YAKUBU RABI'U

V.

KANO STATE

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

SC/CR/334/2024

***JOHN* INyANG OKORO**
TIJJANI ABUBAKAR
HABEEB AbEWALE OLUMUyIWA ABIRU
JAMILU yAMMAMA TUKUR
MOHAMMED BABA IDRIS

FRIDAY, 4TH JULY, 2025

Criminal Law & Procedure: Proof in criminal cases – onus on prosecution – whether require to proof case beyond reasonable doubt – nature of proof beyond reasonable doubt – the principle in Miller vs. Minister of Pensions (1947) 2 ALL ER 372

Criminal law & Procedure: Proof beyond all reasonable doubt – meaning and nature thereof – the principle in Ikpong vs. State (2025) LPELR-80974 (SC)

Criminal Law: Rape – intendment of medical report – whether to establish the issue of penetration in the case of rape

Criminal law: Rape – medical evidence – where medical evidence is supported by evidence – whether appellant cannot discredit medical evidence

Criminal law: Rape – absence of consent of victim – where a girl of 12 years is raped – whether such a victim is incapable of giving consent – the principle in Natasha vs. State (2017) LPELR-42359(SC)

Criminal law: Rape – evidence of age of the prosecutrix not challenged by the appellant – whether court will take the evidence of age as proved

Criminal law: Rape – importance of penetration – whether rupture of the hymen or emission of semen is not necessary to prove rape

Criminal Law & Procedure: Rape – corroboration of evidence of prosecutrix – whether there is no law requiring the evidence of prosecutrix – duty on court to warn itself – whether can be dispensed in certain situations

Criminal Law & Procedure: Evidence of prosecution witnesses – where there are minor discrepancies therein – whether it is only substantial contradictions and not minor discrepancies that are material

Issue:

Whether the lower court was right in affirming the judgment of the Trial Court which held that the prosecution proved the offence of rape as charge beyond reasonable doubt.

Facts:

The Accused/ Appellant was charged and arraigned at the High Court of Kano State for the offence of rape contrary to section 283 of the Penal Code of Kano State. The accused was alleged to have rape one Hajara Tukur, a 12 years old, which occurred on the 4th October 2011.

At the hearing of the case, the prosecution called four witnesses and tendered three exhibits. In his defence, the appellant testified on his behalf and called two additional witnesses.

At the close of hearing, the trial court convicted the Accused/Appellant as charged and sentenced him to ten years imprisonment.

Dissatisfied, the Accused/Appellant unsuccessfully appealed to the Court of Appeal Kaduna Division, hence this further appeal to the Supreme Court.

Held (unanimously allowing the appeal)-

1. *On onus and nature of proof on the prosecution in criminal cases-*

It is trite law in our criminal jurisprudence that the prosecution bears the burden of proving the accused 's *guilt* beyond a reasonable doubt. However, such proof is not beyond all doubt. This critical distinction means the evidence must be so compelling that it leaves no reasonable uncertainty in the mind of the court, even if a rernote or fanciful possibility remains. In *Ugwanyi* v. *FRN* (2012) LPELR-7817(SC), this Honourable Court reaffirmed the guidance of Lord Denning in *Miller* v. *Minister* of *Pensions* (1947) 2 E.R. 372 thus:

> **"...*That proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted of fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibililty in his favour which can be dismissed with the sentence "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt but nothing short of that will suffice.* See *also Lori* v. *State* (1980) 8-11 *S.C.* at 81"**

2. *On nature of proof beyond all reasonable doubt -*

Similarly, in the recent case of ***Ukpong*** **v**. ***State (2025) LPELR - 80974 (SC)*** , my learned brother Stephen Jonah *Adah* , *JSC* At (Pp. 20 - 21 Paras E - E) while delivering the *lead* judgement, stated thus:

> **"*Proof beyond reasonable doubt is the statutory burden placed on the shoulders of the prosecution by Section*** *35(2) of the Evidence Act 2011 . The requirement of* ***the law is that for this burden to be discharged by the prosecution***, ***the prosecution must walk through the*** *evidence available* ***to*** *establish the ingredients of the offence(s) for which the accused person was charged*. *The evidence required to prove the offences and rebut the presumption of innocence of the accused would be direct evidence or circumstantial evidence*, *or the confessional statement of the accused person*. *It must* ***be noted here, however, that proof beyond reasonable doubt is not proof beyond every shadow of doubt or proof to the guilt***. ***The burden is discharged where all the essential ingredients of the offence charged have been established or proved by the prosecution through credible, compelling***, ***conclusive and reliable evidence***. ***See Alabi v***. ***The State (1993) 7 NWLR (Pt***. ***307) 51 1***. ***523; Osuagwu v***. ***The State (2013) 5 NWLR (Pt***. ***1347) 360***. **"**

3. *On intendment of medical report in a case of rape -*

It is on record that the Respondent, in proving the ingredients of the offence of rape as charged i.e. that the Appellant had sexual intercourse with the victim in question, relied on Exhibit **A**, a medical report tendered by the prosecution which was not objected at the trial court. The expert opinion of the medical practitioner who examined the victim. suggested that her hymen was raptured, which could indicate vaginal penetration. I am not oblivious to the Appellant's argument seeking to discredit the medical report, describing it as vague, speculative, and insufficient under legal standards. However, I respectfully disagree. The Appellant has misunderstood the role of rnedical evidence in rape cases. While a medical report is not always essential, especially in rural settings, it becomes important when the accused denies the offence. In such circumstances, the Court is encouraged to look into a medical report *so* as to confirm injury to the private part or other parts of the body of the rape victim. In other words, the intendment of a medical report is to establish injury sustained to the private part, i.e. the vagina, or any other part of the body of an alleged rape victim and nothing more.

