

IN THE HIGH COURT OF JUSTICE
EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP THE HON. JUSTICE G. O. IMADEGBELO
ON WEDNESDAY THE 15TH DAY OF OCTOBER 2014

BETWEEN

SUIT NO HAB/1C/2008

THE STATE **COMPLAINANT**
VS
BRIGHT ASIRIUWA **ACCUSED**

J U D G M E N T

The accused person is charged on a two count charge on information filed on the 28th day of February, 2008. This charge was substituted with charge filed on the 9th day of July, 2008 and which was further substituted with a charge filed on the 21st January 2013.

STATEMENT OF OFFENCE

COUNT 1:

Indecent assault punishable under section 222 of the Criminal Code Cap 48 Vol. II Laws of the defunct Bendel State of Nigeria, 1976 as applicable in Edo State.

PARTICULARS OF OFFENCE

Bright Asiruwa (m) sometime in September 2007 at Osazuwa, Ugbiyaya village in Ehor, in the Abudu Judicial Division unlawfully and indecently dealt with Rafatu Braimoh a girl of eleven years.

STATEMENT OF OFFENCE

COUNT II:

Rape, punishable under section 358 of the Criminal Code Cap 48 Vol. II Laws of the defunct Bendel State of Nigeria, 1976 as applicable in Edo State.

PARTICULARS OF OFFENCE

Bright Asiruwa (m) on or about the 26th day of November 2007 at Osazuwa, Ugbiyaya village in Ehor, in the Abudu Judicial Division had unlawful carnal knowledge of Rafatu Braimoh a girl without her consent.

In proof of its case, the prosecution called six witnesses. The accused person pleaded not guilty to the two count charge on the 18/2/2014. The accused person testified for himself and called three witnesses. A brief resume of the prosecution's case is set forth below.

PW1 is Momodu Braimah, he lives at Ugbiyaya, Ehor in Edo State, he is a farmer. He knows the accused person at Ugbiyaya. He knows one Rafiatu Braimah, she is his daughter. On the 26/11/2007, he was at home when his son Inu and Rafiatu came to him crying and he asked what happened, Rafaitu said that it was teacher, the accused person sent her to his house. When she got there, the accused person said she should enter his bedroom. That he told her to lie down on the bed she refused, he forced her on the bed tore her pant and had sex with her. When Rafiatu was telling him about it, the accused person came to his house to beg him, that he should not be annoyed, he should not let anyone know that he wants to marry Rafiatu, that anything he want he will do. He told his son Nasim, as they were talking Rafiatu fell down they took her to the hospital. The Headmaster of the school came with police that he wants the accused person arrested. The community also assisted to report the matter to the Onojie. They sent one of their Alhaji Inu to the Onojie. The Onojie invited them to the palace. When they got to the palace, the accused narrated and he also narrated. The accused was found guilty and was fined for polluting the land. He is not aware if he paid the fine or not. He was called to the State C.I.D. he also made statement.

Under cross examination by C. E. Agbonwanegbe Esq. the witness stated that he made statement to the police. He told the police what he told court. He did not tell the police that on his way back to the town hall that he saw the accused. All he said here is what he told the police. He told the police that the headmaster came to him that he wants to report the matter to the police. He told the police that the matter was reported to the Enogie whether it was recorded or not, he does not know. He was in his house when he heard people crying, he was not in a town hall meeting. He told the police that Rafiatu was crying. Rafiatu fainted in his presence, that is why they took her to the hospital his daughter was not helping the accused person. His house is close to the school. He dug a soakaway pit on his land which the community gave to him. It is the day that the accused called Rafiatu that is the day she knew he lived there. He had no previous quarrel before with the accused, that it is only this issue he has quarrel with the accused. The accused was present at the Enogie

palace. It was his daughter who informed him that the accused raped her. It was his daughter who told him what happened.

