

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: JIMOH I. SALAWU & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CR/179/14
DATE: 29TH JANUARY, 2016**

BETWEEN:

COMMISSIONER OF POLICE - COMPLAINANT

AND

CPL EKO BAM - DEFENDANT/RESPONDENT

John Ijagbemi for the prosecution.

Okoyi Tinuola appearing with Chioma Chukwuma holding the brief for FIDA.

O.K. Rugbere for the accused appearing with Obizala Egemabo, Linus Okoh and Teddy A. (Miss).

Prosecution Counsel – The matter is for judgment and we are ready.

J U D G M E N T

The Accused person was arraigned before this court on 21/11/2014 on one charge of having an unlawful sexual intercourse with a child by name Emmanuella Bam Eko, his own biological daughter contrary to Section 31(1) and punishable under Section 31(2) of the Child Right Act Cap 50 LFN. The accused person pleaded not guilty to the same charge.

In prove of the case, the prosecution called five witnesses. Inspector David Dauda testified as the PW1.

In his evidence-in-chief, he stated that on 12/5/14 while he was on duty, a case of sexual harassment was referred to him and his team for investigation by the Commissioner of Police FCT, Abuja.

That on the 9/5/14 a complainant by name Peter Nnameka and one Suleman Saddiq came to the Police Headquarters from Brekette family member of Love F.M. Radio Station 104.5 F.M. and alleged that on that 9/5/14 that the accused person was caught having sexual intercourse with his biological daughter by name Emmanuella Bam Eko a 15 years old girl inside the living room at Ado Dutse, Abuja.

PW1 further stated that when he requested from the complainant to know how they came about the accused had sexual intercourse with his daughter, Mr. Peter informed him that one of the accused person's son was about to enter the room when he discovered that the door was locked from inside and he knocked but they couldn't open the door until after sometime.

It is the evidence of PW1 that in the process of investigation, the victim was taken to hospital for examination and the Medical Report shows that there was repeated sexual intercourse with the victim.

PW1 also stated that he recorded the statement of the accused person; the said statement dated 12/5/14 was admitted in evidence as Exhibit A.

The PW1 also stated that he took the victim to Police General Hospital Area 1, Garki, Abuja for examination. The witness also stated that one of his finding is that about 3 persons, who are co-tenant of the accused person came to the police station and

made statement confirming the incidence. He also visited the scene of the crime.

Under cross-examination, PW1 stated that he could not find any incriminating material in the house of the accused person because the case was not reported immediately. The PW1 further stated that he met with the son of the accused person that alleged that he knocked at the accused person's room but he did not open the door till after sometimes; his name is Felix Bam Eko. He made statement to the police.

No re-examination, PW1 was accordingly discharged.

Mr. Peter Nnaemeka testified as PW2.

In his evidence-in-chief, he stated that he was informed about the accused person daughter's complainant of indecency of which the accused person agreed he used his daughter.

PW2 also stated that he and his co-tenant agreed to take the victim to Brekette Family House F.M. at Mpape.

On reaching there they met Ahmed Isa the Ordinary President of Brekette Family and the victim stated her ordeal to him; that they (the tenants) informed Ahmed Isa what they know about the matter and Ahmed Isa in turn reported the matter to State C.I.D. Abuja on 12/5/14.

PW2 further stated that on reaching the Police Command the Police took his statement and that of the victim.

Under cross-examination, PW2 stated that the accused person is living in one room with his wife and other children including the victim.

The PW1 informed this court that his wife did not tell him that she saw the accused having sexual intercourse with his daughter; he did not also see the accused sleeping with his daughter. That it was the people living in the compound that confronted the accused person, including himself. PW2 stated that the accused person confessed to them (co-tenants) that he had sex with his daughter.

No re-examination, PW2 was discharged.

The PW3 is Emmanuella Bam Eko, the victim herself. In her evidence-in-chief, she stated that in 2014 in the night her step mother went to the market and her dad asked her brothers to go to stream and fetch water and she asked her Dad whether she can follow them, he said no.

PW3 further stated that when her brothers had gone to the stream, she went back to bed and her Dad went and shut the door and came down to her bed and pull off her cloth; she asked him what he was doing and he said nothing and she started crying and he had sex with her that night.

