the contradictions impugned the case of the Prosecution and created reasonable doubt in the favour of Defendant. They referred to the case of:

Atiku V. State
(2010) 9 NWLR (Pt. 1199) 241 @ 274 – 275

That the evidence of the Prosecution leaves reasonable doubt as to the fact that the Defendant committed the offence charged. They referred to the case of:

Dibie V. State
(2004) 14 NWLR (Pt. 893) 257

That the Prosecution's failure to produce the test result conducted on the Defendant marred their case against the Defendant. They referred to **S. 167 (d) of the Evidence Act.** That the Prosecution failed to furnish the Defendant with the test because it will be unfavourable to them. They referred to the case of:

Ewuba V. State
(2007) LPELR – 43833

That the testimonies of PW1 & PW2 are Hearsay.

That the testimony of PW1 is contradictory to the Statement made at the Police Station and at CID. That at the Police Station she said that the Defendant tried to rape her daughter, at State CID. But she said that her daughter

was raped by the Defendant in her testimony in Court. Hence, that her evidence is contradictory and inconsistence and should be discountenanced. They relied on the case of:

Nduka V. State
(2013) LPELR – 21199 (CA)

So also the evidence of PW2 as the Prosecution did not call the person who took the victim to the Defendant's house to testify. They referred to the case of:

Dori Polo V. State
(2012) LPELR – 15415

They urged the Court to resolve the sole Issue in their favour and hold that the Prosecution failed to establish and prove the offence of rape against the Defendant, and therefore discharge and acquit the Defendant.

The Defendant Counsel filed Reply on Points of Law to the Prosecution's Final Written Address submitting thus, referring and relying on the case of:

Aliu V. State
(2015) All FWLR (Pt. 782) 1706 on Confessional Statement.

That the PW2 writing the Statement of the Defendant when he could read and write is wrong and denial of Defendant's Right. That the said Statement which is confessional ought to have been written by the Defendant himself.

That not calling the maker of the Medical Report as a Witness also affected the case of the Prosecution. They urged Court to dismiss the case in the interest of justice.

COURT

The Court has summarized the case of the Prosecution and the Defendant as well as the Reply of the Defendant Counsel.

It is the humble view of this Court that the Prosecution established the offence of rape against the Defendant as required by law. The Prosecution tendered the Confessional Statement – **EXH 4 & 5** made by the Defendant**.** The Prosecution also tendered Medical Reports – **EXH 2 & 3** from 2 different Hospitals, all showing that the anus of the victim aged 3 years was bruised over the vulva and clothed blood and there was obvious bleeding in the anus confirming the force used by the Defendant to force his penis into the tiny anus of the victim. This confirms the confession of the Defendant in his Statement that:

> **"I goes through the anus because I cannot penetrate through the sexual organ."** As shown in the Statement of 2nd December, 2021 – **EXH 5.**

It also confirmed the confession of the Defendant recorded on 29th November, 2021, a day after the incident happened.

> **"I then took the girl inside our bathroom and removed her skirt and also removed my trouser and I then put my penis inside the girl's anus and I did it …"**

The content of **EXH 3** showed that:

> **"Vulva area smeared with blood ... the rectal area is also swollen ... with wild bruises on the skin tender to touch."**

It concluded as attempted rape.

All the findings in the Medical Reports corroborated the allegation as made against the Defendant by the Prosecution in this case. It also corroborated the Confessional Statements made by the Defendant and recorded by the 2 Officers on the 29th November, 2021 and 2nd December, 2021 respectively.

In the two (2) Statements the Defendant confessed to raping or 'attempting' to rape the victim. It equally corroborated the Statement made by the mother of the victim.

From the totality of the testimonies and documentary evidence presented before this Court the Prosecution established and proved the crime/offence beyond reasonable doubt.

The mother of the victim testified how she noticed the girl crying and limping, a fact the hospital confirmed. In her Statement she said:

> **"He did not succeed in entering her vagina, he entered her through her anus and he wound her."**

Again, looking at the circumstantial evidence, it is clear and not in doubt that the victim was in the house of the

Defendant on the day of the incident. It is not also in doubt that she left from the Defendant's house crying that evening on the day of the incident.

The issue of pain and blood running down her leg were as a result of the attempt by the Defendant to forcefully penetrate the anus of the victim ages only 3 years old. The Defendant in his own Statement confirmed that the girl was in their house on the given day and left crying after. According to the Defendant:

> **"I did it once before the girl demanded that she wants to go and I took her outside and she began to cry."**

The above is as contained in the Statement of the Defendant recorded on the 29th day of November, 2021.

The Prosecution was able to prove all the ingredients of the offence of rape against the Defendant in this case. They showed in **EXH 4 & 5** that tear was noticed in the anus of the victim with obvious bleeding. **EXH 2 & 3** refers.