PW2, is Braimoh Zini. He lives at Ekpoma at No. 82 Ihumudumu road in Edo State. He is a trader. Rafatu Braimoh is his younger sister. He knows the accused person. He knows PW1 he is his father. On the 26/11/2007, he received a phone call from his younger brother Inu Braimoh that he should come down to the village that his younger sister Rafatu Braimah has been defiled by her primary school teacher. He called his father who confirmed it that he should come down immediately. While he was in the vehicle on his way, his father called him that he should go straight to the police station that the community said he should invite the police. He went to the Ehor Police station where he instituted the matter. He was given two policemen to invite the accused person to the police station. He took the two policemen to Ugbiyaya village on getting to the village, he took the policemen to his father. In the presence of the two policemen, his father narrated to them what happened. He asked of Rafatu and his father informed him that Rafatu fainted and his mother and younger brother rushed her to the hospital. Also he did not know the hospital. He asked of the accused person his father said as the Odionwere of the Osazuwa village, that the headmaster came with four men to Osazuwa village to meet with his father. That he came because he heard of what the accused person did and brought police to arrest the accused person. That was how the accused person got arrested to Ehor police station. The policemen said they should enter a vehicle to Ehor police station to find out if the accused was actually there, they entered a vehicle and drove to Ehor, the community sent some youths along with them because he did not know the accused person. On getting to Ehor police station while driving in he saw Mr. Eboje the Headmaster driving out of the police station. He told the policemen that, that is the headmaster they said he should not worry, they are sure the teacher is in the cell. They entered the premises on getting to the station the accused person was nowhere to be found in the police station. While searching for him, the D.P.O. invited them into his office. He made a statement, thereafter he gave him policemen to look for the accused person and the headmaster. Before he knew what happened the policemen dragged him and forced him with three of his brothers inside the cell. His brothers are Aroki, Bashiru Braimoh and one other boy who accompanied them from the village, he does not know his name. One of the two policemen who went with him told them that this is injustice. They put that policeman into the cell that same day. They all slept in the cell till the next day Barrister Imafidon and others came to Ehor police station and enquired why they put them in the cell, they said he and his brothers beat up the teacher. Their lawyers said where is the accused, they said he is in the hospital the lawyer and the D.C.O. went to the hospital, the accused was nowhere to be found. The D.C.O. came back and released all of them. It was in the evening of the 27th, his lawyer called

the policemen that he wants them to investigate this case right now, the D.C.O. said he should go and bring Rafatu from the hospital, she was admitted and bring her the next day. His father told him the name of the hospital. It was Eguavon hospital Irujekpen. He met the doctor to release her to him, he took Rafiatu to Ehor police division they met the DCO who took them to his office, he recorded his statement and that of Rafatu. He took the file to the D.P.O. The D.P.O. came out shouting that he is not interested in any case of defilement here that they should go to the State C.I.D. He immediately called his lawyer who said he should come down. He wrote a petition to the State C.I.D. Benin. The Policemen asked him if he knew where the accused lived he said he lives at Ehor, they looked for the accused and the headmaster, they were nowhere to be found. While they were looking for the accused and the headmaster, the accused and headmaster went to arrange S.A.R.S. from the State C.I.D. went to Osazuwa village, opened tear gas, the whole community ran into the bush, they arrested five of his persons, Aminu, Abduzemini, Baishiru, and two other village boys. He was called on phone that night. The next day he called his lawyers Imafidon & Omodiale, members of his community Alhaji Inu and Chief Ohunmiyon, Mallam Sanu and Mallam Aliu all these people accompanied him and Rafatu to the State C.I.D. They could not find his brothers. They had taken them to Ehor Magistrate court to remand them, the Ehor magistrate court did not sit, they returned them to State C.I.D. when this incident happened the matter was reported to the Enogie of Ehor who invited them to the Palace. The Enogie sent one Chief Ihaza to the Assistant Commissioner of Police to release his brothers. Five days later the accused person, headmaster, members of the community assembled at the Enogie's palace. Everyone narrated what they knew, the accused said he was buying shoes for Rafatu and that Rafatu has been writing him love letters. The people there were surprised. The Enogie said so that is why you defiled her that he has defiled the land and he should go and make sacrifice. The Assistant Commissioner of police released his brothers but said he should go and settle with the accused person and he should return with his brothers to tell him what the palace decided. They returned to Benin to see the Assistant Commissioner of Police, the Chief Ihaza told the Assistant Commissioner of Police what happened, he said he will settle us that the Chief Ihaza should go and report back to the Enogie. As soon as he left the Assistant Commissioner of Police ordered his brothers back into the cell, they were about to include him, he told them he was not amongst the five that is how he found his way out of the State C.I.D. The day he took his sister to the State C.I.D. one Sgt Omokaro took his sister to the police clinic. When he came back, he succeeded in taking few statements while he was to proceed with the recording statements policemen came and disorganized the members of the community. They wanted to put him in the cell but Omokaro saved him. He went to Benin and met one of his brothers who took him to see the Commissioner of Police, while he was there two policemen came to arrest him, he did not know how the

Assistant Commissioner of Police knew he was there, but the policemen in the Secretary's office did not allow them to arrest him. The Commissioner of Police saw them and they narrated what happened he invited all the parties, the accused, ACP, himself, Rafiatu. The five in the cell, Sgt. Omokaro. The Commissioner of Police asked the ACP what is his opinion, he could not say anything. He instructed him to investigate and if possible charge the matter to court. He made three statements, two at Ehor, one at State C.I.D. Benin. It was his elder brother Success Braimoh who accompanied him to the Commissioner of Police.

