

IN THE HIGH COURT OF ENUGU STATE OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
BEFORE HIS LORDSHIP, HON. JUSTICE P. I. ENEJERE
ON MONDAY, THE 12TH DAY OF MAY, 2014

SUIT NO. E/51C/2010

BETWEEN:

THE STATE
VS.
CHIDERA NNAJI

Accused present.

JUDGMENT:

The accused stands charged with the offence of defilement under Section 200 of the Criminal Code, Cap. 30 Vol. 1 Laws of Enugu State 2004. He is also charged with committing an unnatural offence under S. 196 of the criminal code (*supra*). The prosecution called five witnesses. The accused testified for his defence. The prosecution's case is that on 25/1/10 at about 12.30 pm the victim of this defilement Ozioma Nweze came home from school with her little brother Chukwuemeka. They told their mother the PW2 that they were going to ease themselves in a nearby bush. The PW2 waited for the two children to come back until 1 pm. She had a three weeks old baby with her. She could not leave the three weeks old baby to go in search of her two children. After a while Ozioma and her junior brother came back crying. She PW2 ran to meet them. She discovered that Ozioma was not walking properly. Ozioma told her that the accused who is their neighbor took them farther into the bush with a cane exhibit C – Cassava Stick. In the bush the accused told Chukwuemeka to cover his mouth

with his hand so he could not shout. He told Ozioma to pull off her pant and lie down. He then put his penis into her vagina after that he forced his penis into her anus. Ozioma was screaming but the accused covered her mouth with his hand. After this the accused told her to get up. He then inserted his penis into her mouth. He urinated into her mouth and told her to keep swallowing it. Finally the accused defecated and told Ozioma to lick the faeces of his bottom until it was clean. After this he told her to remove her dress and use it to clean the blood and dirt off him. He then told the two children to go home.

He threatened them by telling them that he will kill them if they told anybody and he will also kill their parents and everybody in their house. Ozioma was five years old at the time of this incident.

The accused's case is that on 25/1/10 he was going to a corn mill to grind corn for pap on the road he met a little girl called Ijeoma. He got to a foot ball field and joined the people playing ball there. The ball hit the little girl and she started crying. She went home with her little brother and told her mother that he hit her with a ball. She was bleeding from her hand.

After playing ball he went to the mill, left his corn there and went to see his sister. Within a short time a man came to his sister's house looking for him. He went back to the corn mill where he left his corn together with the man and his niece. At the mill he saw the little girl's mother and the woman said that he defiled her daughter. He was taken to the police station.

At the close of proceedings both counsels for the defence addressed the court.

I have considered the evidence adduced before me in this case. I have also considered the address of defence counsels.

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It is trite law that in a criminal charge of this nature the burden is on the prosecution to prove its case against the accused person beyond reasonable doubt. To discharge this burden the prosecution must establish the ingredients of the offences for which the accused is charged.

Under S. 200 of the Criminal Code, the prosecution must prove:

1. That the accused unlawfully had carnal knowledge of a girl.
2. That the girl is under the age of eleven.
3. That prosecution of the offence commenced within two months after the offence was committed.

In the instant case the PW1 and PW2 the parents of the victim Ozioma testified that she was five years old at the time of this incident. This evidence was not challenged. I therefore find that the victim Ozioma was five years old at the time of the incident.

This incident was reported to the police the same day according to the evidence of the PW1, PW2 and PW4. The accused also testified that he was taken to the police, the day of the incident. The accused was arraigned at the Magistrate Court for proof of evidence on 2/2/10. It is clear and I find that prosecution of this matter commenced within two months after the offence was committed as "prosecution of a matter is different from trial of a matter. Prosecution commences when the matter was reported to the police, when ever the police or the State initiates trial, then trial commences. That is to say that when a statute as in this case refers to commencement of prosecution of a case it is referring to when the matter was reported to the police.

The next question is whether the victim Ozioma was defiled.

The PW2 Ozioma's mother testified that her daughter came back from the bush crying, she was not walking well. She was bleeding, vomiting and spitting. The PW1 saw her daughter bleeding from the virgina and anus. The PW5 the medical doctor testified that the victim PW3's hymen was partially ruptured, he testified that the probable cause of what he observed is penetration and defilement. The PW3 the victim herself testified that the accused inserted his penis in her virgina.

