

IN THE COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF NNEWI JUDICIAL DIVISION
HOLDEN AT NNEWI:

BEFORE HIS LORDSHIP, THE HON JUSTICE O. M. ANYACHEBELU ON
TUES THE 6TH DAY OF FEB 2018.

SUIT NO HN/ 30C/2016:

BETWEEN:

THE STATE

COMPLAINANT

AND

NNANNA MARTIN EZULIKE

DEFENDANT

JUDGMENT

The charge in respect of this case was initially filed on 27th June 2016. It was a two count charge of the offences of Abduction and Rape.

Trial proceeded and on the 2nd day of February 2017, at the end of cross-examination of PW1, the prosecution sought leave to amend the charge in terms of the Amended Charge filed on 2nd February 2017. The said amendment was with respect to dates. This was not opposed and so was granted as prayed. That brought about the birth of a substituted charge.

Again on the 20th day of September 2017, after the close of case for the defence, the prosecution sought yet another leave to further amend the charge in terms of the amended charge filed on 8th September 2017. This was once again not opposed but granted as prayed.

Fresh plea was taken on the said 20th September 2017, where upon the sole Defendant pleaded not guilty.

From the said amended charge, the statement of offence in respect of this case reads as follows;

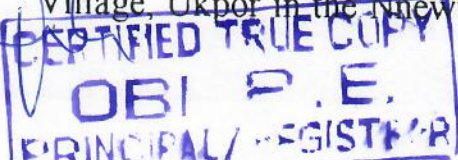
COUNT 1

STATEMENT OF OFFENCE

Abduction contrary to Section 30 (2) (c) of the Child Rights Law 2004.

PARTICULARS OF OFFENCE

Nnanna martin Ezulike on the 21st day of February at Umudara Umunuko Village, Ukpor in the Nnewi Judicial Division took Esther Ifeoma Ugwunwa, a



fifteen year of child without the consent of her guardian and detained her until the 28th day of February 2016 with the intent to have unlawful carnal knowledge of her.

COUNT 2

STATEMENT OF OFFENCE

Rape, contrary to Section 34 (2) of the Child Rights Law 2004.

PARTICULARS OF OFFENCE

Nnanna martin Ezulike on the 21st day of February at Umudara Umunuko Village, Ukpor in the Nnewi Judicial Division had unlawful carnal knowledge of Esther Ifeoma Ugwunwa.

As earlier indicated, the defence pleaded not guilty to the amended charge as read. The records indicate that there was no further evidence thereafter. Actual hearing commenced on 23rd November 2016 with the evidence of PW1.

Altogether the prosecution fielded four (4) witnesses while the Defence fielded two (2) witnesses. The testimonies of the prosecution witnesses are herein below summarized.

PW1 was one Sgt. Mark Mathew Ojiakor – Force No 375850 attached to Ukpor Divisional Police Station. He is the investigating Police Officer (IPO) in respect of this case. He told the story of how on the 1st day of March 2016 at about 09.45am while he was on duty at the DCB of Ukpor Police Station, a case of abduction/rape was reported by one Chinwe Ugwunwa in the company of her daughter Esther Ugwunwa. The case was referred to him for investigation.

PW1 stated that according to the report, the Defendant between 21st February 2016 to 28th February 2016, entered into the complainant's compound and touched her 15 years old daughter who was about going to church and she lost consciousness. He then abducted and took her away from the compound to somewhere at Umudara Umunoko Village at Ukpor where he had carnal knowledge of her against her will.

Consequent upon the report, PW1 and his team went into investigation and discovered that the Defendant and the victim are blood relations being first cousins. He was also informed that on regaining consciousness, the Defendant dropped the victim at Ndiodoro Umunoko Masquarade Square Ukpor. PW1 recorded the statements of the complainant and the victim.



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The victim was given a police medical form for proper medical examination and lab test at Ukor General Hospital and a medical report was issued to him by the doctor.

