

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON TUESDAY 14TH DAY OF JUNE 2022
BEFORE HIS LORDSHIP
JUSTICE MALAMI UMAR DOGON DAJI(JUDGE)

SUIT NO: SS/54^c/2021

BETWEEN

THE STATE.....COMPLAINANT

AND

NASIRU YAKUBU.....DEFENDANT

APPEARANCE:

H. B. Dogondaji – for the prosecution.

S. Ovia – for the defendant.

JUDGMENT

On the 9th day of November 2021 the defendant was arraigned before this Hon. Court on a count charge of rape contrary to section 260(1) of the Sokoto state penal code 2019. The charge against the defendant reads as follows:

“That you Nasiru Yakubu (M) of Unguwar Rogo Area, Sokoto south LGA of Sokoto state on or about 1600hrs at Unguwar Rogo Sokoto south LGA of Sokoto state within the Sokoto Judicial Division did commit the offence of rape in that you deceitfully and deliberately lured one Nana

Firdausi Bello (F) of 9 years old into your room and forcefully had sexual intercourse with her and thereby committed an offence punishable under section 260 of the Sokoto state penal code law 2011”.

The above charge was read, interpreted and explained to the defendant in Hausa language and the defendant pleaded not guilty to the said charge.

The defendant having pleaded not guilty to the said charge, the prosecution in this case called a total number of 4 witnesses in order to prove the charge against the defendant.

The first witness that testified for the prosecution is one Insp. Sa'idu Haruna. He testified under oath and told this court that he is working with the C.I.D office as an IPO. This witness further told this court that he knew the defendant in this case on the 12th day of March 2020 at about 1700hrs while he was on duty at the C.I.D office, a case of rape was reported at the C.I.D office against the defendant on that fateful day. This witness further told this court that himself, his O/C one Asp. Ibrahim Bala, Abubakar Adamu and Sat. Aminu Yusuf were detailed to investigate the case. This witness further told this court that he was assigned to record the statement of the defendant. This witness further told this court that he first of all put words of caution

to the defendant in Hausa language. This witness further told this court that after administering the words of caution to the defendant he proceeded to record his statement in Hausa language. This witness further stated after he recorded the statement in Hausa language he proceeded to translate the said statement into English language. The said statement of the defendant recorded in Hausa language by this witness which was translated into English language was tendered in evidence despite the objection to its admissibility by the learned defence counsel, reasons for which she stated she would furnish in her final written address as exhibits A and A1 respectively. In the course of this judgment, I will consider whether the said statement made by the defendant was rightly admitted in evidence or not. This witness stated under cross examination that his investigation in this case started and ended with the recording of the defendant's statement. This witness further stated at the time of recording the statement of the defendant he was not represented by any legal practitioner and none of his relatives were present. This witness further stated the police at the C.I.D office did not recover any medical report of the victim of the offence. This witness further stated in the course of the investigation, he did not visit the scene of the offence.

The second witness that testified for the prosecution is on Sat. Abubakar Maharazu. This witness told this court that he is a police officer and is attached to Unguwar Rogo Police Division as an IPO. This witness told this court that he knew the defendant in this case on the 12th day of March 2020 at about 1700hrs when a case of rape and screening of offender was reported at Unguwar Rogo police Division and the case was referred to him for investigation. This witness further told this court that the nominal complainant by name Amina Aliyu complained against the defendant that on the 12th day of March 2022 at about 1600hrs the said defendant Nasiru Yakubu called her daughter by name Firdausi Bello a 7 years old girl inside his room where he had unlawful carnal intercourse with her. This witness further told this court that at the time, the nominal complainant lodged the report the defendant was at large and it was revealed that the defendant was screened by one Mudassiru Yakubu and one Lubabatu Muhammed. This witness further told this court that the two of them were arrested by the police and were interviewed by this witness. This witness further told this court that he recorded the statement of the nominal complainant and that of the said Mudassiru Yakubu and Lubabatu Muhammed. This witness further told this

court that he took the victim to the hospital for medical check-up. This witness further stated that at the specialist hospital Sokoto he was issued with Card No: 2890 and the hospital also issued them with a medical report. This witness further stated that he compiled the case diary in respect of this case and forwarded same to the Divisional police officer who directed him to transfer the case to the C.I.D office Sokoto for further investigation. This witness further stated that he transferred the case file to the C.I.D office as at that time the defendant was not arrested. This witness further stated that he later learnt that the defendant was arrested by the officers of the C.I.D office Sokoto.