PW3 proceeded to state that in the morning, the following day, she went and took her bath and wanted to go to school and the Dad asked her to wait by then her brothers have gone to school. The Dad said that he wants to give her something and she told him that she cannot wait. The Dad then lock the door and asked her to lay down and she refused and he pushed her on the bed and he tore the pant she was wearing and he had sex with her.

PW3 also stated that the Dad took her to the Cashew garden at Dutse and he asked her to go inside and that she should pull her cloth, she refused and the Dad started beating her with a stick.

The next day, the Dad asked her to follow him into the bush at Dutse to get a stick to build batcher. On reaching the bush he asked her to lie down and when she lay down he started beating her and he had sex with her that day. When he saw someone coming he ran away into the bush.

That in a week the Dad had sex with her 2 or 3 times and sometimes if she refused he will ask her not to be talking to him.

It is the evidence of PW3 that on 9/5/14 she went to school and her teacher asked her to pay money for common entrance examination that is N5,500.00 and when she reach home she told the Dad, who in turn requested to have sex with her before he will give her the money and she said no; but that day he had sex with her. And the next day being Friday she went to school, when she came back from school, she told her Dad that she was hungry and he said that he will have sex with her before he will give her money to buy something; she tried to run but he locked the door. By then she was in her period and that afternoon her Dad had sex with her. Thereafter, he threw the sum of N50.00 to her.

It is the evidence of PW3 that her two brothers came back from the stream and they were knocking at the door and the Dad asked her not to open the door or go anywhere.

Two of their neighbours sitting in front of the PW3 doors heard when she was crying and shouting.

The next day being Saturday, one of their neighbour that was sitting in front of the door asked her why she was crying the previous day and she told him everything.

PW3 further stated that when some of the neighbour confronted her Dad, he said that he was checking her body as he had the right to do so since she is his daughter.

It is the evidence of PW3 that on Monday their Landlord's wife and all the male in their compound took her to the Brekette Family. From there she was taken to the police and she explained what happened.

Under cross-examination, the PW3 stated that she was living with her father, her step mother and 4 other children in a single room.

PW3 further stated that she cannot remember the date she first had sex; she cannot also remember having sex with any other person. Her cloth was not stain when she had sex. That she is about 17 years of age now. She cannot remember how many times she had sex.

PW3 further stated that her father used to have sex with her at night; that night her step mother went to market and her brothers went to fetch water.

It is the testimony of PW3 that her father and the neighbour are always quarrelling.

The PW3 also stated that her step mother use to go to the market by 5:00 a.m. and return to the house 1:00 p.m.

The PW3 stated that she made statement to the police, but she was not the one that wrote the statement.

Under re-examination, PW3 stated that Mama Favour and Mama Chioma are not the same person; she was then accordingly discharged.

The PW4 is Margret Joseph. In her evidence-in-chief, she stated that the victim is the daughter of her neighbour; that on 9/5/2014 she came back from shop to bath and when she finished bathing she sat in front of her room; she saw the son of the accused knocking at their door and the people inside refused to open the door.

After sometime, the door was opened, the accused came out of the room and went back and his daughter followed him out of the room.

When the victim came back, the PW4 asked her what she was doing in the room with her father that they locked the door, she said that her father was checking her.

PW4 also stated that the PW3 told her that it has taken long the father is sleeping with her.

The PW4 then reported the matter to the landlord's wife, who then call a meeting of all ladies in the compound on the matter. After the meeting, the accused person was confronted, he denied the accusation. Thereafter, the men in the compound had their meeting and on Monday the men took the girl to a Radio Programme call "Embelembe".

PW4 stated that later she was informed that she was needed at the Police Command to give statement.

Under cross-examination, PW4 stated that the house of the accused person is one room apartment; the accused lives in the room with his wife and 4 other children.

PW4 also stated that she did not see the accused person sleeping with his daughter; that she made statement at the Police Station.

PW4 stated that when the accused person's son was knocking at the door she was sitting in front of her room, but she did not have any conversation with the boy.

It is also the evidence of PW4 that she did not hear any noise from any room. When the door was opened she was sitting in front of her room.

PW4 further stated that she did not ask the accused person when he came out of the room what he was doing with the daughter because she did not ask the daughter by then; that she reported the matter to Mama Richard on the day of the incidence 9/5/14 at about 3:00 p.m.

No re-examination, PW4 was discharged.

Dr. Nonye Lawrence Welle testified as PW5.

