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 S.N. ODILI
DELIVERED ON FRIDAY THE 20TH DAY OF APRIL, 2018.

SUIT NO: A/16C/2017

BETWEEN:

THE STATE
VS

ISIOMA IDIOR

JUDGMENT

The Defendant is charged of defilement of one Adaugo Oguji under Section 200 of the Criminal Code law, Cap 36, Vol 2, Revised Laws of Anambra State of Nigeria, 1991.

The prosecution called three witnesses namely, PW1, PW2 and PW3, and tendered six exhibits, namely, exhibit A, B, C, D, E and F. The Defendant testified for himself as the sole witness.

The Prosecution's case is that the Defendant lured Elvira Adaugo Oguji a child of about 7 years to his shop on 8th January, 2017, under the guise of showing her a sowing machine which he claimed to have bought for her, and forcibly had unlawful carnal knowledge of her.

The Defendant denied committing the offence.

At the hearing, the Defendant's counsel, C. B Okonkwo Esq. objected to the admissibility of the medical report dated 8th January, 2017, and the Attestation Form dated the same 8th January, 2017, and Court directed that argument on the objections be canvassed in the final written

address of counsel to both parties. The said documents were therefore admitted subject to the court's ruling on the argument on their admissibility in the judgment.

However, the Defendant's counsel in her final written address did not address the Court on the admissibility of the Attestation Form. The Defendant counsel's objection to the admissibility of the said document is therefore deemed abandoned. Having been abandoned, it ought to be struck out. It is accordingly struck out. The Attestation Form dated 8th January, 2017, is hereby admitted and marked exhibit E.

Counsel to the Defendant in arguing her objection to the admissibility of exhibit D, contended that the said exhibit D is inadmissible because its maker was not called as a witness, and that the police officer, one Pulife Emmanuel I. who certified it did not state his rank contrary to the provisions of **Section 104 (2) of the Evidence Act, 2011.** The Prosecution counsel did not respond to this argument.

xhibit D was tendered by the PW3 who is the Investigating Police fficer (IPO) in the matter. Obviously, it forms part of the police record nd PW3 who is the Investigating Police Officer (IPO) is competent t ender it. The requirement of tendering a document through the make not sacrosanct as the court may having regards to the circumstance the case with or without an order admit a document without callin e maker notwithstanding that the said maker is available but nc lled as a witness. See **Section 83 (2) of the Evidence Act, 201** preso, the fact that a medical report in a criminal trial was tendere a person, other than the doctor who wrote and signed it does no ke it inadmissibility or in any way impugn its validity or authenticity **Akpan V. State (2014) LPELR – 22741 (CA), Idi V. State (201** **LR 22623 (CA), Lawrence V. State (2012) LPELR – 19734 (CA**

exhibit D and tender it through him does not make it inadmissible or affect its validity or authenticity.

The Defendant counsel's argument on improper certification of exhibit D is misconceived. Exhibit D is the original copy of the medical report, and not certified true copy. It was never certified as true copy by any police officer. There is nowhere in exhibit D where the name Pulife Emmanuel I. appeared. The rules of certification do not apply to exhibit D. The Defendant counsel's objection on this ground is inapplicable to exhibit D.

The Defendant counsel's objection on the admissibility of the medical report is lacking in merit. It is accordingly dismissed. The medical report dated 8th January, 2017, is hereby admitted and marked exhibit D.

At the conclusion of evidence on 20th October, 2017, counsel to the Defendant prayed for date in early 2018 to enable her write and file the Defendant's written address because she was about to put to bed. The suit was therefore adjourned to 26th February, 2018 for adoption of written addresses, and parties were given 30 days apiece to file their written addresses, and 20 days to the Defendant to file Reply on point of law if need be. On 26th February, 2018, the Defendant's written address was not filed. The said Defendant's written address was eventually filed on 20th March, 2018 and parties adopted their written addresses on 20th April, 2018.

