

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 23RD DAY OF DECEMBER, 2021
BEFORE HIS LORDSHIP:

HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

SUIT NO: SS/127^C/2020

BETWEEN:

THE STATE-----COMPLAINANT

AND

KHALIFA SANI-----DEFENDANT

Appearances:

P.A. Chadi Esq. with Maryam Attahiru Esq. for the state.

L.O. Lateef Akangbe Esq. with C.B. Sarkin Noma Esq. for the
defendant who is also in court.

J U D G M E N T

Court: By a one (1) count charge dated 12/11/2020 and filed on the 8/12/2020 signed by Hon. Sulaiman Usman SAN and Attorney General of Sokoto State, the defendant one Khalifa Sani was arraigned before this court for the offence of ***Rape*** punishable under Section 260 of the Sokoto State Penal Code Law, 2019. The charge was read and explained to the defendant in Hausa language to the satisfaction of the court because the defendant speaks and understands Hausa language. After the charge was read and explained to the defendant, the defendant pleaded not guilty. The

charge which the defendant pleaded not guilty, is hereby reproduced below as follows:-

“That you Khalifa Sani on or about 19th July, 2019 at about 1300hrs at Kumbula Village of Sabon Birni LGA of Sokoto State within Sokoto Judicial Division did commit the offence of Rape in that you attacked one Fatima Hassan age 15yrs old in the bush at her way back from Kumbula Village, you dragged her Hijab, she fell down, close her mouth and forcefully had sexual intercourse with her. You thereby committed an offence punishable under Section 260 of the Penal Code Law of Sokoto State, 2019.”

After the plea of not guilty of the defendant was taken, the case was thereafter adjourned for hearing. In their efforts to prove the charge against the defendant, the prosecution called three (3) witnesses and tendered five (5) exhibits, marked as **Exhibits A, A1, B, C and C1** respectively.

Exhibit ‘A’ and ‘A1’ are the Hausa and English translated versions of the defendant’s statement which he made at CID Office Sokoto on the **24/7/2019**.

Exhibit ‘B’ is the medical report in respect of one Hassan Fatima dated **20/7/2019** and signed by one Dr. Ayokunle M.A.

Exhibit ‘C’ and ‘C1’ are the Hausa and English translated versions of the defendants statement made at Sabon Birni Police Divisional Headquarters on the **20/7/2019**.

After the close of the prosecution's case, the defence counsel opened their defence and called one (1) witness who happened to be the defendant himself and tender no Exhibit. Thereafter, the case was adjourned for adoption of written address. During the adoption, the defence counsel adopted their written address as their oral legal argument and submissions and finally urge the court to discharge and acquit the defendant. The prosecution on the other hand, also adopted their written address as their oral legal argument and submissions and finally urge the court to convict the defendant as charged.

The defence counsel in his adopted written address, formulated only one (1) issue for determination at paragraph 3.1.1 of his adopted written address and is hereby reproduces as follows:-

“Whether the prosecution has proved all the essential ingredients of the offence of rape beyond reasonable doubt.”

The prosecution on the other, also formulated one (1) issue for determination and is hereby reproduced below as follows:-

“Whether looking at the totality of the evidence adduced before this Honourable Court, the prosecution has proved the offence of rape contrary to Section 260 against the defendant beyond reasonable doubt.”

For the purpose of this Judgment, I have adopted the sole issue formulated by the prosecution with little paraphrasing because the

issue can conveniently dealt with the issue formulated by the defence counsel. That is:-

“Whether looking at the totality of the evidence adduced before this court, the prosecution has proved its case beyond reasonable doubt against the defendant.”

In his adopted written address, defence counsel submitted that the prosecution has failed to lead potent evidence to prove any of the ingredients of the offence with which the defendant was charged.

In his further submission at paragraph **4.1.2** of the adopted written address, the defence counsel argued that the confessional statements of the defendant admitted as **Exhibit A, A1, C and C1** which the prosecution seems to heavily relied on, is both laden with irregularities and the defendant has unequivocally denied ever making them as they were retracted by the defendant at the trial when he was giving evidence as DW1 thereby necessitating this court to carefully evaluate the purported confessional statements with a fine tooth comb.