In her evidence-in-chief, she stated that on 12/5/14 Emmanuella Bam Eko was brought to the hospital at about 2 – 3 p.m. in company of the police I.P.O. alleging that she was sexually assaulted by her father; she examined her and observed that her underwear was stained with discharge and this discharge can also be seen in the virgina. There was no forceful penetration, no bruises and no blood stain.

PW5 stated that she took the blood sample and high virgina sore and sent same to the laboratory for investigation.

The PW5 also stated that prior to the daughter's presentation in the morning of 12/5/2014, the accused person came to the hospital telling her that he had body pain and he was weak. The PW5 then examined him and discovered that he has hernia; they took the blood sample of the accused for test and the result was negative. She wrote medical reports dated 22/5/14 and 19/5/14 which were admitted in evidence as Exhibits B and C respectively. Under cross-examination, PW5 stated that the victim told her that she had sex for the first time about 2 years before the presentation.

The PW5 further stated that her finding in reported sexual assault was based on history but supported by the fact that her hymen was absent; that no one can trace the person who broke the hymen of a woman through examination.

The witness stated that from her virginal examination, the sexual assault was not traced to the accused but through history; that from the report the victim has one year history of sexual assault by her father.

The PW5 also stated that she examined the accused in respect of the sexual assault and she took his blood sample and the result of the tests is in the holder. She is available to relate her finding on the accused to the assault.

PW5 further stated that the findings she had from the accused and the victim in respect of the blood test did not correlate; she did not see any semen on the girl, her findings is based on the history of the victim.

No re-examination, PW5 was discharged and that is the cash for the prosecution.

In defence of this case, the accused person called four witnesses.

Mr. Sylvester Enangotan testified as DW1.

In his evidence-in-chief, he stated that he lived with Emmanuella as neighbour at Abini Village, Cross Rivers State; that Emmauella's mother was always accusing her of stealing her money, as a result her mother drove Emmanuella away. Then the senior brother to the accused person took Emmanuella to his house.

DW1 further stated that the Chief of the Village sent a letter to the accused person to come and take his daughter because the life she was having was bad. The accused person later came and took the girl to Abuja.

The DW1 stated that he knows the life of Emmanuella which is very bad i.e. following boys and men in the community.

Under cross-examination, the DW1 stated that he lived with the accused person at Abini for more than 20 years.

The DW1 also stated that he know what happened in respect of this case³; that he was told about this case by some people living in Abuja.

No re-examination, DW1 was discharged.

The DW2 is Comfort Bam Eko, the wife of the accused person. In her evidence-in-chief, she stated that she is a trader and that she do go to market by 6:00 a.m. and return sometimes 2 O'clock. The DW2 stated that on 9/5/2014 she went to market by 6:00 a.m. and came back about 2:00 p.m. and her house was normal. She

met her children in the house and her husband came back from work.

On Sunday 11/5/14 she went to church by 8:30 a.m. and came back 11:30 a.m. Her husband came back from work and she prepared food and gave to him.

It is the evidence of the DW2 that her landlord's wife Mama Peter, Mama Richard and Margret went into her room and drove her children out and started to ask her husband questions; that Emmanuella said he is sleeping with her. As a result of the question put to her husband there was uproar in the compound and her husband was beaten up. They took Emmanuella to the landlord's house.

The following day being Monday, the Police was invited and her husband was arrested.

The DW2 stated that the apartment is one room, they all sleep in the same room; that she had been living with Emmanuella for 6 years and she did not tell her anything.

Under cross-examination, DW2 stated that she had 3 children but her husband have 7 children. Emmanuella is the only daughter. The DW2 stated that she is into ice-block business. Sometimes she live the house 6;30 a.m. to go to the market and comes back home at about 2 o'clock. That she is taking care of Emmanuella, that she is the one that buys toilet paper for her during her menstruation.

No re-examination, DW2 was discharged.

Felix Bam Eko testified as DW3. In his evidence-in-chief, he stated that on 9/5/2014 he did not knock at the door and he did not go close to the door as he was playing with his friends.

DW3 also stated that he was taken to the police in respect of this matter and he informed the police that on Friday 9/5/14 nothing happened.

On Saturday he was busy and on Sunday he went to church 8:00 a.m and came back 11:30 a.m.

After that their father came back from work later on that day, while they were eating some women came into the house and asked them to live the house and they left. He did not know what they discussed; that it was later he had that his father was sleeping with his sister.

