CHIMA UDE OKA v. THE STATE

(2018) LPELR-43914(CA)

In The Court of Appeal of Nigeria

On Friday, the 9th day of March, 2018

CA/E/78C/2016

Before Their Lordships

HELEN MORONKEJI OGUNWUMIJU Justice of The Court of Appeal of Nigeria

TOM SHAIBU YAKUBU Justice of The Court of Appeal of Nigeria

MISITURA OMODERE BOLAJI-YUSUFF Justice of The Court of Appeal of Nigeria

Between

CHIMA UDE OKA Appellant(s)

AND

THE STATE Respondent(s)

Other Citations

RATIO DECIDENDI

1. CONSTITUTIONAL LAW - BREACH OF RIGHT TO FAIR HEARING: Whether a party can allege breach of fair hearing after presenting his case

"In the instant case, the appellant had every opportunity to defend himself and full control of his own defence after he was abandoned by his counsel. It is the duty of defending counsel in a criminal trial to ensure that an accused person is never left unrepresented at any stage of his trial. See OKONOFUA & ANOR v. STATE (1981) LPELR- 2489. Neither the prosecuting counsel nor the defending counsel should be absent in Court without a good and substantial reason and without the courtesy of informing the Court in writing. When Mr. A.S. Enyi recklessly abandoned his professional duty both to the Court and the appellant, the appellant took his own destiny into his own hand. He did not seek an adjournment at any time due to the absence of his counsel or request for an opportunity to engage another counsel. Having utilized every opportunity available to him by cross-examining the prosecution witnesses and giving evidence in his own defence, he absolutely has no reason to contend that he was denied fair hearing. Raking up allegation of lack of fair hearing is not a magic wand that cures every ailment of a litigant or an accused person. The contention of the appellant that he was denied fair hearing is an abuse of that principle." Per BOLAJI-YUSUFF, J.C.A. (Pp. 36-37, Paras. E-C) (...read in context)

2. EVIDENCE - CONFESSIONAL STATEMENT: Tests for determining the truth or weight to attach to a confessional statement before a court can convict on same

"The vexed question of retraction of confessional extra judicial statements, by accused persons, has engaged the attention of our Courts over the years. Generally, it is settled law, that there is no evidence stronger than a person's own admission or confession of his complicity in the offence for which he is arraigned in Court for trial. Therefore, the Court can convict on such a confession by an accused person. Golden Dibie & Ors. v. The State (2007) 3 SCNJ 160. And there is nothing esoteric or strange about resiling from or denying/retracting a confessional statement by an accused person. It is not unnatural that at the earliest phase of the commission of an offence, the sense or feeling of guilt weighs more on the mind of the offender, but with passage of time, his mind gets toughened again which invariably leads to an afterthought and eventual retraction of the earlier confessional statement that was made by him. Hence, soon after the offence, their consciences are more pricked and so they are goaded to be truthful in their extra-judicial statements. The important thing of consideration for the Court, is that if it is convinced that the confession of guilt was freely and voluntarily made and the Court is satisfied as to its truth, the accused person can be convicted on it. Akpan v. The State (2001) 15 N.W.L.R. (pt. 737) 745. The above notwithstanding, the Supreme Court had held in a plethora of authorities to the effect that it is expedient and desirable that where an accused person has denied making the confessional statement, the trial Court should look for some evidence, however slight, outside the confession to confirm that it was a true confession. Emmanuel Nwaebonyi v. The State (1994) 5 N.W.L.R. (pt. 343) 138; Effiong v. The State (1998) 8 N.W.L.R. (pt. 562) 362; Golden Dibie & 2 Ors. v. The State (2007) 3 SCNJ 160 at 171 - 172; Osetola v. The State (2012) ALL FWLR (pt. 649) 1020; Osuagwu v. The State (2013) 1 S.C.N.J 33 at

57. The apex Court, in order to put the Courts on firma terra, before grounding a conviction on a retracted confessional statement, evolved a six parameter test in gauging the veracity and truthfulness of such confessional statements. His Lordship, Adekeye, J.S.C. in Haruna v. Attor. Gen. Federation (2012) LPELR - 7821 (SC) at pages 28 - 29, succinctly stated that: "A Court can convict on the retracted confessional statement of an accused person but before this is properly done, the trial judge should evaluate the confession and the testimony of the accused person and all the evidence available. This entails the trial judge examining the new version of events presented by the accused person which is different from his retracted confession and the judge asking himself the following questions - Is there anything outside the confession to show that it is true? a. Is it corroborated? b. Are the relevant statements made in it of facts true as far as they can be tested? c. Did the accused person have the opportunity of committing the offence charged? d. Is the confession possible? e. Is the confession consistent with other parts which have been ascertained and have been proved? R. v. Sykes (1913) CAR pg. 113. R. v. Omokaro (1941) 7 WACA pg. 146. Achuba v. State (1976) NSCC pg. 74. Yusufu v. State (1976) 6 S.C. 167." Further see Afolabi v. The State (2013) 6 SCNJ (pt. 1) 159 at 192; Osetola v. The State (2012) LPELR - 9348 (SC) at pp. 32 - 33; Karimu Sunday v. The State (2018) 1 NWLR (pt. 1600) 251 at 278." Per YAKUBU, J.C.A. (Pp. 18-21, Paras. E-E) (...read in context)

3. EVIDENCE - CONFESSIONAL STATEMENT: Whether a court can convict solely on the confessional statement of an accused person

"The law is settled that an accused person can be convicted solely on his own free and voluntary confession." Per BOLAJI-YUSUFF, J.C.A. (P. 37, Para. D) (...read in context)

4. EVIDENCE - CONFESSIONAL STATEMENT: Whether confession is the best form of evidence in a criminal trial; whether it is sufficient alone to sustain a conviction

"...The ipse-dixit of the appellant in Exhibit P3, undoubtedly, was a confessional statement of his admission in respect of the charge against him. Exhibit P3 has all the trappings of the requirement in Section 28 of the Evidence Act, 2011 and the law is well settled to the effect that once an accused person makes a statement which states categorically that he committed the offence with which he was charged, he can be convicted upon that confessional statement. Kasa v. The State (2008) 2 SCNJ 375 at 423; Abdullahi & Ors v. The State (2013) 5 SCNJ (pt. II) 453 at 473 - 474. The Supreme Court was very emphatic in Basil Akpan v. The State (2008) 4 - 5 SC, (pt. II) 1, to the effect that a "confession in a criminal trial is the strongest evidence of guilt on the part of an accused person. It is stronger than the evidence of an eye witness because the evidence, borrowing from the daily axiom, comes from the mouth of the horse, who is the accused person. What better evidence than that? He knows or knew what he did and he says or said it in Court. Is there any need for any further proof? I think not." - per Niki Tobi, JSC." Per YAKUBU, J.C.A. (Pp. 23-24, Paras. A-A) (...read in context)