The said medical report which this witness said was issued to him at the Specialist Hospital Sokoto was sought to be tendered in evidence through him but same was objected to by the learned counsel, reasons for which she stated she would furnish in her final written address. Despite the said objection the medical report having been identified by this witness was admitted in evidence by this court and same marked as exhibit B. I will in the course of this judgment determine whether the said exhibit B was properly admitted in evidence by this court or not.

Under cross examination, this witness stated that he visited the scene of the crime but did not recover any evidence there and he did not interview any witness there that saw the defendant committing the offence.

The next witness that testified for the prosecution is Nana Firdausi Bello. She is 9 years old at the time she testified and therefore a minor. She gave an unsworn testimony and prior to her testimony this Hon. Court posed some questions to her to determine her competency to testify as required by section 209(1) of the Evidence Act 2011. This Hon. Court is convinced that from the answers given by the said Nana Firdausi Bello to the questions posed to her by this Hon. Court, she possesses sufficient intelligence and understood the duty of speaking the truth. For instance a question was posed to her by this court in the following terms: *“What will be the consequences when a person appeared before a court and tell lies and she answered that such a person has committed wrong and will be cast into hell fire by God in the hereafter”*.

Therefore from the answers given by this witness to the questions posed to her by this court, this court is satisfied that she is competent testify before this court. As stated earlier this witness gave an

unsworn testimony. She told this Hon. Court that her name is Nana Firdausi Bello and that she was 9 years old and lived at Minanata Area Sokoto. She further told this court that she was in primary school and she was at class 5 and that she attended a school called Basic Education at Kasuwar Kanawa, Sokoto. This witness further told this court that she knew the defendant in the dock and that his name is Nasiru. This witness further told this court that one day when she went to fetch water at a house called Gidan Mangurori and the defendant met her there and asked her if she want to pluck mangoes and after that the defendant took her on his shoulders and he started touching her private part. This witness further told this court that the defendant took her on his shoulders so that she could be able to pluck mangoes. This witness further told this court that after plucking the mangoes the defendant told her to go into his room to fetch a leather bag in order to put the mangoes. This witness further told this court that the defendant then met her in his room and directed her to lie down on his mattress and after she lied down on the mattress, the defendant removed her panties and laid on her body and inserted his penis into her private part and started kissing her. This witness further stated that she then put her panties and the defendant put the

mangoes inside the leather bag and gave her and he told her to go home and he also told her that if she should disclose what transpired between the two of them to her mother he would kill her. This witness further told this court that she went and informed her mother what transpired between her and the defendant and at that juncture her mother directed her to show her the defendant. At that juncture this witness informed her mother that she could not walk because her private part was paining her. This witness further stated that her mother went to the said Gidan Mangurori looking for the defendant. This witness further stated, the defendant was found hiding under a car and people brought him out and her mother went to the police station and reported the incident. This witness further stated that she was taken to the Specialist Hospital Sokoto.

This witness stated under cross examination that the incident happened on a Thursday and that she was taken to the Specialist Hospital on Monday.

The next witness that testified for the prosecution in this case is one Amina Aliyu. She testified under oath and told this court that she lives at Minanata Area Sokoto and that she is a housewife and a business woman. This witness further told this court that the said

Nana Firdausi Bello is her daughter and that she was aged 9 years. This witness further told this court that she knew the defendant in this case and that about 2 years ago she sent her daughter Nana Firdausi to fetch water for her at a house called Gidan Mangurori at Minanata area and that she observed that Nana Firdausi took too long time to return. This witness further told this court that when Nana Firdausi returned home she was crying and this witness said she asked her what happened and she told her that somebody took into his room and raped her and later gave her mangoes. This witness further told this court that when she checked Nana Firdausi's panties she saw blood. This witness further stated that she went straight to the said Gidan Mangurori and entered through the gate of the house and checked every room in the house but could not find the defendant and when she came out of the house she informed some people what happened to her daughter and those people also checked inside the house but could not see the defendant and that it was when they were coming out of the house that somebody saw the defendant laying down under a car and those people arrested the defendant while this witness went and called police. This witness further told this court that herself and a police officer took the girl Nana Firdausi to the

Hospital and that at the Hospital she was examined and it was concluded that the Nana Firdausi was raped. This witness further stated that she later went to the police station. This witness further told this court that the defendant was later arrested and taken to the C.I.D office. This witness further stated that her statement was recorded at the C.I.D office.

