

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 16TH DAY OF FEBRUARY, 2021
BEFORE HIS LORDSHIP:

HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

SUIT NO: SS/11^C/2021

BETWEEN:

THE STATE-----COMPLAINANT

AND

1. FODIYO BELLO

2. BELLO ALTINE-----DEFENDANTS

H.S. Buhari Esq for the State.

M.I. Hanafi Esq. with V.E Ikwuta Esq. for the 2nd Defendant.

H.S. Buhari Esq: The 2nd Defendant is in Court and speak Hausa Language and is on remand, while the 1st Defendant (Fodiyo Bello) has been granted bail by High Court 5 sometimes on the 22/6/2020 as disclosed by the custodial centre's record. The 1st Defendant is not in Court. In view of this we are asking for a date so that we can trace the surety of the 1st Defendant with a view to have him before this Court on the next adjourned date. We have agreed to the 15/3/2021 for further mention.

M.I. Hanafi Esq: No objection.

Court: This case is hereby adjourned to 15/3/2021 for further mention. 2nd Defendant be further remanded at the custodial centre of Nigerian Correctional Service, Sokoto.

Signed

Hon. Justice Mohammed Mohammed
(Judge)
16/02/2021

Court resumed today 15/3/2021

Appearances:

Abbas Samaila Esq for the prosecution.

M.I.Hanafi Esq with V.E. Ikunta Esq for the 2 Defendant.

Abbas Samaila Esq: The Defendants are in Court and speak Hausa Language.

Court to Registrar: Affirm yourself and interpret from English to Hausa and vice versa.

Abbas Samaila Esq: The 1st Defendant is on bail while the 2nd Defendant is on remand. They are standing trial for the offences of ***Conspiracy and Unnatural offence*** punishable under Sections 97 and 284 of the Penal Code. The is for further Mention. We apply that their plea be taken.

M.I. Hanafi Esq: We have no objection.

Court to Registrar: Read and explain the charges to the Defendants.

Court: Did you hear the charge that was read over and explain to you?

1st Defendant: Yes, I heard.

2nd Defendant: Yes, I heard.

Court: Did you understand the particulars of the charge?

1st Defendant: Yes, I understand

2nd Defendant: Yes, I understand

Court: Are you guilty or not guilty?

1st Defendant: I am not guilty

2nd Defendant: I am not guilty

COUNT 2

Court: Did you hear the charge that was read and explained to you?

1st Defendant: Yes, I heard.

2nd Defendant: Yes, I heard.

Court: Did you understand the particulars of the Court?

1st Defendant: Yes, I understand.

2nd Defendant: Yes, I understand.

Court: Are you guilty or not guilty?

1st Defendant: I am not guilty.

2nd Defendant: I am not guilty.

Abbas Samaila Esq: The Defendants having pleaded not guilty we apply for a date to call on witnesses. We have agreed to 13/4/2021 for hearing.

M.I.Hanafi Esq: That is the position

Court: This matter is hereby adjourned to 13/4/2021 for hearing. Bail of the 1st Defendant to continue while the 2nd Defendant be further demanded.

Signed

Hon. Justice Mohammed Mohammed
(Judge)

15/03/2021

Court resumed today 6/7/2021

Appearances:

V.E. Ikunta Esq. for the Defendants holding the brief of Munini Ishola Esq. The matter is for hearing. Prosecuting counsel and the Defendants are not in Court.

Court to Registrar: Any correspondence from the prosecution and why is it that the Defendants are not in Court?

Registrar: There is no any correspondence from the prosecution and the correctional centre.

V.E. Ikunta Esq: In view of the circumstances, we ask for a date and we suggest 5/8/2021 for hearing.

Court: This matter is hereby adjourned to 5/8/2021 for hearing. Bail of the 1st Defendant to continue while the 2nd Defendant be further remanded. Fresh hearing notice be issued to the prosecuting counsel.

Signed

Hon. Justice Mohammed Mohammed
(Judge)
6/07/2021

Court resumed today 27/9/2021

Appearances:

M.I. Hanafi Esq. with V.E. Ikunta Esq. for the 2 Defendants.