The Defendant's counsel, C.B. Okonkwo Esq. in her written submission contended that none of the evidence of the Prosecution witnesses tied the Defendant to the offence. Counsel submitted that only the PW2 mentioned the Defendant as the person who defiled her but that PW2 admitted under cross examination that she was tutored to say so by the PW1 and PW3. Counsel also argued that the evidence of the Prosecution witnesses is characterized by material contradictions and

inconsistencies; therefore, they cannot be a basis for the Court to convict the Defendant. Counsel finally argued that the police did not investigate the offence properly. Counsel urged the Court to discharge and acquit the Defendant.

Learned Prosecution counsel, C.N. Chukwuka Esq. submitted that the Prosecution proved all the elements of the offence of defilement and that the Defendant was identified by the PW2, and the Defendant also in exhibit F confessed to the crime. Counsel urged the Court to hold that the Prosecution has presented sufficient materials upon which the Defendant can be convicted.

The Defendant's counsel formulated four issues for determination while the Prosecution counsel formulated a lone issue. I have considered the issues raised by counsel. The Prosecution's lone issue is more germane and apt to the determination of this case. It encapsulates the four issues raised by the Defendant. I therefore, adopt the said issue with slight modification, namely,

> *Whether the Prosecution has proved a case of defilement against the defendant.*

The standard of proof required of the Prosecution in criminal matters is proved beyond reasonable doubt. See **Section 135 (1) of the Evidence Act, 2011.** In charge of the defilement, the Prosecution shall prove the following elements, namely;

a. That the accused had sex with the child who was under the age of 11 years.
b. That there was penetration into the vault of the virgina.
c. The evidence of the child must be corroborated.

See Adonike v. State (2015) 7 NWLR (Pt. 1458) 237 @284 paras G – B.

in a charge of defilement, the Prosecution does not need to prove that the prosecutrix did not consent to the sexual intercourse, because a child under the age of 11 is incapable of consenting to sex. See **Adonike v. The State (supra)@ 285 paras A – B; Isa v. State (2016) 6 NWLR (Pt. 1508)243 @ 260 Para H; Ahmed v Nigerian Army (2016) 17 NWLR (Pt. 1540) 34 @ 55 paras E – F; Lucky v. State (2016) 13 NWLR (Pt. 1528) 128 @153 154 paras H – B.**

The three witnesses called by the Prosecution are the Prosecutrix's mother (PW1), the Prosecutrix (PW2) and the Investigating Police Officer (PW3), while the exhibits tendered are the statement of the PW1 to the police (exhibit A), the statement of the PW2 to the police (exhibit B), Police Investigation Report (exhibit C), Medical Report (exhibit D), Attestation Form (exhibit E), and the Defendant's Statement to the Police (exhibit F).

The evidence of the PW1 is that when her daughter, the PW2, told her that the Defendant had sexual intercourse with her, she took her to confront the Defendant who denied having sexual intercourse with the prosecutrix. Consequent upon that, they went to hospital with the Defendant and the matron there conducted test on her daughter and confirmed that she had sexual intercourse. From there they proceeded to the police station, and from the police station they went to another hospital, where the doctor after conducting test on her daughter confirmed that she had sexual intercourse.

PW2 is the Prosecutrix, she testified that she is eight years old, and a primary 3 pupil of Alpha Nursery and Primary School, Nwagu Agulu. She said that she knows the Defendant who stays at the entrance of their house gate, and occasionally comes to their house to do carpentry work for them. She stated that in the afternoon of 8th January, 2017, on her way to her mother's shop, the Defendant who promised earlier that he

will buy a sowing machine for her, called her and told her that he has repaired the said sowing machine, and that she should come and see it. When she entered the Defendant's shop, he grabbed her, covered her mouth, removed her cloth, brought out his penis and joined it with her private part and that he did it twice. She further testified that when the Defendant finished, he threatened her that if she tells anybody, he will bury her alive.

The PW3 gave evidence of the police investigation activities.

The Defendant who testified as DW1 denied having sexual intercourse with the Prosecutrix. He testified that the Prosecutrix came to his shop while Emeka Mechanic was in his shop and asked him if he had set the sowing machine, thereafter, she started playing with the machine, and he sent her away when Emeka Mechanic left his shop.