The accused's evidence is that the ball they were playing hit a little girl called ljeoma. I cannot find a link between the ljeoma story and that of Ozioma in this case. He said that ljeoma was bleeding from her hand. I do not believe his story. From the unchallenged and un discredited evidence of the prosecution witnesses, it is clear that the PW3 Ozioma was defiled and I so find.

The next question is whether it was the accused person who defiled the PW3.

The PW3 gave an unsworn testimony because she does not know the meaning of an oath. She was rational and clear in her story of the incident. She testified that the accused look her into the bush, told her to remove her pant which she did and he proceeded to put his penis into her virgina. After this, he inserted his penis into her anus and later told her to lick his penis while he urinated into her mouth. He passed feaces and told her to lick his anus. She did whatever he told her to do. He told her that if she refused to comply he will flog her with the stick exhibit C he had in his hand. She got home and told her mother what happened.

The PW1's story and PW2's story is as to the report given to them by their daughter the PW3.

The unchallenged evidence of the PW1 and PW2 is that the accused pleaded with them telling them that it was the work of the devil.

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The PW5 the medical doctor testified that Ozioma was defiled.

There is no link between the accused's story with Ozioma. Exhibit D is the under pant of the victim Ozioma. Ozioma's pant is definitely soaked with what could be blood and other fluids.

I am satisfied that the PW3 was defiled by the accused person and nobody else.

The PW2 testified that the accused is their neighbor and the PW3 told her that it was the accused who defiled her.

The evidence of the PW3 has been corroborated by the evidence of the Medical doctor and that of the PW1 and PW2.

The accused denied making his statement exhibit B. Exhibit B is a confessional statement.

It is my view that the evidence of the prosecution witnesses support the confessional statement. In exhibit B the accused explained why he was very brutal, he stated that when he tried to penetrate the victim's virgina, he could not succeed so he tried the anus and also failed. He then inserted his penis in her mouth. I am satisfied that the accused's statement to the police exhibit B weights heavily against him.

I am also satisfied and the evidence of the prosecution witnesses have established that contrary to S. 196 of the criminal code (supra) the accused had carnal knowledge of the PW3 against the order of nature.

He inserted his penis in her anus and in her mouth.

He even indecently treated her by defecating and forcing her to lick him clean.

The PW5 the medical doctor testified that Ozioma had laceration at the lower edge of her anus and it was probably caused by penetration and defilement.

The defence counsel in his address argued that the only issue for determination is whether the alibi raised by the accused person was investigated. He submitted that the accused told the court in his evidence that he was playing football and the ball hit the girl. He argued that the police did not investigate this statement. The argument and submission of learned counsel is misconceived. The police cannot investigate what they were not told. There is no where in exhibit B the accused said that he was playing foot ball and the ball hit the little girl. The story the accused told the police is sharply different from what he told the court in his evidence on oath. His evidence in court is very bogus and cannot represent the real facts. I do not believe him.

Exhibit A is the PW1's statement to the police where the PW1 stated hat her daughter told her that one man defiled her in her evidence in chief, she explained that her daughter Ozioma told her that it was the accused. Ozioma knew the accused because he was their neighbor.

Exhibit D is the victim Ozioma's under pant. Ozioma's pant is definitely and obviously soil with what could be blood.

I had earlier ordered that the accused be taken to hospital for his age to be determined.

After several adjournment to avoid further delay since the accused was in custody hearing resumed because that task could not be completed.

There is an Age declaration sworn to by one Enoch Nnamani in this case file. That document is from an unknown source and of curious origin. It does not form part of the case of either the prosecution or the defence. It is not part of the information in view of the index of reference.

It is therefore not considered in this case. The accused was treated as an adult.

I am satisfied that the prosecution has proved the charges against the accused person beyond reasonable doubt. He is found guilty in Count I and guilty in Count II.

Accused:- I plead for leniency.

Accused's counsel:- Accused is young. He is a first offender. He is the only surviving child of his parents. "I plead with the court to temper justice with mercy. The accused has been in custody for a long time, 4 years.

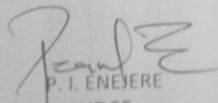
Sentence:-

This is the most gruesome act of defilement I have ever encountered and the indecent treatment of the victim was uncalled for. The accused is sentenced to 5 years imprisonment in Count I or N20, 000 fine, and 5 years imprisonment in Count II or N60, 000 fine.

Prison terms to run concurrently.

Fine to run cumulatively.

Time spent in custody to be included in the prison term.


P. I. ENEJERE
JUDGE
12/5/14