**HABU IDI**

**v.**

**THE STATE**

IN THE COURT OF APPEAL OF NIGERIA

ON WEDNESDAY, THE 19TH DAY OF FEBRUARY, 2020

CA/YL/88C/2017

**LEX (2020) - CA/YL/88C/2017**

**OTHER CITATIONS**

3PLR/2020/22 (CA)

(2020) LPELR-49506(CA)

**BEFORE THEIR LORDSHIPS**

CHIDI NWAOMA UWA, JCA

JAMES SHEHU ABIRIYI, JCA

ABDULLAHI MAHMUD BAYERO, JCA-end!

**BETWEEN**

HABU IDI - Appellant(s)

AND

THE STATE - Respondent(s)-end!

**ORIGINATING COURT(S)**

HIGH COURT OF TARABA STATE [Holden at Jalingo, Taraba State]-end!

**REPRESENTATION**

C. P. Ezeokoye, Esq. - For Appellant

AND

Hamidu Audu, Director of Public Prosecutions, Ministry of Justice Taraba State, with him, A. Shittu, Deputy Director Legal Services. - For Respondent-end!

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE – SEXUAL OFFENCES - RAPE:- General principles and elements of the offence of rape under the Penal Code – Age of woman considered a legal minor – Position of married women and rape – When consent would be vitiated

CRIMINAL LAW AND PROCEDURE – SEXUAL OFFENCES - RAPE:-Proof of under Section 282 of the Penal Code - Evidence of corroboration of the evidence of the victim in a rape case – Whether required as a matter of law – Whether an accused person in a charge of rape cannot be convicted on the uncorroborated evidence of the complainant

CRIMINAL LAW AND PROCEDURE – PROOF OF OFFENCE:- Proof beyond reasonable doubt – Meaning of – Onus of proof – On whom lies – How discharged

CHILDREN AND YOUNG PERSON’S LAW:- Justice administration – Where age of child is at issue – Conflicting evidence of child, mother and third parties thereto – Which evidence court pays greater regard to-end!

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - REPLY BRIEF: Raising new issues in a reply brief, both on the facts and law – Whether permitted under the Rules of the Supreme Court - Order 19 Rule 5(1) of the Court of Appeal Rules 2016 – Duty of Court thereto

EVIDENCE - BURDEN OF PROOF/STANDARD OF PROOF: General principles of the burden and standard of proof in a criminal trial – Duty of Prosecution thereto - Section 36 (5) of the 1999 Constitution

EVIDENCE - DOCUMENTARY EVIDENCE:- Objection to the admissibility of - Whether objection can be raised at the appellate level against a document admitted without objection at the trial Court-end!

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant was tried, convicted and sentenced to a prison term of seven (7) years for the offence of rape contrary to Section 283 of the Penal Code. He was alleged to have raped the PW3 who was on an errand for her mother along with PW1. The Appellant came on a motorcycle, picked the PW3, held her with one hand and drove away with her. He drove around with her despite her cries. At one point, he stopped and somebody came with a machete and asked why she was crying. The Appellant told the person to forget about her. Then the Appellant took her behind a filling station, pushed her to the ground and had an illicit sexual intercourse with the PW3. The Appellant then put her back on the motorcycle, brought her to a roundabout and when he saw her mother (PW2) and some other people, he pushed her off, threw Four Hundred Naira (N400) on her and rode off.

PW3’s mother and those with her lifted the PW3 from the ground and took her to the police station where she gave her statement. When arrested, Appellant first made a statement denying the intercourse but admitting driving her around at her request. Thereafter, he made another statement denying the making of the first statement.-end!

DECISION(S) APPEALED AGAINST

The Court below convicted the Appellant on the evidence led after considering the prosecution’s case and the defence of the Appellant.-end!

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. Whether the failure of the Respondent to reproduce PW4 for further cross-examination does not amount to breach of the right to fair hearing of the Appellant? (Distilled from Ground one).

