

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT COURT NO.12 JABI ABUJA  
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU  
THIS 28<sup>TH</sup> DAY OF JANUARY, 2025**

**SUIT NO: FCT/HC/CR/1026/2020**

**BETWEEN:**

**COMMISSIONER OF POLICE -----COMPLAINANT**

**AND**

**SHAIBU MAJEED -----DEFENDANT**

***CHINYERE MONEME** appears with **EBINOWEI SINCLAIR** for plaintiff.  
**IBRAHIM M. ABDULLAHI** for the defendant.  
Defendant in court speaks English language.*

**RULING**

The defendant was arraigned before this court for the offence of rape contrary to section **3(1) (2) OF THE CHILD'S RIGHT ACT CAP 50 LFN**. He denied the allegation and in proof thereof, the prosecution fielded four witnesses who in addition to their oral submission tendered five (5) documents, Exhibit A1-A5 respectively. At the close of the case for the prosecution, Learned counsel for the defendant filed a no-case submission urging the court to hold that the testimony of the victim had been discredited as a result of cross-examination and unreliable to establish the offence in the charge.

The summary of the prosecution case is that on or about the 8<sup>th</sup> day of August 2020 at about 10am at Tudun Wada, Lugbe, FCT-Abuja. The defendant lured one Miss. Halima Adamu (PW1), aged 10 years inside a room which he manages as a caretaker off Airport Road, Lugbe, Abuja and Unlawfully had sexual intercourse with her. According to the victim, she stated in her evidence in chief that during the lockdown, defendant (Majeed) called her in the landlord's house and said she should remove her cloth, and lie down on top of the bed, he put his private part into her private part and told her that if she told anybody he would kill her. That the defendant used Pepsi to call her. That she was in her mother's shop with her brothers Ayuba and Daniel when the defendant called her. When her mother came back from her trip, she saw that she was becoming lean, and asked who did to her, she said it was Majeed. When asked how many times the defendant did this to her, she said two times and defendant denied she had not been to the landlord's house before she described the landlord's house as having cushion with the landlord's pictures, curtain and bed.

The PW2, the Police Investigator attached to Lugbe division, during her investigation, she noticed that the victim was unwell. She took her and the suspect to the Nigeria police Hospital to ascertain if they have venereal or communicable disease. That while in the doctor's office on examination of the victim, she noticed that the victim's private part was not closed like a little child's own. That she has urine stains and her hymen broken. She also visited the scene of crime, the defendant is the custodian of the room,

brought out the key and opened it, that the room was the exact description of how the victim described to her. She also investigated the defendant's alibi that the victim saw the landlord's room when they were packing her mother's goods inside. She also discovered that the loads were in sacks and bulky which ordinarily a small child cannot carry or lift. They were issued with medical reports. She tendered it with the statement of the defendant, and also the hospital card all marked as Exhibits A2, A3 and A4 respectively.

The PW3 is the victim's guardian who discovered that the victim was smelling stench and looks lean when she came back from her trip. She also informed by her mum whom she kept the victim and her other children with, that since she travelled, the victim had been bedwetting, that was also confirmed by her son Ayuba. She asked the victim to remove her pants, and saw that her vagina was swollen, and did not look like a child's private part. She asked who did it to her and she told her it was Majeed, the one that stays in the compound where she has her shop. She reported to the police.

The PW4 is also an Investigator with the Central Investigating Department of the FCT Police Command. He received a case of rape by the PW3 on behalf of the victim. He also visited the scene of crime. He also confirmed that the landlord does not live in the premises, but entrusted his room to the defendant. That the victim confirmed to him that nobody else in the compound molested her apart from the defendant. He tendered the statement of the defendant as exhibit A5. All the witnesses were duly cross-examined by the defense counsel.

In the address of no-case submission by the defense, some of the argument by the counsel are that the victim did not prove that there was penetration, that the word used by the victim as “put his private part in my private part” is not synonyms with the word “penetration.” That the victim did not prove her level of penetration by the defendant. He also argued that the victim who claimed that her brothers Ayuba and Daniel were there when the defendant called her, were not witnesses called by the prosecution. That the Ayuba and Daniel were in better position to corroborate the evidence of te victim.

He also argued that the evidence of the PW3 is heresy and inadmissible. That she was not around when the alleged incident happened. The defense counsel also argued that the evidence of the PW2, the IPO cannot also be believed because Exhibit A4, the Medical Report tendered by her was not her document, that the defendant counsel did not have the opportunity of cross-examining the maker of the document. That there is no explanation as to the whereabouts of the Medical Doctor who prepared the Medical Report. He relied on the case of **UDOM V UMANA (2016) 12 NWLR (1326) 17A @ 243-244 PAR A-B, ADESINA V THE PEOPLE OF LAGOS (2019) 8 NWLR (PT.1673) 126 @136 PAR. D-F.** Counsel also argued that the alibi raised by the defendant in his statement to the police was also not investigated. He urged the court to discountenance the testimony of the PW2.

In response, the prosecution Counsel in his reply submitted and rightly too that at the stage of the no-case what the prosecution is to establish is that

there is ground for proceeding and that the defendant has something to explain to the court. That the onus is on the prosecution to establish a prima facie case against the defendant and not a proof beyond reasonable doubt, he relied on the case of **DESTRA INT. LTD VS. FRN (2017) 2 NWLR (PT 1550) 347-516 @ PG 489**. He submitted that the defendant has an explanation to make to this Honorable Court.

I agree with the Learned Prosecution Counsel that all that the court is to determine at this stage is whether there is a prima facie case against the defendant, to warrant the Court asking him to enter defence. The word *prima facie* been defined in plethora of case as “on the face of it.” See the cases of **IKEM & ORS. VS SATE (1986) LPELR 1482 SC, OKO V STATE (2017) LPRLR 42267 SC, FRN VS YAKUBU & ORS (2018) LPELR 43930 CA.**

The prosecution also relied on the case of **ABOGEDE VS. STATE (1996) 5 NWLR (PT. 118) PG 270 @ 280** where the court held thus:

***“At this stage it is not necessary for the learned trial judge to determine if the evidence is sufficient to justify a conviction. The trial court only has to be satisfied that there is a prima-facie case requiring at least some explanation from the accused person.”***

The argument of the Learned Counsel for the defendant as to whether there was penetration or not goes to the weight to be attached to the evidence of the prosecution while evaluating the totality of the evidence adduced by the prosecution witness. Same for the perceived inconsistencies which the

defense counsel argued was manifested in the evidence of the prosecution witnesses. Furthermore on the issue of tendering of the medical report by the PW2, the Investigating Police Officer from Lugbe, the court by the submission of the defense counsel is called upon to evaluate the oral and documentary evidence of the witness who tendered the document.

On the issue of alibi, I fail to see in the statement of the defendant to the police where he said he was not at the scene of crime and I say no more. Our courts have been warned not to write lengthy ruling in a no case submission in order not to prejudice the mind of the court. I do not agree with the no-case submission of the defence counsel. I have reviewed the evidence of the prosecution witness and am satisfied that the prosecution has made out a case to warrant that the defendant enter a defence. I hereby overrule the no-case submission and order that the defendant open his defense accordingly.

Case is adjourned to 1/4/2025 for defence.

**SIGN**

**HON. JUDGE  
28/1/2025.**