5. EVIDENCE - CONFESSIONAL STATEMENT: Effect of failure of an accused person to object to the admission of his confessional statement

"In the instant case, the appellant, at the trial apart from not objecting to the admission into evidence of Exhibit P3, did not allege that he was beaten or tortured in making the confessional statement. If that were the situation, the learned trial judge would have been duty bound, to conduct a trial-within-trial, in order to determine the voluntariness or involuntariness of the said confessional statement. Osuagwu v. The State (2013) 1 SCNJ 33 at 58 - 59. However, since that was not the scenario at the trial, the learned trial judge was eminently justified in admitting into evidence, the appellant's confessional statement, that is, Exhibit P3." Per YAKUBU, J.C.A. (P. 24, Paras. A-D) (...read in context)

6. EVIDENCE - CORROBORATION/CORROBORATIVE EVIDENCE: Nature of evidence required as corroboration for the offence of rape

"The learned trial judge, found that the pieces of evidence proffered by the prosecutrix - PW1 and the medical officer - PW4 who examined the PW1 after the sexual assault on the latter, were uncontradicted. And after reviewing the evidence of the prosecution witnesses, his Lordship found as follows at page 77 of the record of appeal: "Following from the above, it is my view that the entire evidence of the prosecution which was in no way challenged or contradicted by the defence, establishes on unequivocal terms the fact of rape of the victim in this charge, Ezinne Ukpai. The evidence of the victim (PW1) and the medical doctor (PW4) together with the medical report, Exhibit "P5" established the fact of sexual intercourse. It is trite from judicial decision that the term "carnal knowledge" means sexual intercourse which is complete upon penetration. See

the case of Ezigbo v. State (supra) and Adonike v. State (2015) 7 NWLR (pt. 1458) 237. It was part of the evidence of PW1 that accused dragged her into his room and asked her to undress. When she refused, he threatened her with a machete, beat her three times on the back with the machete, tore her cloths and pant and pushed her down. He brought out his penis and inserted into her vagina and had sex with her with blood coming out of her vagina three times that night while tying her mouth and hands. The evidence of PW1 of accused penetrating her vagina with his penis was corroborated by PW4 (the medical doctor) and Exhibit "P5" (the medical report). In view of all the above, I am of the opinion that the prosecution in this case through credible and contradicted evidence has succeeded in establishing the act of the rape of the victim and I so hold." I must say that I do not have any difficulty in agreeing with the findings of the learned trial judge. They are borne out of the evidence placed before him. There is a clear connection between the evidence of PW1 with that of PW4 vis-a-vis Exhibit P5. I am satisfied that the evidence of PW4 read together with Exhibit P5, clearly connected with the sexual defilement of the PW1 by the appellant. In other words, the evidence of PW1 was amply corroborated with the evidence of PW4. In Iko v. The State (2001) 14 NWLR (pt. 732) 221 at pp. 240 - 241; (2001) LPELR - 1480 (SC) at pages 12 - 14, my Lord Kalgo, JSC succinctly stated that: "Corroboration" in my understanding simply means "confirming or giving support to" either a person, statement or faith. What then constitute corroboration in law? In R. v. Baskerville (1916 - 17) All ER Reprint 38 at 43, Lord Reading CJ defined what evidence constitutes corroborative evidence for the purpose of the statutory and common law rules when he said:- "We hold that evidence in corroboration must be independent testimony which affects the accused by

connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offence for which corroboration is required by statute" It therefore follows, in my view, to ask what is the purpose of corroborative evidence? In D. P. P. v. Hester (1973) AC 296 at 315, Lord Morris said:- "The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible: and corroborative evidence will only fill its role if it itself is completely credible evidence" The above two quotations put together would appear to mean that while corroborative evidence must be independent and capable of implicating the accused in relation to the offence charged, it must be credible and must go to confirm and support that evidence which is sufficient, satisfactory and credible whether the case is one in which it is required by statute or by rule of practice." I am satisfied that with the evidence of PW4 who made Exhibit P5 in respect of PW1's evidence to the effect that it was the appellant, who sexually assaulted her, that is, raped her on 20th February, 2015; the first ingredient of the offence of rape, that is the fact that there was sexual intercourse between the PW1 and the appellant was established by the prosecution. I am satisfied that with the evidence of PW4 who made Exhibit P5 in respect of PW1's evidence to the effect that it was the appellant, who sexually assaulted her, that is, raped her on 20th February, 2015; the first ingredient of the offence of rape, that is the fact that

there was sexual intercourse between the PW1 and the appellant was established by the prosecution." Per YAKUBU, J.C.A. (Pp. 27-31, Paras. C-C) (...read in context)

7. CRIMINAL LAW AND PROCEDURE - OFFENCE OF RAPE: Essential ingredients of the offence of rape

"Now, Section 34 of the Ebonyi State Child's Rights and Related Matters Law, 2010 upon which the appellant was charged and arraigned for prosecution provides thus: Section 34 (1) No person shall have sexual intercourse with a child. Section 34 (2) A person who contravenes the provision of Subsection (1) of this Section commits an offence of rape and is liable on conviction to imprisonment for life. Section 34 (3) Where a person is charged with an offence under this Section, it is immaterial that: (a) the offender believed the person to be of or above the age of eighteen years or (b) the sexual intercourse was with the consent of the child. Therefore, to prove the offence of rape, the prosecution is required to establish that: (a) sexual intercourse has taken place, (b) that the victim was a child, and (c) that the accused person was the man who committed the offence." Per YAKUBU, J.C.A. (Pp. 26-27, Paras. D-C) (...read in context)

8. CONSTITUTIONAL LAW - RIGHT TO DEFENCE/LEGAL REPRESENTATION: Whether an accused person must be represented by counsel where he is charged with a capital offence

"...It is only in cases of where sanction is death penalty that the Courts have mandated that the accused MUST be represented by legal counsel. See Nemi &

Ors v. The State (1994) 10 SCNJ 1." Per OGUNWUMIJU, J.C.A. (P. 34, Paras. D-E) (...read in context)

9. CONSTITUTIONAL LAW - RIGHT TO FAIR HEARING: Essential elements of fair hearing

"The right to fair hearing guaranteed by Section 36(1) of the Constitution has two pillars namely audi alteram partem and nemo judex in causa sua meaning that both sides must be given every reasonable opportunity of being heard and no one shall be a judge in his own cause." Per BOLAJI-YUSUFF, J.C.A. (P. 36, Paras. B-C) (...read in context)