Under cross-examination by C. E. Agbonwanegbe the witness stated that he made statement at the State C.I.D. He was not given the opportunity to write all he wanted because the A.C.P. came to disturb him, he had to stop and sign and continued. He was not given an opportunity by the police to say all that transpired. He is telling this court all that happened. He recalled that he came to court to testify, all he told court on that day is what he is telling the court now. He was not present when the accused defiled Rafatu all he know is what Rafatu and his father told him. His father did not see the accused defiling Rafatu. His sister was admitted in Eguavon hospital, at the State C.I.D. she was taken to the police station, she returned same day. He is not the most intelligent person in his family. It is not possible to know who is more intelligent than him. His brother, the medical doctor is resident in Auchi, his brother the lecturer is at the University of Ekpoma. He is not a troublemaker. His father called him because he is close. On getting to Osazuwa village, his father told him Rafatu has been rushed to the hospital at that time unknown. There was no problem between the headmaster and teacher. The teacher has been coming to fetch water. The soakaway was dug by his father in his own land not close to the primary school. The local education did not come to settle this issue of the soakaway before the incident. It is untrue that Rafatu was having affairs with others before this incident. If anything happens to Rafatu in the school he will be informed. From Ekpoma he cannot know what is happening to his sister in Osazuwa village. He was not given any medical report. The police went there. He is unable to know the sex life of his sister. His sister is not a prostitute. When he went to discharge his sister from the hospital the doctor did not tell him anything, he paid the bill and left. At the State C.I.D he did not accompany her to the police doctor. It is not true that all he came to do is to prove he is a man. His people were detained to hinder the case of defilement. As he was looking for the accused person, the accused person used police to arrest his brothers. He does not know the charge that took his brothers to Ehor.

PW3 is Braimah Inu he lives at Ekpoma, Edo State. He is a student at the Ambrose Ali University Ekpoma. He knows one Rafatu Braimah, she is his

younger sister. He knows PW1, he is his father. He knows PW2. On the 26/11/2007 in the afternoon as he was going out he saw his younger sister Rafatu Braimoh crying, he asked her what was wrong with her, she told him that her teacher forced her to bed and made sex with her. He asked her which of the teachers she said Bright Asiriwa. He told her to take him to the teacher's house. On getting there they did not meet the teacher at home. He took Rafatu to his parents to inform them of what she told him. On getting to their house they met the teacher in his mother's room knelt down begging his mother that she should not shout out that he is ready to do anything that his mother asked him to do he is willing to marry Rafatu. His mother was now asking him why he was begging her. He then informed his mother what Rafatu told him. Immediately Rafatu fell down and fainted. He quickly called the PW2 from Ekpoma, he said he is going to Ehor to get the police. His mother and himself took Rafatu to Eguavon hospital Iruokpen. He later heard that PW2 was detained at the police station. Three days later, Police from the State C.I.D. came to the village and started chasing everybody. They came into their house, they did not meet anyone, picked up one phone v.k. 500. They went to his Cousins/brothers house and arrested some of his cousins/brothers. That is all he knows. He made statement to the police.

Under cross-examination by C E. Agbonwanegbe the witness stated that this is his third year in school. In 2007 he was working his admission into school. He was living at Ekpoma. He was not in Ekpoma on the 26/11/2007, he was in the village. The distance between the teacher's house and his house is up to five houses on one side. There are up to five roads that lead from the teacher's house to their house. The house and teacher's house are on the same street. There is no common road leading to their house. They have five roads that leads to their house. He went to the accused person's house he met no one. He and Rafatu met the accused person kneeling down. His father was not at meeting. Rafatu was taken to the hospital unconscious before she woke up. They took her to the hospital, he does not know anything about his father. He did not see his father before he went to the hospital. His mother and himself used a motorbike to take Rafatu to the hospital. They used two motorbikes to the hospital. When she was in the hospital, he went outside, he does not know when she became conscious. There is no quarrel between the accused and his father and his father did not dig a soakaway in the premises of the school. There was no settlement by the local government between his father, accused and headmaster of the school. It is not true that because of the quarrel, they were beating Rafatu for going to the teacher's house. He does not know anything about Rafatu going to the teacher's house as he does not stay in the village. He met the accused kneeling down that they should not shout out that he is going to marry his sister