This witness stated under cross examination that she did not witness the defendant raping her daughter. This witness further told this court that she took her daughter to the hospital and that after the Doctor examined her he did not prescribe any medicine for her but he only instructed her to be putting her in warm water with dettol. This witness further stated under cross examination that she put the soiled panties of her daughter inside a pit latrine.

After the close of the case for the prosecution, the defence opened their case. The defendant called one Abdulrashid Mustapha to testify on his defence. The defendant himself did not testify in this case.

Mr. Abdulrashid Mustapha testified in this case as DW1. He told this court that the defendant is his junior brother. This witness further told this court that the defendant has been sick for sometimes but could not state exactly when the problem started. This witness further

told this court that the defendant is afflicted with mental problem and that the problem started when the defendant was in primary school. This witness further told this court that the defendant was taken to the hospital but he could not state exactly when the defendant was taken to the hospital. This witness stated that the defendant was taken to Kware Psychiatric hospital in the year 2011 and that he was taken there twice in 2014. This witness further stated that the hospital at Kware issued them with a medical report. This witness further told this court that when he heard that the defendant was in detention at Sokoto correctional centre he got a medical report and after obtaining the said medical report he wrote a letter to the office of the Hon. A. G and commissioner for justice, Sokoto. The learned defence counsel Mrs. Ovia at this juncture sought to tender both the said letter written to the Hon. Attorney General and the said report obtained from Kware in evidence, the learned prosecuting counsel Mrs. H. B. Dogondaji in her response did not oppose the admissibility of the said letter to the Hon. A. G in evidence but opposed the admissibility of the said medical report obtained from Kware in respect of the defendant and reserved her reasons for doing so till final address. The said letter to the Hon. A. G and the medical report were

tendered in evidence through this witness and two of them were admitted in evidence by this Hon. Court as exhibits C and C1 respectively despite the said objection to the admissibility of the medical report by the prosecuting counsel. This witness stated under cross – examination that he could not state the actual date the defendant was taken to the hospital ay Kware. This witness further stated that at first the relatives of the defendant used to offer him natural medicine. This witness further stated the said medical report was obtained in the year 2021. This witness further told this court that when the defendant committed the alledged offence he was not under his custody and in fact he don't even know where the defendant was until when he heard that he was at the correctional centre Sokoto and that he was taken there because he committed the alledged offence.

After the close of the case by both the prosecution and the defence, both counsel applied to this Hon. Court for the leave of this Hon. Court to file written addresses.

On the 10th day of June 2022 both counsel in this case adopted their written addresses earlier filed.

The learned counsel for the defendant Mrs. S. Ovia adopted her written address dated the 12th day of April 2022 wherein she raised one issue for determination and went on to canvass argument to that regard. The learned counsel adopted the said written address as the argument of the defendant in this case and she urged this court to acquit and discharge the defendant.

Mrs. H. B. Dogondaji, the learned counsel for the prosecution on the other hand adopted her written address dated the 19th day of May 2022 as the argument of the prosecution in this case and she urged this court to convict the defendant as charged.

As in all criminal trials, the burden of proving the guilt of the accused person is on the prosecution. That burden is static and never shifts. The case of the prosecution is to be proved beyond reasonable doubt. On this see the case of *SUNDAY v STATE* (2013) LPELR 20196 CA.

The guilt of the accused person may be proved in any or all of the following ways:

1. Confessional statement of the accused.
2. Circumstantial evidence.
3. Evidence of an eye witness.

In an effort to prove the guilt of the defendant in this case, the learned prosecuting counsel called a total number of 4 witnesses and tendered three exhibits. Exhibit A and A1 the Hausa and English translation of the statement of the defendant, exhibit B which is a medical report in respect of the victim of this offence. The defendant on the other hand did not testify in his defence himself but he called a witness who is his elder brother who testified on his behalf about his mental sickness and through whom a medical report in respect of the defendant from Neuropsychiatric hospital Kware Sokoto state was admitted in evidence by this court as exhibit C1.