10. CONSTITUTIONAL LAW - RIGHT TO FAIR HEARING: Test of fairness/fair hearing in proceedings

"Now, Section 36 (6)(d) of the 1999 Constitution of the Federal Republic of Nigeria, as amended, provides, inter alia: "36.(6) - Every person who is charged with a criminal offence shall be entitled to (d) examine, in person or by his legal practitioner, the witness called by the prosecution before any Court or Tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the Court or Tribunal on the same conditions as those applying to the witnesses called by the prosecution....." In the circumstances and facts of this matter, it is clear to me that the appellant rightly exercised his fundamental right to fair hearing as stipulated under Section 36(6)(d) of the Constitution (supra). To my mind, the submissions of appellant's counsel could

have been of considerable weight, if the appellant had applied for an adjournment on account of the absence of his counsel from Court and he was refused the indulgence of such an adjournment. However, that is not the situation here. Therefore, I do not think that it is an ingenuous contention that in all situations and cases, an appeal predicated on a denial of fair hearing by a party such as the appellant herein, is a talisman or cure for all medicine to impugn and damnify a Court proceedings. This point was strongly and succinctly stated by the learned jurist, Niki Tobi, J. S. C., in Orugbo v. Una (2002) 16 NWLR (pt. 792) 172; (2002) 9 SCNJ 12 at page 17, that: "The true test of fair hearing is the impression of a reasonable person who was present at the trial whether from his observation, justice has been done in the case. See Mohammed v. Kano N. A. (1969) 1 All NLR 428; Funduk Engineering Ltd v. Mcarthur (1995) 4 NWLR (pt. 392) 640; Col. Yakubu (Rtd) v. Governor of Kogi State (1995) 8 NWLR (pt. 414) 386. The reasonable man should be a man who keeps his mind and reason within the bounds of reason and not extreme. And so if in the view of a reasonable man who watched the proceedings, the principle of fair hearing was not breached, an appellate Court will not nullify the proceedings. Fair hearing, which as entrenched in the Constitution, is based on determining or testing the constitutionality of a trial in terms of procedure. It is a very fundamental principle of law which the parties and the Courts are free to apply in relevant situations in relation to the facts of the case and not in vacuum. Accordingly, where the facts of the case reject the principle, the Court will have no competence to force the principle of law on the case." Furthermore, the learned Law Lord, at pages 36 - 37 of the report, concluded, thus: "Fair hearing is not a cut-and-dry principle which parties can, in the abstract, always apply to their comfort and convenience. It is a

principle which is based and must be based on the facts of the case before the Court. Only the facts of the case can influence and determine the application or applicability of the principle. The principle of fair hearing is helpless or completely dead outside the facts of the case." In the circumstances and facts of the instant case as I demonstrated earlier in this judgment, I am of the considered and firm opinion that the complaint of fair hearing at appellant's instance is more of flying a kite and unreal. It is therefore unavailing to him. So, I resolve issue 1 against the appellant and in favour of the respondent." Per YAKUBU, J.C.A. (Pp. 14-17, Paras. E-E) (...read in context)

11. CONSTITUTIONAL LAW - RIGHT TO FAIR HEARING: Attributes of the principle of fair hearing

"I should state emphatically straight away, that fair hearing is the touchstone of justice. And that nothing rankles the spirit and soul of a person than a resonating feeling that he was not afforded a fair hearing in a Court of law, in a matter that was decided against him in that Court. That is why, in Section 36(1) of the 1999 Constitution (as amended), the hallowed principle of fair hearing is clearly entrenched and enshrined. This principle was succinctly reiterated in Rear Admiral Francis Agbiti v. The Nigerian Navy (2011) 2 SCNJ 1; (2011) LPELR - 2944 (SC) at p. 47 per Adekeye, JSC, inter alia:- "The basic criteria and attributes of fair hearing are: (a) That the Tribunal or Court must hear both sides not only in the case but also on material issue in the case before reaching a decision. (b) That having regard to all the circumstances in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to have been

done. The right to fair hearing is a fundamental constitutional right guaranteed by Section 36(1) of the 1999 Constitution; any breach of it particularly in trials renders same null and void." Per YAKUBU, J.C.A. (Pp. 11-12, Paras. B-A) (...read in context)

TOM SHAIBU YAKUBU, J.C.A. (Delivering the Leading Judgment): This appeal is sequel to the judgment of D. O. Oko, J., of the Ebonyi State High Court of Justice, holden at Abakaliki, delivered on 23rd September, 2016. It was a trial by the Judge as Chairman and a jury of two assessors/members. The charge against the appellant, bordered on the offence of rape on a minor aged thirteen (13) years anchored on Section 34(1) & (2) of the Ebonyi State Child Rights and Related Matters Law, 2010.

On 20/2/2015, at about 8.00pm., one Ezinne Ukpai (the 13 year old prosecutrix and victim of the alleged crime) was returning from an evening market at Ezi Ukpai, Amangwu Edda in Afikpo South Local Government Area of Ebonyi State. The prosecutrix met the Appellant on the way close to his house. The Appellant forcefully dragged the prosecutrix into his said house, tied her hands. He later untied her hands and had carnal knowledge of her thrice. The prosecutrix remained in the Appellants grip and captivity until the night of 21/2/2015 when the Appellant had a visitor (in the same night) who knocked at the Appellants door. The latter went to the door and opened same for the visitor. The prosecutrix, in her stack nudity quickly escaped through the open door and ran to the house of her aunt one Patience Oge who quickly provided a wrapper and food

for her and housed her for the night, and took her (prosecutrix) to her mother the following morning; who observed injuries and blood clots in the vaginal track of the prosecutrix. The Appellant in his extra-judicial statement confessed to the crime but resiled therefrom during trial.

In her judgment, the Court below found the appellant guilty of the offence charged against him and sentenced him to ten (10) years imprisonment. The appellants appeal is predicated on eight (8) grounds of appeal. They are at pages 81 86 of the record of appeal to wit:

GROUND ONE

The learned trial Judge erred in law and in facts when he held that:-

The evidence of the victim (PW1) and the medical doctor (PW4) together with the medical report, Exhibit P5 established the fact of sexual intercourse.

PARTICULARS OF ERROR:-

1. Exhibit P5, the medical report, is tainted with reasonable doubt as the medical examination was carried out long after the alleged rape of the PW1.

2. There was a conspicuous lapse of time between 20/2/2015 when the alleged offence of rape took place and 6/3/2015 when the medical examination was conducted on the PW1 which renders the said medical report unsupportive evidence of sexual intercourse of 20/2/2015.

3. There is no evidence by the prosecution that PW1 never had sexual intercourse with another man prior to 6/3/2015 when the medical examination was conducted on the PW1.