PW4 is Braimah Rafatu, she lives at Ugbiyaya Uhumwonde Local Government. She is a student. She was born 10/12/1996. In 2007, she was nine years old. She knows the accused person, he was her teacher in class 4 in Osazuwa primary school. She knows PW1, Momodu Braimah. She knows PW2 and PW3 they are her brothers. On 26/11/2007, the Accused person gave her some books to keep in his house. Sometime in September 2007, the accused person gave her some books to take to his house. She got there she met him she dropped the books on the table, as she was leaving he forced her to lie down on the bed, he put cream on one of his fingers, he put the finger into her vagina, when she was crying he now said if she cry again he will kill her after he had finished putting his hand in her vagina he now told her to go. She went to her class to sit down, she started crying, her headmaster one Mr. Ebogie was asking her why she was crying, she was afraid to tell him what the accused person has done to her, he enquired the second time she now informed him of what the accused did to her. He instructed her not to anyone that he will warn the accused person not to do it again that she should not tell anyone. That if he hears of it from any other person he will send her away from the school. The second time the accused person gave her the books to keep in his house as she was coming out, the accused person locked the door and forced her to lie down on his bed, he put cream in his two fingers and put it in her vagina when she was crying he said he will kill her or drive her away from the school after he has finished he told her to go. She reported to her headmaster he said she should go and not say that type of thing again that if she say it again he will drive her away from the school. The third time again the accused person gave her the books to go and keep in his house. She said no she will not go again, he brought a cane and used it to flog her. She collected the books from him and took it to his house. She got there, and met him in his house, she dropped the books on his table, when she was coming out, he locked the door and forced her to lie down on his bed again, he tore her tight and put his penis into her vagina and started moving his penis in her vagina, she was now shouting, he brought out a knife that if she shout again he is going to kill her. When he was finished he now told her to go. She was now crying home, she saw PW3 who asked her why she was crying, she told him what the accused person did to her, he said they should go to the accused house, they did not meet the accused at home. PW3 said they should go back home. On getting home they met the accused person in her mother's room kneeling down begging her mother, she became dizzy it was later in the night she discovered she was in the hospital at Irukep. The following day PW2 came to the hospital and took her to Ehor police station. On getting there, the police officer took her to the police clinic. At State C.I.D. she made a statement. She was treated at the police clinic, she was examined at the police clinic. Thereafter, the Enogie of Ehor invited them to the palace, the Enogie said they should state what happened. The Enogie now said the accused is to pay some certain things which he did.

Under cross examination by C. E. Agbonwanegbe the witness stated that she is in JSS3 now at Premier Secondary School Irukekpen. She knows the implication of lying. She was in primary 4 when this incident occurred in 2007. The Accused person taught them in primary 4 when the teacher of primary 4 was absent. She cannot recall the name of her teacher in primary 4. This incident happened when she was in primary 4 in September 2007 to June 2008. In 2006 she was in primary 3, 2007 she was in primary 4. In 2006 – 2007 she was in primary 4 in Osazuwa Primary School and she got promoted to primary 5. She did not attend primary 5 at Osazuwa primary school. She was in primary 5 when this incident happened. The incident occurred in 2007 when she was in primary 4. The accused person was a primary 2 teacher and also teaches primary 4. She told the court that the accused sometimes teaches her class. In September when he gave her books to his house was not the first day. The Accused always send her message to his house, that was not the first day. She help the accused to wash his clothes. The first time he sent me during break time and sometimes after closing from school. She cannot recall the number of times the accused sent her to his house. The accused and her were good friends, he was sending her on errands. The first day he did something to her, he told her to go and put books in his house. On that day he put cream in his finger and put in her vagina. She is very close to her parents. She usually tell them what bothers her mind. The accused person threatened to kill her if she told anyone including her mother. She told the headmaster because he saw her crying in the classroom that was during break time, the headmaster also threatened her that she should not tell anybody. Before that day that was the first day someone touched her vagina. The second time the accused also used his fingers, she cannot recall the date of the second time. She was also sent on the second occasion to drop books in the house of the accused. On the 3rd occasion he also sent her with books to his house. When he sent her the 3rd time she refused he brought out cane and used it to flog her, she now collected the books from him and took it to his house. The 1st time was during break time and others after school time. She cannot describe the accused penis. She has not had previous affair before that day with any person. Till date she has had no affair with any person. She knows one Dazumi, he was her classmate. She was never flogged for sleeping with Dazumi. She told court, She met her brother on the way, they went to the house of the accused, they told court she was bleeding she was unconscious. She was admitted at Irukekpen, she was not given a medical report. The Doctor told her that someone disvirged her. She never saw the medical report. The name of the hospital is Eguavoen medical centre Irukekpen. She was rushed to the hospital on the date the incident occurred. She recovered consciousness the next day. She stayed there for some days she cannot recall the number.