The DW3 stated that he told the police that he did not knock at the door on 9/5/14 as alleged; he also stated that his father never sent them to the river at night; that they do fetch water in the day time.

Under cross-examination, DW3 stated that on 9/5/2014 he was playing all around and would not know what was happening in their house.

It is the evidence of DW3 that his father loves Emmanuella and himself and paid their school fees. The witness stated that the evidence he gave in court was not what someone ask him to say.

No re-examination, DW3 was discharged.

The accused person testified as DW4. In his evidence-in-chief he stated that he goes to work 7:00 a.m. and close at 4:00 p.m.

DW4 stated that Emmanuella lives with him from birth.

In 2010 he brought Emmanuella from his village.

DW4 further stated that on 13/4/14 after taking evening food, Emmanuella left the house and he discovered around 10:00 p.m. that Emmanuella was not at home; that when she came back at about 10:00 p.m. he confront her to tell him the truth as to where she went, she then told him that she was with her boy friend.

It is the evidence of DW4 that 9/5/2014 was a public holiday because there was a Seminar of African Heads of State. He left the house by 8:00 a.m. and came back to his house on that day at 3:00 p.m. and met his wife and children; there was no problem in his house on that day.

On 10/5/14, he was on weekend duty and he closed by 4:00 p.m. when he came back to the house, he met Emmanuella crying, when he asked her why she was crying, she said that Mama Precious called her and asked her whether her father was sleeping with her and she replied NO. He proceeded to inform his wife on returning they did not see Emmanuella again.

DW4 further stated that on coming out of the house, he saw Mama Peter and asked her what was she asking Emmanuella and she replied that, it was Madam Peter that called her on phone and said she should ask Emmanuella whether he the DW4 slept with her. Later on, Madam Peter came to his house and asked for his forgiveness.

It is the evidence of the accused person that on 11/5/2014 in the morning he went to work and on coming back around 4:00 p.m. his son Felix informed him that Mama Precious called Emmanuella and took her away.

He went into his house and while they were eating with his wife, his landlord's wife came in with 5 other women and asked as to what happened between him and his daughter and he replied that nothing happened. At that stage, Mama Favour carried the food he was eating. When he wanted to go out Mama Precious blocked the door and slapped him, the 4 other women joined her and started beating him and were shouting that he raped his daughter.

On Monday 12/5/2014 at about 8:30 a.m. policemen came with their vehicle and they took him to Police Command, Abuja where he was remanded in the SARS cell.

The accused person stated that he did not sleep with his daughter on 9/5/14; he did also not lock the door of his house on that day as he went about his motor-cycle business.

The accused person also stated that it is not true that she used to have sex with his daughter 2 or 3 times in a week. He did not take his daughter to the Cashew garden to have sex with her.

Under cross-examination, DW4 stated that he has 7 children, 5 of them are with him and 2 are in the village. He also stated that there is no cashew garden at Dutse Apo.

DW4 stated that if anybody have sexual intercourse with Emmanuella, he will take legal action against the person; that he foresee a better future for Emmauella.

No re-examination, the DW4 was accordingly discharged and that is the case for the defence.

The Defence counsel filed 18-page final written address dated 18/9/15 wherein counsel formulated the following issues for determination:

1. Whether there is any credible evidence of corroboration linking the accused person to the alleged offence.
2. Whether from the circumstances of this case, the prosecution has proved his case beyond reasonable doubts.

On Issue 1, it is the submission that where rape is denied by the accused, there should be credible evidence of corroboration supporting the commission of the offence. See PESU v STATE (2011) 3 NWLR 9Pt 1234) 399 at 417 Paras F – H.

Looking at the evidence of the prosecution in the case at hand, there is no credible, cogent and unequivocal evidence corroborating the testimonies of PW3 the alleged victim, or to show without more that the accused committed the offence as charged.

It is submitted that the evidence of PW1 does not in any way corroborate the testimony of PW3 (Emmanuella Bam Eko) that her father had sexual intercourse with her on the 9/5/14.

It is the contention that PW2 is not a witness of truth and his evidence cannot be relied upon.