The following were admitted in evidence;

1. Exhibit P1 – Medical Report dated 2/3/2016
2. Exhibit P2 – laboratory Report dated 4/3/2016
3. Exhibit P3 – Laboratory Report dated 3/3/2016.

The PW1 and his team further visited the scene of the crime, arrested and took the suspect to the station. He was cautioned and volunteered a statement which the PW1 recorded in English language and read out to him before he signed.

The statement of the Defendant Nnanna Martin Ezulike dated 2/3/2016 was admitted and marked as Exhibit P4.

At the end of investigation, it was discovered that the Defendant actually committed the offence and so he was charged to court. The PW1 thereafter wrote an investigation report.

The said Police Investigation Report dated 2/3/2016 was admitted and marked as Exhibit P5.

PW1 further stated that where he wrote 14th till 21st was actually meant to read 21st to 28th.

Under cross-examination, PW1 admitted that the report to the station was made on 1/3/2016 and that he concluded the investigation and made a report on 2/3/2016. He denied that he took the statement of another girl apart from the purported victim and contended that he got to know the age of the victim from evidence given by the witness. He further admitted that he took the victim to hospital for medical examination on the said 1/3/2016.

PW1 stated that prior to the incident, the victim had not visited the Defendant's compound as she resides in Lagos and only came back home for burial.

PW2 was one Ugwunwa Esther Ifeoma. She is the victim in this case. She recalled the 21st February 2016 which being a Sunday she was preparing for church service when the Defendant, whom she knew prior to the incident came to the house with his motorcycle. He asked for her Aunty, Miss Ngozi



Onwuasoigwe whom the PW2 was residing with but the PW2 informed him that she had already left for church. He then requested that she should follow him with his motorcycle to his house which she declined.

He then held PW2 by the shoulder and pleaded with her. It was at that point that she dropped her bible. He asked if she had any money with her and she went inside, brought out the sum of four thousand, one hundred and fifty naira (N4,150=) being money given to her by her Aunty for her school fees. She handed same to the Defendant. The defendant collected the money and took her to his house in his motorcycle.

PW2 alleged that on getting to the Defendant's house, he asked her to prepare rice and stew for him. After cooking, she sat down and watched telly as she no longer felt herself fully. In the evening, the Defendant told her to eat and she ate. He further gave her an opened can malt which she drank and fell asleep soon after.

According to the PW2, she wanted to sleep in the room but because he was making advances to her, she went to the parlour where she found a mat and slept. When she woke up the next morning, she felt raped and had blood stains on her cloth. She felt weak too. The Defendant led her to the bathroom where she took her bath. She still did not feel like going.

PW2 contended that the Defendant usually locks her inside when going out and she stays indoors till he returns. This lasted for 7 days and on those days, he gave her cloths which he said belonged to someone that stayed with him.

Within the said 7 days, PW2 contended that the Defendant had carnal knowledge of her for about five to six times forcefully. She explained that the Defendant usually parks his motorcycle when he returns, then go outside and lock the gate from outside and finally jumps over the fence to come into the house through the back of the compound.

She recalled to have been given Nutri milk and some snacks by the Defendant. On 28/2/2016, the Defendant informed her that he would like her to go because her parents would be looking for her. He took her in his motorcycle and dropped her after Ndodo Masquarade square. There were masquarades at the square on that day. He sternly warned that she should not disclose what happened to anyone and threatened that if she disregards his warning, she would be in trouble. He told her that some other girls usually spend up to two months in his place without anyone finding out.

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PW2 contended that it was after the Defendant dropped her that she started recovering fully and recollecting what happened. On getting home, she met her Auntie's absence but by that time, the PW2's mother was on the way from Lagos to the village. When her Auntie came back, she enquired of her whereabouts but as a result of the Defendant's threat, PW2 refused to talk. It was when her Auntie called the PW2's father's younger brother who came and threatened to beat the PW2 that she eventually opened up and told the whole story. She also narrated the story to her mother on arrival. It was at this point that her mother made a report to the Police Station.

