

IN THE HIGH COURT OF JUSTICE OF JIGAWA STATE

IN THE JIGAWA JUDICIAL DIVISION

HOLDEN AT BIRNIN KUDU

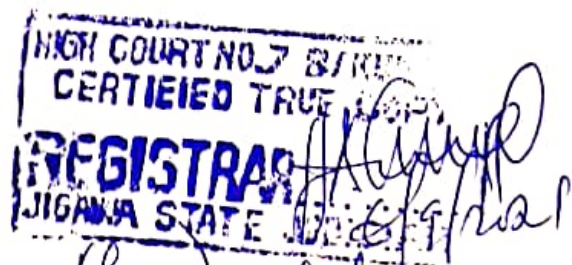
**SUIT NO:-JDU/302C/2020**

**BETWEEN:-** THE STATE.....COMPLAINANT  
AND  
AMINU YA'U.....DEFENDANT

**JUDGMENT**

There are two counts to this charge. The 1<sup>st</sup> count is laid under section 95 of the Penal Code Law of Jigawa State and the 2<sup>nd</sup> count is laid under section 285 (1) of the penal Code Law punishable under section 285 (2) Penal Code (Miscellaneous Amendment) Law 2014. The particulars of the 1<sup>st</sup> count state that the defendant lured Rahama Awaisu 'f' 11 years (wherein referred to as the victim) into an uncompleted building, undress himself and undress the victim use his penis and attempted to rape the victim. While the 2<sup>nd</sup> count is in connection with same act which constitute the offence of gross indecency. Three witnesses testified for the prosecution. At the close of the prosecution's case, the defendant testified on his own behalf and called no other witness.

The facts of the case from the prosecution's angle was that, the victim was selling Henna when the defendant called her and directed her to go and give his wives for N 50 each. The defendant showed her a faraway place at the outskirts of the town as his house. The victim who testified as PW1 said she saw a dog on her way to the house and returned back, PW1 said later she also met with the defendant who had changed his cloth, and the defendant told her that his wives were not around. And he showed her one uncompleted building and directed her to enter into the PW1 said she entered in to building when the defendant followed her and asked her to remove her dress but she refused. The defendant then forced to undress her. He laid her down and laid on her. Later they came out PW1 said the defendant waited to called them, but



the defendant did not allow her to talk to them. So before the people came to them the defendant runs away.

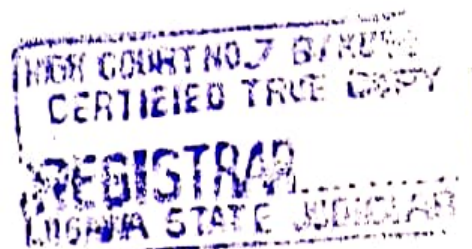
Under cross-examination by the defence counsel, the victim said, when the defendant followed her to the uncompleted house she did not shout because she sought that his wives were inside the house, she also testified that when the defendant laid on her he raped her, as he asked her to face the eastern direction and he put something inside her private part.

The second witness PW2 is a teacher of DGSS B/kudu. He testified to the effect that they were at place close to school of Nursing and they were many, when they saw the defendant and the victim, the defendant trying to stop a motorbike for the victim. He stopped the first, 2<sup>nd</sup> and 3<sup>rd</sup> motorbike but none of them agreed to pick the victim. So they decided to ask the defendant his relation with the victim. PW2 said they called the victim and asked her what happened, she was trying to explain but the defendant did not allow her to speak. Somebody among them then advised that they should call the victim aside and asked her when the defendant runs away. PW2 said, when they asked the victim she said, the defendant directed her to his house to give his wives Henna which she was selling, but when she entered the house she could not see anybody. So the defendant followed her and removed her dress by force and laid on her.

Under cross-examination the witness said the story he narrated was told to him by PW1.