2. Whether from the facts and circumstances before the Honourable lower Court, the Respondent could be said to have proved beyond reasonable doubt that PW3 was a 13 year old minor and if the answer is in affirmative, whether the trial Court complied with Section 209 (1) and (3) of the Evidence Act, 2011 before relying on her piece of evidence to convict the Appellant? (Distilled from Grounds 2 and 3).

3. Whether the Honourable lower Court was not in error when it accorded Exhibit PA1 so much probative value despite the denial put forward by the Appellant as to the signature thereon and the issue relating to not reading of the Exhibit in the open Court, failure to call the superior officer before whom the said statement was made, the riotous nature of the Exhibit with Exhibit B2 and the fact that same was not made in the presence of the counsel to the Appellant? (Formulated from Grounds 5, 6, and 7).

4. Whether pieces of evidence emanating from PW1, PW2, DW1, DW2 read together with Exhibits PA1, PA2, B1 and B2 were complementary and thus capable of corroborating the evidence of PW3? (Formulated from Ground 8).

5. Whether proof of locus criminis of the offence of rape is not a fact in issue capable of having a fatal effect on the case of the prosecution in event of same not being proved? (Formulated from Ground 9).

6. Whether the failure of the Honourable trial Court to consider some salient issues raised by the Appellant did not amount to breach of his right to fair hearing? (Formulated from Ground 10).

7. Whether the Honourable lower Court can be said to have properly evaluated the evidence before arriving at the conclusion of the verdict of guilt against the Appellant? (Formulated from Grounds 4 and 11).-end!

*BY RESPONDENTS*

1. Whether the Respondent has proved the offence of rape punishable under Section 283 of the Penal Code against the appellant beyond reasonable doubt (Distilled from grounds 2, 4, 8, 9, 10 and 11 of the grounds of appeal.

2. Whether the Court below was right when it relied on the evidence of the prosecutrix PW3, PW1, PW2, Exhibits PA1 and 81 with the surrounding circumstances in convicting and sentenced the appellant to 7 years imprisonment for the offence of rape punishable under Section 283 of the Penal Code (Distilled from grounds 5, 6 and 7 of the grounds of appeal).

3. Whether the Court below failed to accord the appellant right to fair hearing as the prosecution was unable to recalled (sic) PW4 for further cross-examination (Distilled from grounds 1, and 3 of the grounds of appeal).-end!

*AS ADOPTED BY COURT*

1. Whether the prosecution proved the offence of rape contrary to Section 283 of the Penal Code against the Appellant beyond reasonable doubt.

2. Whether the Court below failed to accord the Appellant his right to fair hearing.-end!

DECISION OF [CURRENT] COURT

Issues 1 and 2 resolved against Appellant. Bail granted Appellant after conviction was revoked and Appellant ordered to be sent back to Prison to complete a term of seven (7) years. -end!

**MAIN JUDGMENT**

JAMES SHEHU ABIRIYI, J.C.A. (Delivering the Leading Judgment):

This is an appeal against the judgment delivered on 25th May, 2016 in the High Court of Taraba State holden at Jalingo where the Appellant was tried, convicted and sentenced to a prison term of seven (7) years for the offence of rape contrary to Section 283 of the Penal Code.

In a resume, the facts of the case for the prosecution include the following: The PW1 and PW3 were sent on an errand by the mother of the PW3. Somewhere on their way they stopped. The Appellant came on a motorcycle, picked the PW3, held her with one hand and drove away with her. He drove around with her despite her cries. At a point, he stopped and somebody came with a machete and asked why she was crying. The Appellant told the person to forget about her. Then the Appellant took her behind a filling station. Appellant pushed her to the ground. Appellant removed his trousers. Appellant removed her pant. The Appellant brought out his penis and had an illicit connection with the PW3.

Blood started coming out from PW3’s vagina and she was crying.

The Appellant then took her and put her on the motorcycle, pushed her off by a roundabout when he saw PW3’s mother (PW2). The Appellant threw four hundred Naira (N400) on her and rode off.