The medical report in the instant case indicated that a ruptured hymen could suggest vaginal penetration, effectively pointing towards the commission of sexual intercourse. In my respectful view, this finding supports the conclusion of penetration which is the most important ingredient in proof of

the offence of rape. I will return to the issue of penetration later in this judgment.

4. *On where other evidence supports medical report in a case of rape -*

The Appellant, however, challenged the report as vague and speculative, claiming it failed to meet the necessary legal standard as enumerated in the case of ***Iko* V *State (Supra)***. Yet, this criticism misses the point, as the respondent *did* not solely rely on the medical evidence to prove his case. In addition to the evidence, the Respondent tendered Exhibit B which is the Appellant's confessional statement, in which he admitted to committing the offence.

It is noteworthy that legally, an intact hymen or *lack* of injury is no barrier to proving rape. The law is *clear* that any penetration. however slight, is sufficient to establish the offence, proof of hymenal rupture is not required. Furthermore, the confessional statement (Exhibit B) even standing alone, is sufficient to ground a conviction if it was made voluntarily, clearly, and unequivocally. Taken together, the medical findings and the confession constitute compelling, legally sufficient evidence of rape. The Appellant's attempt to isolate and discredit the medical report fails.

5. *On when a victim is incapable of giving consent in a case of rape-*

It is not in dispute, as confirmed by the records, that the prosecutrix was under the age of fourteen at the time of the alleged incident. During her testimony on *23rd* April 2013, when she was asked her age, she stated she was 13 years *old*, This places her at approximately 12 years *old* when the incident occurred in 2012, rendering her legally incapable of giving consent to sexual intercourse.

Under Section 282(1)(e) of the Penal *Code*, any female below the age of 14 is deemed incapable of consenting to sexual intercourse, regardless of whether they appear to do so. This principle is further affirmed in *Natsaha* Vs *State (201* 7) *LPELR - 42359* ***(SC)*** *and also* ***Isa v***. ***The Kano State (2016) LPELR - 4001 1 SC Pg*** . ***10-11*** . In the latter case this Court held that;

> '...***the act of rape*** *is* ***by nature unlawful because the concept involves an aggressive carnal knowledge of a female without her consent***. ***Consent in this context*** *must be devoid of any form of external influence*. *A* ***child who is under age is not however capable of giving consent***. ***Rape by nature is grave***, ***devastating and traumatic***. ***It also reduces the totality of the victim's personality***. ***Several definitions given to rape are all characterized by an absence of consent as a common feature .***

6. *On where appellant did not challenge the age of the prosecutrix -*

Notably, the Appellant *did* not contest the victim's age, and the prosecutrix was not cross-examined on this aspect. It is therefore appropriate to hold, and I so do, that at the time of the incident, the prosecutrix was under the statutory age required by law to *give c*onsent to the act. Specifically, she was approximately 12 years *old in* 2012, well below the threshold. Furthermore, it is undisputed from the outset to this case that the victim was never, at any rnaterial time, married to the Appellant. This issue was neither contested nor relied upon by the Appellant in his defence to the charges. In the absence of any *clear* evidence to the contrary, it must safely be *held* and I so hold that the prosecutrix was never the Appellant's wife. See **Mohammed v**. ***State (2022) LPELR - 57348(SC)***.

7. *On importance of penetration in rape cases -*

Coming back to the issue of penetration, the position of the law as was upheld by this Court in plethora of *cases* is that the most important *and* essential ingredient of the offence of rape is penetration. The Court will deem that sexual intercourse has taken place upon proof of penetration of the penis into the vagina and the slightest penetration of the penis, will be sufficient to constitute the act of sexual intercourse. Emission or the rupture of the hymen *is* unnecessary to establish the offence of rape. See I***di* A**. ***State*** *(2017) LPELR - 42587 SC*.

On this issue, I *agree* with the Respondent that Exhibit **A**, the medical report, together with PW3's testimony describing her harrowing experience and the pain she felt, strongly indicates that some degree of penetration, even if slight, occurred. In addition, the Appellant himself confessed in Exhibit B, the confessional statement admitting to the commission of the offence. These two exhibits (A and B) thus serve as corroborative evidence supporting one another and collectively linking the accused to the crime. Thus, the medical findings, *first-hand* testimony, and the Appellant's confession each independent, cogent, and mutually reinforcing, create a strong evidential foundation *for* establishing penetration.

8. *On corroboration of evidence of prosecutrix in a case of rape* -

Similarly, as a general rule, no corroboration is required *for* the evidence of a Prosecutrix in a trial *for* the offence of rape. No law dernands that a *Prosecutrix's* evidence must be corroborated *for* it to ground the conviction of an accused person standing trial *for* the offence of rape. The only caveat is that it is not safe to convict on the uncorroborated evidence of the prosecutrix. The court is advised to warn itself of the inherent risk of conviction on the uncorroborated testimony of the prosecutrix. However, where there is enough evidence from which the trial judge can reach a decision, then there is no need to warn itself of the danger of acting on the uncorroborated evidence of the prosecutrix.