Umar Aliyu PSC for the prosecution with M.A. Shuni Esq, the case is for hearing. The 1st and 2nd Defendants are in court. However I am not the counsel handling the matter and we don't have any witness before the Court. In the circumstances, we ask for another date to inform the counsel handling the matter. We have agreed to 13/10/2021 for hearing.

M.I.Hanafi Esq: That is the position.

Court: This case is hereby adjourned to 13/10/2021 for hearing. The 1st Defendant's bail to continue while the 2nd Defendant be further remanded.

Signed

Hon. Justice Mohammed Mohammed
(Judge)

27/09/2021

Court resumed today 13/10/2021

Appearances:

Ibrahim Adamu Esq. for the State.

M.I. Hanafi Esq: The Defendants are before the Court and Speak Hausa Language and they are standing trial for the offences of ***Criminal Conspiracy and Unnatural Offence*** punishable under Sections 97(1) and 284 of the Penal Code respectively. The matter is for hearing. Unfortunately none of our witnesses is before the Court. In the circumstances, we apply for another date to enable us call our witnesses. We have agreed to 18/11/2021.

Court: This matter is hereby adjourned to 18/11/2021 for hearing. Bail of the 1st Defendant to continue while the 2nd Defendant be further remanded.

Signed

Hon. Justice Mohammed Mohammed
(Judge)

13/10/2021

Court resumed today 1/12/2021

Appearances:

H.S. Buhari Esq. for the Prosecution.

M.I. Hanafi Esq. with V.E. Ikwuta Esq. for the Defendants.

H.S. Buhari Esq: The Defendants are before the court and speak Hausa Language.

Court to registrar: Affirm yourself to interpret from English Language to Hausa and Vice Versa.

H.S. Buhari Esq: The case is for hearing and we intend to call 2 witnesses and they are before the Court. We are ready.

M.I.Hanafi Esq: We are also ready.

Court: Proceed.

H.S.Buhari Esq: Our PW1 is an official witness in person of Inspector Waziri Muktar. He will testify in English Language. We apply that he be called in to the witness box.

Court: Permission to call PW1 into the witness box, is hereby granted.

PW1 (After affirmation): My name is Sgt. Muktar Waziri force No. 504064. I am a public officer attached to state CID Sokoto as Investigating Police Officer, I know the Defendants and I came to know them on 20/10/2017 when they were brought from Kwanni Divisional Police Headquarters in relation to the case of *criminal conspiracy and unnatural offence*. After they were brought, our team was detailed to investigate the case and the team comprised of ASP Abdullahi Ladan, Insp. Sunday Mamman, Insp. Danjuma Giwa, Sgt. Suleman Bello and myself. Our Superior Officer in person of ASP Abdullahi Ladan instructed me to record the statements of the 2 Defendants one after the other. I then started with one of them whom I think is the 2nd

Defendant. I took him to our detective room where we normally record the statements of Defendants. I read the word of caution to him in Hausa Language and he signed and agreed to make his statement voluntary. After I finished recording the statement. I read it over to him in Hausa Language. He there after accepted that the statement was his statement and he then signed. There after I translated the statement into English Language and attached it inside our case file. There after I took the next Defendant and recorded his statement the same way. I followed the same procedure I adopted in recording the previous one. After I finished I read it over to his in Hausa Language and he accepted the statement as his and signed. I then translated the statement into English Language and attached it inside our case file. After we compiled the case file, we duplicated it and sent it to ministry of justice for legal advice.

H.S. Buhari Esq: In the course of your evidence in Chief, you made mention of recording the statements of the 1st and 2nd Defendants?

PW1: Yes and the said statements are in the case diary, and if I see them I can identify them by my handwriting signature and the names of the Defendants on them.

H.S. Buhari Esq: Have a look at these documents and tell this Court if they are the statements you recorded.

PW1: Yes these are the statements I recorded from the 1st and 2nd Defendants.

H.S. Buahri Esq: The witness having identified the statements of the 1st and 2nd Defendants which he recorded, we seek to tender same in evidence.

M.I. Hanafi Esq: No objection.

Court: The witness having identified the statements of 1st and 2nd Defendants which he recorded on the 20/10/2017 and the prosecution has applied for same to be admitted in evidence which application has not been objected to by the defence counsel, the said statements of the 1st and 2nd Defendants both Hausa and English translated version are hereby admitted in evidence and marked is exhibits 'A', 'A1', 'B' and 'B1' respectively.