The Prosecution demonstrated and established that the victim is a minor aged about 3 years. The Defendant's Counsel laborious but futile submission that there is disparity about the age of the victim and that Court should discountenance the Prosecution submission is highly misconceived because the victim, whether aged 3, $3^{1/2}$ or 5 years old, is still a minor. The disparity in stating the age of the victim by the Prosecution holds no water, as it does not make the action of the Defendant as alleged in this case to be legitimate, legal and lawful. This is because rape is rape,

whether of a minor or a major, it is still a crime under the law. Besides, allegation of rape of a minor is a serious offence because a crime committed against a minor is wrong and offence/crime of rape is equally wrong. The Prosecution need not labour on whether there is consent or willingness as no such thing happened.

Again, with the bruises and bleeding as seen by the mother of the toddler and as contained in the Medical Report, the issue of consent cannot be established. So also the question of whether there was Statement by the mother of the victim that there is an attempt to rape and that there was rape as the Defendant Counsel laboriously canvassed. The disparity in the Statement of PW1 as to attempt to rape and her testimony as to rape is of no significance and cannot make her Statement a Hearsay or contradictory. After all, the Defendant did not deny the fact that he raped the girl by putting his penis in her anus.

The argument and/or submission of the Defendant Counsel that there was no penetration and as such there was no rape, cannot stand as the definition of rape under both the Violence Against Persons (Prohibition) Act and the Penal Code Act has been expanded. See the case of:

Ali V. State
(2021) 12 NWLR (Pt. 1789) 186 Para B

Where it was held that rape is entering of the penis or some other part of the body like finger or foreign object into the vagina or other part of the body orifice. Again, in the Black

Law Dictionary, rape is not only entering the vagina with the penis.

From all indication the victim is a victim of statutory rape which is unlawful sexual influence with a person under the age of consent. The victim is 3 years old.

The law and justice has evolved and developed beyond proof of rape based on full penetration, ejaculation or forcing and carrying out the rape by force or abduction or by proof of plundering and despoiling of a case.

By the provision of **S. 1 of the Violence Against Persons (Prohibition) Act, 2015,** any intentional penetration of the anus, vagina, mouth of another person or any other part of a person's body or anything else.

In this case the Defendant confessed to have penetrated into the anus of the victim with his penis. The Defendant did not deny that fact. His testimony that he was forced to confess to that fact has already been determined in the Ruling of this Court on Trial-within-Trial, where the Court held that the Statement were voluntarily made and recorded as he confessed. That there was no proven act of involuntariness as the facts contained therein were those known to the Defendant alone. Besides, the PW2 never met the Defendant before the incident and did not know him before.

The submission that the evidence of PW1 & PW2 were Hearsay evidence is not true. So this Court holds. The PW1 is the mother of the victim who saw firsthand the small girl

crying home after she was sexually molested by the Defendant. She was the first person that noticed the crying and the blood streaming down the victim's leg, and she was the person that opened the girl up and saw that she had injury in her private part. She was the first and only person the victim told what happened to her. The victim did not go to any other place. Even the Defendant in his Statement said that when did it once trying to penetrate deeply the victim cried and said she wanted to go home, and he (the Defendant) brought her out of the crime scene and let her go home as she was crying. The PW1 need not witness or have eye-witness account of the rape before her testimony can be admitted. The PW1 having consistently related to the Court what happened and what she saw and observed a few minutes after the incident, is evidential enough. This Court holds that her Statement/testimony is cogent, credible and **not** a Hearsay evidence as the Defendant Counsel/Defendant.

Again, it is not a secret that most I.P.O never have eye-witness account of a crime. I.P.O often comes in after the crime is committed and report formally made to the Police. The PW2 having not been present at the time the crime was committed does not make her testimony a Hearsay evidence.

Again, I.P.O and Police Officers worldwide are duty-bound to help a Defendant pen down or record his/her Statement where such a Defendant has stated or cannot write. Again, where a Defendant can speak English and write but may be based on the circumstance, may not be in the right frame

of mind to write at the time, the Police is duty-bound to record the Statement of such a Defendant. Where there is evidence of cautionary words signed at the beginning of the making of the Statement and there is also evidence that the Defendant signed same and the Police Officer who recorded signed indicating that he/she recorded, the Court holds that such Statement is consistently regular and properly done and obtained especially where certain information in the Statement are facts known and personal to the Defendant/Accused. In such cases the Court will hold that such Statement is properly recorded and will attach full judicial weight to it.