It is, in my humble view, unnecessary in this case *for* the court to issue a warning to itself about relying on uncorrodbrated evidence of the prosecutrix. Exhibits A *and* **B**, together with the testimonies of the other prosecution witnesses, provide robust corroboration. The medical report, the appellant's voluntary confessional statement, and the flow *and* credibility of the witness testirnonies independently reinforce each other. Therefore, the prosecutrix's evidence was supported by multiple, rnaterial forms of corroborative *proof* . See *Ogunbayo* V. *State* *(2007) LPELR* - ***2323(SC) 2007 S***. ***C***

9. *On effect of minor discrepancies in evidence -*

Learned counsel *for* the Appellant has vigorously argued that there are contradictions in the prosecution witnesses' evidence. Having carefully reviewed the record, it appears that what counsel describes as contradictions are in fact minor discrepancies, primarily concerning dates. Such differences typically *arise* frorn normal human limitations, errors in observation, lapses in mernory over time, or the mental trauma of shock and horror at the time of occurrence. Importantly, *for* contradictions to affect a criminal *case*, they must relate to a material *issue*, one that impacts the substance of the offence. Minor discrepancies that do not affect essential elements are legally immaterial and pose no threat to the prosecution's case. See ***Shaibu*** V. ***State*** ***(2017)*** L***PELR- 421 OO(SC)*** *2017 S.C*

10. *Per Jamilu Yammama Tukur,JSC -*

Where witnesses recount the same event with slight variations, it often enhances credibility and clearly reflects the ordinary human memory. As the Court observed in many *cases* , if the testimnonies of witnesses were exactly identical, that may very well strongly suggest coaching or collusion. In this case, no such material contradictions exist. The testimonies, though varied in rninor particulars, remain consistent on the key *facts* and elements of the offence. Consequently, there is no merit in the appellant's contention, and his arguments fail to disrupt the significant weight *of* the prosecution's evidence. See ***Galadima*** **V**. ***State*** ***(201 7) LPELR-43469(SC) 201 7 S. C***

I conclude by reiterating the respondent's observation. For nine years, the appellant (a *35-year-old* man) served as a respected village head in Mahauta village, someone of high standing, whom people consulted *for* guidance. It strains credulity that such a person would allow a friend to trick him into confessing to a heinous crime like rape, *fully* aware of the gravity of the accusation. Were he truly innocent, he would have vigorously defended his honour before it was irreparably besmirched.

In my view, the retraction of his confession is nothing more than an afterthought and will not avail the Appellant. A rational adult, cognisant of the

consequences, would not falsely admit to raping anyone if he knew the allegation to be untrue.

After thorough review of all evidence. the prosecution has incontrovertibly met its burden of proof beyond reasonable doubt. having established each essential element of the offence of rape. I therefore hold that the Appellant *did* rape the prosecutrix and is guilty of the offence as charged.

This *sole* issue is therefore resolved in favour of the respondent.

History of the case:

Supreme Court:

Names of Justices who sat on the appeal: John Inyang OKoro, Tijjani Abubakar, Habeeb Adewale O. Abiru, Jamilu Yammama Tukur, Mohammed Baba Idris

Appeal No: SC/CR/334/2024

Date of judgment: Friday, 4th July, 2025

Names of Counsel: Victor U. Udeh Esq. with Ekeere E. Bassey Esq for the Appellant.

Nasara Danmallam Esq with the fiat of Attorney General Niger State, for the Respondent

JAMILU, JSC (Delivering lead Judgment): This is an appeal against the Judgement of the Court of Appeal sitting at the Kaduna Division (hereinafter referred to as the "Lower Court"), delivered on 16th day of December 2019 with Appeal No. CA/K/438/2019 wherein the Court dismissed the appeal of the Appellant and affirmed the judgment of the Trial High Court of Kano State.

The facts of the case are that the Appellant, a *35-year-o* ld man, was arraigned on 16th May *2012* on a charge of rape involving one Hajara Tukur, a 12-year-old *girl*, alleged to have occurred on the 4th October 2011 at approximately 07:30 hours at Filing Kwallo Quarters Dambatta, Kano State, in Charge No: K/290c/2011, The incident was reported to the Divisional Police Station, Dambatta, by PW4, the victirn's elder brother. Upon being invited by the police, the appellant presented himself at the station, where he was detained and subsequently transferred to the State Criminal Investigation Department (CID), Kano.

At the Divisional Police Headquarters, Dambatta, the Appellant made a confessional statement admitting to the commission of the alleged *offence* , but later retracted the *said* statement. Upon conclusion of the investigation the Attorney-General of Kano State applied *for* and obtained leave to prefer a charge against the ppellarit. Consequentlyf Charge No: K/190c/2011 was instituted at the High Court of Kano State against the Appellant, wherein he was charged with the offence of rape, contrary to Section 283 of the Penal *Code* of Kano State

At the hearing of the case, the prosecution called four witnesses and tendered three exhibits. In his defence, the appellant testified on his own behalf and called two additional witnesses, but *did* not tender any exhibits

in support of his case. Upon the close of evidence, both parties addressed the court by way of written addresses. Thereafter, the trial court delivered its judgment on 10th April 2014. The Appellant was found guilty, convicted accordingly, and sentenced to ten years' imprisonrnent with a fine in the sum of N10,000.00.

Dissatisfied, the Appellant appealed against the Judgement of the trial court to the Court of Appeal Kacluna Division *vide* a notice of appeal filed on the 21st May 2014.

Further aggrieved with the Judgement of the lower Court, the Appellant appealed to this Court via a Notice of Appeal *filed* on the 7th of July 2024.

The Appellant's brief of argurrlent was *filed* on 26th July 2024 wherein the Appellant nominated a lone issue *for* determination thus;

1. **Whether the Lower Court was right in affirming the Judgement of the Trial Court which held that the prosecution proved the offence of rape as charged beyond reasonable doubt when the unsworn testimony *of* the prosecutrix was not adequately corroborated by either exhibit A, B or other evidence and there were** material contradictions in the evidence of the **prosecution witnesses**.

The Respondent's brief of argument was *filed* on 15th October 2024. The Respondent distilled the following issue for determination thus;

1. Whether the lower court was right in affirming the judgement of the Trial Court which held that the prosecution proved the offence of rape as charge beyond reasonable doubt.