The learned defence counsel raised a preliminary issue on the admissibility of exhibit B the medical report issued by specialist hospital Sokoto in respect of the victim of this offence. The learned counsel urged this Hon. Court to discountenance exhibit B in evidence on the grounds that the medical report is a secondary document and is therefore inadmissible in evidence unless where certain conditions are met and on this the learned counsel referred this court to section 87 of the Evidence Act 2011. The learned counsel stated that the prosecution failed woefully to lead proper foundation as to why the original cannot be tendered and without such a foundation, the

secondary evidence of exhibit B, the medical report cannot be validly tendered. The learned prosecuting counsel in her written submissions before this court on the objection of the learned defence counsel to the admissibility of the medical report, exhibit B. It is the submission of the learned prosecuting counsel that exhibit b tendered before the court is the original. The learned counsel urged this court to look at exhibit B and its content and to also consider the fact that the medical report, exhibit B is on a letter headed paper of specialist hospital Sokoto. According to the learned counsel all these showed that exhibit B is the original and not a secondary evidence as alledged by the defence counsel.

I have painstakingly perused exhibit B and from the face of it I could not see how it is a photocopy as alleged by the learned defence counsel. I'm very much in agreement with the prosecuting counsel that from the contents of exhibit B and the fact that the medical report is on a letter headed paper of Specialist Hospital Sokoto, that exhibit B is the original and not a secondary evidence of the original and I so hold. It is the view of this Hon. Court that exhibit B is indeed the original of the medical report in respect of Nana Firdausi Bello, the victim in this case and therefore requires no foundation to be laid for

its admissibility in evidence. Exhibit B, already admitted in evidence is therefore rightly admitted in evidence and I so hold.

In a charge of rape contrary to section 260 of the penal code, the prosecution has to prove the following ingredients of the offence before it can secure conviction as follows:

1. That the accused person had sexual intercourse with the girl or woman in question.
2. That it was done with or without her consent when she is under 14 years of age.
3. That the girl was not the wife of the accused.
4. That there was penetration.

In her written submissions before this court, the prosecuting counsel stated that the prosecution has established the 1st ingredient of the offence i.e that the accused person had sexual intercourse with the woman or girl in question by the evidence of Nana Firdausi Bello pw3 in her evidence before this court.

It is also the view of the prosecution counsel that the confessional statement of the accused person, exhibit A and A1 corroborated the evidence of pw3.

On the 2nd ingredient, it is the view of the prosecuting that it is clear by the evidence of pw3 and pw4 her mother, that Nan Firdausi Bello was 7 years old when the offence was committed and therefore her consent was immaterial.

On the 3rd ingredient of the offence it is the submission of the prosecuting counsel that by the evidence of pw3, the prosecutrix herself, it is clear that she was not the wife of the accused person.

On the 4th ingredient of the offence i.e that there was penetration, It is the submission of the learned prosecuting counsel that this ingredient of the offence is proved through exhibit B, the medical report in respect of Nana Firdausi Bello which according to the learned counsel reveals the absence of hymen from the virgina of the victim. The learned counsel further contended that penetration however slight can sustain a conviction of rape.

It is the contention of the defence counsel in her written submissions before this court that the prosecution did not lead credible evidence to prove the guilt of the defendant.

On the evidence of pw3, the prosecutrix in this case where she gave an unsworn testimony before this court considering her age because she was just 9 years old. According to the learned counsel when a

question was put on pw3 by the court to confirm her age and capacity to understand the consequences of swearing under oath she responded by saying that “I don’t know the implication of telling the truth”. The learned counsel is of the view that by his answer pw3 does not understand the duty of speaking the truth and therefore not a competent witness whose testimony should be regarded by this Hon. Court.

It is to be noted that this court on the realization that pw3 did not at first understand the question put to her by this court, further asked her more questions and by her response to those questions this court reached the conclusion that pw3 was a competent witness and was allowed by this court to give an unsworn testimony before this court and hence she testified as pw3.