She leaves everything to God and let God judge her. She got to the hospital she did not know where she was. The blood from her vagina was not cleaned by anyone. She was experiencing pains after the incident occurred her legs were hurting her. It is only when he gives her books to take to his house that he forced her to bed. Her father did not dig a soakaway in the school premises. She does not know anything about the settlement over the soakaway. It is not as a reason of quarrel the case was framed against the accused person. It was when she was struggling with the accused, he brought out a knife, she shouted, he is alone in house, the owner of the house is dead he is the one in charge of the house, he is the only tenant. The accused and herself do not live very close. It makes sense that a man after raping a daughter went to beg the mother. She is not aware that the accused person was beaten to a coma. The statement she made to the police at Ehor is the same statement she made at Benin City. She told Inu Braimah PW3 she was raped. She told PW2 about the incident in the hospital. Her father saw her in the hospital. She cannot recall the date her brother took her from the hospital to Ehor police station. She was not in school on the days she was in hospital. At Ehor police station she was asked by a female police what happened, she was not examined. The penis entered her vagina. She does not know if anything came out of the penis. He knows the truth about the incident and God will judge him.

P.W.5 is Thomas Omokaro, Force NO. 172422 Sgt. attached to legal section State C.I.D. Benin City. He knows the witnesses that have testified so far and the accused. On the 26/11/2007, he was on duty when the PW1 reported a case of defilement through a petition addressed to the Commissioner of Police, which was approved and later referred to him for detailed investigation. If he sees the petition he will be able to identify it. This is the petition. Based on the petition, the petitioner made statement to him, he also obtained the statement of the witnesses. Immediately he took the victim to the police doctor. After the examination by the police doctor, he was instructed to Iruokpen where the victim was initially taken for treatment. At Iruokpen the medical doctor gave a medical report to prove that he has treated the victim previously. He collected the report from Iruokpen to the police doctor in Benin, based on the report by the medical doctor in Iruokpen and his examination of the victim he issued a medical report which he signed. This is the medical report signed by him.

Medical report from Nigeria Police medical services was admitted in evidence as Exhibit 'A'. During the course of his investigation he later discovered that the case was reported at Ehor police station based on that he sent a signal message to the D.P.O. of that division requesting for the original case file and the accused person. The case file was forwarded without the accused person, which he accepted on the instruction of Asst. Commissioner of Police at that time. Few days later the officer in charge of the State C.I.D. invited him to his office where he met the accused person, he was introduced to him and he was

instructed to obtain his statement and allow him to leave immediately. He re-arrested the accused person, charged him with the offence of defilement, cautioned him in English language, he volunteered a statement which was read to him in English language, while he counter-signed as recorder. The accused person reported a counter case of assault against his witnesses, based on that the case of assault was transferred to the State C.I.D. on the date of interview by Asst. Comm. of Police. The Asst. Commissioner of Police ordered him to hand over the file to the CREAK section based on that he ordered the arrest of his witnesses in that section. About two or three of his witnesses were arrested. He obtained the statement of the accused person. This is the statement of the accused person. Statement of the accused person Aisuruwa Bright is admitted in evidence as Exhibit 'B'. During the course of his investigation he visited the scene of crime, he also visited the school where the accused person is a teacher. He recorded statement from some of the elders in the community. He was able to find out that the victim was a pupil to the accused person who was her teacher. He also discovered that the accused person used to send the victim to carry some of his books to his house. He discovered that the accused person was actually beaten as a result of the crime he committed. During this period his witnesses arrested by the Asst. Commissioner of Police were still in detention at the State C.I.D. cell. He wrote his investigation report through his sectional head to the commissioner of police. The report was signed by him. He has a duplicate copy of the report he wrote. The Police Investigation Report signed by Sgt Thomas Omokaro dated the 23rd day of January 2008 is admitted in evidence as Exhibit 'C'. Based on his report the Asst. Commissioner of Police instructed him to take the witnesses to Ehor, the court did not sit. He later discovered that his witnesses were charged with attempted murder. He returned the case file along with his witnesses to the State C.I.D. At the State C.I.D. there were a lot of threats on him which attracted the attention of the Commissioner of Police. The threat was from his department because the Asst. Commissioner of Police ordered that if the court did not sit, he should detain his witnesses, bringing them to the police station was his offence. There was no time the accused person was detained. It was the intervention of the Commissioner of Police that saved the situation, the Commissioner of Police ordered that the case files for attempted murder and defilement be duplicated and sent to the D.P.P. for advice. He duplicated the two case files in the presence of the Asst. Commissioner of Police. The case files and duplicates were handed over to the o/c legal in his presence for onward transmission to the office of the D.P.P. It was about some months later he was informed by o/c legal CSP Mike Ekpo Esq. (retired now) that the D.P.P. advised that the persons for the case of attempted murder have no case to answer but the case of defilement has a case to answer. Based on that the accused person was arraigned before this court.