The issue distilled by both the Appeltant and Respondent are substantially the same in context, with the lone issue nominated by the Respondent more *lucid* and captures the essence of the grievances of the Appellant with the judgment of the Lower Court. I will therefore be guided in the determination of the appeal by that issue

ARGUMENT OF COUNSEL

Learned counsel *for* the Appellant argued that the standard of proof in criminal *cases* is proof beyond reasonable doubt. He contended that, in establishing proof beyond reasonable doubt, every ingredient of the alleged offence must be contextuaiized within the facts and circumstances of the case, and that where any of the ingredients is not proven to the required standard, the prosecution's case must fail. The prosecution relied on Section 283 of the Penal *Code* Law of Kano State, which sets out the ingredients that must be established to prove the offence of rape and *also* ited the cases of *Kingsley* V *State (201 0)* 6 *NWLR part* 11 *91* ***age 593*** **at** ***608 E-G***, ***Onyenye***

V *State (201 2) NCC 304* Ht *10-3111 Atiku V State (2010) 9 NWLR part 11 99 page 241* t ***269 C**-F* among others .

It was argued for the Appellant that, at the time the prosecutrix testified in the trial court on 23rd April 2013, she was 13 years *old*, He submitted that under Section 209(1) of the Evidence Act *2011*, a child under 14 rnay *give* unsworn evidence if , in the court's opinion, they possess sufficient intelligence and understand the duty to tell the truth. The court, if satisfied, will then allow her unsworn testimony. The Appellant further argued that Section 209(3) provides that no person may be convicted solely on a *child*'*s* unsworn evidence unless it is corroborated by other material evidence implicating the accused. Consequently, since the prosecutrix was the only eyewitness, her unsworn testirnorly required corroboration to support the Appellant’s conviction.

Furthermore, counsel *for* the Appellant submitted that neither Exhibit A nor Exhibit B corroborates the evidence of PW3. He contended that *for* Exhibit A which is the medical report dated 7th October 2011 to serve as corroborative evidence, it must do two things: confirm that sexual intercourse occurred, and link the act to the appellant. However, Exhibit **A** *fails* on both counts. He argued that it is vague and speculative, providing no definitive indication 'hat intercourse took place, nor identifying the Appellant as the

perpetrator. Counsel argued that Exhibit A *does* not satisfy the requirements *for* corroboration laid out in Ik**o v**. ***State (2001) LPELR - 1480 (SC)*** , nor *does* it qualify as corroborative evidence generally. As such, the lower court *erred* in concluding that Exhibit A was neither *vague* nor speculative and that it, in *fact* , corroborated PW3's testirnony.

Furthermore, counsel for the Appellant contended that Exhibit B, the alleged confessional statement cannot adequately corroborate the testirnony of PW3 unless it passes the legal test *for* the veracity of confessional statements. He relied **on *Iko* v**. ***State*** (supra) and *Alo* v. *State* (2015) LPELR-24404(SC). arguing that a confession, even if voluntary, must be consistent, probable, and supported by some independent evidence before it can serve as valid corroboration.

It was argued on behalf of the Appellant that the veracity of exhibit B was never properly tested by the trial court before it concluded that the Exhibit corroborated PW3's testimony. Counsel submitted that if the court had applied the required veracity test, ' would have determined that Exhibit **B** was not, in fact, a true confession. Rather, the Appellant merely informed officers at the State CID, Kano, that he had made a previous statement to the Dambatta police, and he did not offer a fresh confession. He simply

recounted what he had earlier stated, and if Exhibit **B** contains any confession, it is at best a hearsay staterrlent.

The Appellant argued that Exhibit B is insufficiently detailed. It states only that he "had an *affair*'' with PW3 , without providing any specifics as to when, where, how the affair occurred. or its nature. He contended that Exhibit B fails to meet the standard *for* a confessional statement, which requires proof that sexual intercourse took place; moreover, the term "affair'' *does* not necessarily imply intercourse or penetration. He further submitted that the statement constitutes a blend of admission and denial and that each must be independently supported by evidence. As such, it cannot serve to corroborate PW3's testimony. He cited ***Sahalatu*** *Shasali v. State* (1988) 5 NWLR (Pt 93) 164 at 167 in support. He lamented that Exhibit B requires its own corroboration and. Fherefore, cannot corroborate any part of PW3's evidence. Consequently, he maintained, the lower court erred in affirming hat Exhibit B served as corroboration.

He opined that Exhibits **A** and B do not fall within the category of corroborative evidence capable of supporting PW3'5 testimony. He argued that PW3 was the vital witness upon whose evidence the Respondent built their case, and in the absence of any corroboration, the Respondent could not have proven its case against the appellant. Further, the appellant pointed out material

contradictions in PW3's testimony regarding the date of the alleged offence. He acknowledged that in *cases* involving alleged sexual intercourse, consent is immaterial, but emphasized that the prosecution must still establish the offence's date, the victim's age, and whether penetration occurred.

It was argued on behalf of the Appellant that the date of the offence was not properly established. PWI stated the date as October 4th, 2011; PW4 indicated that this same date was when his father asked him to report the incident to the police; meanwhile, PW3, the victim, asserted that the offence occurred on October 4th, 2012. Therefore, PW 1, PW2, and PW3's testirnonies were :haracterized as hearsay because they conflicted with the date pecified on the charge sheet. Counsel further contended that despite noting this contradiction, the lower court proceeded to import evidence not introduced by the Respondent in order to reconcile these discrepancies. He submitted that such a move constituted a factual finding by the lower court and, as per established law, findings of *fact* are within the exclusive province *of* the trial judge, and an appellate court should not disturb them unless they are perverse.

The Appellant submitted that the trial court never made those findings, as no evidence was presented explaining that the contradictions arose *from* PW3's mental state; instead, this explanation was solely imported by the lower

court. He argued there was no legal or factual basis for such a finding, and that, had the trial court made such a determination, it would have been perverse, *He* rnaintained that the lower court failed to satisfactorily account *for* the discrepancies regarding the date of the alleged offence. These material contradictions, he contended, should have engendered doubt and been resolved in his favour.