H.S. Buhari Esq: That is all for the witness.

Court: Cross Examination

M.I. Hanafi Esq: You recorded the statements of the Defendant on the day they were brought to your office?

PW1: Yes

M.I. Hanafi Esq: How long did the Defendants stayed at Kwanni Police station before they were transferred to CID.

PW1: I can't remember and I can remember from the case diary the offence was alleged to have been committed on 28/9/2017. I recorded the statements of the Defendants on 20/10/2017 which is about 3 weeks interval from the date of the commission of the offence and the recording of the statements.

M.I. Hanafi Esq: As at the 20/10/2017 when the Defendants were brought to your office, did you see any whitish liquid on the body of the victim one Ibrahim Dahiru?

PW1: No.

M.I. Hanafi Esq: To the best of your knowledge of investigation, there is no any medical expert who examined the body of the victim?

PW1: Yes there is no any medical examination that was conducted, but we have visited the house at Makera Assada, Sokoto where the offence was committed, and while at the house, I have not sighted any whitish fluid in the premises.

M.I. Hanafi Esq: Apart from the recording of the Defendants statements, you have not done any other thing?

PW1: Apart from recording of the statements of the Defendants, I also recorded the statement of the victim witnesses as well as visited the scene of crime.

M.I. Hanafi Esq: That is all for this witness.

Court: Re – Examination

H.S. Buhari Esq: No any re-examination and we apply, that the witness be discharged.

Court: The witness is hereby discharged.

H.S. Buhari Esq: Our PW2 is Ibrahim Dahiru who is the victim of the crime. He will testify in Hausa Language. He is a child of 12years old. We apply that the witness be called into the witness box.

Court: Permission to call PW2 into the witness box is hereby granted.

H.S. Buhari Esq: The witness is a child of 12years old. Who ordinarily gives unsworn evidence according to provisions of

the evidence Section 209 thereof. We are ready to take him.

M.I. Hanafi Esq: No objection.

Court: By virtue of Section 175(1) of the Evidence Act 2011, all persons are competent to testify before a trial court unless the court considers that the witness for reasons of old age or tender age is in able to understand the questions put to him or unable to give rational answers to the questions put to him. By virtue of Section 209(1) of the same Evidence Act, 2011, a child who has not attained the age of 14 years shall not be sworn and shall give evidence otherwise than on oath or affirmation if in the opinion of the court the child is possessed of sufficient intelligence and understands the duty of speaking the truth to justify the reception of his evidence through a preliminary question and answer session to be conducted by the trial court.

Consequent upon the foregoing, this court as a matter of legal requirement and as a condition precedent, will conduct same preliminaries through questions and answer session to be conducted by this court with a view to ascertain whether or not the witness will understand the questions that will be put to him as well as be able to give rational answers to them including his ability to appreciate the duty of speaking the truth for the purpose of deciding whether or not the witness is competent to give his oral testifying in this case before this court.

Court: Tell this court your name.

PW2: My name is Ibrahim Dahiru.

Court: Where do you live?

PW2: I live at Unguwar Makafi Area, Sokoto.

Court: What is the name of your father?

PW2: Dahiru.

Court: Are you a Muslim by faith?

PW2: Yes, I am a Muslim by faith.

Court: Do you pray?

PW2: Yes I do pray because I want to be rewarded by God.

Court: Do you know the essence of telling the truth?

PW2: Yes, I know and whoever tell the truth will be rewarded by God.

Court: Is it good to tell lies against someone?

PW2: No because if one tell lies against someone, he will enter hell fire, and if one tell the truth, he will be rewarded by God, because he will enter paradise.

Court: In view of all the foregoing questions put to the witness and the corresponding answers the witness gave, I am satisfied that the witness has in fact possessed sufficient intelligence to justify the reception of his evidence in this case, because he appeared in my humble view to understand the duty of speaking the truth as well as give rational answers to the questions put to him.

Consequent upon the foregoing and in consideration of the provisions of Sections 175 and 209(1) of the Evidence Act, 2011 this court is satisfied with the

competence of Ibrahim Dahiru (PW2) as a witness to give evidence in this case and hereby ordered that the witness though a child, is hereby permitted to give his evidence in this case.