PW2 at the earliest opportunity made a statement to the police dated 12/5/14 wherein he stated that when he came back from work on 9/5/14 his wife informed him that the accused person was caught having sexual intercourse with his daughter. The statement under reference was part of the summary of evidence filed by the prosecution on the 21/8/14 and even though the

prosecution failed to tender it as part of the evidence at the trial, the court can look at it as it has become part of the court's record and see how unreliable, uncontradictory and unworthy the testimonies of PW2 is. See OYEWOLE v AKANDE (2009) 15 NWLR 9Pt 1163) 119 at 148 Paras A – E.

It is submitted that from the testimonies of PW1, PW2 and PW4, it is clear that the testimonies are so contradictory that it is very unsafe to rely on them. The statement made to the police by PW2 also contradicts his oral testimony in court. See SHOFOLAHAN v STATE (2013) 17 NWLR (Pt 1338) 281 at 311 Para A – B.

It is the submission that the failure of the prosecution to produce the statement made to the police on the 12/5/14 is fatal to their case. Court is urged to invoke Section 167(d) of the Evidence Act. It is the contention that the testimony of the PW4 materially contradicts the testimonies of other witnesses and leaves room for doubts that should and ought to be resolved in favour of the accused person. Court is referred to the evidence of PW1, PW2, PW3 and PW4.

It is submitted that the medical examination and its outcome are most unhelpful to the case of the prosecution, it established no nexus with the accused person and the crime alleged; that PW5 testified under cross-examination that her findings was based on history and not physical collection of evidence; that the evidence put in by the prosecution is by no means corroboration; they are mere items of evidence raising suspicion. Suspicion has no place in our laws. See UDOR v STATE (2014) 12 NWLR (Pt 1422) 548 at 560 – 670 Paras G – A.

Submitted that the evidence adduced by the prosecution does not have any direct link which supports the testimony of PW3 with the commission of the offence by the accused person. The bits and pieces of evidence on record failed to meet the requirement of corroborative evidence. See OKOH v NIG. ARMY (2013) 1 NWLR (Pt 1334) 16 at 37 – 38 Paras G – F. Court is urged to resolve Issue 1 in favour of the accused person.

On Issue 2, it is the submission that the degree of proof is beyond reasonable doubt and nothing less.

In the charge preferred against the accused person, the prosecution must prove that the accused and only the accused raped PW3 and no one else.

It is submitted that the witnesses of the defence clearly show that the prosecution's evidence are highly controverted, based on hearsay and suspicion and they cannot be related to the facts set out in the charge to ground a conviction.

It is submitted that from the surrounding circumstances of this case, it is on record that the prosecution failed to show or lead PW3 to say whether her father was the one who disvirgined her, or the first time she had sex or whether she has had sexual intercourse with any man other than her father before the alleged sexual intercourse with her father took place; this piece of evidence would have been so vital, considering other allegation made by PW3 that the accused has had series of sexual intercourse with her in their living room in the night and in the bush. Clearly the story as narrated by the prosecution witnesses is unbelievable and leaves room for unresolved doubts.

The point should be made clear that PW3 is not a virgin and the time she got disvirgined was concealed by her and she could not also reveal who disvirgined her. Exhibit C merely shows that PW3 hymen was not intact and nothing more. Exhibit C did not confirm the facts of ingredient of rape. See OKOH v NIG. ARMY (Supra) at 37 – 38.

PW5 and Exhibit C did not state that it was the penis of the accused person that penetrated PW3's virgina and PW3 never mentioned throughout her evidence the person responsible for her hymen not to being intact.

From the facts and circumstances of this case, it is clear that the prosecution has not only failed to prove its case beyond reasonable doubts but their evidence is not credible and compelling. The witness statements are high contradictory which destroys the credibility of the prosecution witnesses. See OMOTAYO v STATE (2013) 2 NWLR (Pt 1338) 235 at 242 – 248 Paras H – B.

It is submitted that the prosecution have failed to prove its case beyond reasonable doubt and also failed to lead cogent evidence to disprove the evidence of the defence. Court is urged to discharge and acquit the accused person.

The prosecution's counsel filed a 5-page final written address dated 19/10/15 wherein counsel formulated an issue for determination, thus:

“Whether the prosecution has proved his case as charged beyond reasonable doubt against the accused person”

On this singular issue, it is the submission that with the avalanche of credible, cogent and material evidence before the court, the prosecution has proved his case against the accused person beyond reasonable doubt.

It is submitted that the accused person severally abused the victim of this case (PW3). The PW3 narrated without missing words how her father started having unlawful sexual intercourse with her since 2014.