The last witness was one Sgt. Isa Ayuba of State CID Dutse who testified on 14/1/2020 this case of rape was transferred from B/kudu Police Station to their department for discrete investigation alongside with the defendant. PW3 said he recorded the statement of the defendant which was admitted in evidence as exhibit A and A1 under cross examination however, the witness identified the medical report of the hospital that examined the victim which he stated was already in the case file transferred to them from B/kudu Police Station which was also admitted in evidence as exhibit FMC2

While testifying on his behalf, the defendant denied that the victim had entered any uncompleted building. But he rather testified that he was at the



road side trying to fix his tractor vehicle that got fault together with his co-worker when he saw the victim trying to cross the road who narrowly escaped been hit by the Okada man. So he started abusing the victim for crossing the road without caution he also cautioned her as to the recklessness of the Okada people on the high way DW1 said then a friend of the former Okada man came when he told him what happened to the former Okada man who nearly hit the victim. DW1 said later PW2 asked what is happening when he told him, wouldn't he saw what is happening? The defendant said, then he came back and fixed his tractor and left. DW1 said it was after about 4 hours when he was offloading sand, about 10 people among whom are Abdullahi, Abba Bodari, Jangulota and one Manyale holding sticks and cutlasses came and started beating him. They beat him seriously until he got fractured on his wrist. They arrested him to the police station where the police showed him a girl and asked him whether he knows her. He told the police that, he can remember he rescued her from been hit by an Okada bike while crossing the road. But they said he took her to uncompleted building and had sex with her which he denied.

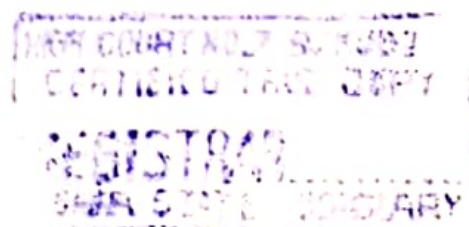
DW1 said then the police took them to the hospital for examination and when they come back one Inspector Algaita recorded his statement, he was asked whether he raped the victim which he denied.

The witness was never cross examined by the prosecution.

At the close of the evidence, the learned counsel for both the defendant Mr. M.A. Abubakar Esq and the prosecution Dr. Musa Adamu Aliyu the Hon. Attorney General Jigawa State made their final submissions.

The learned defence counsel urged and impressed on the court that, given the nature of this case, the prosecution has failed woefully to prove the charge strictly as required by law.

The counsel gave his reason, that the fact being undisputable as it is, that there is absolutely no connection between the defendant and the victim as the only time the defendant came close to the victim was to serve her from been knocked down by a motorcyclist and this was done in open. Counsel submitted that the prosecution's reliance on exhibit A and A1 as being



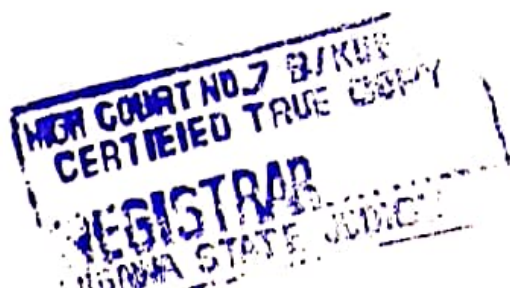
confessional statement of the defendant, was never a confession. As in the statement itself the defendant clearly told the police that he don't know anything about having sex with the victim. Counsel submitted that for a statement to be confession the defendant must unequivocally confessed to the commission of the offence MAJOR BELLO M. MAGAJI V. NIG. ARMY (2018) LPELR 1814 SC. Counsel further submitted that apart from the alleged confession, the only available evidence is the evidence of the prosecutrix/victim and her testimony was rephit with contradictions. Counsel therefore submitted that for the court to convict based on the prosecutrix evidence alone corroborative evidence is required. CHIBUIKE OFORLIKE V. STATE (2019) LPELR 46411 SC per. AKAS JSC.

