

THE CRIME OF RAPE

Posted on [March 31, 2016](#) Written By [Olanrewaju Olamide](#) Posted in [Nigerian Criminal Law](#) Tagged [Sambo vs The State](#), [Upahar vs The State](#)

According to the provision of **S.357 of the Criminal Code**, rape occurs when a person has unlawful carnal knowledge of woman without her consent, if with her consent, by means of threat or intimidation, by means of fraudulent misrepresentation as to the act or by impersonating her husband.

The meaning of 'unlawful carnal knowledge' is expressly provided for in **S. 6 of the Criminal Code**. It defines unlawful carnal knowledge as

“carnal connection which takes place otherwise than between husband and wife.”

The section also further states that an important element of carnal knowledge or carnal connection is penetration.

Also, rape has been defined by **S.282 of the Penal Code**. It provides:

(1) A man is said to commit rape who, except in the case referred to in subsection (2) of this section, has sexual intercourse with a woman in any of the following circumstances-

(a) against her will;

(b) without her consent;

(c) with her consent, when her consent has been obtained by putting her in fear of death or of hurt;

(d) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(e) with or without her consent, when she is under fourteen years of age or of unsound mind.

(2) Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.

In the case of ***Upahar vs The State (2003) Vol 6 NWLR pt 816*** the court held that to establish the offence of rape, the prosecution has to prove:

1. That the accused had sexual intercourse with the prosecutrix.
2. The sexual intercourse was done in circumstances under the provision of **S.282(1) of the PC**.
3. The prosecutrix was not the wife of the accused or if she was the wife, had not attained the age of puberty.
4. The accused had the mens rea to have sexual intercourse with the prosecutrix without her consent, or he was reckless and careless regarding her consent.
5. There was penetration.

In the offence of rape, the testimony of the complainant must be corroborated in order to secure conviction. Also, a person cannot be convicted of raping a child under the age of 13 on the uncorroborated testimony of one witness.

The evidence of the prosecutrix must unequivocally implicate the accused. In the case of ***Sambo vs The State (1993) Vol 6 NWLR pt 300***, the appellant asked the prosecutrix, a young girl of eleven, to bring water into his room. Upon bringing the water, he played loud music and he alleged that he danced with the prosecutrix. After the prosecutrix left the room, she was crying and blood was found on her thighs by her sister. She told her sister that she was raped by the accused. Her sister then reported the case to the police for rape.

At the trial court and the court of appeal, the accused was convicted of rape. At the Supreme Court, in allowing the appeal, the court held that the testimony of the prosecutrix alleging rape was not corroborated by other external evidence. Thus, in this situation, a conviction for rape could not be secured.

Queen vs Omishade (1964) NMLR, Njovens vs The State (1973) NMLR, Rabiun vs The State (2005) Vol 7 NWLR pt 925.

In the offence of rape, the actus reus is penetration while the mens rea is the intention to have unlawful carnal knowledge.

The punishment for rape according to **S.358 of the Criminal Code** is life imprisonment with or without caning.

SOURCES

1. Lecture delivered by Dr Mrs. M.A. Abdulraheem Mustapha
2. Okonkwo and Naish: Criminal Law in Nigeria
3. The Nigerian criminal Code
4. The Nigerian Penal Code