He further concluded that the prosecution's evidence was contradictory and insufficient, and that the court's judgrnent was contrary to the weight of the evidence and failed to prove the o*ffence* beyond reasonable doubt. He cited ***Kalu v.***. **Nigerian *ArmY*** *(201*O) **4** *NWLR (Pt* 1 1 ***85) 433*** at ***450* G**. He *urged* the court to allow the appeal, resolve the date discrepancy against the Respondent, set *aside* the Appellant's conviction and sentence, and discharge and acquit him of the charge.

On the other hand, the Respondent contended that it had clearly established all the essential elements of the offence of rape under section 282(1) of the Penal *Code* and thereby proved its case beyond reasonable doubt. The Respondent argued that the prosecutrix's testimony was sufficiently corroborated by Exhibits A and B, in addition to other supporting evidence. It further asserted that there were no material contradictions in the evidence provided by the prosecution's witnesses.

While attempting to persuade the court that it had successfully established every element of the offence of rape, the Respondent structured its arguments under subheadings.

In proving that the Appellant had sexual intercourse with the woman in question, the Respondent submitted that the prosecutrix, at pages 20-22 of the record, described how she and her friend Ikisu were lured by the Appellant to the home of one Hajiya Iuwa. There, the Appellant asked them to "press his manhood" and *gave* them N100 to share. She further testified that even after they moved frorn Filin Kwallo to BirninTafasa, the Appellant continued to call her on different occasions with the same intent, paying her #50 each time she complied. She stated that in Hajiya Bichi's house, the Appellant pulled down her wrapper *and* inserted his finger into her private part. She *added* that the following day, again at the sarne Hajiya Bichi’s house, the accused called her, pulled down her wrapper, *and* inserted his penis into her private part an act she described as painful.

The Respondent argued that Exhibit A, a medical report concerning the victim, showed her hymen was raptured. The *medical* expert opined that a raptured hymen could support an inference of vaginal penetration. Counsel *for* the Respondent contended that the Appellant himself , in his *brief* at page 2, paragraph 2.3, adrnitted confessing to the offence at the Danbatta Police

Division. The Respondent submitted that, viewed together, these factors establish that the Appellant had sexual intercourse with the Prosecutrix, and the court should so hold.

As for consent, whether given or not, when the prosecutrix is under fourteen years *of age* , the Respondent emphasized that it is undisputed she was 12 at the time of the incident and 13 when she *gave* evidence. This fact was admitted by the Appellant in his *brief* before this court (page 5, paragraph 4.7), stating the victim was 13 on April 23rd , 2013, when testifying in the trial court. Counsel argued that *age* was never in dispute; therefore, under the law, the prosecutrix, being under fourteen, was legally incapable of giving consent, and she was not cross-exarnined on this issue.

Regarding the element of whether the woman was the accused's wife, the Respondent contended that the prosecutrix was never married to the appellant. They adopted the points made earlier and *added* that, by any standard, a *12-year-old* cannot lawfully marry. Moreover, it was never part of the Appellant's defence that the prosecutrix was or 'had been his wife at any material time.

Regarding whether penetration occurred, the Respondent referred to paragraph 4.5 of their brief and emphasized that penetration is the most critical element of the offence of rape–however slight s*uffices* to ground a

conviction. They asserted it is unnecessary to lrove any injury or the rupture of the hymen to establish rape. Counsel noted that Exhibit **A**, the medical report, indicated a ruptured hymen and evidence of sexual assault. Coupled with the prosecutrix's testimony, that the appellant removed her wrapper, inserted his penis into her private part, and caused her pain, this, they argued, conclusively demonstrates that the essential element *of* penetration has been proved. The cases of ***Habu*** **Musa V** ***State (2013) LPELR*** *1***993 *(CS) Suit 409/201 1***, I***ko V State (Supra)*** and *Ogunbayo* V. *State (2007) LPELR (SC)* where *cited* in support.

In response to the Appellant's criticism of the trial court's judgrnent, that PW3's evidence was not corroborated and that the court should not have convicted the Appellant, the Respondent contended that corroboration *does* not require direct evidence of the Appellant committing the offence, nor must it confirm every detail of the witness's testimony. Rather, it is sufficient when a piece of evidence supports another in a material aspect. They submitted that, notwithstanding earlier arguments that corroboration is a sine *qua* non in rape cases, though it remains a matter of practice; and that proof ''beyond reasonable doubt" *does* lot mean proof "beyond aII shadow of doubt. He cited the cases of *:**sah Ahmed*** **V. *State (201 1) NWLR*** **Pt**. ***1227*** **89**. ***Dagayya*** **V** *State (2006) 7 NWLR* Pt. *98 , 647* SC and *Mufutau Bakare* V Sta*te (1****987) NSCC*** **267 at** 272 among others in support.

The Respondent further argued that Exhibits B and B1, being the Appellant's confessional statements, are inherently strong evidence because no one is better placed to provide evidence about an offence than the accused himself . Crucially, neither the Appellant nor his counsel objected to the voluntariness of these statements when the prosecution tendered them, the proper juncture at which such objections should be raised. The law *holds* that failing to object at this point waives the right to later contest voluntariness, and such belated objections are treated as afterthoughts. The *cases of Stephen V State (2013) LPELR SC and Koku V State* ***(201 9) LPELR (CA)*** where cited in support.

Regarding the Appellant's contention about contradictions concerning the date of the alleged offence, the respondent 5ubrnitted that the lower court was correct in treating these discrepancies as immaterial and not *fatal* to its case. Counsel argued that it is well-established that minor, inconsequential contradictions which do not affect any essential element of the offence cannot vitiate the prosecution's case. For a contradiction to be fatal, it must involve a material fact that *goes* to the substance of the case and lead to a miscarriage of justice. Counsel further asserted that such trivial differences are natural in human testimony and do not pertain to rnaterial facts; therefore, the minor discrepancies regarding dates are not substantive contradictions.