- **Haruna V. AGF (2012) LPELR 7821.**
- **Solola V. State (2005) UNWLR pt. 937 p. 460.**
- **Alarape V. State (2001) 14 WRN P1.**
- **Idowu V. State (2000) 7 SC pt. II p. 50.**

At paragraph **4.1.9**, defence counsel submitted that since the defendant did not sign **Exhibit ‘C1’** which is the English translated versions of the defendant’s statement at Sabon Birni Police Divisional Headquarters, and has retracted making the statement, the said English

translate version of the defendant's statement with little or even nothing in law.

- Ogudu V. State (2011) LPELR 860

At paragraphs **4.1.10 – 4.1.12** of the adopted written address, the defence counsel submitted that the confessional statements of the defendant are unreliable having contravened the provisions of Section 17(1) and (2) of the Sokoto State 2019.

- Charles V. FRN (2018 LPELR 43922.

- Owhoruke V. Commissioner of Police (2015) 15 NWLR pt 1483 p. 557.

Furthermore, the defence counsel at paragraph **4.1.13** of their adopted written address, submitted that the evidence of PWs1, 2 and 3 are essentially hearsay evidence which is inadmissible.

According to him, PW2 gave evidence of what he was told by the Fatima Hassan while PWs 1 and 3 are police officers whose evidence is inadmissible hearsay. He finally concluded that their evidence is not credible as they all fraught with hearsay testimony.

- Sections 37 and 38 Evidence Act.

- Ojiako V. The State (1991) 2 NWLR pt. 175 p. 578.

- Ugwumba V. The State (1993) 8 NWLR pt. 296 p. 660.

- Oladejo V. State (1994) 6 NWLR pt. 348 p. 101.

The defence counsel also contended that **Exhibit ‘B’** which is the medical report, is inadmissible because it was not tendered through the maker as PW3 through whom it was tendered is a police officer.

- **Monday V. FRN (2020) LPELR 51478.**
- **John V. State (2017) LPELR 48039.**

He finally submitted that failure of the prosecution to call the victim to give evidence, amounts to withholding of evidence detrimental to the prosecution and urge the court to so hold.

- **Commissioner of Police V. Ude (2011) 12 NWLR pt. 1260 p. 189.**
- **Section 167(d) Evidence Act.**

He concluded by saying that in view of the prosecution’s failure to prove all the elements of the offence with which the defendant is charged, the case ought to be dismissed and urge the court to discharge and acquit the defendant.

In her response, the prosecuting counsel submitted that by **Exhibits A, A1, C and C1** as well as **Exhibit ‘B’**, the prosecution has proved the fact? The defendant did in fact had sexual intercourse with a woman below the aged 18 years and urge the court to so hold.

- **Modupe V. State (1998) ALL NLR pt. 371 P1.**
- **Moh’d V. State (2007) 2 NCC 575.**

She further submitted that by the evidence of PW2, and **Exhibits A, A1, C and C1**, it has become very clear that the victim of the crime

never consented but was forced into having sexual intercourse with the defendant by the acts of the defendant against her.

- **Popoola V. State (2014) 10 NCC 497.**

Prosecuting Counsel argued that as to medical report, any of the parties can tender it without calling the medical Doctor who signed it without prejudice to the right of the defendant to call the medical Doctor if he so wish.

- **Olabode V. State (2007) NCC 2.**

It was her submission that once evidence of penetration is established in *rape* cases, then conviction can be sustained.

- **Musa V. State (2013) 8 NCC 464.**
- **Adonike V. State 92015) 11 NCC 97.**

The prosecuting counsel further submitted that although the defendant retracted his confessional statements in his oral evidence before the court, this court is not prevented from relying on it since there are some evidence of corroboration.

- **Nwachukwu V. State (2007) 11 QCCR 110.**
- **Mohammed V. State (2017) NCC 15.**
- **State V. Gwangwan (2016) NCC 12.**
- **Akpan V. State (2000) 2 CLRN 18.**

As to the argument that Section 17(2) of the ACJL of Sokoto State 2019 has not been complied with, the Defendant denied making a statement at either CID or Sabon Birni Police Stations which amounts

to retraction, and retraction according to the prosecution, cannot prevent the court from acting on the statements since the confessional statements were corroborated by other evidence and was recorded in compliance with Section 16(4) of the ACJL of Sokoto State 2019.