Under cross-examination by C. E. Agbonwanegbe the witness stated that he worked under the supervision of the O/c legal. The o/c legal is in a position to vet any assignment given to him. The document Exhibit C was sent to his O/c legal. He is not aware that the o/c legal sent a report to the Commissioner of police, the document is not part of the case file. Exhibit 'B' is the statement of the accused. Exhibit 'B' is dated 12/12/2007. The Exhibit 'C' is dated 23/1/2008. The petition came to him on the 26/11/2007. This is a photocopy of the petition dated the 26/11/2007. Letter written by C. U. Ibhafidon & Co. to the Commissioner of Police dated the 26/11/2007 is admitted in evidence as Exhibit 'D'. His findings in exhibit 'C' coincides with the doctor's report. He is not a medical doctor. After he collected the medical report he gave it to the Asst. Comm. of Police who instructed him to invite the Police doctor to explain the report. In his presence and in the presence of the Asst. Commissioner of police the police doctor explained that the complainant was raped by the accused person, based on which he wrote my report. He went to Iruekpen to collect a report from the doctor, the report was enveloped and addressed to the police medical doctor. I did not see the report, he did not send a copy to the D.P.P. It was the O/c legal that sent the file to the D.P.P. This medical report from Iruekpen hospital was not seen by him, it was not one of the documents duplicated by him. The police only have dealings with the police doctor and not a private doctor, he did not number the medical report as it is numbered C1 and C2. You cannot number a document twice which shows that somebody tampered with the report. He only received the medical report from the police doctor. The handwriting on the copy of the report from the Iruekpen hospital is different, the signature is also different. He did not see the document, neither did he sign a copy. It is not true that the teacher's house is opposite the school. The house of the teacher and the complainant is not close. It is true that there is a soakaway between the house of the complainant and the school which caused problems between the complainant's father and the school authority. He did not see the class teacher. It was on the 26/11/2007 the petition was passed on to me, the incident took place on the 26/11/2007. The case was initially handed at Ehor, there was no investigation at Ehor, he cannot re-call the interval before the case was transferred to him, it was up to a week. There was entry made at Ehor, statements were recorded. The petition came to him on the 26/11/2007. The complainants in the case of attempted murder made against them it is not true that he came to tell lies to court as his superiors are on the side of the accused person. He and his superiors have never deferred in report to the D.P.P. His report was vetted by the o/c legal and it was confirmed by him, he duplicated the report and sent to the o/c legal. He signed the report. He does not know why it is not in the file. Something happened to the file. He duplicated the file and sent same with original to the o/c legal for onward transmission. The police report by Asst. Commissioner of Police to the Commissioner of Police is not part of his report, it was made behind his back and was not part of the case

file. The information he investigated so far is what he came to tell the court. He did not witness the act.

PW6 is Doctor Wilson Akhiwu, he lives at No. 6 Obayare Street 2nd Ugbor G.R.A. Benin City. He is an Assistant Commissioner of Police and a medical practitioner consultant pathologist and he is the officer in charge police medical services Edo State police command. He holds MMBS (Basic Medical Certificate) MSC in toxicology 1995, FMC Pathology 1999, FWACP 1999. The last two are the qualification that entitles him to be a Consultant. Rafiatu Braimah was brought before him by Sgt. Thomas Omokaro (PW5) then of the State C.I.D. Benin on the 5/12/2007 the complainant told him that she was defiled by her teacher on the 26/11/2007. She claimed that the teacher lubricated his penis with Vaseline on that day. She claimed that the same teacher sometime in September has assaulted her indecently by using his fingers in her private part. Before he saw her, she had been attended to by another doctor and they came with a report from the doctor. He discountenanced that report and examined her personally as he has to examine her personally and not rely on any report by another person. When he examined Rafatu, he found that her secondary sexual characteristics were just developing like the breast and the pubic hair so there was no reason for mistaking her for an adult. The vaginal examination revealed that the hymen was lacerated in two areas one at the 3 O'clock position and the other at 9 O'clock position. He did not arrive at a conclusion when he wrote the report. The hymen can be broken by a number of things, the penis, finger a piece of stick, anything that can go in there. In this instance, because of the time lag he did not say whether it was a particular object the penis or finger that lacerated the hymen. When he was called upon by the investigative team to explain his report, he gave them these same options, and told them they have more facts and should be able to infer from which of these options caused the laceration of the hymen.