On the issue of corroboration, it is submitted that the evidence of PW5 couple with Exhibit B and C are material, cogent and convincing enough to corroborate the evidence of PW3. See case of POSU v STATE (2011) 3 NWLR (Pt 1234) 393 at 416.

It is submitted that not all the contradiction in the evidence of the prosecution can vitiate his case. Contradiction that do not go to the root of the case will in no way affect the case of the prosecution. See HABIBU MUSA v STATE (2013) 8 NLC 464 Page 468 at 487. Para H – F.

It is submitted that in considering the evidence before the court to determine whether the prosecution has proved his case, the court is duty bound to take into account the totality of the evidence adduced by the prosecution. See case of OGIDI v STATE (2005) 5 NWLR Pt 918 Pg 286 at 298 R 12.

It is the submission that the evidence of DW1, DW2 and DW3 are tainted because the witnesses are blood relation to the accused person; they never knew what offence the accused person is charged; they have no knowledge of the crime of the accused. Their evidence are nothing but hearsay. Court is urged to convict

the accused on the one count charge pursuant to Section 31(2) of the Child Right Act as the prosecution has proved his case beyond reasonable doubt.

I have carefully considered the processes filed, evidence of witnesses and submission of learned counsel on both sides, I am in one with the prosecution's counsel that the sole issue for determination is whether the prosecution has proved his case as charged beyond reasonable doubt against the accused person.

It is worthy of note that both the prosecution and the defence are in one that for the accused person to be convicted of the offence of unlawful sexual intercourse with a child pursuant to Section 31(1) and (2) of the Child Right Act LFN, the prosecution need to establish the following ingredients:

- (a) That the accused had sexual intercourse with the prosecutrix.
- (b) That the act of sexual intercourse was done without her consent or that the consent was obtained by fraud, force, threat, intimidation, deceit or impersonation.
- (c) That the accused had the *men's rea*, the intention to have sexual intercourse with the prosecutrix without her consent or that the accused acted recklessly not caring whether the prosecutrix consented or not.
- (d) That there was penetration.

The above was established in the case of POSU v STATE (Supra).

It is an elementary principle of law that it is not the duty of an accused to prove his innocence. The prosecution must establish

the guilt of the accused. See *CHIANUGO v STATE* (2002) 2 NWLR (Pt 750) 225.

It is also trite that the standard of proof in a criminal trial is proof beyond reasonable doubt; this means that it is not enough for the prosecution to suspect a person of having committed a criminal offence. There must be evidence, which identified the person accused with the offence and that it was his act, which caused the offence. See *AIGBADION v STATE* (2000) 4 SC (Pt 1) 1 at 15.

Now, the PW1 Mr. David Dauda, the IPO in his evidence-in-chief stated that on the 9/5/14, a complainant by name Peter Nnaemeka (PW2) and one Suleman Saddiq came to the police headquarters and alleged that on the 9/5/14 that the accused person was caught having sexual intercourse with his biological daughter (PW3) inside their living room at Ado Dutse, Abuja and when he requested from the complainant to know how they came about the accused having sexual intercourse with his daughter, the PW2 informed him that one of the accused person's son (DW3) was about to enter the room when he discovered that the door was locked from the inside and he knocked but they could not open the door until after sometimes.

Mr. Peter Nnaemeka who was one of the complainant, in his evidence-in-chief, as PW2 stated that they were informed about the accused daughter's complaint of indecency.

Under cross-examination of PW2, he stated thus:

“My wife didn’t tell me that she saw the accused having sexual intercourse with his daughter. I didn’t see the accused sleeping with his daughter”... “It is the people living

in the compound that confronted the accused and I was part of them”

The accused person's son that was alleged to have knocked at the door on that fateful day, testified as DW3. In his evidence-in-chief, he stated that he did not knock at the door and did not go close to the door as he was playing with his friends.

Under cross-examination, he restated that he told the police that he did not knock at the door on 9/5/14 as alleged.

It is instructive to state here that the PW1 while adducing evidence-in-chief stated that one of his finding is that about 3 persons, who are co-tenants of the accused person came to the police station and made statement confirming the incidence. However, in the wisdom of the prosecution non of these statements were tendered as exhibits in this trial. One begins to wonder why the prosecution is withholding these all important documents.