Counsel submitted that in the instant case, corroboration is completely absent. Counsel therefore urged the court to hold that, the prosecution has failed to prove the offence of attempted rape beyond reasonable doubt.

In his reply, the learned Hon. Attorney General submitted that, prima facie evidence had been laid to establish the charges against the defendant. Counsel submitted that it has been established that the victim was taken in to an uncompleted building and her dress was forcefully removed by the defendant and he claimed on the victim. Counsel submitted that this evidence was not shaken.

Counsel further submitted that on the authority of MU'AZU V. STATE (2018) LPELR 46768 CA pp 40-41 the Court Appeal held clearly that an accused can be charged with gross indecency and rape at the same time. Counsel submit that, therefore the defendant can be charged with the offence of gross indecency and attempted rape, as the removal of the dress is act of indecency. Counsel urged to sustain the two head of court and convict the defendant authority.

In order to succeed on charges of this nature the prosecution are enjoined to prove that the act of the defendant must be immediately connected with the commission of the offence of rape and it must be something more than preparation for the commission of the offence see. SHURUMO V. STATE (2010) 19 NWLR (pt. 1220) 73.



The prosecution must also prove that the defendant had committed the act of gross indecency upon the victim.

Looking at the evidence so far adduced, the victim being the principal witness narrated how the defendant invited her to enter into the uncompleted building and further narrated what transferred therein as it relates to the offences upon which the defendant was charged.

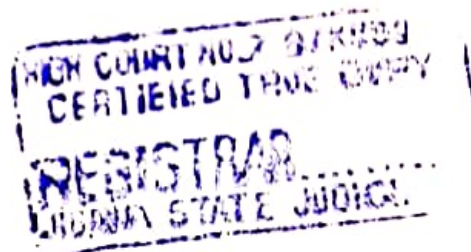
It is submitted by the defence counsel however that her evidence was replit with contradictions which this sole evidence are enjoined not to be relied upon by the court without corroboration.

The court of our land, as high as the Supreme Court, have clearly stated that, in a case of rape, corroboration is not required but it is considered unsafe to convict on the uncorroborated testimony of the prosecutrix. MOHAMMED V. KANO STATE (2018) LPELR 43913 SC per. OLABODE RHODES- VICTOR (pp. 22-23 paras. F-A) since the Supreme Court is the Ultimate law court in Nigeria, this court must follow its prominent.

Let me however emphasis that, before the evidence of the PW1 is relied upon by this court it must be acceptable. The main portion of the evidence of the victim when compared with or related to the evidence of the defendant there are the following points:

That as rightly submitted by the defence counsel the evidence of the victim was replit with contradictions viz:

1. The victim stated in her evidence in chief that at first time the defendant showed her a house far away from the town as his house for her to take Henna for his wives but was disallowed from going to the house with the presence of a dog.
2. Later she saw the defendant have change dress and the defendant told her that his wives were not around and showed her uncompleted building and directed her to enter. The question is what do the victim on the 2<sup>nd</sup> time do at the uncompleted house? having been informed that his wives were not around? Still the victim said she entered.



3. But when cross examined by the defence as to why she did not shout when the defendant followed her, the victim (forgotten that she said the defendant had told her his wives were not around) but went on to say that she did not shout because she sought that his wives were inside the house. She also testified under cross examination that the defendant raped her by putting something inside her private part.

However, by Exhibit FMC2 the medical report in respect of the victim signed by Dr. Usman Hashim, Federal Medical Centre B/kudu, the report shows that, there was no history of Peril penetration into the victim's vagina, no history of vaginal laceration, bruises or bleeding. These evidence however, contradicted the evidence of PW1 the victim. And these contradictions ever goes materially to the charge. As the defendant was charged for the offence of attempt to commit rape while the victim was testifying that the defendant in fact raped her.