PW3’s mother and those with her lifted the PW3 from the ground and took her to the police station.

The Appellant denied having illicit connection with the PW3. According to him, he was requested to drop the PW3 at her house with his motorcycle. Her house was described to him. He drove past the house. The PW3 told him to take her back to her boy friend who he understood was where he picked her from. He noticed one Manasseh who earlier wanted to snatch PW3 in a vehicle coming. So he took another road and returned to the place where he picked the PW3.

He made a statement to the police at the Police Station Zing. At the “CID Jalingo” he made another statement. He did not confess to committing the offence. The signature on Exhibit PA1 is not his signature but the one on Exhibit B2 is his signature.

The Court below convicted the Appellant on the evidence led after considering the prosecution’s case and the defence of the Appellant.

The Appellant on the 28th June, 2016, filed an initial notice of appeal challenging the conviction and sentence. The notice of appeal contained ten grounds of appeal. By the order of this Court, made on 13th June, 2018, the Appellant amended the notice of appeal. The amended notice of appeal filed on the 10th November, 2017 was deemed duly filed and served on 13th June, 2018. The amended notice of appeal contains ten (10) grounds of appeal.

In an amended Appellant’s Brief of Argument filed 6th March, 2019 and deemed duly filed and served on 12th March 2019, the Appellant presented the following seven issues for determination from the ten grounds of appeal:

1. Whether the failure of the Respondent to reproduce PW4 for further cross-examination does not amount to breach of the right to fair hearing of the Appellant? (Distilled from Ground one).

2. Whether from the facts and circumstances before the Honourable lower Court, the Respondent could be said to have proved beyond reasonable doubt that PW3 was a 13 year old minor and if the answer is in affirmative, whether the trial Court complied with Section 209 (1) and (3) of the Evidence Act, 2011 before relying on her piece of evidence to convict the Appellant? (Distilled from Grounds 2 and 3).

3. Whether the Honourable lower Court was not in error when it accorded Exhibit PA1 so much probative value despite the denial put forward by the Appellant as to the signature thereon and the issue relating to not reading of the Exhibit in the open Court, failure to call the superior officer before whom the said statement was made, the riotous nature of the Exhibit with Exhibit B2 and the fact that same was not made in the presence of the counsel to the Appellant? (Formulated from Grounds 5, 6, and 7).

4. Whether pieces of evidence emanating from PW1, PW2, DW1, DW2 read together with Exhibits PA1, PA2, B1 and B2 were complimentary and thus capable of corroborating the evidence of PW3? (Formulated from Ground 8).

5. Whether proof of locus criminis of the offence of rape is not a fact in issue capable of having a fatal effect on the case of the prosecution in event of same not been proved? (Formulated from Ground 9).

6. Whether the failure of the Honourable trial Court to consider some salient issues raised by the Appellant did not amount to breach of his right to fair hearing? (Formulated from Ground 10).

7. Whether the Honourable lower Court can be said to have properly evaluated the evidence before arriving at the conclusion of the verdict of guilt against the Appellant? (Formulated from Grounds 4 and 11).

In an amended Respondent’s Brief of Argument filed on 3rd June, 2019 but deemed duly filed and served on 18th September, 2019, the Respondent presented the following three issues for determination:

ISSUE ONE

Whether the Respondent has proved the offence of rape punishable under Section 283 of the Penal Code against the appellant beyond reasonable doubt (Distilled from grounds 2, 4, 8, 9, 10 and 11 of the grounds of appeal.

ISSUE TWO

Whether the Court below was right when it relied on the evidence of the prosecutrix PW3, PW1, PW2, Exhibits PA1 and 81 with the surrounding circumstances in convicting and sentenced the appellant to 7 years imprisonment for the offence of rape punishable under Section 283 of the Penal Code (Distilled from grounds 5, 6 and 7 of the grounds of appeal).

ISSUE THREE

Whether the Court below failed to accord the appellant right to fair hearing as the prosecution was unable to recalled (sic) PW4 for further cross-examination (Distilled from grounds 1, and 3 of the grounds of appeal).

