In the Supreme Court of Nigeria

On Friday, the 1st day of June 2012

Before their Lordships

Walter Samuel Nkanu Onnoghen	.....	Justice, Supreme Court
Ibrahim Tanko Muhammad	.....	Justice, Supreme Court
Suleiman Galadima	.....	Justice, Supreme Court
Nwali Sylvester Ngwuta	.....	Justice, Supreme Court
Olukayode Ariwoola	.....	Justice, Supreme Court

SC.35/2010

Between

Edwin Ezeigbo ..... Appellant

And

The State ..... Respondent

Judgment of the Court
Delivered by
Walter Samuel Nkanu Onnoghen. JSC

This is an appeal against the judgment of the Court of Appeal Holden at Abuja in appeal no. CA/A/51 C/2007 delivered on the 8th day of January, 2008 in which the court dismissed the appeal of the appellant against the decision of the High Court of Niger State of Nigeria, Holden at Suleja in Charge No NSHC/SD/1C/2004 delivered on the 16th day of December 2005 in which the court convicted the appellant of the offence of rape and sentenced him accordingly. The instant appeal is therefore a further appeal against the decision of the said High Court.

The facts of the case include the following:-

On the 8th day of April, 2004 at about 4 p.m, PW.1 saw her two daughters Ogechi and Chioma ages 8 and 6 years respectively in the company of the appellant. The daughters were holding ice cream. When PW.1 called the two girls appellant changed direction and continued to walk away with the girls who also ignored their mother, PW.1. PW.1 became apprehensive and ran after appellant and the girls. On seeing PW.1 running towards them, appellant abandoned the girls and took to his heels.

Later upon inquiring, the girls narrated how appellant used to lure them to his shop to have sexual intercourse with them and on one occasion he gave ₦30.00 to Ogechi and ₦10.00 to Chioma in return. The information was relayed by PW.1 to her husband who reported the matter to the police.

The issue for determination as formulated by learned counsel for appellant, P.O. Okolo Esq., in the appellant brief filed on 7th April, 2010 is as follows:-

> "Can it be said that the evidence of PW.5 that the disappearance of the hymen of the two children was caused by the penetration of penis into their virginals severally amount to sufficient corroboration of PW.2's evidence that the appellant had sexual intercourse with her?"

On the other hand, learned counsel for the respondent, M.G Chiroma Esq. in the brief of argument filed on behalf of the respondent on 30th August, 2010 formulated the following issue for determination, to wit:-

> "Whether besides the evidence of PW.5 who introduced Exhibit 2, there is no other evidence corroborating the evidence of PW.2 to sustain the conviction against the appellant before the court".

Looked at very closely, the two issues are almost the same except that the issue formulated by learned counsel for appellant emphasized on sufficiency of corroboration of the evidence of PW2.

In arguing the issue, learned counsel for appellant submitted that the lower court was in error in holding that the evidence of PW.2 - the unsworn evidence of a child - was corroborated by the evidence of PW.5 - a medical doctor, as PW.5 never stated

that it was the penis of appellant that penetrated PW2's virginal; that PW.5 never mentioned appellant throughout his evidence as the person responsible for the penetration.

It is the further submission of counsel that the evidence of PW.5 together with the medical report, Exhibit 2 which he tendered are not capable of corroborating the evidence of PW.2. Relying on the case of *Okpanefe v The State, (1969) ALL NLR 411* learned counsel submitted that though Exhibit 2 confirms the fact of rape of PW.2, it does not corroborate in any way PW.2's story that it was the appellant that committed the rape and urged the court to resolve the issue in favour of appellant and allow the appeal.