It was further argued by the Respondent that minor discrepancies *do* not negate otherwise credible testimony. Counsel submitted that evidence is only "contradictory" if it raises doubt as to which of two or more alternative versions should be believed, that is, when the discrepancy is so significant that it alters the course of events and strikes at the substance of the case. He cautioned that if every trivial discrepancy *could* vitiate a trial, virtually all criminal prosecutions would collapse, as human memory naturally lapses over time and minor errors in narration are inevitable. He cited ***Friday*** V. ***State (2016) LPELR-40638 (SC) At 22***, ***Yaki V State (2008) All FWLR (Pt*** . ***440)*** **61** ***8*** and ***Awopeju*** **V** ***State (2002)*** **3** M***JSC*** **P** ***141*** **At 1** ***45 Ratio*** **6** among other *cases* . He cautioned that if every trivial discrepancy could vitiate a *trial* , virtually all criminal prosecutions would fail, since human memory naturally lapses over time and Small errors in narration are inevitable. He further cited the *cases* ***Ikemson*** **V** ***State (1989) LPELR- 1473 (SC)*** At **44** and *Uche V State (2015) LPELR 24693 (SC) 32-33*.

The Respondent further submitted that the Appellant's own briefs have simplified the matter *for* this honourable court. On page 2, paragraph 2.3, the Appellant admitted confessing to the offence at the Divisional Headquarters, Dambatta. On page 5, paragraphs 4.7 and 4.9, he acknowledged that the prosecutrix was 13 when she testified. The trial court deterrnined she

possessed sufficient intelligence to *give* unsworn evidence under Section 209(1) of the Evidence Act and she *did* just that. Moreover. the Appellant's admissions at pages 5, paragraphs 4.5-4.11, emphasize that the victim was a minor. Once compliance with Section 209 of the Evidence Act is established, her testirnony may be relied upon by the court.

On the further arguments advanced by the Appellant regarding the admissibility of Exhibits B and B1, the Respondent submitted that he appellant's submissions at pages 6-11, paragraphs 4.15-4.40, do not represent the correct position of the law. He argued that the ubmissions are speculative, perverse, and inconsequential, and as such, cannot persuade this Honourable Court to interfere with the concurrent findings of the lower courts. Counsel contended that the content of Exhibit B is a clear and unequivocal confession by the Appellant, admitting that he raped Hajara. The statement encapsulates all the material facts pointing to his guilt and was tendered without objection.

The Respondent concluded that the Appellant, being the village head of Mahauta in Danbatta Local Governrnent Area, a person who adjudicates disputes among his subjects cannot convincingly claim that a friend misled him into confessing to such a serious crime. The Respondent urged the

court to reject that line of argument, asserting that the Appellant's claim of being induced to confess without committing the offence is not credible. Counsel further contended that this Court has, in numerous decisions, held that a voluntary confession is the strongest form of evidence against an accused person and, when consistent with other established facts, is sufficient to sustain a conviction and cited the case*s* o*f* ***Solala V State (2005) 2 NWLR Pt***. ***937 Pg***. ***460 At 497-498*** . ***Achabua*** **V** ***The State*** **(1** ***976)*** **12 SC 63 At 69** *and Suleiman Olawale*, *Arogunda V The State (2009) 12 SC 6 NWLR p***t**. ***(1 1 36) 165*** in support and urged the court to dismiss the Appellant's arguments, uphold his conviction and sentence, and dismiss the appeal as vexatious, unfounded, *and* without merit.

RESOLUTION OF THE ISSUE

I have carefully gone through the argument of counsel on this *sole* issue. The Appellant contended that the prosecution failed to prove the charges against him beyond reasonable doubt. It is trite law in our criminal jurisprudence that the prosecution bears the burden of proving the accused 's *guilt* beyond a reasonable doubt. However, such proof is not beyond all doubt. This critical distinction means the evidence must be so compelling that it leaves no reasonable uncertainty in the mind of the court, even if a rernote or fanciful possibility remains. In *Ugwanyi* v. *FRN* (2012) LPELR-7817(SC), this

Honourable Court reaffirmed the guidance of Lord Denning in *Miller* v. *Minister* of *Pensions* (1947) 2 E.R. 372 thus:

> "...*That proof beyond reasonable doubt does not atean proof beyond the shadow of doubt*. *The law would fail to protect the community if it admitted of fanciful possibilities to deflect the course of justice*. *If the evidence is so strong against a man as to leave only* a *remote possibilFtf in his favour which can be dismissed* ***with the sentence "of course it is possible***, ***but not in*** *the least probable*" *the case is proved beyond* ***reasonable doubt but nothing short of that will suffice***. See *also* ***Lori*** **v**. ***State*** **(1980) 8-11** ***S***.***C***. **at 81"**

Similarly, in the recent case of ***Ukpong*** **v**. ***State (2025) LPELR - 80974 (SC)*** , my learned brother Stephen Jonah *Adah* , *JSC* At (Pp. 20 - 21 Paras E - E) while delivering the *lead* judgement, stated thus:

> **"*Proof beyond reasonable doubt is the statutory burden placed on the shoulders of the prosecution by Section*** *35(2) of the Evidence Act 2011 . The requirement of* ***the law is that for this burden to be discharged by the prosecution***, ***the prosecution must walk through the*** *evidence available* ***to*** *establish the ingredients of the offence(s) for which the accused person was charged*. *The evidence required to prove the offences and rebut*

the presumption of innocence of the accused would be direct evidence or circumstantial evidence, or the confessional statement of the accused person. It must ***be noted here, however, that proof beyond reasonable doubt is not proof beyond every shadow of doubt or proof to the guilt. The burden is discharged where all the essential ingredients of the offence charged have been established or proved by the prosecution through credible, compelling, conclusive and reliable evidence. See Alabi v. The State (1993) 7 NWLR (Pt. 307) 51 1. 523; Osuagwu v. The State (2013) 5 NWLR (Pt. 1347) 360. "***

