Appeal Court acquits pharmacist jailed for life over rape

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The Court of Appeal in Abuja has discharged and acquitted a pharmacist, Abubakar Mustapha Danraka, earlier sentenced to life imprisonment by a High Court of the Federal Capital Territory FCT upon conviction for rape.  
  
A three-member panel of the appellate court, headed by Justice Joseph Oyewole faulted the findings and decision of the High Court of the FCT and proceeded to set it aside.  
  
In the lead judgment, Justice Oyewole found among others, that the case was poorly investigated and that the prosecution failed to prove its case with credible evidence as required.  
  
The judgment, delivered on July 15 was on the appeal marked: CA/ABJ/CR/1019/2023 filed by Danraka.  
  
Danraka is described as the Special Adviser to the Director General of the National Institute for Pharmaceutical Research Development (NIPRD), Abuja  
  
He was arraigned on April 5, 2022 on a one count charge of rape, marked: FCT/HC/CR/014/2022 brought against him by National Agency for the Prohibition of Trafficking in Persons (NAPTIP).  
  
Danraka was, in the charge, alleged to have, between March 20 and 21, 2020 raped a 12-year-old male neighbour (names withheld) by intentionally penetrating the victim’s anus with his penis.  
  
The prosecution alleged that the incident occurred at Spring Valley Estate, Airport Road, Abuja.  
  
He denied the allegation by pleading not guilty, following which the prosecution called four witnesses during the trial, while the defendant called three witnesses, including himself.  
  
In a judgment on September 18, 2023, Justice Asmau Akanbi-Yusuf accepted the case of the prosecution, convicted Danraka and sentenced him to life imprisonment, a decision he appealed at the Court of Appeal in Abuja.  
  
Justice Oyewole, in the lead judgment of the Court of Appeal, held that the trial court was wrong to have admitted the victim’s extra judicial statement as part of the prosecution’s evidnce.  
  
He also held that the prosecution was wrong not to have investigated the alibi raised by Danraka.  
  
Justice Oyewole also faulted the medical doctor – Dr. Denni Richard Shettima of the Nation’s Hospital, Abuja – who examined the alleged victim, for not equally subjecting the defendant to medical scrutiny.  
  
The judge added: “The only eye-witness to the commission of the said rape was the victim, who testified as PW2 (the victim) at the trial.  
  
“His testimony failed to specifically state that he was raped or penetrated by the appellant.  
  
“In convicting the appellant, however, the lower court relied on the extra-judicial statement of the same PW2 tendered through PW1 (the investigating police officer – IPO) by the prosecution.  
  
“This was an error as the lower court failed to take cognizance of the clear provisions of sections 232 and 233 of the Evidence Act 2011.  
  
“The said extra judicial statement of PW2 was inadmissible for the purposes for which the lower court admitted it and in relying on the said extra judicial statement for evidence to convict the appellant, the findings which emanated therefrom were not only perverse but had occasioned miscarriage of justice.  
  
“As earlier stated, the extra-judicial statement of a witness is not to be tendered in evidence and used as additional evidence against the criminal defendant or accused person, it can only be used to resolve contradictions in the testimony of the witness.  
  
“It follows therefore that a court cannot rely on inadmissible evidence to arrive at its decision.  
  
“The medical doctor who examined PW2 testified as PW4 (the medical doctor) and his evidence was assessed by the lower court as providing needed corroboration for the content of exhibit C, the wrongfully admitted extra judicial statement of PW2.  
  
“On his own, the said PW4 did not examine the appellant although he (the appellant) was readily available at the earliest opportunity.  
  
“His (the medical doctor’s) testimony therefore did not link the appellant with the offence.  
  
“Also, his testimony cannot be corroborated or provide corroboration for the wrongfully admitted exhibit C.  
  
“The absence of legally admissible evidence of penetration by the appellant and the absence of any examination of the appellant by PW4 rendered the evidence of the said PW4 worthless before the court.  
  
“The situation of the respondent was only further exacerbated by the failure to investigate the alibi of the appellant which was raised at the earliest opportunity as contained in exhibit B,” he said.  
  
Justice Oyewole held that the evaluation of the issue of alibi of the appellant by the lower court and the method of investigation by the investigators created an unacceptable impression that the appellant did not enjoy a presumption of innocence under section 36 (5) of the Constitution and that he had the duty of proving his own innocence.  
  
He added: “This must never happen in a criminal trial especially one where the appellant faced the punishment of life imprisonment.  
  
“It is a constitutional imperative that investigators approach their task with an open mind which permits of the possibility that the person brought before them as the alleged offender may be innocent.  
  
“That way every piece of Investigative lead would be adequately covered without any iota of bias.  
  
“In line with the provisions of section 36 (5) of the Constitution that where doubts arise in the case presented by the prosecution then such doubts should be resolved in favour of the accused person or criminal defendant.  
  
“The highlighted doubts in the case of the respondent herein must ensure to the benefit of the appellant.  
  
“In totality, therefore, I find merit in this appeal and I hereby allow it.  
  
“Consequently, the judgment of the lower court delivered in Suit No. FCT/HC/CR/014/2022 delivered on 18th September 2023 is hereby set aside.  
  
“I equally set aside the conviction and sentence of the appellant and instead, the appellant is hereby discharged and acquitted,” Justice Oyewole said.  
  
Justices Peter Obiorah and Okon Abang, who are members of the panel, also agreed with the lead judgment.