On his part, learned counsel for respondent submitted that having regard to the totality of the evidence on record, particularly the evidence of PW2 and PW5 and Exhibits 1 and 2, the prosecution proved its case beyond reasonable doubt, that PW.2 testified that on the 8th day of April, 2004, appellant took her and her younger sister Chioma to his shade at Old Minna Garage, Suleja where appellant asked her to lay on top of a chair while he pulled off his trousers and laid on top of her and put his penis inside her private part, resulting in her feeling pain while blood and white thing came out of her private part. Appellant later gave PW. 2 ₦30.00 and warned her not to tell anybody about it; that Exhibit 2 shows that there was rupture in the hymen of PW.2 due to penetration by penal sharp (penis) as testified to by PW.5.

Turning to the submission of counsel for appellant to the effect that neither Exhibit 2 nor PW.5 linked appellant with the commission of the offence, learned counsel submitted that the gist of the offence of rape is penetration which has been established in this case; there is no doubt that the offence of rape was established but what appellant disputes is the fact that he had not been linked with the commission of the offence as the offender.

It is the further contention of counsel for respondent that evidence of PW.2, an unsworn evidence of a child needed corroboration to ground a conviction and that in the instant case such corroboration exists in the evidence of PW.5 and Exhibit 2; that the acts of the appellant in running away upon being confronted by PW.1 after buying the children ice cream and zobo together with appellant going to plead with the parents of the girls constitute further evidence of corroboration of the evidence of PW.2 to the effect that appellant raped her and her younger sister.

Finally counsel urged the court to dismiss the appeal and affirm the conviction and sentence of appellant

It is settled law that for the prosecution to sustain a conviction against the appellant under Section 283 of the Penal Code, the following ingredients of the offence must be established by evidence.

(i) That the accused had sexual intercourse with the women in question;

(ii) That the act was done in circumstance envisaged in any of the five paragraphs of Section 282(1) of the Penal Code;

(iii) That the woman was not the wife of the accused; or if she was the wife, she had not attained puberty;

(iv) That there was penetration.

However, Section 282(1) of the Penal Code provides as follows:-

> "A man is said to commit rape who save in the case referred to in subsection 2 had sexual intercourse with a woman in any of the following circumstances:-
>
> (a) Against her will,
>
> (b) Without her consent,
>
> (c) With her consent, when her consent has been obtained by putting her in fear of death or hurt,
>
> (d) With her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
>
> (e) With or without her consent when she is under fourteen years of age or of unsound mind"

Looking at the totality of the case as presented and the defence thereto, it is very clear that the fact that PW.2 was raped is not in dispute at all. It is in fact not being disputed by appellant. What appellant is contending is that he has not been linked with the commission of the offence in question by the evidence on record: particularly Exhibit 2 - the medical report and the evidence of PW.5, the medical doctor who examined PW.2 and also testified at the trial.

Corroboration in respect of the offence of rape is evidence which tends to show that the story of the prosecutrix that the accused committed the crime is true - See *Samba v. State (1993) 6 NWLR (Part 300) 399; Upahar v. State (2003) 6 NWLR (Part 816) 230*.

Corroboration need not consist of direct evidence that the accused committed the offence charged, nor need it amount to a confirmation of the whole account given by the witness/prosecutrix. It must, however, corroborate the said evidence in some respects material to the charge in question. It is also settled that corroborative evidence must in itself be a completely credible evidence.

What did the trial court which heard the evidence find? At page 98 of the record the court found/held as follows, inter alia.