The evidence of the PW2 as to what transpired between her and the Defendant in the Defendant's shop was unshaken under cross examination, while she was not cross examined at all on her age. It is the law that failure to cross examine a witness on a particular fact is a tacit acceptance of the fact. See **Oforlete v. State (2000) 12 NWLR (Pt. 681) 415; (2000) LPELR – 2270 (SC).** Also, exhibits B, C, D, and F all put the PW2's age at 7 years. While testifying in the witness box on 17th May, 2017, the PW2 gave her age as 8 years old. As at the day of the incident (i.e 8th January, 2017), the prosecutrix was 7 years old while as at 17th May, 2017, when she testified in court, she was 8 years old. Exhibits B, C, D and F corroborated the evidence of the age of the PW2 as to her age.

PW2 was sworn on oath, preliminary questions put to her and she answered them correctly and intelligently. She understood the implication of swearing and testifying on oath. Her evidence therefore does not require corroboration. The law is that sworn evidence of a

minor requires no corroboration. See **Isa v. State (2016) 6 NWLR (Pt. 1508)243@ 264, para A; Ogunbaya v. State (2007) 8 NWLR (Pt. 1035) 157**

Evidence of PW2 is a direct and positive account of how the Defendant lured her to his shop, covered her mouth, pulled off her clothes, brought out his penis and had sexual intercourse with her twice. This piece of evidence was not in any way contradicted or discredited rather it was reaffirmed under cross examination. She testified thus under cross examination;

Que – How big is the Defendant's penis

Ans – It is longer than the size of a biro, then not too big in size.

Que – That 8th January, 2017 was the first time you had seen Isioma's penis

Ans – Yes

Que – How come you still remember the size

Ans – Because when he was doing it I was struggling to pull up my pant, I then saw his penis

She further answered thus;

Que - When the Defendant joined his penis to your private part, did you feel any pain

Ans – Yes

Que – How painful was it

Ans – Very painful

Que – It was more painful than the injury you sustained on your leg

An – Yes

Her evidence continued as follow;

Que – How many times did Isioma join his penis to your private part

Ans – Twice.

The above evidence being evidence elicited under cross examination makes the evidence of the PW2 more cogent and irresistible. There is no doubt that a man who lured a girl of about 7 years into his workshop, grabbed her, covered her mouth, removed her cloth, brought out his penis and joined it with the girls private part had sexual intercourse with her. No matter how slight penetration is, it amounts to rape/defilement. See **Isa v. State (supra), @ 274 paras C – D.**

The court also observed the demeanor of the PW2 in the witness box. She was calm and answered questions put to her. I believe her evidence.

Apart from the evidence of PW2, exhibit F is the confessional statement of the Defendant to the police wherein he admitted having sexual intercourse with the PW2. The Defendant in exhibit F stated thus,

> *...immediately Emeka left she started clamping (sic) (climbing)me up and down, she removed her pant before she site (sic) (sat) on me while I was sitting down, I was having sex with her, I did not realized (sic) (release) inside her, then after that she left and came back with her mother to my workshop...*

Confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that

me. **See Afolabi v. State (2016) 11 NWLR (Pt. 1524) 497 @ 514. See ection 28 of the Evidence Act, 2011.** Where there is an admission of the commission of an offence, the job of the prosecution is made easier.

The Defendant's admission that he had sex with the PW2 was confirmed by the evidence of PW2, exhibits B, C and D. A confessional statement of an accused alone is sufficient for the court to convict the accused if it is free, voluntary, direct and positive, and the court is satisfied that;

i. There is anything outside the confession which shows that it may be true
ii. It is corroborated
iii. The relevant statement of facts made in it are true as far as they can be tested
iv. The prisoner had the opportunity of committing the offence
v. The confession is possible
vi. The confession is consistent with other facts which have been ascertained and established.

See **Smart v. State (2016) 9 NWLR (Pt. 1518) 447@ 473**

The Defendant's confessional statement was made freely, voluntarily, and it is both direct and positive.