It is on record that the Respondent, in proving the ingredients of the offence of rape as charged i.e. that the Appellant had sexual intercourse with the victim in question, relied on Exhibit **A**, a medical report tendered by the prosecution which was not objected at the trial court. The expert opinion of the medical practitioner who examined the victim. suggested that her hymen was raptured, which could indicate vaginal penetration. I am not oblivious to the Appellant's argument seeking to discredit the medical report, describing it as vague, speculative, and insufficient under legal standards. However, I respectfully disagree. The Appellant has misunderstood the role of rnedical evidence in rape cases. While a medical report is not always essential, especially in rural settings, it becomes important when the accused

denies the offence. In such circumstances, the Court is encouraged to look into a medical report *so* as to confirm injury to the private part or other parts of the body of the rape victim. In other words, the intendment of a medical report is to establish injury sustained to the private part, i.e. the vagina, or any other part of the body of an alleged rape victim and nothing more.

The medical report in the instant case indicated that a ruptured hymen could suggest vaginal penetration, effectively pointing towards the commission of sexual intercourse. In my respectful view, this finding supports the conclusion of penetration which is the most important ingredient in proof of the offence of rape. I will return to the issue of penetration later in this judgment. The Appellant, however, challenged the report as vague and speculative, claiming it failed to meet the necessary legal standard as enumerated in the case of ***Iko* V *State (Supra)***. Yet, this criticism misses the point, as the respondent *did* not solely rely on the medical evidence to prove his case. In addition to the evidence, the Respondent tendered Exhibit B which is the Appellant's confessional statement, in which he admitted to committing the offence.

It is noteworthy that legally, an intact hymen or *lack* of injury is no barrier to proving rape. The law is *clear* that any penetration. however slight, is sufficient to establish the offence, proof of hymenal rupture is not required.

Furthermore, the confessional statement (Exhibit B) even standing alone, is sufficient to ground a conviction if it was made voluntarily, clearly, and unequivocally. Taken together, the medical findings and the confession constitute compelling, legally sufficient evidence of rape. The Appellant's attempt to isolate and discredit the medical report fails.

It is not in dispute, as confirmed by the records, that the prosecutrix was under the age of fourteen at the time of the alleged incident. During her testimony on *23rd* April 2013, when she was asked her age, she stated she was 13 years *old*, This places her at approximately 12 years *old* when the incident occurred in 2012, rendering her legally incapable of giving consent to sexual intercourse.

Under Section 282(1)(e) of the Penal *Code*, any female below the age of 14 is deemed incapable of consenting to sexual intercourse, regardless of whether they appear to do so. This principle is further affirmed in *Natsaha* Vs *State (201* 7) *LPELR - 42359* ***(SC)*** *and also* ***Isa v***. ***The Kano State (2016) LPELR*** - ***4001 1 SC Pg*** . ***10-11*** . In the latter case this Court held that;

> '...***the act of rape*** *is* ***by nature unlawful because the concept involves an aggressive carnal knowledge of a female without her consent***. ***Consent in this context*** *must be devoid of any form of external influence*. *A* ***child who is under age is not however***

capable of giving consent. ***Rape by nature is grave***. ***devastating and traumatic***. ***It also reduces the totality of the victim's personality***. ***Several definitions given to rape are all characterized by an absence of consent as a common feature .***

Notably, the Appellant *did* not contest the victim's age, and the prosecutrix was not cross-examined on this aspect. It is therefore appropriate to hold, and I so do, that at the time of the incident, the prosecutrix was under the statutory age required by law to *give c*onsent to the act. Specifically, she was approximately 12 years *old in* 2012, well below the threshold. Furthermore, it is undisputed from the outset to this case that the victim was never, at any rnaterial time, married to the Appellant. This issue was neither contested nor relied upon by the Appellant in his defence to the charges. In the absence of any *clear* evidence to the contrary, it must safely be *held* and I so hold that the prosecutrix was never the Appellant's wife. See **Mohammed v**. ***State (2022) LPELR - 57348(SC)***.

Coming back to the issue of penetration, the position of the law as was upheld by this Court in plethora of *cases* is that the most important *and* essential ingredient of the offence of rape is penetration. The Court will deem that sexual intercourse has taken place upon proof of penetration of the penis into

the vagina and the slightest penetration of the penis, will be sufficient to constitute the act of sexual intercourse. Emission or the rupture of the hymen *is* unnecessary to establish the offence of rape. See I***di*** **A**. ***State*** *(2017) LPELR - 42587 SC*.

On this issue, I *agree* with the Respondent that Exhibit **A**, the medical report, together with PW3's testimony describing her harrowing experience and the pain she felt, strongly indicates that some degree of penetration, even if slight, occurred. In addition, the Appellant himself confessed in Exhibit B, the confessional statement admitting to the commission of the offence. These two exhibits (A and B) thus serve as corroborative evidence supporting one another and collectively linking the accused to the crime. Thus, the medical findings, *first-hand* testimony, and the Appellant's confession each independent, cogent, and mutually reinforcing, create a strong evidential foundation *for* establishing penetration.

Similarly, as a general rule, no corroboration is required *for* the evidence of a Prosecutrix in a trial *for* the offence of rape. No law dernands that a *Prosecutrix's* evidence must be corroborated *for* it to ground the conviction of an accused person standing trial *for* the offence of rape. The only caveat is that it is not safe to convict on the uncorroborated evidence of the prosecutrix. The court is advised to warn itself of the inherent risk of conviction on the uncorroborated testimony of the prosecutrix. However, where there is

enough evidence from which the trial judge can reach a decision, then there is no need to warn itself of the danger of acting on the uncorroborated evidence of the prosecutrix.