> "... the testimony of PW.2 is that accused had sexual knowledge of PW.2. PW.2 testified that accused lied on her and then had sex with her by putting his penis into her yash. The learned counsel to the accused in his written sum-up contended that in general parlance buttock is referred to as yash.
>
> I am of the view that since the defence is aware that "yash" means buttock and since PW.2 a girl of tender age has described her own yash as being in front, one can reasonably assume that her yash which is in front is her private part. Since PW.2 gave evidence to the effect that the accused put his penis in her private part and blood and white liquid came out of her body, I am satisfied that the accused person has sexual knowledge of PW.2 and that there was penetration .... PW.4 (5) the medical doctor who medically examined PW.2 and her junior sister Chioma Elechi found that the hymens of the two of them were not intact. He expressed the opinion that the disappearance of the hymen might have been caused by penetration into the virginals and that the virginals of the two girls must have been penetrated by penis severally.
>
> PW.4 said that severally means more than two occasions. PW.4 later tendered the medical report which was admitted as Exhibit 2. PW.4 wrote in part in Exhibit 2 that he made an assessment of sexual exploitation by a man on the two children.
>
> In view of the testimony of PW.4 that he made an assessment of sexual exploitation by a man on the two children, and since according to PW.2 it was the accused that had sexual intercourse with her, I am satisfied that the above testimony of PW.4 and Exhibit 2 sufficiently corroborated the testimony of PW.2 that accused had sexual intercourse with her ...."

The question that follows is what is the reaction of the lower court to the above findings of fact by the trial court?

At page 110 of the record, the lower court held as follows on the issue as to whether there was corroboration of the evidence of PW.2.

> "The evidence of PW.4, a medical doctor who examined PW.2 and her sister made an assessment of sexual exploitation by a man on the two children. He found that the disappearance of the hymen of the two children was caused by penetration of penis into their virginals severally - meaning more than two occasion.
>
> I confirm the opinion of the learned trial judge that this piece of evidence of PW.4 sufficiently corroborated the evidence of PW.2 that the appellant had sexual intercourse with her .... No separate medical examination is required to be conducted on the appellant for the purpose of linking him with the commission of the crime. Lack of medical examination on him immediately after the incident is not fatal to the prosecution".

From the above findings it is clear that the lower courts made concurrent findings of facts in relation to the issue of corroboration in particular. I have carefully gone through the record and am of the considered view that the said findings are supported by the evidence before the court and consequently are not perverse. It is settled law that this court, the Supreme Court of Nigeria does not make a practice of setting aside concurrent findings of facts by the lower courts except where such findings are not supported by the evidence on record or are perverse etc, etc. In the instant case, learned counsel for appellant has not demonstrated that the concurrent findings of fact in relation to corroboration is perverse so as to make it necessary for this court to set same aside. See *Awoniyi v Shooleke (2006) 8 NJSC 34 at 49; Omoboriola v Malitary Governor of Ondo State (1998) 14 NWLR (Part. 584) 89 at 107.*

The above being the case, it is clear that the issue under consideration is without merit and is accordingly resolved against appellant.

In conclusion appeal is unmeritorious and is consequently dismissed by me.

Judgment delivered by
Ibrahim Tanko Muhammad. JSC

The facts revealed in this appeal are sordid and can lead to a conclusion that a man can turn into a barbaric animal, When the appellant was alleged to have committed the offence of rape, he was 32 years. His two young victims: Ogechi Kelechi 8 years old and Chioma Kelechi 6 years, were, by all standard, under aged. What did the appellant want to get out of these under aged girls? Perhaps the appellant forgot that by nature, children, generally are like animals. They follow anyone who offers them food. That was why the appellant, tactfully induced the young girls with ice cream and zobo drinks in order to translate his hidden criminal intention to reality, damning the consequences. Honestly, for an adult man like the appellant to have carnal knowledge of under aged girls such as appellant's victims is very callous and animalistic. It is against the laws of all human beings and it is against God and the state. Such small (under aged) girls and indeed all females of whatever age need to be protected against callous acts of criminally like minded people of the appellant's class. I wish the punishment was heavier so as to serve as deterrent.

Learned counsel for the appellant dwelt on the issue of corroboration of the evidence, especially the unsworn evidence of PW2. But it is in evidence that the appellant himself admitted knowing his victims for whom he used to buy ice-cream and sobo (Zobo) drinks. He admitted under cross-examination that he went to PW1 (victims' mother) and her husband to beg them to settle the matter:

> "I went to Cecilia and her husband that I wanted to settle this case they demand (ed) for 40,000.00 and I refused to give them."
>
> (Part 45 of the record)

It is difficult for the appellant to wriggle out of the conviction and sentence doled out to him by the trial court and affirmed by the court below. I see no why for it.