GROUND TWO

The learned trial Judge erred in law and in facts when he held that:-

Even though he denied having carnal knowledge of the victim while giving evidence in Court, part of his evidence in Court is that he took the PW1 and one Eni Irem to his house from where the victim escaped through the back door.

PARTICULARS OF ERROR

1. It was the appellants evidence that PW2, the mother of PW1 pleaded with him to assist her in looking for PW1 who according to her was missing, which the defendant obliged her.
2. In the course of assisting the PW2 in looking for PW1, the appellant found PW1 and immediately took her to her parents house, but nobody was found there, necessitating the appellant to take the PW1 back to his house and later brought the PW1 back to her parent house.
3. The fact that the defendant gave evidence in Court that he took the PW1 to his house after he found that the PW1s mother was not around, without more, cannot make him liable for the offence of rape.

GROUND THREE

The learned trial Judge erred in law and in facts when he held as follows:-

Let me also recall at this stage that the I. P. O. While giving evidence testified that every effort made by the investigating team for the accused to take them to the house of Eni Irem was rebutted (sic) (rebuffed) by the accused and the villagers informed the team on further inquiry that there is nobody by that name in the community.

PARTICULARS OF ERROR

1. The prosecution failed to mention names and addresses of the villagers who purportedly informed the investigating team that nobody answer Eni Irem in the community.

2. The prosecution also failed to call as witnesses at least one villager who purportedly informed the investigating team that nobody answers Eni Irem in the community.

3. The evidence of the prosecution to the fact that the villagers informed the investigating team that nobody answer Eni Irem is unbelievable and should create serious doubt in the mind of Court.

GROUND FOUR

The learned trial Judge erred in law and in facts when he held as follows:-

It should be noted that the accused did not contest the voluntariness of his Exhibit p3 which was direct, positive and unequivocal of facts that satisfy the ingredients of the offence the accused person confessed to have committed.

PARTICULARS OF ERROR

1. The appellant maintained in the evidence that he was gravely tortured and his shirt torn by the police at station before the Exhibit p3 were extracted from him.

2. The said Exhibit p3 cannot qualify as confessional statement in view of Section 28 of Evidence Act, 2011 as amended.

3. It is the duty of the prosecution to prove beyond reasonable doubt by way of cogent and compellable evidence that the said Exhibit p3 was voluntarily obtained before the same can be tendered and admitted in evidence, which duty the prosecution failed to discharge.

GROUND FIVE

The learned trial Judge erred in law when he held that:-

The above evidence of the victim and other prosecution witness which is consistent was in no way discredited under cross-examination.

PARTICULARS OF ERROR

1. The prosecution evidence is full of conflict and inconsistent, capable of raising doubt to culpability of the appellants guilt.

2. It was the PW1 evidence that on 20/2/2015, she was sent to sell bush mango, but PW3 (I. P. O.) who investigated the matter testified that PW1 was sent to sell ukpa on the said fateful day.

3. The I. P. O. have long concluded his investigation and made his findings indicting the appellant for the offence of rape even without medical REPORT an act that showed that the I. P. O. did not properly investigate the case.

GROUND SIX

The learned trial Judge erred in law when he failed to afford the appellant the constitutional opportunity of cross examining the prosecution witnesses.

PARTICULARS OF ERROR

1. The appellant was apparently not represented by counsel during trial at the Court below.

2. None of the witnesses fielded by the prosecution was cross examined by the appellant.

3. Failure to avail the appellant the opportunity of cross examining the witnesses fielded by the prosecution endangered the constitutional right of the appellant.

4. Evidence of the lower Court crystallize that the appellant is not educated or lettered, not to talk of being a lawyer.

GROUND SEVEN

The learned trial Judge erred in law when he held as follows:-

In the light of the entirety of the above evaluation of the evidence led in proof of his charge by the prosecution, I hold that the prosecution by the totality of the evidence adduced in this case has successfully discharged the burden of proving the guilt of the accused in this charge beyond reasonable doubt.

PARTICULARS OF ERROR

1. The prosecution failed to prove beyond reasonable doubt through credible evidence that the appellant and no other person raped the PW1.

2. The learned trial Judge did not consider evidence of the appellant to the fact that Exhibit p3 was not obtained voluntarily.

GROUND EIGHT

The judgment of the lower Court is unreasonable and cannot be supported having regard to the weight of evidence.

The appellant, in order to activate the prosecution of the appeal was armed with the appellants brief of argument, dated and filed on 20th December, 2016. The respondents brief of argument, was settled by I. I. Alobu, Esq., Director of Public Prosecutions, Ministry of Justice, Abakaliki, (with F. N. Nteoma, Esq., Chief State Counsel, J. U. Chukwu, Esq., Principal State Counsel, Miss Chinyere Anoke,

Principal State Counsel and G. A. Bamikole, Esq., Legal Officer (NYSC) all of the Ministry of Justice, Abakaliki.

In the appellants brief of argument, three issues were nominated therein for the determination of the appeal. They are, to wit:

1. Whether the prosecution has proved its case of rape against the appellant beyond reasonable doubt?
2. Whether the trial Court was right when it admitted and convicted the appellant based on the alleged confessional statement (Exhibit P3) when the said Exhibit P3 did not comply with Section 28 of the Evidence Act, 2011 as amended?
3. Whether the non representation of appellant by counsel at crucial stage of his trial, did not violate the constitutional right of the appellant?

On the part of the respondent, two issues were suggested for the determination of the appeal, thus:

1. Whether the prosecution has beyond reasonable doubt, proved its case of rape against the Appellant.
2. Whether the non-representation of the Appellant by a counsel at the crucial stage of his trial constituted a violation of the Appellants fundamental right to fair hearing.

Having perused the record of appeal, the judgment of the Court below vis-a-vis the grounds of appeal against that judgment and the issues nominated by the respective counsel to the parties. I am satisfied that the two issues nominated by the respondent which covers issues 1 and 3 of the appellants, are sufficient to

resolve this appeal. Therefore, the two issues for my consideration and determination are:

1. Whether the non-representation of the appellant by counsel at the crucial stage of his trial, did not violate the constitutional right of the appellant?
2. Whether the prosecution proved beyond reasonable doubt, its case of rape against the appellant?

The two issues shall be taken and considered one after the other as re-arranged above, by me.

Arguing issue 1, the appellants learned counsel contended that the Court below ought to have adjourned the trial proceedings of 24th June, 2016 when it discovered that the appellants counsel was not in Court to represent him and cross-examine the prosecution witnesses no. 3 and 4 whose evidence were vital. He submitted that the offence of rape, being a serious one required the attention of a lawyer, placing reliance on Rabiu v. The State (2005) NWLR (pt. 925) 491 at 516. He insisted that the appellant was denied of his constitutional right to fair hearing.