Appellant filed a reply brief on 6th June,’ 2019, deemed duly filed and served 18/9/19.

This appeal in my view can be determined on the following two issues:

1. Whether the prosecution proved the offence of rape contrary to Section 283 of the Penal Code against the Appellant beyond reasonable doubt.

2. Whether the Court below failed to accord the Appellant his right to fair hearing.

Learned counsel for the Appellant pointed out that the Appellant applied for the recall of all six witnesses called by the Respondent and all other witnesses were recalled except PW4 who recorded Exhibit PA1 relied upon by the Court below.

It was submitted that the failure to recall the PW4 by the Respondent for further cross-examination and the reliance of the Court below on Exhibit PA1 constituted a miscarriage of justice and amounted to a breach of fair hearing against the Appellant. It was further submitted that the failure to recall the PW4 amounted to with holding of evidence. The Court was referred to Section 167’ of the Evidence Act 2011.

It was submitted that the failure to recall PW4 was fatal to the case of the Respondent and the Court below erred when it relied on the evidence of PW4 particularly Exhibit PA1 tendered through him.

Only PW2 and PW3 (the mother and daughter respectively) testified to the age of the PW3, it was pointed out. The PW2 (the mother), it was contended, turned somersault and said that she did not know the age of the PW3 (the daughter). No birth certificate was tendered, it was submitted. The Court was referred to the evidence of the PW3 where she stated thus:

“I am 13 years old. It is not 5 years from the date of betrothal to the date of the incident. I will not know the number of years in between. It has been long so I cannot remember. I am 14 years now...” Page 106 of the record.

The Court was also referred to page 34 of the record where the PW3 stated thus:

“... He has only paid the dowry long time ago. I was 12 years old then ... It may be up to 5 years since Chindo paid my dowry ...”

All the Court below did it was contended, was to believe the testimony of PW2 as to the age of PW3 without more even in view of the contradicting testimonies of PW2 and PW3. The Court was referred to pages 201 and 208 of the record of appeal.

It was submitted, the only conclusion is that the PW3 was about 17 years old at the time of the alleged rape and not a minor incapable of giving consent. This, it was submitted, was fatal to the case of the Respondent.

Assuming without conceding that the PW3 was indeed a minor at the time of the alleged rape, the Court below, it was argued did not comply with Section 209(1) and (3) of the Evidence Act. The Court was referred to Okon & Ors vs. The State (1988) LPELR-2472 Pg. 16 - 17 and Dagayya vs. The State (2006) LPELR-912 PP. 42 - 43.

The evidence of PW3, it was submitted, was not corroborated, and the Court below wrongly convicted the Appellant on the uncorroborated evidence of PW3 who the Respondent presented as a minor.

It was submitted that the evidence PW1, PW2, DW1, DW2 read together with Exhibits PA1, PA2, B1 and B2 are so contradictory in material facts that it cannot be said they are complementary as to corroborate the evidence of PW3.

It was submitted that the failure to read the confessional statement of the Appellant in open Court was fatal to the case of the Respondent.

It was submitted that Exhibit PA1 was at variance with Exhibit B1, both statements of the Appellant and the Court below picked Exhibit PA1.

It was also pointed out that the Appellant denied the signature on Exhibit PA1.

It was further pointed out that the statements of the Appellant were recorded by the police in the absence of his lawyer.

It was submitted that the Court below ought not to have relied on the statement in convicting the Appellant. The Court was referred to Owhoruke vs. Commissioner of Police (2015) LPELR-24820 PP. 22 - 23.

The Respondent, it was submitted failed to prove the locus criminis, that is, where the alleged rape took place and this was fatal to its case. The Court was referred to Ibrahim vs. The State (2015) 4 SCM 184 at 208 and Ezekwe vs. The State (2018) LPELR-44392.

Copious authorities were cited by Appellant’s counsel on good judgments and fair hearing.

