IN THE HIGH COURT OF JUSTICE OF JIGAWA STATE

IN THE JIGAWA STATE JUDICIAL DIVISION

HOLDEN AT BIRNIN KUDU

SUIT NO:- JDU/350C/2020

BETWEEN: STATE.....COMPLAINANT

AND

DALHA HASSAN.....DEFENDANT

BEFORE: HIS LORDSHIP HON. JUSTICE MUSA UBALE

**JUDGMENT**

One Aisha Sabo Basiru the mother of the victim used to see a stain of something that looked like sperm on the trouser of her son who is of tender age. And when she queried him about its presence in his trouser he told her that it was the defendant that used to rob oil on his anus. The victim who testified as PW1 told the court that the defendant used to call him to his room and remove his trouser and rob jelly oil in his anus and then play him video film from his phone. In his extra-judicial statement, the defendant also stated that, he used to sell sugar cane and the victim and the other children used to go to his business place hut he has never had any anal sex with the victim or any of the children. This is the case for the prosecution.

On 21st day of December, the defendant was charged with the offence of having anal intercourse against the order of nature with the victim Walid Yusuf Basiru aged 9 years contrary to S. 284 (1) of the Penal Code Laws of Jigawa State;

After taken the plea of the defendant the trial commenced on 8th March, 2021. The prosecution called four witnesses and tendered two Exhibits A and A1the statement of the defendant recorded in Hausa and translated into English.

At the close of the evidence, the learned Defence Counsel rest the case of the defence with that of the prosecution and filed his written address which he

adopted as his oral submission and legal argument. The prosecution also filed their final submission.

The learned defence counsel Mr. M.A. Abubakar Esq urged and impressed on the court that, given the nature of this case, the prosecution must fail against the defendant as the state has not proved the charge strictly as required by law. Counsel submitted that, by the provision of S. 36 (5) of the 1999 constitution the defendant enjoyed the right to presumption of innocence. Thus the burden is always on the prosecution to prove the guilt of the defendant and not for the defendant to prove his innocence COP V. MR EMMANUEL AMUTA (2017) LPELR- 41386 SC. And the legal and evidential burden of the prove is prove beyond reasonable doubt

Counsel submitted that in the instant case, the PW1 (the purported victim) testified only that the defendant used to remove his trouser and apply oil on his anus and no more.

And the defendant in his extra-judicial statement which is direct and unambiguous denied the alleged crime. Counsel submit that the evidence of PW1 clearly absolves the defendant of any crime whatsoever. Counsel submit that apart from the evidence of PW1 all the remaining evidences of PW2 (the father of the purported victim) and PW4 (his mother) are all hearsay evidence as both denied ever seeing the defendant with their son.

In their response the prosecution submitted that they were expected to prove the offence charged by compelling evidence and in compliance with the provision of S. 284 (1) of the Jigawa State Penal Code (Miscellaneous Amendment) Law No. 9 of 2014 and that by the combined effect of the testimonies of PW1, PW2, PW3 and PW4 and exhibit A and A1, they have proved the offence of sodomy against the defendant.

Counsel submitted that by exhibit A and A1 the prosecution circumstantially proves that the defendant has actually had carnal knowledge of the boy (PW1) against the order of nature.

Counsel quoted the evidence of PW1 wherein he testified that:-

"the defendant used to remove his trouser and apply jelly oil in his anus and he used to play a video film to them to watch in his hand set at his room and give them sugar cane"

The question is can the above testimonies indicated that the defendant had anal intercourse against the order of nature with the PW1? In his extra-judicial statement exhibit A and A1 which the prosecution relied havily as they have proved by circumstantial evidence the offence of sodomy was however a denied of the performance of the offence by the defendant. As all what the defendant was saying in that statement was that he used to sell sugar cane where the victim and other children used to visit the place of his business and that he never had any anal sex with the victim or any of the children. Can this proved the offence of sodomy against the defendant circumstantially?

It has been held in plethora of cases that for the prosecution to rely on circumstantial evidence to prove the commission of the crime, the circumstantial evidence must be cogent, complete, unequivocal and compelling leading to the irresistible conclusion that the accused and no other person committed the offence but him. See TAIYE V. STATE (2018) LPELR 4446 SC.

In the instant case were the defendant was said to be charged with the offence as provided by section 284 (1) (e) of the Penal Code Law 2014; the defendant is said to have committed the offence only if he had carnal intercourse with a man against the order of nature and there was penetration.

The evidence of the victim however did not disclosed penetration as the medical report of the commission of the offence was never presented to the court. Thus the evidence presented by the prosecution are however based on suspicion which no matter how strong cannot amount to proof. It was held by the Supreme Court in ORJI V. STATE (2008) LPELR 2767 SC that suspicion, no matter how high, cannot ground criminal responsibility.

In the instant case therefore, in my view the entire case of the prosecution was built on suspicion which is settled that cannot take the place of legal proof.

In view of this, I am in total agreement with the defence counsel that the evidence of the prosecution did not proof the essential ingredient of the

offence of sodomy which is penetration and that all the evidences of PW2 and PW4 are hearsay evidence and I so hold.

Now there is nothing in the evidence before me to indicate clearly that the defendant had anal intercourse with the victim which will ground a conviction of sodomy. Thus the prosecution has not given evidence establishing the offence and I so hold.

In the final analysis therefore, the defendant cannot possibly be, and he is hereby found not to be guilty of the offence of sodomy charged against him. He is therefore, accordingly discharged and acquitted thereon.

Signed Judge

29/7/2021