For this and the detailed reasons in the lead judgment with which I entirely agree, I too dismiss the appeal and affirm the concurrent decisions of the two courts below.

Judgment delivered by
Suleiman Galadima. JSC

The Appellant in this appeal was arraigned before the Suleja High Court, Niger State of Nigeria on two count charge of rape, which read as follows:

> "(a). That you Edwin Ezigbo on or about the 5th of April, 2004 at old Minna Motor Park Suleja within the jurisdiction of High Court of Niger State, sitting at Suleja, had carnal knowledge of Chioma Kelechi a six years old girl being an under age girl you thereby committed an offence of rape contrary to Section 282 of Penal Code.
>
> (b). That you Edwin Ezigbo on or about the 4/4/2004 at old Minna Motor Park Suleja within the Jurisdiction of High Court of Niger State had carnal knowledge of Ogechi Kelechi an eight years old girl being an under age girl you thereby committed an offence of rape contrary to Section 283 of Penal Code."

During the trial, 4 witnesses testified for the prosecution, while the Appellant testified alone in his own defence. In its judgment, the learned trial Judge convicted and sentenced the appellant on the charge to 2 years imprisonment. In addition the Appellant was ordered to pay ₦500.00 and failure to pay this the Appellant was to serve another 3 months imprisonment. He was however, discharged on the first count charge for want of evidence.

Dissatified with this decision the Appellant appealed to the Court of Appeal Abuja, where his appeal was dismissed. Hence this further appeals to this court.

The brief facts of this case are that on 4/4/2004 around 4 pm one Cecilia Elechi PW1, saw her two daughters, Ogechi and Chioma ages 8 and 6 years respectively in the company of the Appellant, holding ice cream. When PW1 called the two girls, appellant changed his direction and continued to walk away with the two girls who also ignored PW1 their mother. Anxious to know the fate of her daughters PW1 pursued the appellant and her daughters. Sensing that he was in trouble, the Appellant took to his heels abandoning the girls, who later narrated the shameful sexual escapade meted unto them by the Appellant. It was revealed that the Appellant used to lure the young girls with paltry sum of money to his shop in order to satisfy his sexual urge.

Learned Counsel for the Appellant has raised the following issue for determination.

> "Can it be said that the evidence of PW5 that the disappearance of the hymen of the two children was caused by the penetration of penis into their vaginas severally amount to sufficient corroboration of PW2's evidence that the Appellant had sexual intercourse with her?"

The Respondent's issue for determination on the other hand reads as follows:

> "Whether besides the evidence PW5 who introduced Exhibit 2, there is no other evidence corroborating the evidence of PW2 to sustain the conviction against the Appellant before the court,"

On 8/3/2012 this appeal was heard. M.G. Chioma (Asst. Chief State Counsel (MOJ, Minna), having identified the Appellant's brief of argument on 7/4/2010 has urged the court to allow the appeal and set aside the judgment of the lower court.

On the other hand learned counsel for the Respondent identified his brief of argument filed on 30/8/2010. He urged this court to dismiss the appeal.

In his argument on this issue learned counsel for the Appellant has submitted that the lower court erred in holding that the evidence of PW2, which is an unsworn evidence of a child was corroborated by evidence PW5, a Medical Doctor. Relying on the cases of *R v. Sekun & Other (1941) 7 WACA 10* and *Latifu Saraki v. R (1964) NMLR 28,* he submitted that when a piece of evidence requires corroboration what to look for is an independent testimony in support of the evidence.