It is, in my humble view, unnecessary in this case *for* the court to issue a warning to itself about relying on uncorrodbrated evidence of the prosecutrix. Exhibits A *and* **B**, together with the testimonies of the other prosecution witnesses, provide robust corroboration. The medical report, the appellant's voluntary confessional statement, and the flow *and* credibility of the witness testirnonies independently reinforce each other. Therefore, the prosecutrix's evidence was supported by multiple, rnaterial forms of corroborative *proof* . See *Ogunbayo* V. *State* *(2007) LPELR* - ***2323(SC) 2007 S***. ***C***

Learned counsel *for* the Appellant has vigorously argued that there are contradictions in the prosecution witnesses' evidence. Having carefully reviewed the record, it appears that what counsel describes as contradictions are in fact minor discrepancies, primarily concerning dates. Such differences typically *arise* frorn normal human limitations, errors in observation, lapses in rnernory over time, or the mental trauma of shock and horror at the time of occurrence. Importantly, *for* contradictions to affect a criminal *case*, they must relate to a material *issue*, one that impacts the substance of the offence. Minor discrepancies that do not affect essential

elements are legally immaterial and pose no threat to the prosecution's case. See ***Shaibu*** V. ***State*** ***(2017)*** L***PELR- 421 OO(SC)*** *2017 S.C*

Where witnesses recount the same event with slight variations, it often enhances credibility and clearly reflects the ordinary human memory. As the Court observed in many *cases* , if the testimnonies of witnesses were exactly identical, that may very well strongly suggest coaching or collusion. In this case, no such rnaterial contradictions exist. The testimonies, though varied in rninor particulars, remain consistent on the key *facts* and elements of the offence. Consequently, there is no merit in the appellant's contention, and his arguments fail to disrupt the significant weight *of* the prosecution's evidence. See ***Galadima*** **V**. ***State*** ***(201 7) LPELR-43469(SC) 201 7 S. C***

I conclude by reiterating the respondent's observation. For nine years, the appellant (a *35-year-old* man) served as a respected village head in Mahauta village, someone of high standing, whom people consulted *for* guidance. It strains credulity that such a person would allow a friend to trick him into confessing to a heinous crime like rape, *fully* aware of the gravity of the accusation. Were he truly innocent, he would have vigorously defended his honour before it was irreparably besmirched.

In my view, the retraction of his confession is nothing more than an afterthought and will not avail the Appellant. A rational adult, cognisant of the consequences, would not falsely admit to raping anyone if he knew the allegation to be untrue.

After thorough review of all evidence. the prosecution has incontrovertibly met its burden of proof beyond reasonable doubt. having established each essential element of the offence of rape. I therefore hold that the Appellant *did* rape the prosecutrix and is guilty of the offence as charged.

This *sole* issue is therefore resolved in favour of the respondent.

In summation I *find* the appeal to be devoid of any merit and same *is* hereby *dismissed.*

The judgment of the Court of Appeal, Kaduna Division delivered on 16th December 2019 in Appeal No. CA/K/438/2019 is hereby affirmed.

INYANG, JSC: My learned brother, **Jamilu Yammama Tukur,** J*SC* had before now availed me with a draft of the lead judgment just delivered for my opinion. Having carefully read same, I have no hesitation in agreeing totally with his reasons and conclusion The offence of rape of the

twelve (12] years old prosecutrix is well established by the prosecution beyond reasonable doubt against the Appellant. For his part, the Appellant has been unable to proffer any argument **to** warrant an interference with the concurrent findings of the two lower courts. This appeal is therefore lacking in merit and is hereby dismissed. The judgment of the court below delivered on 16th December, 2019 which affirmed the decision of the trial court is hereby affirmed.
Appeal Dismissed,

IDRIS, JSC: I had a preview of the judgment delivered by my learned brother, Lord Justice **Jamilu Yammama Tukur, *JSC***. I completely agree with the reasoning, conclusions, decisions and orders therein.

TIJJANI, JSC: My lord and learned brother, JAMILU **YAMMAMA TUKUR**, JSC, granted me the privilege of reading in draft the comprehensive leading Judgement prepared and rendered in this appeal. I endorse the reasoning and conclusion and adopt the judgement as mine, I have nothing extra to add.

I join my learned brother in holding that the Appellant's appeal is without merit, and therefore deserves to be and is hereby dismissed.

Appeal dismissed.

HABEEB, JSC: This appeal is against the judgment of the Court of Appeal, Kaduna Judicial Division, delivered on the 16th of December, 2019 in Appeal No CA/K/438c/2014, and- which affirmed the conviction and sentence of the Appellant for the offence of rape by the High Court of Kano State in a judgment delivered on the 10th of April, 2014 in Charge No K/190c/2011.

The question calling *for* determination in this appeal is whether the learned Justices of the Court of Appeal were right when they upheld the findings of the High Court that the Respondent led sufficient and adequate cogent and credible evidence to prove the offence of rape charged against the Appqgant beyond reasonable doubt. I have had the privilege of reading before now the lead judgment delivered by my learned brother, Jarnilu Yammama Tukur, JSC. His Lordship has ably considered and resolved the all contentions of the parties in the appeal. I agree with the reasoning and abide the conclusion in the lead judgment that the appeal lacks merit and is very deserving of an order of dismissal.

I too hereby find no merit in the appeal. I dismiss the appeal and affirm the judgment of the Court of Appeal, Kaduna Judicial Division, delivered on the 16th of December, 2019 in Appeal No CA/K/438c/2014.