In this case, the Statement confessionally made by the Defendant, which was recorded by the PW2 based on the solicitation of the Defendant who said he could not write, is properly obtained and meets the full credibility test. So this Court holds. Besides, the PW2 during Examination in Chief and Cross-examination consistently stated that he recorded the Statement as seen in the second page of the Statements **EXH 4** and **EXH 5.** The Defendant signed both under the cautionary words and after the Statements were recorded, read and he signed same too.

Also, it is not a must that the specific Police Officer that recorded the Statement of a Defendant must be present to tender the Statement in Court. It should be noted that there is one Nigerian Police Force manned by different Nigerians in the rank and file and officers big and small. These men and women are always on the move in that transfers are done sporadically with little or no notification.

Often times the I.P.O or other Police Officers team members are never around when the Statement recorded by them are to be tendered in Court. The Court usually accepts such Statement so tendered once it is coming from the Security Agency and it has on the face of it met the whole statutory requirements.

In this case the PW2 who tendered the Statement in this case as made by the Defendant on the 2nd day of December, 2021, at the SCID by Agbo Ezekiel, testified and tendered the Statement made by the same Defendant at the Kubwa Police Station Command where the case was first reported to and later transferred to the SCID. It is the case file from the same Kubwa Police that was as it were transferred to the SCID. Again, the Confessional Statement on both Statements are consistent with the same fact, all pointing at the Defendant confessing that he committed the crime of rape of the victim aged 3 years old.

Again, once a Statement in paper is consistent with the testimony of the Witness, the Court will so hold. The oral testimony of the PW1 is consistent with her Statement to the Police. This Court holds that the PW1 is a Witness of truth and her testimony is credible and cogent.

Also, once a case file is transferred from the Police Command to the SCID, it is not statutorily necessary that the Police Officers who handled the case at the Command must be the ones to testify and/or tender document(s) from the Command in Court. The Nigerian Police is one Force.

The content of the Medical Report is consistent with the oral testimony and Written Statement of PW1. Those tests were made or conducted immediately after the incident. Again, the Medical Report from government hospital also was consistent. It has the referral paper all showing that the incident were all concerning the rape of a minor.

The Prosecution proved that the Statements were voluntarily made as decided in the case of:

Oseni V. State
(2012) 5 NWLR (Pt. 1293) 351

This Court also settled that in its Ruling on Trial-within-Trial.

In this case there are several things outside the Confessional Statement that shows it is true. The Statement of the mother of the victim corroborated that fact as she saw the victim ran into their house crying minutes after the incident with blood streaming down her legs. The bruises also. Again, the Statement made by the Defendant in the Confessional Statement and the testimony of PW2 on how the girl left the crime scene as reported and the Statement of PW1 – mother of the victim. The facts contained in the Statement were ascertained by the other facts before the Court.

There is evidence showing that the Defendant had opportunity to commit the offence as he did after the brothers of the Defendant left his house leaving the victim alone with the Defendant. The confession is consistent with

the other facts as stated by both the mother of the victim (PW1) and the Medical Report which confirmed that there is rape, forceful penetration or attempted penetration through the anus of the victim that made the anus painful and tender to touch.

Again, the issue of biscuit given to the victim, the PW2 confirmed that the case file was transferred with the biscuit but because of the effluxion of time the biscuits had dissolved. The Defendant confirmed that the victim was in his house and later her brothers left and shortly after the victim left he was accosted and later arrested by the Police and taken to the Police Station.

The advent of the Violence Against Persons (Prohibition) Act 2015 made it statutory for minors or young people who committed offence of rape to be held liable if proven. See **S. 2 (a) of the Violence Against Persons (Prohibition) Act 2015.** The Section equally expanded the scope of rape to include use of objects or other part of the body to commit sexual assault. See **S. 1 (1) (a) of the Violence Against Persons (Prohibition) Act 2015.**

By the provision of **S. 2 (a) of the Violence Against Persons (Prohibition) Act 2015,** offenders who are aged less than 14 years and who are convicted of rape can go to jail for maximum of 12 years or 14 years as the case may be, if they are less than 14 years. By the decision in the case of:

Federal Republic of Nigeria V. Iweka
(2013) 3 NWLR (Pt.1347) 285

It is the case law that voluntarily made Confessional Statements is admissible where such Statements were obtained it is in accordance with law.