The defence counsel further stated in her written address that even if this court reached the conclusion that pw3 can give an unsworn testimony such evidence cannot solely ground the conviction of the defendant except such evidence is corroborated by another evidence actual or circumstantial.

It is the submission of the learned defence counsel that the evidence of pw4 cannot corroborate the evidence of pw3, being a hearsay

evidence. According to the learned defence counsel, the only evidence the prosecution seems to rely on is corroboration of pw3 is the medical report, exhibit B. According to the learned counsel, the medical report relied upon by the prosecution does not support the prosecution's case and cannot serve as a corroboration to the testimony of any of the prosecution witnesses.

On the medical report, exhibit B the learned defence counsel stated that even though exhibit B reveals an alledged absence of hymen from the prosecutrix Virgina opening the medical report failed to show the presence of any bruises or injury attributed to the use of force and occasioned by an alledged rape by anyone including the defendant. It is also failed to show who ruptured the hymen. It only state that the hymen was ruptured. The learned counsel contended that the corroboration must not merely establish that a crime has been committed must go to identify the accused with the crime in some material particulars. The learned counsel contended that the medical report tendered, exhibit B does not in any way link the defendant to the commission of the crime with which he is charged.

It is the further submission of the defence counsel that in the event this Hon. Court found that the charge against the defendant was

proven beyond reasonable doubt, this court is called upon by the defence counsel to take cognisance of the mental state of the defendant which was highlighted at the earliest possible time.

The learned counsel stated further that where a defence of insanity is raised, the onus is on the defendant to prove same because this is a fact within the knowledge of the defendant. On this the learned defence counsel referred this court to the evidence of DW1 who is the elder brother to the defendant. According to the learned defence counsel DW1 led evidence to show that the defendant was of unsound mind. The learned counsel further stated that this is also evident from the medical report from the Federal Neuropsychiatric hospital Kware, exhibit C.

The learned counsel further stated that where the defence of insanity is successfully pleaded, the defendant cannot be found guilty of the offence and this is because on exhibit A and A1 the statement of the defendant to the police at the C.I.D office Sokoto. According to the learned defence pw1 alledged that he took the statement of the defendant without the defendant's legal representation or any of the defendant's relatives. According to the defence counsel failure of pw1 to establish compliance with the mandatory provisions of the ACJL

2019 discredits exhibit A and A1 and therefore no weight ought to be ascribed to them. The learned counsel urged this court to discountenance exhibit A and A1 and ascribed no evidential weight to it.

It is the further contention of the defence counsel that the confessional statement of the defendant, exhibit A and A1 was not freely and voluntarily given. According to the learned defence counsel, in this case the defendant suffers from mental infirmity and therefore does not possess the requisite intelligence to make any statement more especially when he was alone. The learned counsel argued that a mentally unstable person cannot make any meaning to any statement. Hilarity presupposes the absence of mensrea. On this the learned counsel cited the case of ADELU Vs STATE (2011) 13 NWLR (prt 1425) at 469. The learned defence counsel further stated that in the instant case the defendant had both a medical history of insanity as well as evidence of a family member who has been taking care of him since 2013. The learned counsel urged this court to uphold the defence of insanity in favour of the defendant and consequentially discharge and acquit the defendant.

I will first of all consider if the prosecution by the evidence adduced in this case before this court proved the essential ingredients of the offence of rape contrary to section 260 of the penal code of sokoto state 2019 before considering the defence of insanity raised by the defendant through DW1.

The first ingredient to be proved is that the defendant had sexual intercourse with the victim in this case Nana Firdausi

Bello. Nana Firdausi Bello a 9 year old gave an unsworn testimony before this court and in her testimony when she testified as pw3 she gave account of how the defendant took her on his shoulders in order to pluck mangoes and how he started touching her private part. Nana Firdausi Bello further narrated to this court how the defendant took her into his room, removed her panties and asked her to lay on his mattress and how he also removed his trousers and laid on her and inserted his penis into her virgina and started kissing her. Pw3 further told this court that after the defendant finished what he was doing she put her panties back and he gave her the mangoes and she went home but before going home she stated that the defendant warned her not to inform her mother of what transpired between them and if does he would kill her. This