It is further submitted that the evidence of PW5 together with the Medical Report Exhibit 2, which he tendered are not capable of carroborating the evidence of PW2. It is contended that there is nowhere in the evidence of PW5 or in Exhibit 2 that the name of the Appellant was mentioned. Reliance was placed on the cases of *Thomas Idiemo v. Inspector General of Police (1957) 2FSC 26* and *Francis Okpanefe v. The State (1969) All NLR 411.*

The learned counsel for the Respondent, on his part, in the brief of argument drew our attention to what he referred to as his "Observation/Objection" to the Appellant's sole issue raised for determination of the appeal. Besides the fact that the preliminary objection was not raised in accordance with the Rules of this court, this sham and unnecessary objection should not have been made in this court. The ground of his objection is that the only issue the Appellant has formulated for determination of the appeal is not tied to any ground of appeal, for this reason the said ground of appeal is deemed abandoned. It is preposterous for the learned counsel for the Respondent to contend that there was no ground of appeal at all in the Appellant's Notice of Appeal; and yet he raised the same Issue for determination based on the ground not dissimilar. The objection is unnecessary and is overruled.

However, the learned counsel for the Respondent sensing the futility swayed and argued the issue in contention. He submitted that having regard to the entire evidence on record, most particularly the evidence of PW2 and PW5 and Exhibits 1 and 2, the prosecution had proved its case beyond reasonable doubt. That PW2 gave vivid account of how she was desecrated by the appellant who took her and her younger sister to his shop and forcefully inserted his penis inside her vagina. She bled and sustained injury and was given ₦30.00 (thirty naira) to keep the affair secret. PW5 testified that the examination of PW2 shows that there was rupture in PW2's hymen due to penetration by panel object suggesting the forceful penetration of appellants' penis.

On the submission of learned counsel for the appellant to the effect that neither Exhibit 2 nor PW5 linked appellant with the commission of the offence, learned counsel for Respondent, relying on the case of *Iko v. The State (2001) 14NWLR (Part 732*) 221 At Page 226, submitted that the basic element of the offence of rape is penetration, however slight; is sufficient and it is not necessary to prove injury to the victim. Learned Counsel conceded that the unsworn evidence of PW2, a child needed corroboration to ground a conviction and that in this case such corroboration exists in the evidence of PW5 and Exhibit 2. That the conduct of the appellant on the day in question provided sufficient corroboration. For instance, the appellant seen running away instead of explaining or exonerating himself before PW1. That the appellant admitted knowing PW1 and the sister Chioma. He bought ice cream and "zobo" drink for them (See Exhibit 1). That he pleaded with the parents of the two girls to settle the case. All these are further evidence of corroboration of the evidence of PW2 to the effect that the appellant raped her and her younger sister.

In the light of the forgoing the counsel urged the court to dismiss the appeal and affirm the conviction and sentence of the appellant.

For the prosecution to sustain a conviction of the appellant under section 283 of the Panel Code, the ingredients of the offence must be established as follows:

(a) That the accused had sexual intercourse with the woman in question.

(b) That the act was done in circumstances falling under any of the five paragraphs in Section 282 (1) of the Panel Code;

(c) That the woman was not the wife of the accused or if she was the wife, she had not attained puberty.

(d) That there was penetration.

See *Ibo v. Zaria Native Authority (1962) NWLR 30; Jos Native Authority v. Allah NA Gani (1967) NMLR 107 and Okoyomon v. State (1972) 1 NMLR: 292.*

However Section 282(1) of the Panel Code provides that:

> "A man is said to commit rape who save in the case referred to in subsection 2 had sexual intercourse with a woman in any of the following circumstances:-
>
> (a) Against her will
>
> (b) Without her consent
>
> (c) With her consent when her consent has been obtained by putting her in fear of death or hurt.
>
> (d) With her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
>
> (e) With or without her consent when she is under fourteen years of age or of unsound mind. "

Essentially the elements listed 5.282 (1) (a) (b) (e) have been proved by the prosecution. It is a fact that PW2 was raped by the appellant. His contention that he has not been linked with the commission of the offence in question by the evidence on record is untenable. The evidence of PW2 and PW5, the medical Doctor who examined her and Exhibit 2 show that the appellant committed the crime Corroboration in respect of the offence of rape is evidence which tends to show that the statement stay of the prosecutrix that the accused committed the crime is true: See *Uphar v The State (2003) 6NWLR (Part 816) 230*.