In this case the Statement of the Defendant was obtained according to law and voluntarily made. All the Statements he made raising involuntariness are afterthought and retraction, and such retraction will not vitiate the admission of the Statement as voluntary. See also the case of:

Ikpasa V. Attorney General of Bendel State
(1981) 9 SC 7

And the old case of:

R. Itule
(1961) 2 SCNLR 402

Again, in a case where there is no contradiction in the material particulars in the evidence of Witness of a party, it cannot be said that there is contradiction in the evidence of such Witness. There may be discrepancies but such discrepancies do not mean contradiction as far as they do not touch on the material particular. See the case of:

Njoku V. Jonathan
(2012) 8 NWLR Pg. 13

See also the case of:

Okoko V. Dakolo
(2006) 14 NWLR (Pt. 1000) 401

Where there are discrepancies but the evidence of 2 Witnesses are still reconcilable, it is held to be consistent. See the case of:

Usiobaifo V. Usiobaifo
(2005) 3 NWLR (Pt. 913) 665

In this case the discrepancies in the age of the victim did not in any way make the evidence of PW1 & PW2 before this Court irreconcilable as the discrepancy did not contradict the material particulars in this case.

It has also been held and it is also provided in **S. 138 of the Evidence Act** that proof in criminal matter must be beyond reasonable doubt, and it must be done by the Prosecution with credible and admissible evidence. See the cases of:

Federal Republic of Nigeria V. Usman
(2012) 8 NWLR (Pt. 1301) 141

Okoro V. State
(1998) 14 NWLR (Pt. 584) 181

Osho V. Ape
(1998) 8 NWLR (Pt. 562) 492

In this case the Prosecution has tendered credible and admissible evidence – documents, Confessional Statements of the Defendant and the Medical Reports from 2 hospitals, all of which confirmed that there was rape as seen in the bruises in the private part of the victim. The testimonies of PW1 & PW2 equally corroborated both the Confessional Statement of the Defendant and the Medical Reports, all of

which were made before this matter was charged to Court, unlike the Birth Certificate of the Defendant – **EXH 6** which was made in the course of the case in Court showing that the Defendant was born on 4th of July, 2007. That document – **EXH 6** was made and dated 7th April, 2022, when this case was already in progress, showing that he was aged about 14 years and 4 months. This means that if convicted, the Defendant can be sentenced to life imprisonment since he is aged over 14 years. See **S. 2 (a) of the Violence Against Persons (Prohibition) Act 2015.**

The Prosecution has proved that the Defendant committed the crime as charged. It is the law that where the commission of a crime is in issue it must be proved by the Prosecution beyond reasonable doubt. The Prosecution has done that in this case. There is no doubt that the commission of the crime of rape is in issue in this case. See the cases of:

Igabele V. State
(2006) 6 NWLR (Pt. 975) 100

Agbo V. State
(2006) 6 NWLR (Pt. 100) 545

Oseni V. State
(2012) 5 NWLR (Pt. 1293) 351

Bakare V. State
(1987) 1 NWLR (Pt. 52) 579

The Prosecution has led evidence and left to remote probability in favour of the Defendant. It shows that the Defendant committed the crime of rape as charged.

This Court had noted the submission of the parties on the age of the Defendant as a minor. There are several facts before the Court to confirm that the Defendant himself by virtue of his age is a minor. The Court need not waste its time to dwell on the statutory right and obligation of a minor who is charged with an offence of rape or other crime. Besides the **Violence Against Persons (Prohibition) Act 2015** has equally provided that such a person can be convicted if found guilty and sentenced according to the provision of the **Violence Against Persons (Prohibition) Act 2015.**

The Court had noted the prayer of the Prosecution Counsel urging the Court to find the Defendant guilty but to consider the provisions of **S. 221, 232 (d) of the Child Rights Act** which allows Court to make hospital Order or prescribing some form of Intermediate treatment for the Defendant as an effective remedy to stop the Defendant from growing up as a pedophile causing problem to himself and the society at large, the Defendant having been a victim of sexual molestation by an unknown and unnamed and unidentified adult, a fact the Defendant denied though it is contained in his Statement to the Police at Kubwa made on 28th day of November, 2021, the day of the incident.

The Prosecution having proved the case against the Defendant – **Praise Okpoko** beyond reasonable doubt, this Court finds the Defendant guilty of the offence of rape of the victim in this case. He is hereby convicted of the said

offence of rape committed on the 28th day of November, 2021.

The Court has noted the Allocutus. If jailed, it will deprive him from going to school. It will distract his education. He was sexually molested. Hence, urging the Court to be merciful. He is a first offender. But the Court sentencing is not a punishment as such but reformative. In this case it calls for reformative of the Defendant.

Therefore, the Defendant having been convicted, you are hereby sentenced to a Juvenile Correctional Facility where you must undergo medical psychological and psychopatience treatment within that period at the Police Medical Facility that is nearest to the Defendant for the next six (6) months.

This is the Judgment of this Court.

Delivered today the _____ day of _____ 2025 by me.

K.N. OGBONNAYA
HON. JUDGE

APPEARANCE:

PROSECUTION COUNSEL: CHINYERE MONEME, ESQ.

DEFENDANT COUNSEL: M. B AYODELE, ESQ.