Under cross-examination by C. E, Agbonwanegbe the witness stated that he cannot remember if this is the medical report brought with the victim. It is a long time now, it seems like a doctor's report. He does not know the signatory of the report from the General practitioner. When he receives a report from a General Practitioner, he throws it away as he does not trust them, he does his own report. He does not know the accused person.

Under re-examination the witness stated that Rafiatu was quite erudite in her description of what happened that day, he has no cause to disbelieve her, he leaves the options open to the court.

DW1 is Bright Asiriwa, he lives at No. 48 Osemwende Street, Benin City. At the time of the incident he was living at Ugbiyaya village. He is a teacher. He knows why he is in court. He is in court as a result of a charge of rape and indecent assault. He is not guilty of the count of rape and indecent assault. On the 26/11/2007, he never committed such an offence. He feels pained to stand at the dock to defend this case of rape and indecent assault because the case that was supposed to be in court is conspiracy/attempted murder against the complainant's family. PW4 has been, was his pupil from 2005 – 2007. He taught her for three years, she always spend the whole days in his house after closing and even in the morning before going to school she helps him to do most of his domestic work, like cooking, washing of plates, at times alone and at times with other children. At times she comes to his house to read in the evening till about 8 pm before she goes home. He has never in any day or night shown interest of having an affair with her, he took her as his own daughter. He did not have any problem or quarrel with this girl and the parents until the 14/9/2007 when they resumed first term 2007 – 2008 school year. They met the PW1 the late father encroaching into the school compound constructing a house foundation at the boundary between him and the school, he dug a soakaway pit on the side of the school path by headmaster's office, then constructed a flood channel on the street to the school field. He was the assistant headmaster at that time. His headmaster and himself went to meet the PW1 and enquired of him about the construction of that soakaway and to re-channel flood path, to stop the building. Instead of the PW1 to apologise, he said they should get out of his house; he is the Odionwere and the owner of the village that he came to the village before the school, that they do not have the right to question him. In the afternoon, they were having a village meeting, his headmaster and himself went to report to the elders. The community elders came to school and saw what's on ground, he was instructed to stop the soakaway and the flood path (channel) the elders begged them they left him that day. The PW1 continued with his construction the next day. The headmaster wrote a letter to the local government education authority, he has a photocopy of the letter with him. The headmaster wrote a letter dated on the 17/9/2007 to the local government. The local government authority came and asked the PW1 to stop the building, if you go to the scene the sign of the soakaway is still there and the building is still there the soakaway is still there but he did not finish the construction. He was fighting for the government not his own personal property. It surprised him to see that the enemy of the government is whom the government now joined to fight back at him. He never heard that they had anything in mind against him till on the 6th November, 2007 during break time, he sent PW4 and one Abu Blessing to help him clean his room, because on Fridays they used to fetch them waster from the stream and he was not in the village that Friday. On Monday 26/9/2007 he sent PW4 and one Abu Blessing as they were going he gave 2 (two) continuous assessment reports of his class to vet which he was

going to record the last marks of the pupil. Unknown to him they did not go during the break time as he was with his headmaster at that time. At the closing hour of 1.30 pm, the headmaster had already left. He had to wait for all the pupils to leave the school, after they all have left he went home, he was about entering his compound, he saw PW4 coming out from his house, she saw him and she stopped. She said, I beg uncle no vex (don't be annoyed) because I did not come to clean the room during break time, when he asked why, she said she was not feeling fine. He asked why did she give the continuous assessment report to Abu Blessing to drop in his house, she said Abu Blessing went home to eat. He also asked her why did she not tell him she is not feeling fine when he sent her. She said excuse me sir my father was in the house. He was shocked. He enquired what happened if your father was in the house. That at the weekend one of the brothers (PW2) in Ekpoma, the one that was in charge of the building came and said that she should not come to his house again to assist him. That if she comes to his house again that they will kill her. As she was explaining PW3 was at the backyard, back of their house. PW3 saw PW4 talking to him. The distance between his house and their house was only a small house demarcating the two houses. PW3 saw PW4 from there and called her, she answered. Pw3 shouted in their dialect "what are you doing in teacher's house". She replied that she brought books for him. She left to meet PW3, while he entered his room. There were women frying garri in their kitchen that day (same Monday). There was Igbira man present on that same date with his wife, he know him as papa Sadia. As he entered inside his house he heard a shout of top of the voice of PW4 shouting make una come they wan kill me. He came out of his room, he saw PW3 with a cane beating PW4. He went there he got hold of the cane that he was using to beat PW4. He enquired why the beating from PW3, he said that every afternoon when she closes from the school she does not stay at home. He replied that he saw her talking to him when he called on her, he said it will end today. As he got hold of the cane, PW3 went to collect another cane, as he was going to collect another cane, he followed him and held him, meanwhile PW4 was crying and scowling on the ground. As they were dragging the second cane, PW1 came from the village meeting that was holding that day with sanitary inspectors. He PW1 came from the side of the house and said "you that want the government to destroy his house, you are not afraid to send his daughter errands" he gave him a slap. He told him "oga today is not my first time of sending children messages and I am not the owner of the land you are talking about it is for the government" and he replied "it is for the government and you carry it on your head. He gave me a slap again, he held his hand, the PW3 younger brother called Miminu broke a bottle and said he want to fight, the PW1, wanted to stab him with it, he left the PW1 and got hold of Miminu, as they were dragging the bottle, the PW1, pw3, Miminu and other relations that their house are close to them started beating him. When he saw the beating was too much for him he managed to escape