witness i.e pw3 later on going home informed her mother what transpired between herself and the defendant and her mother demanded her to go and show the defendant and at that juncture she informed her mother that she could not walk because her private part was paining her. In corroboration of this unsworn testimony of pw3 Nana Firdausi Bello her testified as pw4 and also narrated to this court how she sent her daughter to fetch water her and how the girl returned home crying and how the girl informed her that somebody took her into his room and raped her and later gave her mangoes. It is also the evidence of pw4 Amina Aliyu that she went looking for the defendant and with the help of some people he was found hiding under a car. She also informed this court that she reported the incident to the police and the defendant was later arrested and taken to the C.I.D office Sokoto. This witness also told this court that herself and a police officer from Unguwar Rogo Division took pw3 Nana Firdausi Bello to the hospital where she was examined. A medical report in respect of Nana Firdausi Bello was admitted in evidence as exhibit B through one Sgt. Abubakar Maharazu a police officer attached to Unguwar Rogo police Division who testified before this court as pw2. A confessional statement

made by the defendant to the police at the C.I.D office Sokoto was also tendered in evidence through pw1 as exhibit A and A1 respectively. In exhibit A and A1 the defendant told the police how he took the victim Nana Firdausi Bello into his room and how he removed her panties and rubbed his penis on her virgina. He also narrated how the girl informed her mother about the incident and how the mother in company of some people came looking for him and how he escaped to Gagi bush where he hide and later returned home and he was arrested.

The learned defence counsel in her written submissions before this court attacked both the medical report exhibit B and the extra-judicial statement of the defendant exhibit A and A1. In respect of the medical report exhibit B I already made a finding that exhibit B is not a photocopy and therefore not a secondary evidence and was therefore properly admitted in evidence and properly marked as such. In respect of exhibit A and A1, it is the contention of the learned defence counsel that exhibit A and A1 were recorded in the absence of a legal practitioner or any relative of the defendant and therefore contravened section 17(2) of the ACJL 2019. I'm unable to agree with the learned defence counsel that this court should reject

exhibit A and A1 or rather not to place any weight on exhibit A and A1 because they are being recorded in the absence of a legal practitioner. In the case of AKINWANDE v STATE (2019) LPELR 48378 CA, the court of appeal held as follows: “The appellant counsel argued and submitted that there is no evidence before the trial court that the procedure adopted by the police to obtain the confessional statement of the appellant was transparent. It was not obtained in the presence of his legal practitioner or solicitor to prove that the confession was voluntary. I’m bold to say that there is no any decision of this court or the apex court which stated that any confessional statement not made in the presence of a legal practitioner must be rejected. However if the voluntariness of a confessional statement is in issue and the statement was obtained in the absence of a legal practitioner, then the court will take that into consideration in determining the weight to attach to such a statement”.

It is to be noted that the voluntariness of exhibit A and A1 is not in issue in this case. The learned defence counsel only raised the issue of voluntariness of exhibit A and A1 because of the issue of insanity raised by the defence and stated that because of that issue of

insanity the defendant cannot be said to have given a voluntary statement to the police when he was incapable of given any statement because of his state of mind. I can only agree with the submission of the defence to this if the defence of insanity raised by the defendant succeeds.

Therefore by the evidence of pw3 Nana Firdausi Bello, the evidence of pw4 Amina Aliyu who is her mother and exhibits A and A1 the extra-judicial statement of the defendant and exhibit B, it is clear that the defendant had sexual intercourse with the victim in this case and I so hold.

On the second ingredient of the offence i.e that the intercourse was done with or without her consent when she is under 14 years of age, it is clear by the evidence of pw3 the victim herself and the evidence of pw4 Amina Aliyu, her mother that Nana Firdausi Bello was 7 years of age at the time the offence was committed and therefore her consent was immaterial. The prosecution therefore proved this ingredient of the offence by credible evidence and I so hold.

On the next ingredient i.e that the girl was not the wife of the accused, it is clear from the evidence of pw4, the mother of the victim in this case that the victim Nana Firdausi Bello is not the wife of the defendant and I so hold.