The respondents counsel, arguing per contra, submitted that the appellant having conducted his defence pursuant to Sub section (6)(d) of Section 36 of the 1999 Constitution, as amended, was not denied his right to fair hearing. He referred to Okeke v. Oruh (1999) 6 NWLR (pt. 606) 175; Faretta v. California 422 US 806, 95 ct. 2525 (1975), cited in Harold Chase and Craig Duart, Constitutional

Interpretation Cases, Essays, Materials, 2nd Edition, St. Paul Minnesota, West, 1989, page 959.

Resolution:

I should state emphatically straight away, that fair hearing is the touchstone of justice. And that nothing rankles the spirit and soul of a person than a resonating feeling that he was not afforded a fair hearing in a Court of law, in a matter that was decided against him in that Court. That is why, in Section 36(1) of the 1999 Constitution (as amended), the hallowed principle of fair hearing is clearly entrenched and enshrined. This principle was succinctly reiterated in Rear Admiral Francis Agbiti v. The Nigerian Navy (2011) 2 SCNJ 1; (2011) LPELR 2944 (SC) at p. 47 per Adekeye, JSC, inter alia:-

The basic criteria and attributes of fair hearing are:

(a) That the Tribunal or Court must hear both sides not only in the case but also on material issue in the case before reaching a decision.

(b) That having regard to all the circumstances in every material decision in the case, justice must not only be done but must manifestly and undoubtedly be seen to have been done. The right to fair hearing is a fundamental constitutional right guaranteed by Section 36(1) of the 1999 Constitution; any breach of it particularly in trials renders same null and void.

In the instant case, the appellants counsel, one A. S. Enyi, appeared for him on 4th March, 2016 when the appellants plea was taken. He also appeared in Court and moved the application for bail of the appellant which was refused on 8th April, 2016. He also appeared for the appellant on 23/9/16 (sic) when the PW1 and PW2

testified and he cross examined them. The case was then adjourned by consent of both counsel to 24/6/2016 for continuation of hearing. However, the record of appeal at page 55 thereof indicates that on 24/6/2016, the appellants counsel was absent from Court. On that day, the PW3 Cpl. Chukwu Julius, testified for the prosecution and tendered into evidence, Exhibit P1- his investigation report; Exhibit P2- A report from Afikpo South Divisional Police Station in respect of the case. Thereafter, the record of appeal at page 57 thereof indicates as follows:

PW3 here is the statement the accused transferred from Police Divisional Headquarters Afikpo South.

I apply to tender the justified (sic) statement as exhibit.

Accused I identify, the statement.

Accused my statement.

The statement of accused dated 20th February, 2015 received in evidence and marked Exhibit P3. Here is the statement accused entered (sic) to me at the State Headquarters Abakaliki. I apply to tender same evidence as Exhibit send (sic) I identify, the statement of the one I made at the CID Abakaliki. Statement of Accused 4th March, 2015 receive (sic) in evidence and marked exhibit P4. "

Thereafter, the PW3 was cross-examined by the appellant himself at pages 57 58 of the record of appeal. Then, at the sitting of the Court below on 4/3/2016 (sic) PW4 Dr. Michael N. Urom who issued a medical report on the prosecutrix (PW1), testified and through him the medical report was tendered thus:

I apply to tender the medical report identified by the witness as Exhibit report medical report is shown to the Court.

Accused I have seen the report.

Court: Medical report dated 6th March, 2015 received in evidence and marked Exhibit P5. "

Again, the appellant himself cross-examined the PW4 at pages 59 60 of the record of appeal. And when PW5 gave evidence on same date, she was cross-examined personally by the appellant.

I discovered and it is apparent, ex facie from the record of appeal, that right from 24/6/2016 when PW3 gave evidence and the appellants counsel A. S. Enyi, was absent from the Court proceedings, without the courtesy of writing to the Court, explaining his absence from Court, the appellant never prayed/asked for an adjournment on account of the absence of his counsel from Court. He, indeed conducted the case from that date through the subsequent days of the trial proceedings to the end, for and by himself. He never asked for an adjournment which was refused by the Court below.

Now, Section 36 (6)(d) of the 1999 Constitution of the Federal Republic of Nigeria, as amended, provides, inter alia:
36.(6) - Every person who is charged with a criminal offence shall be entitled to
(d) examine, in person or by his legal practitioner, the witness called by the prosecution before any Court or Tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the Court or Tribunal on the same conditions as those applying to the witnesses called by the prosecution.....

In the circumstances and facts of this matter, it is clear to me that the appellant rightly exercised his fundamental right to fair hearing as stipulated under Section 36(6)(d) of the Constitution (supra). To my mind, the submissions of appellants counsel could have been of considerable weight, if the appellant had applied for an adjournment on account of the absence of his counsel from Court and he was refused the indulgence of such an adjournment. However, that is not the situation here. Therefore, I do not think that it is an ingenuous contention that in all situations and cases, an appeal predicated on a denial of fair hearing by a party such as the appellant herein, is a talisman or cure for all medicine to impugn and damnify a Court proceedings.

This point was strongly and succinctly stated by the learned jurist, Niki Tobi, J. S. C., in Orugbo v. Una (2002) 16 NWLR (pt. 792) 172; (2002) 9 SCNJ 12 at page 17, that:

The true test of fair hearing is the impression of a reasonable person who was present at the trial whether from his observation, justice has been done in the case. See Mohammed v. Kano N. A. (1969) 1 All NLR 428; Funduk Engineering Ltd v. Mcarthur (1995) 4 NWLR (pt. 392) 640; Col. Yakubu (Rtd) v. Governor of Kogi State (1995) 8 NWLR (pt. 414) 386. The reasonable man should be a man who keeps his mind and reason within the bounds of reason and not extreme. And so if in the view of a reasonable man who watched the proceedings, the principle of fair hearing was not breached, an appellate Court will not nullify the proceedings. Fair hearing, which as entrenched in the Constitution, is based on determining or testing the constitutionality of a trial in terms of procedure. It is a very fundamental principle of law which the parties and the Courts are free to apply in relevant situations in relation to the facts of the case and not in vacuum.

Accordingly, where the facts of the case reject the principle, the Court will have no competence to force the principle of law on the case.

Furthermore, the learned Law Lord, at pages 36 37 of the report, concluded, thus:

Fair hearing is not a cut-and-dry principle which parties can, in the abstract, always apply to their comfort and convenience. It is a principle which is based and must be based on the facts of the case before the Court. Only the facts of the case can influence and determine the application or applicability of the principle. The principle of fair hearing is helpless or completely dead outside the facts of the case.