PW2 conceded to have lived in Lagos with her parents before the death of her father. She insisted that she met the Defendant for the first time before this incident when she was going to school. On that day, she stopped a bike which happens to be the Defendant. She did not know him then. He took her to her destination and refused to collect his fare asking if she was the daughter of Late Mr. Boniface Ugwunwa and she said she was. He then told her that he is her brother. She also told him where she stays as he requested. She later narrated this to her Auntie on getting home that day.

On another occasion, on her way to school, she wanted to buy sandals at Afor Market, Ukpok. She had only N500 (five hundred naira) and could not see her size. The Defendant saw her, stopped and enquired from her what she was doing there. She told him and he decided to take her to Nnewi to buy the sandals. He also gave her additional N500.00 to complete the price of the sandals. He brought her back to the Afor Market Ukpok from where she took another motorcycle to school. These she confirmed were the two occasions she met the Defendant prior to the incident.

PW2 added that on the said 21/2/2016 when she came into the Defendant's compound, she met three other men doing construction work on the road who were leaving the Defendant's compound. She maintained that all through her stay in the Defendant's house, no one came into the compound. She reinstated never to have agreed to have sex with the Defendant all through. She mentioned that after reporting the incident to the police, they asked that they should go to hospital and run some tests. This was done.

Under cross-examination, PW2 conceded that she visited the Defendant's house only once before the incident and even passed a night. She denied saying in her 2nd statement to the police that she had before the incident spent two nights in the Defendant's house.

The second statement of the witness dated 2/3/2016 was admitted and marked as Exhibit P6.

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PW2 conceded that she did not see the Defendant having sex with her that Sunday night because she slept off. She however stated that when she woke up in the morning, she noticed blood stains on her clothes and experienced sharp pains round her waist. However, in the subsequent days, she saw him have sex with her for about five to six times but she was too weak to stop him. She maintained that she cannot remember if she wrote in her first statement to police that the Defendant had sex with her.

The said 1st statement of PW2 to Police dated 1/3/2016 was admitted and marked as Exhibit P7.

The PW2 agreed to have taken pictures with her friend, one Chika on her first visit to the Defendant's house. She however added that it was the Defendant that called the person who took them the photographs.

The Seven (7) No photographs were admitted and marked as Exhibits p8, p8(a) – P8 (f) respectively.

PW2 denied that her mother requested for money from a certain wealthy relation of the Defendant in order to close the case. She confirmed that she knew that the Defendant's relations were actually pleading for a particular amount to give to the PW2's mother in order to withdraw the case from court.

Finally PW2 maintained that the Defendant had sexual intercourse with her. She maintained that she is not more than sixteen years.

PW3 was one Dr. Francis Anoliefo Okoye, a medical doctor attached to General Hospital Ukpok. He recalled the 4th of March 2016 when he was still a staff of the said hospital. On that day, the victim, Ugwunwa Esther Ifeoma was brought to the hospital with complaint of bodily weakness, abdominal, vaginal and anal pain. PW3 carried on some examinations on the victim which result revealed pelvic inflammatory disease and infection of the vagina and vulva caused by infection resulting from rape.

Under cross-examination, PW3 insisted that the victim was physically examined thoroughly and that the report he made was not based on the story told to him by the victim.

With the conclusion of the evidence of PW3 on 28/3/2017, the case was adjourned at the instance of the prosecution as they were making efforts to bring the 4th witness i.e. PW4 in court to testify. The effort proved abortive. The prosecution eventually announced the close of the case for prosecution on

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Also, original copy of the Immunization card in respect of Esther Ifeoma Ugwunwa was admitted and marked as exhibit P10.

PW4 alleged that on 21/2/2016, she received a distress call from her older sister whom the PW2 was living with to inform her that the PW2 was missing. After a week and on 28/2/2016, PW4 decided to and came down to the east. It was on her return to the village that she received a call from her brother-in-law Raymond Ugwunwa, informing her that the PW2 had been found.