She finally submitted that since the prosecution is only required to prove its case beyond reasonable doubt and not beyond any shadow of doubt, the prosecution has produced enough evidence before this court establishing the guilt of the defendant in respect of the offence with which he is charged.

- **Bassey V. State (2012) 7 NCC 379.**
- **Adonike V. State (2015) 11 NCC 97.**

She concluded that the prosecution having produced its case beyond reasonable doubt, she urge the court to convict the defendant as charged.

Let me start by saying that it is trite law that in Criminal cases it is the responsibility of the prosecution to prove its case beyond reasonable doubt against the defendant in respect of the offence with which he is charged.

- **Ajibade V. State (2013) 8 NCC 221.**
- **Smart V. State (216) LPELR 40827.**
- **Akinlolu V. State (2015) LPELR 25986**

The rationale behind this duty, derived its inspiration from the constitutional provision of presumption of innocence in favour of a defendant accused of committing a crime which has been guaranteed

by the provisions of Section 36(5) of the CFRN 1999 as amended and the provisions of Section 135 of the Evidence Act 2011 which provides that whoever assert the existence of a particular fact, has a duty to prove it if he wants him to be believed.

From the charge with which the defendant was arraigned, the defendant was alleged to have committed the offence of *rape* contrary to Section 259 and punishable under Section 260 of the Sokoto State Penal Code Law 2019 against one Fatima Hassan of 15 years old on or about the 19th day of July, 2019 by attacking the said Fatima Hassan in the bush at the outskirt of Kumbula Village of Sabon Birni Local Government Area of Sokoto State.

In its efforts to prove its case, the prosecution called three (3) witnesses and tendered five (5) exhibits.

Section 259 of the Sokoto State Penal Code Law which defines *rape*, provides as follows:-

“A person is said to commit rape who, save in the case referred to in subsection (2), has sexual intercourse with a person in any of the following circumstances:-

- a) against her will; or*
- b) without her consent; or*
- c) with her consent when her consent has been obtained by putting her in fear of death or of hurt; or*
- d) with her consent when the person knows he is not the persons spouse*

and that the consent is given because the person believes that he is another man to whom she is or believes herself to be lawfully married; or

e) with or without her consent when she is of unsound mind or below eighteen years old.”

On the other hand, Section 260 of the said Sokoto State Penal Code Law 2019 which punishes the offence of *rape*, also provides as follows:-

“260 (1) whoever commits rape, shall be punished with imprisonment for life or for a term which shall not be less than twenty one years.”

From the provisions of Section 259 of the Sokoto State Penal Code Law 2019, which defines *rape*, the prosecution for the purpose of proving its case beyond reasonable doubt against the defendant as required by the law, is expected and or required to prove the following elements:-

- i) that the defendant had sexual intercourse with a woman;
- ii) that he had the sexual intercourse with the said woman in any of the circumstances enumerated in subparagraphs (a) – (e) thereof; and
- iii) that there was penetration.

- Section 259(1) of the Sokoto State Penal Code Law, 2019.
- Musa V. State (2013) 9 NWLR pt. 1359 p. 214.
- Iko V. State (2001) 14 NWLR pt. 732 p. 221.
- Jegede V. State (2001) 14 NWLR pt. 733 p. 264.
- Okoyomon V. State (1972) 1 NWLLR 292.
- Ibo V. Zaria Native Authority (1962) NWLR 30.

In **Exhibit ‘A’ and ‘A1’** which is the Hausa and English translated versions of the defendant’s statement made at CID Office, Sokoto on the 24/7/2019, the defendant states as follows:-

“What happened was that on Friday 19/7/2019 at about 1200hrs, I was in the bush doing farming work of water melon, then I saw one girl passing by. I now attacked her, hijabi (head tie) then I dragged her into millet farmland, then I pull her wrapper and also pull her pant and has sexual intercourse with her. From there, I ran away to my house at Kumbula Village.”

The foregoing portion of the defendant’s statement was corroborated by his earlier statement made at the Divisional Police Headquarters Sabon Birni which he made on the 20/7/2019 a day after the incident which was admitted in evidence ad marked as **Exhibit ‘C’ and ‘C1’** for Hausa and English translated versions respectively. The defendant stated as follows:-

“I met with one unknown girl along Yarbu Lutu road, I stop her on the bush and I have sexual intercourse with her to the level that she get seriously injured on her private part.”