Corroboration need not consist of direct evidence that the accused committed the offence charged nor need it amount to a confirmation of the whole account given by the witness or prosecutrix. See *Sambo v State (1993) 6NWLR (Part 309) 399*.

In considering whether some evidence is corroborative of some other, the court must take all the little items of the former together and consider whether they add up to corroboration as a whole.

PW2 gave evidence of the appellant having sexual intercourse with her as a result of which blood and white substance came out of her vagina. The evidence of PW2 was sufficiently corroborated by other material evidence, particularly that the appellant offered money to the parents of the prosecutrix for the purpose of persuading them not to report the matter to the police.

There has been evidence of penetration when PW2 gave evidence herself. This evidence was sufficiently corroborated by the evidence of PW5 a Medical Doctor who examined PW2 and her sister. The lower courts made concurrent findings of fact in relation to the issue of corroboration. These findings are supported by the evidence before the courts and are not perverse. This court does not make a practice of setting aside concurrent findings of facts by the lower court, except where such findings are not supported by the evidence on record or are perverse. The appellant in the instant case has not demonstrated that the concurrent findings of facts in relation to corroboration are perverse. It is therefore not necessary to set aside the said findings.

In the light of the foregoing, I agree with my learned brother Onnoghen. JSC with his conclusion that the appeal lacks merit and should be dismissed. I accordingly dismiss it.

Judgment delivered by
Nwali Sylvester Ngwuta. JSC

I had the privilege of reading in draft the lead judgment of My Noble Lord, Onnoghen, JSC. I adopt His Lordship's reasoning and conclusions.

The issue formulated by learned Counsel for the appellant, not unlike to the lone issue formulated by the learned Counsel for the respondent reads:

> "Can it he said that the evidence of the PW5 that the disappearance of the hymen of the five children was caused by the penetration of penis into their virgin severally amount to sufficient corroboration of PW2's evidence that the appellant had sexual intercourse with her?"

The rupture of the hymen of PW2 as testified to by the Medical Doctor PW5 and as shown in the report Exhibit 2 which he tendered shows that the PW2 had been violated several times by the opposite sex. It corroborated the evidence of the PW2 that she was raped. Though the evidence of the PW5 and Exhibit 2 fell short of corroborating the evidence of PW2 that she was raped by the appellant, the appellant himself provided the missing link between himself and the crime with which he was charged.

He did so when he approached the parents of the PW2 and pleaded with them for forgiveness for what he had done to their daughter the PW2. In my view, this plea amounted to a voluntary and unsolicited confession to the commission of the crime and corroborates the evidence of the PW2. By his plea to the parents of the PW2 (his victim) appellant gave himself up to the law and became his own accuser.

Based on the above and the fuller reasoning in the lead judgment, I also dismiss the appeal as devoid of merit. Consequently, I affirm the judgment of the lower Court which endorsed the conviction of the appellant by the trial Court.

Judgment delivered by
Olukayode Ariwoola. JSC

I have had the privilege of reading in advance the leading judgment of my learned brother, Onnoghen, JSC ably rendered. I am in total agreement with the reasoning and the conclusion that the appeal is without merit and substance. It deserves to be dismissed. Accordingly, it is hereby dismissed by me.

Counsel

P. O Okolo *with him* P. E. Ossai (Mrs) J.J Mohammed I. S. Afegbua	…..	For the Appellant
M. G Chiroma *ACSC (Ministry of Justice, Niger State)* S. J Anyanyi (Mrs) *State Counsel II* Christiana Barau (Mrs) *SCII*	…..	For the Respondent