PW4 stated that when she got to the house, she met her mother-in-law, brother-in-law and her daughter who was in a bad state and unable to respond well to questions. She only kept saying that if she discloses where she went to, that she would die. PW4's brother-in-law then slapped the PW2 who consequent upon the slap immediately opened up, stating her encounter with the Defendant. The matter was thereafter reported to the police and the Defendant was arrested. Though the Defendant denied the allegation, the doctor confirmed that PW2 was raped.

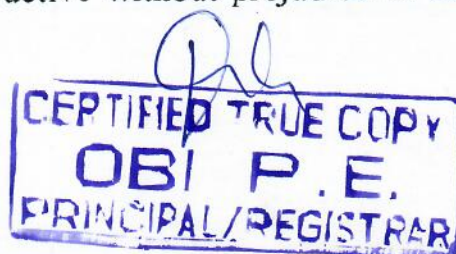
While the matter was with the police, some of the Defendant's family members came to plead on his behalf, asking PW4 to calculate the total expenses so that they would pay and get matter out of court. PW4 gave them a total expenses on one million, twenty six thousand naira (N1,026,000=). The Defendant's family were unable to settle the said bill and the case therefore continued in court.

PW4 conceded to have made statement at the police station.

Under cross-examination, PW4 admitted stating in her statement to the police that the Defendant brought another girl for raping. She however explained that the Statement was based on the information given to her by the PW2. She further insisted that her daughter was actually raped by the Defendant.

At the end of the cross-examination of PW4 and with the close of the case for the Defendant, both counsel filed written addresses duly adopted as final addresses on 16/11/2017.

I have read the charge, the record of proceedings, exhibits and appreciated the oral and written submissions of both counsel as duly adopted. I must say the submissions are instructive without prejudice to the judgment in this case.



The defence counsel did not formulate issues for determination. The prosecuting counsel formulated a lone issue which is virtually adopted in content but recouched in the following terms namely;

“Whether based on the evidence before the court, the Prosecution successfully proved the case before the court beyond reasonable doubt in accordance with the law?

By virtue of the substituted charge introduced by way of amendment, the details as already reproduced, the Defendant is charged for the offences of abduction and having unlawful sexual intercourse (rape) against a victim or prosecutrix alleged to be a child.

It may be necessary at this stage and as a preliminary to reinstate that notwithstanding being charged contrary to the Child Rights Law 2004, yet it is a criminal trial and therefore the law places the onus of proof beyond reasonable doubt on the prosecution. It does not shift. Indeed the Defendant is entitled to remain silent.

See Section 131 of the Evidence Act.

See **BOLANDE VS STATE**
2005 7 NWLR PART 925
431 at Page 461 Para H.

See also the case of **UWA VS STATE**
2015 8 NWLR PART 1450
Pg 438.

In the above named case, it was also reinstated as rightly submitted by the learned Deputy Director, that the said proof beyond reasonable doubt is not expected to be beyond any shadow of doubt for if indeed the evidence is strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is still said to be proved beyond reasonable doubt. See UWA VS STATE supra.

We must also bear in mind that the said proof can be achieved through any of the following.

1. Direct evidence by eye witness.
2. Confessional statement by the Defendant.

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3. Circumstantial evidence.

See the case of **EMEKA NWABUEZE VS THE STATE**
2001 14 NWLR PART 734
Pg 668 at 683.

There are two counts in the charge contrary to two separate sections of the law. I intend therefore to deal with them separately.

1st Count – The details of the charge are as reproduced above. It is made contrary to Section 30 (2) (c) of the Child's Rights Law 2004. The offence as created is commonly called abduction.

The relevant section of the law provides

Section 30 – No person shall remove or take a child out of the custody or protection of his father or mother or guardian or such other person having lawful care or charge of the child against the will of the father, mother or guardian or other person.

- (2) A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction.
- (a) Not applicable
 - (b) Not applicable
 - (c) In any other case to imprisonment for a term of seven years.

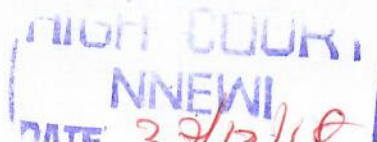
Let me quickly chip in to enhance a better appreciation of this subsection (c) that the preceding subsections make reference to punishment where the child is taken out of Nigeria, it is 15 years, and where just taken out of the State, it is 10 years.