In the circumstances and facts of the instant case as I demonstrated earlier in this judgment, I am of the considered and firm opinion that the complaint of fair hearing at appellants instance is more of flying a kite and unreal. It is therefore unavailing to him. So, I resolve issue 1 against the appellant and in favour of the respondent.

With respect to issue 2, the appellants contention is that his statement in Exhibit P3 was rejected by him in Exhibit P4 because he was tortured and beaten when he made the earlier statement, that is, Exhibit P3. Therefore, according to him, the said Exhibit P3 was not voluntarily made by him and ipso facto, it was not a confessional statement pursuant to Section 28(2) of the Evidence Act.

On the other hand, the learned Director of Public prosecutions, for the respondent, submitted that Exhibit P3 was freely and voluntarily made by the appellant who identified it as his statement when it was being tendered into

evidence, without any objection to its admissibility into evidence. Furthermore, he submitted that there are other facts ascertained from the evidence of PW1 and PW4 which are outside Exhibit P3 to corroborate the facts stated by the appellant in the said Exhibit P3, which he retracted in Exhibit P4 and in his evidence in Court. Therefore, according to him, the appellant was rightly convicted on his confessional statement in Exhibit P3.

Resolution:

The vexed question of retraction of confessional extra judicial statements, by accused persons, has engaged the attention of our Courts over the years. Generally, it is settled law, that there is no evidence stronger than a persons own admission or confession of his complicity in the offence for which he is arraigned in Court for trial. Therefore, the Court can convict on such a confession by an accused person. Golden Dibie & Ors. v. The State (2007) 3 SCNJ 160. And there is nothing esoteric or strange about resiling from or denying/retracting a confessional statement by an accused person.

It is not unnatural that at the earliest phase of the commission of an offence, the sense or feeling of guilt weighs more on the mind of the offender, but with passage of time, his mind gets toughened again which invariably leads to an afterthought and eventual retraction of the earlier confessional statement that was made by him. Hence, soon after the offence, their consciences are more pricked and so they are goaded to be truthful in their extra-judicial statements.

The important thing of consideration for the Court, is that if it is convinced that the confession of guilt was freely and voluntarily made and the Court is satisfied

as to its truth, the accused person can be convicted on it. Akpan v. The State (2001) 15 N.W.L.R. (pt. 737) 745.

The above notwithstanding, the Supreme Court had held in a plethora of authorities to the effect that it is expedient and desirable that where an accused person has denied making the confessional statement, the trial Court should look for some evidence, however slight, outside the confession to confirm that it was a true confession. Emmanuel Nwaebonyi v. The State (1994) 5 N.W.L.R. (pt. 343) 138; Effiong v. The State (1998) 8 N.W.L.R. (pt. 562) 362; Golden Dibie & 2 Ors. v. The State (2007) 3 SCNJ 160 at 171 172; Osetola v. The State (2012) ALL FWLR (pt. 649) 1020; Osuagwu v. The State (2013) 1 S.C.N.J 33 at 57.

The apex Court, in order to put the Courts on firma terra, before grounding a conviction on a retracted confessional statement, evolved a six parameter test in gauging the veracity and truthfulness of such confessional statements. His Lordship, Adekeye, J.S.C. in Haruna v. Attor. Gen. Federation (2012) LPELR 7821 (SC) at pages 28 29, succinctly stated that:

A Court can convict on the retracted confessional statement of an accused person but before this is properly done, the trial judge should evaluate the confession and the testimony of the accused person and all the evidence available. This entails the trial judge examining the new version of events presented by the accused person which is different from his retracted confession and the judge asking himself the following questions

Is there anything outside the confession to show that it is true? a. Is it corroborated? b. Are the relevant statements made in it of facts true as far as they can be tested? c. Did the accused person have the opportunity of committing the offence charged? d. Is the confession possible? e. Is the confession consistent

with other parts which have been ascertained and have been proved? R. v. Sykes (1913) CAR pg. 113. R. v. Omokaro (1941) 7 WACA pg. 146. Achuba v. State (1976) NSCC pg. 74. Yusufu v. State (1976) 6 S.C. 167.

Further see Afolabi v. The State (2013) 6 SCNJ (pt. 1) 159 at 192; Osetola v. The State (2012) LPELR 9348 (SC) at pp. 32 33; Karimu Sunday v. The State (2018) 1 NWLR (pt. 1600) 251 at 278.

The appellant in his extra-judicial statement made in Exhibit P3 on 23rd Feb., 2015, stated thus:

I wish to state here that, I know one Ukpai Arusi Onu m he is from Ezukpai Amangwu and is his brother. That it is only on 21/2/2015 when I went to Eni Irem m house that I know Ezinne Ukpai who stayed with me only that day alone. That when I took her to my house stays in the house since 8 oclock in the morning of same 21/2/2015 till 5 pm in the evening. I know that I had unlawful carnal knowledge of her and gave her close up to brush her mouth and also gave her money to go and buy food items which she cook and eat and left some for (him) me in the house. It is the mother that told me to search for Ezinne Ukpai (f) since she has not been seen for days. I only know that the said girl was staying in the house of Eni Irem for more than six days and of which he confirmed that the said Ezinne Ukpai was with the said Eni Irem. That on that 21/2/2015, I left her in the house when she was shouting, raising alarm for people to come for her rescue that he didnt know that this is what is going to happen. That on same date, I called on a policeman serving in this Division that I have his phone number who then told me that he is on patrol. I know that the complainant and myself are in

different political party group that why they wanted to undue me. I know that I have committed an offence, please forgive me that is all my statement.

The ipse-dixit of the appellant in Exhibit P3, undoubtedly, was a confessional statement of his admission in respect of the charge against him. Exhibit P3 has all the trappings of the requirement in Section 28 of the Evidence Act, 2011 and the law is well settled to the effect that once an accused person makes a statement which states categorically that he committed the offence with which he was charged, he can be convicted upon that confessional statement. Kasa v. The State (2008) 2 SCNJ 375 at 423; Abdullahi & Ors v. The State (2013) 5 SCNJ (pt. II) 453 at 473 474. The Supreme Court was very emphatic in Basil Akpan v. The State (2008) 4 5 SC, (pt. II) 1, to the effect that a confession in a criminal trial is the strongest evidence of guilt on the part of an accused person. It is stronger than the evidence of an eye witness because the evidence, borrowing from the daily axiom, comes from the mouth of the horse, who is the accused person. What better evidence than that? He knows or knew what he did and he says or said it in Court. Is there any need for any further proof? I think not. - per Niki Tobi, JSC.

In the instant case, the appellant, at the trial apart from not objecting to the admission into evidence of Exhibit P3, did not allege that he was beaten or tortured in making the confessional statement. If that were the situation, the learned trial judge would have been duty bound, to conduct a trialwithin-trial, in order to determine the voluntariness or involuntariness of the said confessional statement. Osuagwu v. The State (2013) 1 SCNJ 33 at 58 59. However, since that

was not the scenario at the trial, the learned trial judge was eminently justified in admitting into evidence, the appellants confessional statement, that is, Exhibit P3.

