Why popular Lagos doctor convicted of rape was acquitted

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As Femi Olaleye exited the Special Offences and Domestic Violence Court in Lagos on 24 October, 2023, his dark glasses and face mask concealed his emotions and shielded him against the prying eyes of the onlookers.  
  
Mr Olaleye, who was putting on a white attire had just received a life sentence for rape and sexual assault by penetration.  
  
“Femi Olaleye, I have convicted you of defilement and sexual assault by penetration. This charge has a mandatory sentence of life imprisonment. Accordingly, I sentenced you to life imprisonment on counts one and two. The sentencing will run concurrently on each count,” the judge, Ramon Oshodi, had ruled.  
  
As though unbothered, he rubbed his palms held in handcuffs against each other, while looking straight ahead as three officers from the Nigeria Correctional Centre led him away.  
  
Following his sentencing, Mr Olaleye, who is the medical director of Optimal Cancer Care Foundation spent only one year behind bars. On 29 November, 2024 the Court of Appeal, Lagos Division, discharged and acquitted him, citing errors in the lower court’s judgement.  
  
The decision to set aside the trial court’s decision was taken by three judges — Jimi Bada, Abdu Dogo and Zainab Abubakar.  
  
Olaleye’s Ordeal  
  
Mr Olaleye’s ordeal began in 2022 when popular Nollywood actresses Kate Henshaw and Damilola Adekoya accused him of raping a minor under his care.  
  
The then 56-year-old was arraigned on 30 November, 2022 and pleaded not guilty to the allegations against him.  
  
During the trial, the judge granted Mr Olaleye bail set at N50 million with two sureties which were later reviewed downward.  
  
The prosecution subsequently called six witnesses — the minor , the defendant’s wife , a doctor and child forensic interviewer, both of whom examined the minor as well as two police officers.  
  
Mr Olaleye testified in his defence, alongside his friend of over 40 years as well as his clinical forensic physician who faulted the medical evidence presented by the prosecution.  
  
Proof of rape, sexual assault  
  
In any rape case, age is a critical factor. The Nigerian law states that to establish the offence of rape, the child must be proven to be underaged, the accused person must have had sexual relations with the minor and the consent of the child is immaterial.  
  
For the offence of sexual assault by penetration, it must be demonstrated that penetration occurred, whether into the anus, vagina, mouth, or any other bodily opening, using any part of the accused’s body or another object.  
  
Furthermore, there must be clear evidence that this act was performed without the victim’s consent.  
  
The offences must be proven beyond a reasonable doubt.  
  
Reasons why Femi Olaleye was freed  
  
The Court of Appeal set aside the trial court’s judgment because it failed to adequately prove the victim’s age.  
  
The trial court relied on the prosecution witness testimony to establish the victim’s age; however, none of them witnessed her birth, and there was no document to substantiate her birth age.  
  
The judge, Jimi Bada, emphasised that the failure of the lower court to set up an inquiry to determine her age created doubt which ultimately benefited the appellant.  
  
Also, the judge criticised the trial court for convicting the appellant on three pieces of evidence tagged H, H1 and H2 which were obtained under duress. The exhibits included emails, WhatsApp exchanges between the appellant and his estranged wife and written undertakings.  
  
“The exhibit classified as H is the appellant’s “extra-judicial” statement at the Anthony police division made on 29 November 2021. Exhibit H1 is the print-out of e-mails and WhatsApp messages between the appellant and his wife, Aderemi Olaleye while H2 are hand-written and typed undertaking dated 3 and 5 December 2021.”  
  
The court said that the trial court “made the matter worse’’ by relying on exhibits H and H2 in convicting Mr Olaleye despite acknowledging that the former was written under duress six days after detention.  
  
The court noted that a “trial within a trial” should have been conducted to investigate how the statements were obtained, including the alleged incident where the defendant’s lawyer was “chased away’ by the DPO.  
  
Meanwhile, the court also found the email and WhatsApp exchanges (Exhibit H1) to be unreliable because the applicant had claimed he left his phone at home when he went to the police station and his wife confirmed this and admitted to having access to his phone while he was away.  
  
However, there’s no evidence that she returned the phone to him before the alleged emails and messages were sent. The appeal court ruled that undoubtedly, there is a “possibility and real likelihood” that the exhibits were deliberately created at the time the appellant’s wife had access to them and as such inference will not be out of place.  
  
“This creates a severe doubt and the law is settled beyond cavil that all doubts are resolved in favour of a defendant,” Mr Bada said.  
  
The court reiterated that when there’s doubt, the benefit of the doubt must be given to the defendant.  
  
The court also evaluated the testimonies of all six prosecution witnesses to check whether the testimonies relied upon by the lower court to convict the appellant were credible, cogent and reliable.  
  
It arrived at its conclusion after it found some inconsistencies in the statements and testimonies of some of the witnesses including the appellant’s wife and the victim.  
  
The court also faulted the prosecution for failing to call two key witnesses including the DPO of the police division to testify in court.