Finally in subsection C, in any other case as in this case which is within the same town, it is term of 7 years.

There appears to be three basic ingredients to sustain the offence of abduction in the peculiar circumstances of this law. They are;

- (1) That the Defendant actually took away the victim for an unlawful purpose.

(2) That it was without the consent of the parents or guardian.



(3) That the victim is a child.

Before proceeding let me stress that contrary to the ingredients stated by the Prosecuting counsel, that the item one does not seem to include "and detained her against her will". A reading of the relevant section under this peculiar law has nothing to do with the will of the child. The will or consent has to do with that of the parents or guardian.

Furthermore, in paragraph 2.10 of the written address by the Defendant's counsel, he made reference to the statement of PW2 in exhibit P6 (i.e. her second statement) and submitted that the Defendant never had the intent of having carnal knowledge of PW2 when PW2 followed him to his house and he never detained her in his house nor had carnal knowledge of her.

Let me stress that the Child's Rights Law is quite selfish in aiming at the protection of the child. That is the purpose and intent and it is understandable to avoid taking undue advantage of a child so called. Counsel must therefore bear in mind that under the peculiar section, the burden on prosecution is to show it was without consent of parents or guardians and for an unlawful purpose against the interest of the child.

Now, what is the evidence before the court in support?

The IPO as PW1 in her evidence before the court he told the court that part of his finding as contained in the Investigation Report Exhibit P5 was that the Defendant took the victim - PW2 into his custody and was having marathon sex with her.

Indeed under cross-examination by the Defendant's counsel, he answered thus;

Q - According to your report, exhibit P5, the Defendant put the victim in a family way for almost a week what do you mean by that?

Ans - I mean that he took her into his custody and was having marathon sex with her.

PW2 was the victim. The summary of her evidence had hereinabove been given. Crucial is the testimony of the fact that she was at the material time staying with a guardian namely Miss Ngozi Onwusoigwe who was out of the house when Defendant came visiting on the said Sunday 21st February 2016. She had gone to church and PW2 herself was about leaving.

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The Defendant wanted to take her away, she declined but following persuasion, she obliged and eventually the Defendant took her away on his motorcycle. She never came back. That was how she eventually stayed in the house of the Defendant till the 28th of February 2016.

From the scenero painted by the PW2, in addition to what can be gathered from exhibit P6 which is her statement to Police, she had flashed the Defendant before he came. She also testified that when the Defendant pleaded, she eventually agreed. I accept that as the true position. Indeed the introduction of losing of consciousness by PW2 appear with respect to be an afterthought probably meant not to portray her as a 'spoilt' girl before her parents and guardian.

For the Defendant, the fact that he took her away from the house of the guardian is established. The issue of consent of the child i.e. PW2 is irrelevant.

PW4, the mother of the PW2 testified to the fact that PW2 was said to be missing and that prompted her having to travel to Ukpok from Lagos where she ordinarily resides. The guardian to the PW2 was not at home and so could not have consented. In any case, there was no evidence of consent and since she was not available, then the issue of consent could not even arise or be presumed.

The Defendant denied taking away the PW2 in his evidence in court. Incidentally, in his statement to Police which was admitted without objection and without retracting, he conceded going to the premises of PW2 and asking Pw2 to follow him to his house in the absence of the said guardian. He conceded in that statement Exhibit P4 that she stayed with him for more than a week. He however added that he was persuading her to return home but she refused.

There is no contention that the said statement exhibit P4 was not correctly recorded or denial that he did not make it or that he was induced to make it.

See the case cited by Prosecution Counsel ie

ONWUMERE VS STATE
1991 4 NWLR PART 186
Pg 142 (8).



I do not therefore have doubt that based on the evidence before the court and exhibits, that the Defendant actually took PW2 away from the house of the guardian on the said 21st February 2016 to his own house and kept her for