The Defendant who has a shop at the entrance gate of the prosecutrix's house from where the **prescutrix passes has the** opportunity of committing the crime, and the evidence that he had sexual intercourse with the prosecutrix is consistent with the evidence that there is bleeding, broken hymen, and forceful entry of the prosecutrix's virgina, and the evidence of PW2 that he joined his penis with her private part.

vidence of PW2, exhibits B, C and D corroborate the Defendant's admission in exhibit F. PW2 said that the Defendant removed her clothes and joined his penis with her private part. In exhibit F, the Defendant admitted having sex with the prosecutrix but said that he did not release inside her, while exhibit D shows that there was forceful entry into the prosecutrix's virgina and broken hymen of the prosecutrix. Evidence of PW2 and exhibit F independently linked the Defendant to the crime. Corroboration need not amount to confirmation of the whole account by the prosecutrix. It must however be completely credible evidence which corroborates the prosecutrix's evidence in some aspect material to the charge. See **Lucky v. State (2016) 13 NWLR (Pt. 1528) 128 @ 157 paras E – G**

Even though the sworn evidence of a child does not require corroboration, the confessional statement of the Defendant, exhibits C and D corroborate the said evidence of PW2. In a similar vein, the evidence of PW2, exhibits C and D corroborate the confessional statement of the Defendant.

PW2's evidence that the Defendant joined his penis to her private part, evidence of broken hymen and forceful entry into the Prosecutrix virgina, and the Defendant's admission of having sex with the prosecutrix puts it beyond doubt that the Defendant had sex with the Prosecutrix and his penis penetrated her virgina.

The Defendant's story that he asked the Prosecutrix to leave his shop when Emeka left and that she left is an afterthought.

In his statement to the police, (exhibit F), he said that the Prosecutrix remained in his shop after Emeka left and that she started climbing him up and down when Emeka left. Also, the Defendant who asserts that Emeka was present did not call him to testify. This raises the presumption that evidence of the said Emeka would have been against

ie Defendant if he was called. See **Section 167 (d) Evidence Act, 2011.** I find the evidence of PW2 that it was only herself and the Defendant that were in the Defendant's shop when the incident took place more credible.

The Defendant's counsel argued that there are contradictions in the evidence of PW1, PW2 and PW3 as to the hospital where PW2 was diagnosed, and also the PW2's evidence that nobody passed through the Defendant's shop when she was there whereas under cross examination, PW2 said that Emeka was behind her. The evidence of PW2 is that when she was passing through the Defendant's shop that Emeka Mechanic was at her back, she went further to say that when she was passing, she did not see anybody except Emeka. The import of the above evidence is that nobody passed the Defendant's workshop on that day except Emeka. I do not see any contradiction in the above evidence.

The contradiction as to the hospital the PW2 was diagnosed is immaterial to the charge. The material evidence of the Prosecution is that the Defendant had sexual intercourse with the Prosecutrix on 8th January, 2017, in his shop which evidence was given by PW2 and admitted by the Defendant in exhibit F, and also corroborated by exhibits C and D. Contradictions in the evidence of Prosecution which are not material to the elements of the offence charged are not fatal to the case of the Prosecution. See **Ikpa V. State (2017) LPELR – 42590 (SC), Akpan V. State (1991) 3 NWLR (Pt. 182) 646.**

From the totality of evidence adduced by the Prosecution, I find that the Prosecution has proved beyond reasonable doubt that the Defendant defiled the Prosecutrix on 8th January, 2017, in his shop at Abagana. I find the Defendant guilty of the offence of defilement and accordingly convict him.

ilocutus – The Defendant's counsel pleads for leniency. Says that the efendant does not have criminal record.

entence – I have listened to the plea of leniency by the Defendant's ounsel. The Defendant's act of defiling an innocent underage girl is not nly wicked, callous, but also barbaric. He is a man of low moral pedigree and deserves to be kept out of public circulation. Pedophiles like him are dangerous species and pose a great danger to human existence particularly to the underaged girls, and they should be discouraged. The rightful place for convicted pedophiles like the Defendant is the prison. The offence of defilement and rape are now rampant in the society. **Section 200 of the Criminal Code law, Cap 36, Vol 2, Revised Laws of Anambra State of Nigeria, 1991** prescribes life imprisonment for defilement. That is a mandatory sentence, and upon conviction, the court is bound to impose the said sentence. See **Lucky v. State (supra).** The Defendant, Isioma Idior, is hereby sentenced to life imprisonment.

S.N. Odili
Judge
20/04/2018.

APPEARANCES:
C. N Chukwuka Esq. for the Prosecution
C. B Okonkwo Esq. for the Defendant.