Learned Director of Public Prosecutions Taraba State for the Respondent submitted that in criminal prosecutions, the burden of proof lies squarely on the prosecution to prove the guilt of the accused person beyond reasonable doubt and referred the Court to Igabele vs. The State (2007) 2 NCC 125, Nnajiofor vs. People of Lagos State (2015) LPELR-24666 CA; Abdullahi vs. The State (2008) 17 NWLR (Pt. 1115) 203, Oseni vs. The State (2012) 208 LRCN 153 and Section 135(1) of the Evidence Act.

He submitted that proof beyond reasonable doubt entails establishing the ingredients of the offence. The Court was referred to Adonike vs. The State (2015) Vol. II NCC 97 at 105 - 106.

It was submitted that from the evidence of PW2 - PW6, it can be inferred that the Appellant raped the PW3.

PW2, it was submitted, under cross-examination stated that PW3 was under 13 years old.

It was submitted that by virtue of Section 282(1) of the Penal Code, a girl under the age of 14 years is incapable of giving consent to sexual intercourse. The Court was referred to Natsaha vs. The State (2017) Vol. 9 CAC 309 at 313 and Shuaibu vs. Kano State (2016) LPELR-40011 SC.

The PW3, it was pointed out, was not the wife of the Appellant.

From the evidence adduced by the Respondent, it can be inferred that the Appellant intended to rape the PW3, it was submitted.

It was submitted that evidence of penetration came from the PW3 (the victim). The Court was referred to page 32 of the record. The Appellant, it was submitted, in his statement to the police Exhibit PA1 stated that at the time he was having the illicit connection with the PW3, she was not crying. It was submitted that penetration is the most essential ingredient of the offence of rape. The Court was referred again to’ Natsaha vs. The State (supra), Iko vs. The State (2001) 6 MJSC 1 and Musa vs. The State (2013) Vol. 221 (Pt. 2) LRCN 186 at 191.

It was submitted that the prosecution had proved the offence of rape beyond reasonable doubt.

It was submitted that there were other facts outside the confessional statement of the Appellant which showed that the confessional statement Exhibit PA1 was true. Exhibit PA1, it was submitted, was tendered and admitted without objection and is therefore good evidence. We were referred to Egharevba vs. The State (2016) 258 LRCN 187 at 195. It was submitted that the Appellant cannot challenge the confessional statement Exhibit PA1 on appeal having failed to do so when it was tendered in evidence.

Learned counsel for the Respondent pointed out that the Appellant denied the signature on Exhibit PA1 but argued that the Appellant did not tender any document showing his signature. It was submitted that failure to do so was fatal to the case of the Appellant. The Court was referred to’ Yongo vs. COP (1992) 8 NWLR (Pt. 257) 4.

It was submitted that Section 209(1) of the Evidence Act was complied with because the PW3 affirmed before she gave evidence.

It was submitted that the Respondent did not deliberately fail to recall the PW4 through whom Exhibit PA1 was tendered and admitted without objection. He was cross-examined. It was submitted that the inability of the Respondent to recall the PW4 for further cross-examination did not adversely affect the fairness or otherwise of its case and did not occasion a miscarriage of justice. The Court was referred to Jones vs. COP (1960) FSC 38.

It was submitted that Appellant was charged with committing the offence at Zing. Therefore, it did not matter whether it was in a room or behind a filling station provided the two places are in’ Zing.

The Appellant’s Reply Brief introduced new arguments, both on the facts and law. This is not permitted under the Rules of this Court. See Order 19 Rule 5(1) of the Court of Appeal Rules 2016 which permits of filing a reply brief which shall deal with new points arising from the Respondent’s brief. As the Appellant’s Reply Brief has done violence to the Rules of the Court, I will discountenance it.