The appellant in Exhibit P4, which he made subsequently on 4th March, 2015, after Exhibit P3, denied the charge/allegation against him. This is what he said in Exhibit P4, to wit:

I of the above name and address voluntarily elect to state as follows. That on the 21/02/2015, I was staying in my house at Amaekpu and the mother to one Ezinne Ukpai Arusi met me and complained to me that for the past five days, she has not seen the daughter and that I should help her find where the girl is and after listening to the woman, I commenced searching for the girl and I saw her in one Eni Irem Ezes house and I asked the boy why the girl is in his house and he said that the girl is his girl friend and I asked her if she know that the mother has been looking for her and I took the girl and the boy to my house. Moreover, I wanted to take them to her mother but I remembered that the mother has gone to the farm. Hence I took them to my house and when I reached my house, I gave her water to wash her face and gave her tooth brush to brush her teeth and I gave her food she cooked and ate and left the remaining one for me which I later ate. I did not have sex with Ezinne. I can remember that I made a statement at Afikpo South Division in respect of this case on the 23rd Feb., 2015 and I signed the statement voluntarily. I want to take the statement I am making here and not the statement I made at Afikpo South Divisional headquarters. The girl later ran away from me and I did not report to anybody when the girl ran away. This is my statement.

Oka Chima Udeh

Sgd 4/3/2015.

It is intriguing that although the appellant denied having had a carnal knowledge of the prosecutrix Ezinne, in Exhibit P4, he alluded to the statement he had earlier made at Afikpo South Divisional Police Station on 23rd Feb., 2015 and that he made that statement voluntarily. That is Exhibit P3. A part from that, it is glaring to me that from the gamut of Exhibits P3 and P4, it is doubtless, that the prosecutrix Ezinne spent the night of 20th February, 2015 with the appellant, in the latters room. The prosecutrix alleged that she was raped three times on that fateful night, but the appellant in Exhibit P4 said, he did not.

Now, Section 34 of the Ebonyi State Childs Rights and Related Matters Law, 2010 upon which the appellant was charged and arraigned for prosecution provides thus:

Section 34 (1) No person shall have sexual intercourse with a child.

Section 34 (2) A person who contravenes the provision of Subsection (1) of this Section commits an offence of rape and is liable on conviction to imprisonment for life.

Section 34 (3) Where a person is charged with an offence under this Section, it is immaterial that:

(a) the offender believed the person to be of or above the age of eighteen years or

(b) the sexual intercourse was with the consent of the child.

Therefore, to prove the offence of rape, the prosecution is required to establish that:

(a) sexual intercourse has taken place,

(b) that the victim was a child, and

(c) that the accused person was the man who committed the offence.

The learned trial judge, found that the pieces of evidence proffered by the prosecutrix PW1 and the medical officer PW4 who examined the PW1 after the sexual assault on the latter, were uncontradicted. And after reviewing the evidence of the prosecution witnesses, his Lordship found as follows at page 77 of the record of appeal:

Following from the above, it is my view that the entire evidence of the prosecution which was in no way challenged or contradicted by the defence, establishes on unequivocal terms the fact of rape of the victim in this charge, Ezinne Ukpai. The evidence of the victim (PW1) and the medical doctor (PW4) together with the medical report, Exhibit P5 established the fact of sexual intercourse. It is trite from judicial decision that the term carnal knowledge means sexual intercourse which is complete upon penetration. See the case of Ezigbo v. State (supra) and Adonike v. State (2015) 7 NWLR (pt. 1458) 237. It was part of the evidence of PW1 that accused dragged her into his room and asked her to undress. When she refused, he threatened her with a machete, beat her three times on the back with the machete, tore her cloths and pant and pushed her down. He brought out his penis and inserted into her vagina and had sex with her with blood coming out of her vagina three times that night while tying her mouth and hands. The evidence of PW1 of accused penetrating her vagina with his penis was corroborated by PW4 (the medical doctor) and Exhibit P5 (the medical report).

In view of all the above, I am of the opinion that the prosecution in this case through credible and contradicted evidence has succeeded in establishing the act of the rape of the victim and I so hold.

I must say that I do not have any difficulty in agreeing with the findings of the learned trial judge. They are borne out of the evidence placed before him. There is a clear connection between the evidence of PW1 with that of PW4 vis-a-vis Exhibit P5. I am satisfied that the evidence of PW4 read together with Exhibit P5, clearly connected with the sexual defilement of the PW1 by the appellant. In other words, the evidence of PW1 was amply corroborated with the evidence of PW4.

In Iko v. The State (2001) 14 NWLR (pt. 732) 221 at pp. 240 241; (2001) LPELR 1480 (SC) at pages 12 14, my Lord Kalgo, JSC succinctly stated that:

Corroboration in my understanding simply means confirming or giving support to either a person, statement or faith. What then constitute corroboration in law? In R. v. Baskerville (1916 17) All ER Reprint 38 at 43, Lord Reading CJ defined what evidence constitutes corroborative evidence for the purpose of the statutory and common law rules when he said:-

We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law or within that class of offence for which corroboration is required by statute It therefore follows, in my

view, to ask what is the purpose of corroborative evidence? In D. P. P. v. Hester (1973) AC 296 at 315, Lord Morris said:-

The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible: and corroborative evidence will only fill its role if it itself is completely credible evidence

The above two quotations put together would appear to mean that while corroborative evidence must be independent and capable of implicating the accused in relation to the offence charged, it must be credible and must go to confirm and support that evidence which is sufficient, satisfactory and credible whether the case is one in which it is required by statute or by rule of practice.

I am satisfied that with the evidence of PW4 who made Exhibit P5 in respect of PW1s evidence to the effect that it was the appellant, who sexually assaulted her, that is, raped her on 20th February, 2015; the first ingredient of the offence of rape, that is the fact that there was sexual intercourse between the PW1 and the appellant was established by the prosecution.

I do not think that the second ingredient of the fact that PW1 was a child poses any difficulty. I agree with the finding of the learned trial judge at pages 77 78 of the record of appeal that the PW1 the victim of the offence alleged against the appellant, was aged 13 years as at the time of the commission of rape on her on 20th February, 2015.

With respect to the third ingredient of the offence alleged against the appellant, that is, that he was the man who raped Ezinne Ukpai PW1, on 20th February, 2015, I am satisfied that the appellant was rightly convicted for the said offence, premised on his confessional statement in Exhibit P3. I do not need to whip a dead horse on that point again. I am satisfied that the two issues discussed in this appeal are not available in favour of the appellant.