The Supreme Court held that a piece of evidence contradicts another when it affirms the opposite of what that other evidence has stated and not when there is just a minor discrepancy between them. Two piece of evidence contradict one another when they are themselves inconsistent. See *EZE V. STATE* (2018) LPELR 43715 SC per RHODE-VIVOUR JSC (pp 13-14 paras G-C).

I therefore hold that there are contradictions in the evidence of the prosecution in this respect. It is therefore trite that corroboration in the evidence of the prosecution that goes to the root of the case that raise doubt in the mind of the court, the court are enjoined not to convict on that evidence.

See *IBRAHIM V. STATE* (1991) LPELR 1404 SC. It is also settled by the law that where there are material contradictions and inconsistencies in the evidence of the prosecution, the accused is entitled to be given benefit of the doubt so created as a result of the inconsistencies see *GALADIMA V. STATE* (2017) LPELR 43469 SC per ARIWOLA JSC (p. 29 para C-E).

It is therefore my view that having regards to the contradictions emanate in the evidence of the prosecution which contradicts. I consider to be material contradiction then obviously doubt will be create in my mind as to whether the accused had in fact committed the offence or not. It is trite law that my



doubt must be resolved in favour of the accused OJO V. COP (2013) LPELR 21033. ARCHIBONG V. STATE (2009) 4 SCNJ 85.

It is also agreed by the defence counsel that the prosecution reliance on exhibit A and A1 as being confessional statement of the defendant was never a confessional. It is my view that the defendant never confessed of having invited the victim to uncompleted building tackles of having attempted to rape her.

I wish to further observed that as was held in so many cases, that an attempt to commit an offence under the law is where a person intends to commit an offence, and in the process of putting his intention into execution by means he has adopted to its fulfillment, and thereby manifests his intention by some overt act, but actually falls short to his intention to commit that offence intended. It is however, observed that in the instant case, there is no evidence which state how the defendant whose end to which he wished to arrive was to rape the victim but for the intervention which he was volunteered to meet or anticipated prevented him from the commission of the offence of rape. It was only said he laid on her and then came out from the building and by exhibit FMC 2 there was no evidence of obvious distress to the victim. Therefore the ingredients of the offence of attempt to commit the offence of rape was never proved by the prosecution. It is however held by plethora of authorities that failure to prove any ingredients of the offence charged, then the offence fall short of being proved beyond reasonable doubt. DERIBA V. STATE (2016) LPELR 40345 CA per. GEORGEWILL JCA (p. 13, paras B-D)

“ In law, a failure on the part of the prosecution to prove any or all of the essential elements that constitute the respective offences within which the accused was charged would be fatal to the charge (s) not so as proved as required by law”.

Now as I have already pointed out, the prosecution has not given evidence establishing that fact, that the defendant has in any way be in the uncompleted building with the victim as the whole allegation against the defendant was for a mere suspicion , created by PW2 who saw him along the road side with the victim. It is however trite law that allegation of mere suspicion, no matter how strongly presented cannot displace the heavy duty placed on the prosecution



to prove the accused's guilty. In ABIEKE & ANOR V. STATE (1975) LPELR 8042 SC ALEXANDER JSC (p. 5 paras B-D):

"It is, however, an elementary preposition that mere circumstances of suspicion are not sufficient to justify a conviction or, put in another way, suspicion, however strong, cannot take the place of legal proof. Before a defendant can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime certain and leave no ground for reasonable doubt".

On the whole therefore, I find that the prosecution did not prove the case beyond reasonable doubt as required by law. In these circumstances, therefore, the defendant cannot possibly be, and he is found not to be, guilty of any of the counts of the offence charged against him. He is therefore accordingly discharged and acquitted therein.

Signed.....  
Hon. Judge  
4/3/2021

Pros- We are very well grateful with well consider Judgment.

D/C- We are also grateful with the Judgment.

HIGH COURT NO. 7 BUKURU  
CERTIFIED TRUE COPY  
REGISTRAR  
NIGERIA STATE  
Alimu Jaka  
Sen. Dep. Justice Kuchi