From the evidence of PW3 CPC Ibrahim Sahfi’u of the Divisional Police Headquarters, Sabon Birni, the confessional statements of the defendant both the Divisional Headquarters and the State CID Office Sokoto, the confessional statements of the defendant appeared to be true. The said witness testified as follows:-

“...I was instructed by our DPO to take them to hospital i.e. the victim, her relations and the relations of the defendant. The victim was examined by the Doctor and the result given to us by the Doctor, shows that the victim was raped. I took them to our DPO where the defendant confessed to the commission of the offence.”

As to who link him with the commission of the offence, the defendant in his statement at CID Office Sokoto marked as **Exhibit ‘A’ and ‘A1’** for Hausa and English translated versions respectively, stated as follows:-

“I was at the mosque for Friday prayer when she came together with two men. That was when she saw me and pointed at me that I was the one who raped her. I was arrested and taken to Durumbu (Village Head of Kumbula) before handed over to the police...”

Furthermore, the medical report of Fatima Hassan which as admitted in evidence without objection and marked as **Exhibit 'B'**, shows that there was evidence of struggling as established by conjunctiva haemorrhage, neck pain and bruises due to asphyxiation and dehydration as a result of struggling and exhaustion.

The medical report which was dated 20/7/2019 and signed by one Dr. Ayokunle M.A. was concluded with an opinion that impression of the commission of the offence of *rape* against the victim was established.

From the foregoing pieces of evidence as contained in the extra-judicial statements of the defendant and the medical report which disclose that the victim was 15 years old as at 20/7/2019 when she was examined, the defendant can be said to have had sexual intercourse with one Fatima Hassan of 15 years old on the 19/7/2019 against her will.

I therefore agree with the prosecution that the prosecution has proved all the essential elements of the offence of *rape* punishable under Section 260 of the Sokoto State Penal Code Law 2019 and as defined by Section 259 (1) of the same code.

However, looking at the evidence of the defendant as DW1 and the objections raised by the defence counsel in their adopted written address, the question one will ask is whether this court can accept the evidence as led by the prosecution and act upon same in convicting the defendant?

At paragraph **4.1.10** of their adopted written address, the defence counsel submitted that **Exhibits A, A1, C and C1** are unreliable for

contravening the provisions of Section 17 (1) and (2) of the ACJL of Sokoto State 2019 because the statements were not recorded in compliance with the said provisions.

Viewed closely, Section 17 (2) of the ACJL of Sokoto State 2019 in my humble view, applies only where the accused person decided to volunteer a confessional statement to the investigating authority in compliance with the provisions of subsection (1) of the same Section 17 of the ACJL of Sokoto State 2019.

But in this case, the defendant did not even agree that he made any statement at both the Divisional Police Headquarters, Sabon Birni and State CID Office, Sokoto. The defendant in his evidence-in-chief, testified as follows:-

“I have never confessed to the crime I have never made any statement at the police station.”

With the foregoing evidence of the defendant as DW1, the least that can be said, is that the defendant has retracted his confessional statements.

It is trite law that a trial court can convict upon a retracted confessional statement where there are other pieces of evidence outside the confession showing the probability of it's being true, the opportunity of the defendant to commit the crime, and its consistency with other facts that have been ascertained and established.

- Osuagwu V. State (2009) 1 NWLR pt. 1123 p. 523.

In addition to the foregoing, Section 256 of the ACJL of Sokoto State 2019 provides as follows:-

“A certificate signed by any of the officers named in Section 55 of the Evidence Act, shall be admissible in evidence in accordance with the provisions of that Act.”

In view of all the foregoing, it is the humble view of this court that the medical report having been properly tendered and admitted in evidence cannot be tagged as documentary hearsay.

It is also trite law that evidence of an Investigating Police Officer (IPO) of what he personally saw, did or heard in the course of investigation, is not hearsay and is admissible in evidence.

- **Ugwumba V. State (1993) 5 NWLR pt. 296 p. 660.**
- **Oladejo V. State (1994) 6 NWLR pt. 348 p. 101.**
- **FRN V. Saraki (2017) LPELR 43392.**

Although the medical report says there is no genital laceration or bruises, the law is trite that in *rape* cases it is not necessary to prove any injury or rupture of the hymen to constitute the offence of *rape* if there is penetration.