On the next ingredient of the offence i.e that there was penetration, this is one of the most important ingredients of the offence of rape to be proved by the prosecution. In many cases of our superior courts, it has been held that even a slight penetration of the penis into the Virgina of the prosecutrix will be enough to satisfy this ingredient. In the case at hand, the victim Nana Firdausi Bello stated in her testimony before this court that the defendant removed her panties, asked her to lay down on his mattress and he also removed his trouser and lay on her and inserted his penis into her virgina and when she went home and informed her mother and her mother said she should go with her to identify the defendant, she told her mother that she could not walk because her private part was paining her. Her mother who testified as PW4 stated that when she checked the panties of her daughter Nana Firdausi Bello pw3 she saw blood. The medical report exhibit B stated that there was absence of hymen in the opening of the

virgina but no injury was observed in the virgina and its sorrounding area. From the above evidence adduced by the prosecution before this court can one reach the conclusion that there was penetration of the defendant's penis into the virgina of the victim in this case? As I have stated earlier our apex courts in a plethora of judicial decisions stated that slight penetration is enough to constitute the offence of rape. In the case of POSU and ANOR v STATE (20120) LPELR 4863 CA, the court of Appeal held as follows: *"In IKO v STATE (supra) page 245, the Supreme Court was emphatic that it is not necessary to prove an injury or rupture of the hymen to constitute the crime of rape and reemphasised that penetration however slight is sufficient"*.

In the case at hand, it is clear that the defendant in exhibit A and A1 his extra-judicial statement to the police clearly stated that he rubbed his penis on the virginal of the victim. Could rubbing the penis on the virgina be equated with penetration? I think it cannot. However, the victim Nana Firdausi Bello who was 7 years old at the time the offence was committed remember vividly what the defendant did to her when she stated that the defendant removed her panties and inserted his penis into her virgina. When something

is said to be inserted, that thing must naturally go inside the thing it is inserted into. Therefore to insert his penis into her virgina, it is natural that the penis must have penetrated into the virgina however slight. It is to be noted that our superior courts have stated times without number in a plethora of judicial decisions that the said penetration however slight or weak suffices to constitute the offence of rape.

It is to be noted that the victim even stated in her evidence before this court when she testified as pw3 that she could not even walk because her virgina was paining. Be that as it may this Hon. Court is of the view that from the evidence adduced by the prosecution more especially the evidence of pw3 and exhibit B, the medical report which corroborate the said evidence and the evidence of pw4 which also in some respect corroborate the testimony of pw3, this court is satisfied that there was penetration of the penis of the defendant into the virgina of Nana Firdausi Bello, the Victim in this case and I so hold.

The defendant in this case in his defence have raised the defence of insanity and to that regard called DW1 Mr. Abudulrashid Mustapha who informed this court that he is a senior brother to the

defendant. DW1 in his testimony before this court stated that he knew that the defendant has mental problem and that there was a time he was admitted at Federal Neuro Psychiatric hospital Kware twice in the year 2014. DW1 told this court that the hospital at Kware issued a medical report in respect of the defendant. DW1 further told this court that when he heard that the defendant was at the correctional centre Sokoto, he went to Kware and obtained the medical report in respect of the defendant and wrote a letter to the office of Hon. Attorney General of Sokoto state. The said letter to the Attorney General and the medical report were tendered in evidence through this witness and same admitted in evidence by this court as exhibits C and C1 respectively. Under cross – examination DW1 told this court that he cannot state exactly when the problem with the defendant started but that he was been sick for sometimes and that the problem started when the defendant finished primary school. DW1 also told this court that he could not state the actual date the defendant was taken to the hospital. This witness further stated that at the time the defendant committed the alledged offence he was not under his custody and that at the time the defendant committed the alledged offence he doesn't know his

whereabout and that it was somebody who informed him that the defendant was at the Sokoto correctional centre because he committed the alledged offence. DW1 also told this court that the said medical report was obtained in the year 2021.

It is to be noted that it is through the evidence of this DW1 that the defence tried to convince this court that the defendant is entitled to the defence of insanity.

