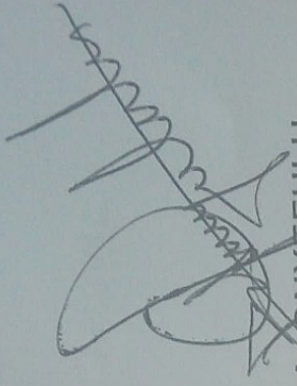


burden placed on them by law. The evidence of the defendant is unchallenged and it is clear that the State has not made out any case at all against the defendant. As stated above, he is deemed innocent until proven guilty as stated in Section 36(5) of the constitution of Nigeria and also in the case of **BELLO v STATE** (2007) 10 NWLR part 1043 page 564.

I shall based on these observations hold that the case against the defendant by the State has collapsed, and it is not for an accused person (defendant) to prove his innocence before a Court as stated in the case of **BELLO v STATE** (Supra).

I shall therefore hold that the prosecution has not proved the case against the defendant, and based on the authorities cited

I hereby discharge him of the count charge against him. He is to be released from his five year period of imprisonment which even if he was tried and found guilty may not have stayed so long before judgment was entered if the State was up and doing.



D.A. ONYEFULU

JUDGE

29 - 4 - 2016

APPEARANCES:

A.C. IDIGO ESQ Principal State Counsel with E. EGBUCHE ESQ for
the prosecution.

N.D. AGU ESQ with N.O. PETER ESQ for the Defendant.

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IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
BEFORE HIS LORDSHIP HON. JUSTICE D.A. ONYEFULU
ON FRIDAY THE 29TH DAY OF APRIL, 2016

A/12^C/13

BETWEEN:

THE STATE

V

AARON EZEANO

JUDGMENT

The defendant is facing a count as proffered by the State for the offence of:
Defilement punishable under Section 200 of the Criminal Code Law Cap 36
Vol. 2, Revised Laws of Anambra State of Nigeria 1991.

The information was filed on 12/7/2013 and signed by one A.C. Idigbo Esq
Principal State Counsel.

This matter began on 12/2/2014 before Hon. Justice J.I. Iguh (Admin Judge
Awka Judicial Division). On that day, one Badamasi Quasin Esq appeared
for the state but the plea of the defendant was not taken as he was not
represented by a Counsel.

On 26/5/2014, the defendant was represented by a Counsel, N.D. Agu Esq. He was properly arraigned and took his plea before Hon. Justice J.I. Iguh, he pleaded not guilty. A date was taken for trial and it never was until this matter was transferred to this court.

This honourable court assumed jurisdiction over this matter on 18/2/16 with a plea of not guilty by the defendant. He was represented by one M.O. Peter Esq. The State was unrepresented. On the next date of 1/3/2016, A.C. Idigo Esq, Principal State Counsel who signed the information was in court and expressed surprise at the matter coming up, this was despite service of hearing notice on the State as ordered by this court. He prayed that the court afford him an adjournment to enable him locate the prosecution witnesses. Both counsel agreed for the matter to be adjourned to 11/4/2016 for hearing.

On 11/4/2016 the State, represented by E. Egbuche Esq (State Counsel) told this court that although the matter was for hearing, the State could not locate any of the prosecution witnesses as they could not be reached on telephone and their addresses were not precise. N.D. Agu opposed the application for a date, as the defendant had been in custody for a long time and such excuses had always been given by the State. This court being one of Justice ordered the matter to proceed.

The case of the prosecution as can be gleaned from the proof of evidence is that, the defendant on 30/7/2011 lured a minor aged 7 to their compound toilet and sexually molested her.

He was arrested and handed over to the police who arraigned him to the Chief Magistrate's Court Abagana and was subsequently remanded in

prison custody ever since. This court heard the tale of the defendant, who testified under Oath as DW1. He denied raping the 7 year old girl as he went to work on that day of the alleged incident. On his arrest, he pleaded his innocence and refused to use money to stall the case as he was innocent. He has been in prison custody ever since.

This Honourable Court being one of Justice allowed an adjournment to enable the State cross examine the DW1 and recall a prosecuting witness if need be.

On 25/4/16 the State was not represented at all despite being in Court on the last date and having the opportunity to cross examine the DW1. Learned Counsel for the defendant, N.D. Agu Esq applied for a date for a short address and for judgment to be entered.

It is the law that a defendant in a criminal matter is presumed innocent until proven guilty by a court, for this principle of the law see Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 as amended. The defendant has been in custody since 2011 without the State calling their witnesses.

This is against Section 35(4) of the constitution as five years of detention awaiting trial cannot by any stretch of the imagination be described as a reasonable time within which a Criminal trial should be held. The state has failed in its duty here.

It is the law that the standard of proof in a Criminal trial is prove beyond reasonable doubt, for this principle of law, see Section 35(1 - 3) of the Evidence Act 2011 as amended, see also **NASIRU v STATE** (1999) 2 NWLR part 589 page 87 at 89. The prosecution has not discharged this