PW2:

My name is Ibrahim Dahiru. I live at Unguwar Makafi Area, Sokoto. I know the 1st Defendant that is Fodio Bello. But I don't know the 2nd Defendant before this incident, that is Bello Altine. I know the 1st Defendant even before this incident because he is my relation. I also know the 1st Defendant because whenever my mother washed her grains of millet, I do take the water with which the grains were washed to the mother of the 1st Defendant in their house. I know the 1st Defendant very well. I know I am before this court to give evidence. There was a day when I was playing in front of my father's house, the 1st Defendant saw me and called me and later sent me to buy omo for him, which I did and also brought back along with the omo and his balance of N25 which I gave to him. After I gave him the omo and his change, he then hold my hand and asked me to follow him, and I said to where? He then said to that house which he pointed. I then asked him what we are going to do? But he said we should just go. So we went to the house, and after we entered, he asked me to remove my trouser, and while I was removing my trouser, I saw the 2nd Defendant also removing his own trouser. I then attempted to run away but the 1st Defendant locked the door. They then got hold of me and, the 2nd Defendant claimed over my back and had canal intercourse with me through my anus. After the 2nd Defendant finished, the 1st

Defendant also did the same thing to me and when they finished, they gave me N150. After I came out from the house, I became confused and was unable to know where to follow to our house. Then I met with one boy whom I know and the said boy requested same 2 grown up men to take me to our house at our area. After they took me to our house, my mother came out and they informed her that they saw me confused and decided to bring me home. My mother then recharged her phone and called my father. When my father came he took me to one school where I was tied with a chain. That is all.

H.S. Buhari Esq: That is all for the witness.

Court: CROSS EXAMINATION

M.I. Hanafi Esq: At the time the incident happened is about 3 years now?

PW2: Yes.

M.I. Hanafi Esq: How old are you now?

PW2: I am now about 12 years and same months.

M.I. Hanafi Esq: Because it is 3 years now, you can't remember some of the things that happened?

PW2: Yes, but I can remember that the incident happened around 8pm in the night.

M.I. Hanafi Esq: Before that date, you have never met with the 2nd Defendant?

PW2: Yes, but I met him that day because there was light in the house.

M.I. Hanafi Esq: You did not see any blood on your body on that date?

PW2: Yes, but I saw some whitish water on my body which the 2nd Defendant washed for me because it was in large quantity.

M.I. Hanafi Esq: You said you know the 1st Defendant before the incident?

PW2: Yes.

M.I. Hanafi Esq: You can't remember who first climbed your back between the 2 Defendants.

PW2: It was the 2nd Defendant who first climbed over my back and had carnal intercourse with me and after him, the 1st Defendant also did the same thing to me. After that I was confused and did not know what happened thereafter. Even at the time they got hold of my hand, I was confused.

M.I. Hanafi Esq: You never knew what carnal intercourse is before this incident?

PW2: I know what it means but I have never had the experience of how it is being done all my life until when I came in contact with the Defendants in this case.

M.I. Hanafi Esq: You don't know what they did to you until you were informed that it was sexual intercourse they had with you?

PW2: Yes and it was the police who informed me that they had sexual intercourse with me, but my parents did not tell me that.

M.I. Hanafi Esq: Your parents did not see the whitish fluid because it was already washed up?

PW2: Yes.

M.I. Hanafi Esq: That is all for this witness.

Court: Re – Examination

H.S. Buhari Esq: No re-examination and we apply that the witness be discharged.

Court: The witness is discharged.

H.S. Buhari Esq: That is the case of the prosecution and we hereby closed our case.

M.I. Hanafi Esq: We are ready to open our defence.

H.S. Buhari Esq: We are ready.

Court: Proceed.

M.I. Hanafi Esq: Our Dw1 is the 1st Defendant in person of Fodio Bello and will testify in Hausa Language.

DW1: (After affirmation): My name is Fodio Bello. I live at Unguwar Makafi. I am selling mattresses and pillows. I know Ibrahim Dahiru (PW2) because we live in the same area. But it is not true that I had sexual intercourse with him. It is also not true that I took him to the house of the 2nd Defendant where the 2nd Defendant had sexual intercourse.

M.I. Hanafi Esq: Where and when were you arrested?