The position of the law which hardly requires the citing of legal authorities is that where the commission of a crime is in issue the allegation must be proved beyond reasonable doubt. The burden of proof is on the prosecution and it never shifts. Proof beyond reasonable doubt does not mean proof beyond shadow of doubt or proof to the hilt or proof beyond all iota of doubt. Thus if the evidence adduced by the prosecution is so strong against an accused person as to leave only a remote possibility in his favour, the case is proved beyond reasonable doubt. See Section 36 (5) of the 1999 Constitution FRN which provides that every person who is charged with a Criminal Offence shall be presumed innocent until he is proved guilty. See also Agbo vs. The State (2006) 6 NWLR (Pt. 977) 545, Igabele vs. The State (2006) 6 NWLR (Pt. 975) 100, Michael vs. The State (2008) 13 NWLR (Pt. 1104) 361, Orisa vs The State (2018) LPELR-43896 SC page 9 - 10, Darlinton vs. FRN (2018) LPELR-43850 SC and The State vs. Fadezi (2018) LPELR-44731.

At common law, rape is the unlawful sexual intercourse committed by a man with a woman not his wife through force and against her will. The offence is incomplete if there is no penetration of the person into the vagina. Also a husband cannot be convicted of raping his wife. See Black’s Law 2014 Edition by Bryan A. Garner.

For the conviction of the Appellant to be sustained there must be credible evidence that the Appellant had sexual intercourse with the PW3 against her will; (2) without her consent; (3) with her consent when her consent had been obtained by putting her in fear of death or of hurt; (4) with her consent, when the man knows that he was not her husband and that her consent was given because she believed that he was another man to whom she was or believed herself to be lawfully married; (5) with or without her consent, when she was under fourteen years of age or of unsound mind. See Section 282 of the Penal Code and Mamuda vs. The State (2019) LPELR-46343 SC page 15.

Evidence of corroboration of the evidence of the victim in a rape case is not required as a matter of law. However it is desirable that the evidence of the complainant should be strengthened by other evidence implicating the accused person in some material particular. It is not the law however that an accused person in a charge of rape cannot be convicted on the uncorroborated evidence of the complainant. See Ogunbayo vs. The State (2007) 8 NWLR (Pt. 1035) 157 and Iko vs. The State (2001) 14 NWLR (Pt. 732) 221.

On the 31st January, 2013, PW4 testified and was cross-examined by the learned counsel for the Appellant. When the learned counsel for the Appellant asked for the recall of all five witnesses called by the Respondent in proof of the alleged offence against the Appellant, several efforts were made to get the PW4 back to Court for the further cross-examination. Nothing came out of these efforts. According to learned counsel for the Respondent, the matter lingered on for about ten months after several adjournments and apparently both counsel and the Court agreed that progress be made by the Appellant commencing his defence. See pages 116 and 117 of the record. As learned counsel for the Respondent rightly pointed out the reason for the inability to recall the PW4 was that he was no longer serving in Jalingo, Taraba State. He had been transferred to Mubi in Adamawa State. From Mubi, he had been transferred somewhere else. See page 113 of the record. It is not surprising therefore that the Court agreed with the parties that the matter proceeds to defence. The grouse of the Appellant is that the Court below relied on the evidence tendered through the PW4 since he could not be recalled for further cross-examination. The Court below in my view rightly relied on that evidence because the cautionary statement of the Appellant tendered through the PW4 was tendered and the Appellant’s counsel said he had no objection. It was admitted and marked Exhibit PA1 by the Court below. After the PW4 had testified he was cross-examined at length by learned counsel for the Appellant. The Court below would have erred if it disregarded the evidence tendered through the PW4 merely because the PW4 could not be recalled for further cross-examination.

I have noticed that on 26th February, 2014, when the Respondent’s counsel requested that recall of PW4 be dispensed with to avoid further delay, Appellant’s counsel made no effort to explain why the further cross-examination of the witness was necessary. He merely retorted thus:

“We do not intend to dispense with the cross examination of this witness but we shall concede to an adjournment.”

But the witness had been cross-examined as pointed earlier, at length. He was being recalled for further cross examination.

For the purpose of emphasis, I repeat that the Court below rightly relied on Exhibit PA1 which was tendered and admitted through PW4 without any objection.