- **Rabiu V. State (2005) 7 NWLR pt. 925 p. 491 ratio 5.**
- **Iko V. State (2001) 14 NWLR pt. 732 p. 221.**
- **Okoyoman V. State (1972) 1 NMLR 292.**
- **Igbine V. State (1997) 9 NWLR pt. 519 p. 101.**

In the case of **Rabiu V. State (Supra)** at page 508 paragraphs B-C I.T. Muhammad JCA (as he then was) while stating what constitute the commission of the offence of *rape*, held as follows:-

“Rape is the unlawful carnal knowledge of a woman by a man forcibly and against her will. Or put more tersely, it is the act of sexual intercourse committed by a man with a woman not his wife and without her consent...”

- **Iko V. State (Supra)**
- **Okoyomon V. State (Supra)**
- **Igbine V. State (Supra)**

In consideration of all the foregoing and the Exhibits having been accepted and believed by this court the only conclusion that can be made from the facts and circumstances collected consequent upon the evaluation of the evidence adduced before this court, is that the defendant's confessional statement were actually made by him voluntarily on the respective dates as indicated on them as well as committed the offence with which he is charged.

I am therefore in complete agreement with the prosecution counsel that the prosecution has proved all the essential elements of the offence of *rape* as required by against the defendant.

The prosecution having proved all the essential elements of the offence, has therefore proved its case beyond reasonable doubt.

- **Ajayi V. State (2013) 53 NSCQR pt. II p. 632.**
- **Ikaria V. State (2013) 8 NCC 248.**
- **Alibi V. State (1993) 7 NWLR pt. 307 p. 511.**

The defendant's statements which are confessional in nature, direct, positive and which admit of all the ingredients of the offence, can be used solely to convict the defendant.

- **Stave V. Usman Isah (2013) 8 NCC 320.**
- **Ajibade V. State (2013) 8 NCC 221.**
- **Mamman V. FRN (2013) 53 SCNQR pt. II p. 183.**

Consequent upon the foregoing, I resolve the sole issue formulated in favour of the prosecution and against the defendant. Accordingly, the prosecution having proved its case against the defendant beyond reasonable doubt in respect of the offence of *rape* punishable under Section 260 of the Sokoto State Penal Code Law, 2019 with which the defendant was arraigned, I hereby find you **Khalifa Sani** guilty and convict you as charged.

ALLOCUTUS

C.B. Sarkin Noma Esq: We plead for leniency on behalf of the convict. He is a first time offender. The convict is a young man who has learnt his lesson and is sober and has been in detention since August 2019. We pray this court to give him an option of fine or a lighter sentence.

P.A. Chadi Esq: To the best of my knowledge, the convict is a first time offender who I am not aware of his previous conviction. We however urge the court to give the convict the minimum punishment as provided in the Section.

SENTENCE

By the provisions of Section 310 (3) of the ACJL of Sokoto State 2019, a trial court after conviction while sentencing, is required to take into consideration all aggravating and mitigating evidence or information as a guide in deciding the nature and extent of the sentence to be passed on the convict.

I have considered the allocutus made by the defence counsel on behalf of the convict as well as the response of the prosecuting counsel.

I have also taken into consideration the provisions of Section 415 (2) (d) of the ACJL of Sokoto State 2019 which prohibit a trial court from passing the maximum sentence on a first offender as well as the wordings of Section 260 of the Sokoto State Penal Code Law, 2019 which punishes the offence and which also give this court the power to exercise some discretion in passing the sentence.

It is trite law that where a statute creating an offence gives the trial court same judicial discretion in passing a sentence, then the trial court can pass a sentence less than the sentence provided for the offence.

- **Amoshima V. State (2011) 14 NWLR pt. 1268 p. 530.**
- **Tanko V. State (2009) 4 NWLR pt. 1131 p. 430.**

Consequently, the convict **Khalifa Sani** is hereby sentence to a fine of ~~N~~200,000 in exercise of my powers under Section 510 (1) of the ACJL of Sokoto State 2019, and in default, serve 5 years imprisonment with effect from the date he was first remanded.

Signed

**Hon. Justice Mohammed Mohammed
(Judge)
23/12/2021**

CERTIFIED TRUE COPY:

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