DW1: I was arrested in the morning by the police from Kwanni Division in our house.

M.I. Hanafi Esq: The police said you made **Exhibit 'A'**, what can you say about it?

DW1: It was not true that I made **Exhibit 'A'**, but they force me to make a statement which is not mine, and what I told them they said is not the truth, I also told them that I did not take anybody to that house. What the police ascribed to me as my statement, is not my statement.

M.I. Hanafi Esq: Tell the court how what is contained becomes your statement.

DW1: I was forced to sign the statement.

Court: CROSS EXAMINATION

H.S. Buhari Esq: You said police forced you to thumbprint your statement?

DW1: Yes it is true I was force by the police to thumbprint the statement.

H.S. Buhari Esq: Have a look at Exhibit 'A' and tell the court if the thumbprint at the footnote of the words of caution and at the end of the statement are your thumbprints?

DW1: Yes, they are my thumbprints.

H.S. Buhari Esq: That is all for the witness.

Court: Re – Examination

M.I. Hanafi Esq: No re-examination.

Court: The witness is discharged.

M.I. Hanafi Esq: Our DW2 is the 2nd Defendant and will testify in Hausa Language.

DW2: (After affirmation): My name is Bello Altine. I live at Makera Area, Sokoto. I am a seller of date and

toothpick. I am before this court because of an offence. It is not true that I had sexual intercourse with one Dahiru Ibrahim and I don't know the said Dahiru Ibrahim.

M.I. Hanafi Esq: The prosecution said you made a statement before the police in which you confessed having canal knowledge with one Dahiru Ibrahim?

DW2: It is not true that I had canal knowledge of the said Dahiru Ibrahim. It is also not true that I made a statement in which I confess committing the alleged crime. But when I went to the police, they asked me questions but the police did not asked me whether I had sexual intercourse with Dahiru Ibrahim.

M.I. Hanafi Esq: Police brought a document in which it was alleged that you confessed committing the crime.

DW2: It is not true.

Court: Cross-Examination

H.S. Buhari Esq: You said police asked you some questions?

DW2: Yes but I don't know whether they reduce my answers into writing.

H.S. Buhari Esq: The 1st Defendant gave evidence before this court, do you wish to adopt the said evidence as your evidence?

DW2: Yes.

H.S. Buhari Esq: That is all.

Court: Re – Examination

M.I. Hanafi Esq: No re-examination and that is the case of the defence and we have agreed to the 15/12/2021 for adoption of written address.

Court: The case is hereby adjourned to the 15/12/2021 for adoption of written address. Bail of the Defendants to continue and the witness is discharged.

Signed

Hon. Justice Mohammed Mohammed
(Judge)
01/12/2021

Court resumed today 16/12/2021

Appearances:

H.S. Buhari Esq. for the prosecution.

M.I. Hanafi Esq. with V.E. Ikwuta Esq. for the Defendants.

H.S. Buhari Esq: The Defendants are before the court and speak Hausa language.

Court to Registrar: Affirm yourself to interpret from English to Hausa and vice versa.

H.S. Buhari Esq: The case has been adjourned to today for adoption of counsel's respective written addresses, and subject to the convenience of court, we are ready.

M.I. Hanafi Esq: We are also ready.

Court: Proceed.

M.I. Hanafi Esq: The Defendants' final written address was filed on the 14/12/2021. We adopt the said written address as our oral legal argument and submissions and urge the court to discharge and acquit the Defendants. We wish to however emphasize that throughout the

evidence of the prosecution, there is no mention that the anus or mouth of the victim was penetrated.

Therefore, the offence of *Unnatural Offence* could not have been consummated.

H.S. Buhari Esq: The prosecution's reply to the Defendants final written address was filed on the 7/12/2021. We adopt the said reply as our oral legal argument and submissions, and urge this Honourable Court to convict and sentence the Defendants as charged.

Court: This case is hereby adjourned for Judgment. Hearing notice will be issue to counsel immediately the Judgment is ready. Bail of the Defendants to continue.

Signed

**Hon. Justice Mohammed Mohammed
(Judge)
16/12/2021**

CERTIFIED TRUE COPY:

FATIMA SAIDU MOH'D
Ag. DIRECTOR LITIGATION
HIGH COURT OF JUSTICE,
SOKOTO.