On the part of the PW3 (the victim) in her evidence-in-chief she stated thus:

“In 2014 in the night my step mother went to the market and my Dad asked my brothers to go to stream and fetch water and I asked my Dad whether I can follow them he said No. When my brothers have gone I went back to bed and my Dad went and shut the door and came down to my bed and pull my cloth and I asked him what he was doing and he said nothing and I started crying and he had sex with me that night”

From this piece of evidence, the question that calls for answer is what day and month in 2014 this incident happened?

It is on record that the DW3 in his evidence-in-chief stated that the accused person never sent them to the river at night and they do fetch water in the day time.

Also the DW2, the Step mother to the PW3 stated in her evidence-in-chief that she is a trader that sell ice block; that she do go to market by 6:00 a.m. and return sometime at 2 o'clock.

From the evidence adduced, I am of the considered view that the piece of evidence as stated above by the PW3 is doubtful.

It is also the evidence of PW3 that the accused asked her to follow him into the bush at Dutse to get a stick to build batcher. On reaching the bush he asked her to lie down and when she lay down he started beating her and he had sex with her that day. When he saw someone coming he ran away into the bush.

Again, the question that comes to mind is did the PW3 report the incidence to the person coming that made the accused ran into the bush. The PW3 did not as a reasonable and responsible girl, that detest the action of the accused person. She ought to have reported to the person coming or to some other person. This piece of evidence to my mind is not worthy of believe.

The PW3 further stated in her evidence-in-chief, thus:

“My 2 brothers came back from the stream and they were knocking at the door and he asked me not to open the door or go anywhere. Two of our neighbours sitting in front of our door and they were gisting and they heard me crying and shouting”

The PW3 failed to mention the names of her two brothers that came knocking; she also failed to mention the names of the two neighbours that were gisting and heard her crying and shouting. Assuming but not conceding that the PW4 was one of the neighbours that heard her crying and shouting, the PW4 under cross-examination stated thus:

“I didn’t hear any noise from the room”

The PW3 under cross-examination stated that she was living with her father, step mother and 4 other children in a single room and the father used to have sex with her in the night; one wonders how possible, for a family of six who live in a single room apartment for the father to have been making advances and sleeping with his own daughter in the night in the same one room apartment or other time without being caught from other siblings or the step mother; the entire circumstances raise serious doubts. It is also pertinent to note that PW4 (Mrs. Margret Joseph) who testified that she saw the accused person’s son knocking on their door never made mention of PW2. PW4 testified in court that she was the one who saw the accused’s son DW3 knocking at their door and she was there when the door was opened.

From the testimonies of PW1, PW4 and PW2, it is clear that the testimonies are contradicting.

It is clear from the evidence of PW3, PW4 and DW3 they all made written statements at the police station; however the prosecution failed to produce or tendered these statements in evidence. I am of the view that the failure of the prosecution to produce or tender the written statements of the PW3, PW4 and DW3 is fatal to

their case. The presumption therefore under Section 167(d) of the Evidence Act is hereby invoked.

It is also important to note that the testimony of PW3 is completely different from the testimony of PW4, while PW4 testified that she asked PW3 (Emmanuella Bam Eko) what she was doing with her father when they locked the door and PW3 said her father was checking her. PW3 testified that it was the next day, when her Dad (the accused) went to work that two of their neighbours who were sitting in front of their door asked her why she was crying and shouting she said nothing. She testified that her neighbour asked her to say the truth that she would help her but she refused.

As stated earlier, PW4 adduced evidence to the effect that she did not hear anything like noise, struggle or resistance. PW3 on the other hand testified that two of her neighbour who were sitting in front of their door chatting heard her crying and shouting.

It is instructive to note again, that PW4 under cross-examination stated that she came back from her shop to take her bath by past three o'clock and it was that same day she asked PW3 what she was doing with her father when they locked the door. PW4 also testified that it was the same day that she reported the alleged incident to Mama Rachel. She said that from where she was sitting she was not able to see the inside of the room of the accused person. She testified that she was the one who called Mama Rachel and told her that the accused person son was knocking at their door and that it was after she told Mama Rachel that Mama Rachael called Mama Chidinma and explained her

statement to her and Mama Rachael and Mama Chidinma was not around when the accused son was knocking at the door.

It should be noted that PW3 did not testify that she was confronted by PW4 on the 9/5/14. The question that agitated the mind would be, was PW4 amongst the two neighbours that sat in front of PW3 door and heard her crying and shouting?.