In the case of ADELU v STATE 2014 LPELR 2286 SC, the Supreme Court held as follows: *To show that the accused person is insane it must be shown that*

- a) At the time the offence is committed, the accused person was suffering from mental disease.*
- b) That the mental disease was so serious that at the relevant time the accused person did not knew what he was doing or/and could not control his actions, or that he should not do what he did intention which is the state of mind of the accused/appellant in most cases is inferred from the facts established in court.”*

From the facts and surrounding circumstances and the evidence adduced in this case can one reach the conclusion that the factors stated in the above decision of the Supreme Court apply to the defendant in this case? The answer to this poser is in the negative. This is because from exhibits A and A1 which is the extra-judicial statement of the defendant, it is clear that the defendant knew what he was doing at the time he took the victim in this case inside his room and had sexual intercourse with her. If indeed he don't know what he was doing he would have requested the victim to lie down in the open and has sexual intercourse with her in the open but because he knew what he was doing he took her into his room in order to hide and commit the act. It is also clear from his statement to the police that the fact that he stated that when the victim informed her mother about what happened people came looking for him with sticks and he had to run to Gagi bush to hide. All these are not the behaviours of a person who does not know what he was doing. In the case of EDOHO v STATE (2010) LPELR 10151/SC, the Supreme Court held as follows: *"In the case of Ghobadia v STATE (2004)6 NWLR pt 869 P.360 this court is of the view that any*

evidence of insanity tendered by an accused person himself is suspect and is not usually taken seriously.”

It is the view of this court that by tendering exhibit C1 by the defendant which is a report from Federal Neuro Psychiatric hospital Kware obtained in the year 2021 while it is in evidence that the defendant was taken to Kware twice in the year 2014 cannot be of any moment in proving the defence of insanity on the part of the defendant. it has been held in a number of judicial decisions that the defence can only avail the defendant if he can show that he was insane at the time he committed the offence. On this see the case of *EJINIMA v STATE* (1991) LPELR 1067 SC. In the instant case the offence was said to have been committed in the year 2020 and the defendant was said to have been taken to Kware in the year 2014 a period of almost 6 years. We don't have the history of the state of mind of the defendant in all those years as DW1 who said he is a senior brother to the defendant stated that he don't even know the whereabouts of the defendant at the time he committed the alledged offence until when he got information that the defendant is at the Sokoto Correctional Centre for committing the alledged offence. This clearly shows that the witness DW1 could not state anything about

the mental state of the defendant during the said period between 2014 to 2020 when he was said to have committed the alledged offence.

Be that as it may, this court is of the view that the defendant could not prove to this court that he was insane at the time he committed the alledged offence and therefore the defence of insanity he raised could not be proved by him and the onus is on him to prove same. the medical report obtained at Federal Neuro Psychiatric hospital Kware in the year 2021 when it was revealed that the defendant was taken to Kware in the years 2014 could not be relied upon by this court to prove that he was insane in the year 2020 when he was alledged to have committed the offence with which he was charged before this court.

In the final analysis this Hon. Court having already made a finding that the prosecution has proved all the ingredients of the offence of rape contrary to section 260 of the penal code against the defendant, the defendant is hereby convicted as charged.

S. Ovia – We are very much grateful for a well considered judgment. We plead with the court to take into consideration the fact that the

convict is a first time offender and has shown remorse for his action. We urged the court to temper justice with mercy in sentencing the convict.

H. B. Dogondaji – We are not objecting to the plea of leniency in respect of the convict. We don't have any record of previous conviction in respect of the convict.

SENTENCE

I have considered the passionate pleas for mercy by the learned defence counsel. I have also considered the fact that the defendant/convict is a first time offender.

It is to be noted that the convict was charged with the offence of rape under section 260 of the Sokoto state penal code 2019. Section 260 provides as follows:

“Whoever commits rape shall be punished with imprisonment for life or for a term which shall not be less than Twenty One years”.

Therefore considering the provision of section 260 (1) of the penal code cited above the minimum sentence this court can impose on the convict is 21 years imprisonment.

Consequently you Nasiru Yakubu having been found guilty of the offence of rape contrary to section 260(1) of the penal code I hereby sentenced you to serve a term of imprisonment of 21 years.

SIGNED
HON. M. U. DOGONDAJI
(JUDGE)
14/06/22

CERTIFIED TRUE COPY

FATIMA SA'IDU MOH'D
AG. DIRECTOR LITIGATION
HIGH COURT OF JUSTICE,
SOKOTO.