In the end, the appeal to my mind, is devoid of merits and it is accordingly dismissed. In effect, the judgment of Destina O. Oko, J., in re-charge No. HAB/16FC/2015, delivered on 23rd September, 2016 is affirmed.

The appellant, being a paedophile, needed to be kept out of circulation for a while, as rightly decreed by the learned trial judge, so that his paedophilia instincts may cool off. His randiness, marked him out, as being of a dangerous specie and of low moral pedigree. The conduct of the appellant herein can be likened to that of the appellant in Adonike v. The State (2015) 7 NWLR (pt. 1458) 237; (2015) LPELR 24281 (SC) at pages 59 60 by his Lordship, Munkata-Coomassie, JSC when he stated that:

The conduct of the appellant herein is as bad as that of the appellant in Akindine v. The State (2012) 16 NWLR (pt. 1326) 318, so I need re-echo what his Lordship, Muhammad J. S. C. said at page 331 of the report, to wit:

The facts revealed in this appeal are sordid and can lead to a conclusion that a man can turn into a barbaric animal. When the appellant was alleged to have committed the offence of rape, he was 32 years. His two young victims: Ogechi Kelechi, 8 years old and Chioma Kelechi, 6 years old were, by all standards, under-

aged. What did the appellant want to get out of these under-aged girls? Perhaps the appellant forgot that by nature, children generally are like animals. They follow anyone who offers them food. That was why the appellant, tactfully induced the young girls with ice cream and zobo drinks in order to transfer his hidden criminal intention to reality, damning the consequences. Honestly, for an adult man like the appellant to have carnal knowledge of under aged girls such as appellants victim is very callous and animalistic. It is against God and the State. Such small (under-aged) girls and indeed all females of acts of age need to be protected against callous acts of criminal minded people of the appellants class. I wish the punishment was heavier so as to serve as deterrent.

I also lend my voice to this very important pronouncement especially against the backdrop of the rise in rape cases nowadays. Lucky appellant who has not appealed against the sentence! Had the trial judge and indeed the Court below, by chance sentenced the accused/appellant to death or life imprisonment I would have kept mum.

My Lords, with that notable pronouncement, I now draw the curtain on this appeal.

HELEN MORONKEJI OGUNWUMIJU, J.C.A.: I have read the judgment just delivered by my learned brother TOM SHAIBU YAKUBU JCA, this is indeed a pathetic case in which a thirteen year old was abducted and raped. The kite of lack of fair hearing because his counsel failed to fully participate at the trial cannot fly in the circumstance of this case. It is only in cases of where sanction is death penalty

that the Courts have mandated that the accused MUST be represented by legal counsel. See Nemi & Ors v. The State (1994) 10 SCNJ 1.

In this case, I share the view of my learned brother that the trial Court allowed the Appellant to cross examine at length all the prosecution witnesses, particularly the prosecutrix, the evidence of whom he could not shake or contradict under cross examination. Section 36(6)(a)-(d) of the 1999 Constitution in my humble view were not violated by the trial Court.

The tactic of a counsel for an accused person withdrawing in the middle of a criminal trial without any explanation to the Court is inexplicable and frankly reeks of lack of professional ethics and competence and is reprehensible. However, that tactics if it were to stall the trial, forgot to take into consideration the specific wording of the 1999 Constitution which allows a defendant in a criminal trial to undertake his own defence or be represented by counsel of his choice. That is all the authorities have consequently held. See Nnakwe v. State (2013) 18 NWLR Pt. 1385 Pg. 1 at 27.

In the circumstance, I agree with the findings of the learned trial Tribunal that the prosecution proved its case beyond reasonable doubt.
The judgment of D.O. Oko J. delivered on 23/9/16 in Charge No. HAB/16FC/2015 is hereby affirmed.

MISITURA OMODERE BOLAJI-YUSUFF, J.C.A.: I have read in draft, the judgment of my learned brother TOM SHAIBU YAKUBU, JCA. I agree with his reasoning and

conclusion therein that the appeal is devoid of merit. It has now become a common practice for a party who has a bad case and who has nothing useful to advocate in support of an appeal to turn to the constitutional right of fair hearing even in a most ridiculous manner. The right to fair hearing guaranteed by Section 36(1) of the Constitution has two pillars namely audi alteram partem and nemo judex in causa sua meaning that both sides must be given every reasonable opportunity of being heard and no one shall be a judge in his own cause.

In the instant case, the appellant had every opportunity to defend himself and full control of his own defence after he was abandoned by his counsel. It is the duty of defending counsel in a criminal trial to ensure that an accused person is never left unrepresented at any stage of his trial. See OKONOFUA & ANOR v. STATE (1981) LPELR- 2489. Neither the prosecuting counsel nor the defending counsel should be absent in Court without a good and substantial reason and without the courtesy of informing the Court in writing. When Mr. A.S. Enyi recklessly abandoned his professional duty both to the Court and the appellant, the appellant took his own destiny into his own hand. He did not seek an adjournment at any time due to the absence of his counsel or request for an opportunity to engage another counsel. Having utilized every opportunity available to him by cross-examining the prosecution witnesses and giving evidence in his own defence, he absolutely has no reason to contend that he was denied fair hearing. Raking up allegation of lack of fair hearing is not a magic wand that cures every ailment of a litigant or an accused person. The contention of the appellant that he was denied fair hearing is an abuse of that principle.

The law is settled that an accused person can be convicted solely on his own free and voluntary confession. The appellant confirmed in his statement Exhibit P3 that he had unlawful carnal knowledge of the victim. In Exhibit P4, he confirmed the fact that he voluntarily made and signed Exhibit P3. There is no controversy about the fact that the victim of the rape is a child. Ebonyi State Childs Rights and Related Matters Law, 2010 absolutely prohibits sexual intercourse with a child and any person who contravenes the law is guilty of rape and liable on conviction to imprisonment for life. The Courts must begin to send serious messages of zero tolerance to sexual terrorists by adhering strictly to the punishment prescribed by the law. The appellant in my view wisely decided not to appeal against the sentence passed on him. He deserves to be kept out of the society for life. I too dismiss the appeal.

Appearances:

Emeka Nwankwo, Esq.For Appellant(s)

I. I. Alobu, Esq., Director of Public Prosecutions, Ebonyi State with him, Mrs C. Anoke, Principal State Counsel, Ministry of Justice, Ebonyi StateFor Respondent(s)>

Appearances

Emeka Nwankwo, Esq. For Appellant

AND

I. I. Alobu, Esq., Director of Public Prosecutions, Ebonyi State with him, Mrs C. Anoke, Principal State Counsel, Ministry of Justice, Ebonyi State For Respondent