I do not think so going by PW4's evidence in court, because PW4 under cross-examination had testified that she did not walk close to the room and she did not hear anything like noise; moreover, PW3 did not say that anyone confronted her on the 9/5/14 but that it was the next day that two of her neighbours confronted her.

It is without doubt that the testimony of PW4 materially contradicts the testimonies of other witnesses and leaves room for doubt.

The PW5 Dr. Nwoye Lawrence Welle in her testimony stated that she took the history of PW3 and did physical and vagina examination. The first thing she noticed was that PW3 underwear was stained with discharge and this discharge can also be seen in the vagina.

It should also be noted that the prosecution thought it wise not to produce or tender the said underwear in evidence. What a prosecution indeed.

PW5 further testified that from her examination of the vagina there was no forceful penetration, no bruises no blood stain but the hymen was vividly absent. She stated that she asked the PW3 if she had sexual intercourse with someone else but PW3 said her father was the only person that has ever had sex with her.

PW5 tendered Exhibit C, Medical Report dated 19/5/14. The paragraph in the said Exhibit C is reproduced as follows:

“...Vaginal Examination, nil bruises, nil blood stains whitish foul smelling discharge around the introituses. Hymen not intact, perineal region clean.

She was zero negative to HBsAg, HIV 1 and II and UDRL, A High vaginal swab was done and she was placed on Appropriate Antibiotics.

Assailant has not yet been evaluated.

From the History taking and above findings there is a suspicion of repeated sexual assault”

I do not think Exhibit C it is helpful to the case of the prosecution since its outcome was a mere suspicion of repeated sexual assault.

Now under cross-examination, PW5 stated that her finding in the reported sexual assault was based on history. It is pertinent to state that the taking of history in this regard is based on whatever the patient reveals not what was scientifically proven or collection of evidence.

Under cross-examination, PW5 testified that Exhibit B is the report in respect of the accused in relation to another matter. In that regard I hold that Exhibit B is irrelevant to this case.

PW5 further stated that she examined the accused in respect of the sexual assault and took his blood sample and the result of the test is in the holder; that she is available to relate her findings on the accused to the assault. One begin to wonder whether it will take eternity for the said result to be out or may the PW5 intends to

make her finding before the Almighty God who is the Judge of all Judges.

A cursory look and consideration of the prosecution evidence is by no means corroboration; they are mere items of evidence raising suspicion. It is trite that suspicion has no place in our laws. See UDOR v STATE (Supra) where the Supreme Court held thus:

“The law is trite that suspicion, no matter how strong it is, cannot take the place of legal proof. Items of evidence raising suspicion which put together, do not have the quality of being corroborative evidence to ground any conviction for a criminal offence”

In the light of the above and after due consideration of the evidence before me, I hold the firm view that the case of the prosecution is shaky, doubtful and cannot ground a conviction of the accused person.

Before I drop my pen, I must confess that the quality of the prosecution is to say the least not impressive.

Criminal prosecution is not a child's play. At this stage, I find it most appropriate to refer to the case of IDOWU v STATE (2000) 12 NWLR (Pt 680) 48; 7 (2000) 7 SC (Pt II) 50; where Ogundare, JSC the lead judgment re-echoed the need for quality prosecution as follows:

“I cannot end this judgment without commenting on the poor quality of the investigation, if any, carried out by the police in this case. Had there been a more thorough investigation, the missing link would have been obtained. The quality of the prosecution at the trial was not better either...”

Wali, JSC in his contributory judgment held that:

“But before concluding this judgment, I wish to comment on the way and manner the prosecution conducted the investigation of this case. The method adopted left much to be desired. With the number of police officers trained as lawyer in the police force, the quality of the police investigation, particularly in this case, is far below the quality and standard one would expect in this age of technological development.... Prosecution of cases are more often than not, conducted in a loose and unsatisfactory manner resulting to acquittal of criminals who should have been convicted”

In conclusion, I am of the considered view that the prosecution has failed to prove its case beyond reasonable doubts and also failed to lead cogent evidence to warrant this court to convict the accused person. Accordingly, I will reluctantly discharge and acquit the accused person for lack of credible evidence. The accused person is hereby discharged and acquitted.

**(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
29/01/2016**

Prosecution’s Counsel – We are most obliged.

Defence Counsel – We are most thankful to the court for the industry put in the judgment.

**(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
29/01/2016**