PW2 both in evidence in Chief and under cross-examination maintained that the PW3 her daughter was 13 years old. The fact that she said under cross-examination that she could only count years but could not know or remember the date of birth of PW3 did not detract from her evidence that the PW3 was 13 years old. PW2 being the mother of the PW3 was the best witness in respect of PW3’s age among the witnesses called by the Respondent.

Learned counsel for the Appellant is therefore wrong in turning to the evidence of PW3 and a couple of other witnesses to look for evidence of the age of the PW3. The Court below therefore rightly relied on the evidence of the PW2 that the PW3, the complainant was 13 years old at the time of the alleged rape.

Although the PW3 gave evidence on affirmation contrary to Section 209(1) of the Evidence Act; I do not agree with learned counsel for the Appellant that the evidence of the PW3 was not corroborated as required under Sub-section 3.

Learned counsel for the Appellant contended that evidence of PW1, PW2, DW1 and DW2 read together with Exhibits PA1, PA2, B1 and B2 were contradictory without the least effort to point out even one such contradiction. It is not enough merely to mouth that there are contradictions without showing such contradictions and the nature whether material or mere inconsistencies.

Learned counsel for the Appellant consented to the document Exhibit PA1 being taken as a read. See page 38 of the record of appeal where the Court stated thus:

“With consent of both learned counsel, the document (sic) are taken as duly read in Court.”

It is clear from the foregoing that the Appellant is shedding Crocodile tears because the document was taken as read with his consent. In the circumstances, the Court will ignore that complaint.

Again, the Appellant is complaining before this Court that the Superior Police Officer before whom the Appellant was taken after Exhibit PA1 was recorded was not called as a witness. The Appellant did not object to the admission of Exhibit PA1 on the ground that the Superior Police Officer before whom he was taken was not called as a witness; or on any other ground. This complaint also has no basis.

Another complaint by the Appellant is that there is contradiction between evidence of PW3 and Exhibit PA1. Exhibit PA1 was not made by the PW3 but by the Appellant. So that argument is neither here nor there. Again without pointing out the contradictions in Exhibits PA1 and B2 which were not made by any of the Respondent’s witnesses, the complaint about the contradictions in the two exhibits is also neither here nor there.

When Exhibit PA1 was sought to be tendered, the learned counsel for the Appellant did not claim that the signature on it was not that of the Appellant. The denial of the signature on Exhibit PA1 by the Appellant as his own at the conclusion of his defence was merely an after-thought. The Court below rightly disregarded the denial.

Furthermore, the learned counsel for the Appellant took a swipe at the Court below for relying on Exhibit PA1 which was recorded in the absence of Appellant’s counsel/lawyer. I cannot fault the Court below for doing so because as stated severally above the said Exhibit PA1 was tendered and admitted without any objection. Learned counsel for the Appellant did not object to the admission of the Exhibit on the ground that it was recorded in the absence of Appellant’s counsel.

It is a cardinal rule of evidence in civil and criminal cases that an objection to the admissibility of document sought by a party to be tendered in evidence must be taken when the document is offered in evidence. Where objection has not been raised by the opposing party to the reception of the document in evidence, such objection cannot afterwards be raised on appeal unless by law the document is rendered inadmissible. SeeEtim & Ors vs. Ekpe & Anor (1983) 3 SC 12 at 36 - 38. The Appellant has not shown that Exhibit PA1 is inadmissible in law. Having not objected to its being admitted in evidence, he cannot afterwards be heard to complain so profusely about its admission on appeal.

Learned counsel for the Appellant asserted without more that there were two contradictory places where the alleged rape took place. Learned counsel did not point out the two contradictory places. From the charge, the Appellant was alleged to have committed the alleged rape at Zing in Zing Local Government Area. Learned counsel for the Appellant did not show which other place any of the witnesses or a witness mentioned as the place the alleged offence took place.

