Sexual Assault: Appeal Court affirms five-year conviction of Baba Ijesha

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The Court of Appeal, Lagos Division yesterday affirmed the judgment of a Lagos State High Court, which sentenced Nollywood actor, Olanrewaju James, popularly called Baba Ijesha, to five years imprisonment for sexually assaulting a 14-year-old minor.  
  
The appellate court in its lead judgment delivered by Justice Folashade Ojo, who presided over the case, found the appellant, Baba Ijesha, guilty on counts 4 and 5, where he was accused of indecently touching a minor and sexually assaulting her.  
  
Other members of the panel, Justice Abdullahi Bayero and Justice Paul Bassi, aligned themselves with the lead judgment.  
  
The Lagos State Government arraigned Baba Ijesha on a six-count charge bordering on indecent treatment of a child, sexual assault, attempted sexual assault by penetration and sexual assault by penetration.  
  
In her judgment, the trial judge, Justice Oluwatoyin Taiwo (rtd) of the Ikeja Domestic Violence and Sexual Offences Court, had on July 14, 2022 sentenced Baba Ijesha to five years imprisonment over sexual assault of a minor.  
  
The court found Baba Ijesha guilty of indecent treatment of a child and sexual assault of a minor between 2013 and 2014, which is contrary to Section 135 of Lagos State Criminal Law 2015.  
  
Justice Taiwo exonerated him of the offence of sexual assault by penetration which deals with allegedly sexually assaulting the minor by penetration with his car key seven years ago and attempted sexual assault by penetration during another encounter with the minor on April 22, 2021.  
  
The judge held that the prosecution successfully proved counts two and three that he indecently placed the survivor on his lap and rubbed his penis on her body.  
  
Dissatisfied, Baba Ijesha, through his counsel Mr. Kayode Olabiran, approached the Appeal Court, praying it to allow the appeal and set aside his conviction and sentence.  
  
The appellant argued that the prosecution failed to prove that he (Baba Ijesha) sexually assaulted the victim, contending that the appellant merely acted a script that he was invited to act.  
  
“The Appellant was set up. The Appellant is an actor. He acted in a script that he was invited to act by his colleague (PW1), Damilola Adekoya,” he argued.  
  
Delivering judgment on the appeal yesterday, Justice Folashade Ojo set aside the appellant’s conviction on indecent treatment of a child and sexual assault of a minor which allegedly occurred between 2013 and 2014, describing the testimony of PW1 (Damilola Adekoya) as hearsay.  
  
Justice Ojo, however held that on the event that occurred on April 19, 2021, the evidence of PW1 (Damilola Adekoya) was an eyewitness account, adding that an eyewitness account remains credible and one of the most effective ways to established commission of an offence.  
  
Besides, the court held that the appellant voluntarily confessed to the crime of the event of April 19, 2021, and did not challenge the statement of (PW1), Damilola Adekoya, throughout the proceedings.  
  
Justice Ojo noted that the appellant made extra-judicial statement at Sabo Police Station Lagos State on April 19, 2021, and another statement at the State Criminal Investigation Department, Panti on the 28th of April 2021, which were tendered in evidence.  
  
The court held that in the two statements, the appellant admitted that he indecently touched and indeed molested PW2 while she was alone with him in PW1’s (Damilola Adekoya) apartment.  
  
Justice Ojo held: “The law is certain that there is no other evidence other than admission in commission of an offence.  
  
“From the totality of the evidence of PW2, it can be safely inferred that as at the date of the victim’s testimony, she was at best 15 years old and a child by virtue of Section 261 of the Child’s Rights Law of Lagos State, 2015.  
  
“It is significant to note that the appellant did not challenge PW2 on the evidence she gave. It is in view of all these that I hold that the prosecution established that PW2, the victim of the offence was a child at the time of the alleged offences in 2021.  
  
“I have carefully looked at the record and unable to agree with the appellant that he was merely acting a script. The interaction between PW2 and the appellant on the 19th April, 2021was not a theatrical performance of make-believe but a personal encounter between the two of them.  
  
“Moreover, PW2’s (victim) body language supported by her oral testimony and documentary evidence clearly show that she attempted to distance herself from the appellant.  
  
“The most inference to draw from appellant’s action in searching the entire house immediately after PW1 left with her visitors and sexually assaulting PW2 is that he intended to commit the offence, and did commit the offence.  
  
“It’s trite that factual findings of the trial court involving the credibility of witnesses are accorded almost respect. Trial courts have the advantage of first-time observation, which allows them to assess witnesses’ demeanour and manner of testifying during the trial.  
  
“On the event of April 19, 2021, it is my firm belief that the evidence of PW1 does not amount to hearsay; she was an eyewitness.  
  
“My conclusion is that the evidence presented by the prosecution before the trial court on the offence of indecent treatment of a child, and sexual assault committed by the appellant on the 19th of April 2021 is compelling and sufficient to justify the appellant’s conviction.  
  
“In conclusion, I have no hesitation in affirming the appellant’s conviction for the indecent treatment of a child and sexual assault.  
  
“The appellant indecently touched PW2’s body in a sexual manner, in violation of Section 135 of the Criminal Law of Lagos State 2015. His actions constitute sexual assault against PW2.  
  
“I am of the view that the respondent discharged the burden proving its case beyond reasonable doubt against the appellant on the allegations of April 19, 2021, and I so hold.  
  
“I have no reason to interfere with the findings of the trial court on the event of April 19, 2021.  
  
“In all, I hold that this appeal succeeds in part and it is accordingly allowed in part.”  
  
The court ordered as follows: “The appellant’s conviction and sentence to five years imprisonment for the offence of indecently touching a child contrary to Section 135 of the Criminal Laws of Lagos State 2011 (count 2 of the charge) is set aside.  
  
“The Appellant’s conviction of 3 years imprisonment for the offence of sexual assault of a child contrary to section 261 of the Criminal Laws of Lagos State 2011 (count 3 of the charge) is set aside.  
  
“I affirm the conviction and sentence of the appellant to 5 years imprisonment for the offence of indecent treatment of a child contrary to section 135 of the Criminal Laws of Lagos State 2015 (count 4 of the charge)  
  
“The appellant’s conviction and sentence to 3 years imprisonment for sexual assault contrary to section 263 of the Criminal Laws of Lagos State 2011 (count 5 of the information) is also affirmed.  
  
“The sentences for counts 4 and 5 are to run concurrently.”