The PW3 in her testimony in Court stated as follows:

“Then another man called Manasseh came holding my skirt from behind while the machine was moving - 1st Accused held me with one hand and drove the machine with one hand. He was running while I was crying, he passed near our house and I was still shouting. He took me behind the hospital. He started beating me saying because that since I am crying he will call other people to come and molest me. He said I should climb the machine or he will beat me. I climbed the machine. He took me to the cemetery in Dan Lappa. I was crying when another person came holding a matchet. That person asked him why I was crying he told the man to forget about me. From there he took me behind a filing station. He pushed me on the ground; he removed his trousers, he removed my pant. He brought his penis, he pushed his penis into my virgina (private part).

He forcefully penetrated into my private part (virgina). Blood started coming out of my private part and I was crying. After he finished he took me and put me on top of the motorcycle. When he saw my mother around the roundabout he pushed me off the motorcycle. My mother is Suzana Shombi. He just threw some money N400 on me and ran off. Then my mother came and took me up from the ground. My mother was not alone. There were other people there.

When they lifted me from the ground they took me to the police station. I was asked as to what happened. I told them i.e. narrated the story.”

The evidence of PW3 reproduced extensively above was strengthened by the evidence of PW1 and PW2 as well as Exhibit PA1 the statement of the Appellant to the police. PW1 saw when the Appellant dropped the PW3 and four hundred Naira (N400) from his motorcycle. He saw her crying and blood was coming out (according to him) from her vagina. So they took her to the police station. The following day, the police took her to the general hospital.

PW2 also saw the Appellant forcefully drop the PW3 at the roundabout from his motorcycle. The PW3 was bleeding. They proceeded to the police station. The next day they took the PW3 to the general hospital. Under cross-examination, the PW2 said the blood was on PW3’s pant and skirt so, it could not have been from the beating only.

Under cross-examination, the PW3 said they spent about two (2) minutes at the filling station. That the Appellant penetrated her rather quickly that was why she bled and also cried. She maintained that it was the Appellant who picked her from the ground after the incident and placed her on the motorcycle.

In Exhibit PA1, the Appellant admitted having sexual intercourse with the PW3. Exhibit PA1 reproduced in part reads as follows:

“I took her to Tudun Wada Ward. From there to Lapo and we came to a Petrol Filling Station which I cannot remember the name and took Rita to Garba’s room near the Filling Station where I lay her on a mattress and I had sexual intercourse with her.”

On the evidence of PW2, the PW3 was under fourteen years. According to the PW2, the PW3 was 13 years at the time of the alleged rape. The Court below was therefore on firm ground when it found that the sexual intercourse which the Appellant admitted having with the PW3 amounted to rape. Issue 1 is therefore resolved against the Appellant and in favour of the Respondent.

As I pointed out earlier, learned counsel for the Appellant cited copious authorities on what amounts to a good judgment without any effort to show that the judgment of the Court below was bad and why. That was a mere academic exercise. The Appellant did not also show that he was not given fair hearing.

Issue 2 is also resolved against the Appellant and in favour of the Respondent.

Both issues having been resolved against the Appellant and in favour of the Respondent, this appeal should be dismissed; and is hereby dismissed.

The judgment of the Court below is affirmed by me. The conviction and sentence of the Appellant by the Court below to a prison term of seven (7) years is affirmed by me.

The bail granted to the Appellant after conviction is hereby revoked. The Appellant shall be taken back to the prison (Correctional Centre) to complete the prison term imposed on him by the Court below.

**CHIDI NWAOMA UWA, J.C.A.:**

I read before now a draft copy of the judgment delivered by my learned brother JAMES SHEHU ABIRIYI, JCA. I agree with my learned brother’s reasoning and conclusion arrived at in dismissing the appeal. I also dismiss it. I abide by the order revoking the bail granted to the Appellant after his conviction and also order that the Appellant be taken back to the correctional centre to complete the prison term imposed on him by the trial Court.

**ABDULLAHI MAHMUD BAYERO, J.C.A.:**

I agree.-end!