and run to his house. As he was running to his house, they were now shouting, "make una hold am e don rape our sister" many people now accompanied them, they started beating him in his room.

He has the original of the letter written to the Odionwere by the Sanitary Inspector which was in the pocket of PW1 which fell down from his pocket in his room while they were beating him up. The letter is dated the 23/11/2007. The reason he brought this document is because of the allegation that he raped the PW4 ran away later he went to beg the mother of the PW4, he did not fabricate anything and he will never lie. After the beating in his room, he found himself at Dominion clinic Ehor on drip when he regained consciousness, he has a photocopy of a medical report, the original copy is in the file to D.P.P. for conspiracy and attempted murder. This was to show how he was beaten and where he was taken to. He was later discharged for further treatment at Gift Medical Centre. After 5 days of his beating on the 30th he wrote a petition to the State C.I.D. it was forwarded to Crack Department the I.P.O. was named Adamu. On the 3/12/2007 they went to arrest, they got to the village PW1, PW3 all in their house ran away to the bush early in the morning. They could only arrest five of their relations that were involved in beating him. They arrested 5 of their relations to State C.I.D. Investigations were carried out. On the 26/9/2007 PW2 and one of their brothers were arrested at Ehor police station, they begged for forgiveness and to pay the bills he used in the hospital. As they refused to pay for the hospital bills and the severity of his beating made him to write petition prior to the arrest on the 3/12/2007. On the 3/12/2007 was when PW4 stopped going to school. He was surprised while giving their testimony that PW4 was in hospital on the 26/11/2007 and she spent 4 days in the hospital. He has two documents to show that PW4 was not in the hospital on the 26/11/2007. He has the school register when he was beaten he was no longer in the school, he was now in Benin before he was transferred. He went to bring the school register when Pw4 said she was in primary 3 and 4 and she was in primary five. He got this document from the headmaster. He was still a staff at the school till 2008. As an Assistant headmaster, he has authority to hold these documents. The pw4 was in school from the 26th – 30th November, 2007, the alleged date of her being in the hospital. The other weeks starts from the 3 – 7th the Pw4 did not come to school. He also has another Eguavoen medical hospital to show that pw4 was not raped. He saw the document by PW5 who used it to confront him, and it was one of the documents served on him, in the court's file. At the State C.I.D. it was his case they investigated and the complainant's family were charged to magistrate court. They went to court the court did not sit. They came back to the State C.I.D. They started begging for settlement, were released on bail. Not knowing they had other plans, it surprised him that after 17 days of the beating of his life on the 12/12/2007 after they have been able to buy the police, they resurrected another case file through a petition that was manipulated by PW5 dated 26/11/2007 date of the alleged

offence. Exhibit 'D' is the petition of rape written against him. He was called by officer Adamu that the Assistant Commissioner of police wants to see him on getting there, he said "you raped a school pupil" he said "No" He called on pw5. He accompanied pw5 to his office. Pw5 said you ran to the station to arrest the people you are supposed to be begging. He told him he did not commit such offence. He brought out Exhibit 'D' and the doctor's report from Iruokpen for him to read through. Pw2 was there with them. He was annoyed with Omokaro that he should not give him the petition to read through. Pw5 said it was his right to see what he was going to defend. The incidents that occurred after the 26/9/2007 were contained in the petition dated 29/9/2007 at the second page. He was thereafter granted bail. After sometime the pw5 called him that there is a report from the Governor's office that he should continue to deny that pw4 is pregnant for him. He enquired of the doctor's report, he said he will see it in court. As he was leaving, the PW5 said he wants to assist him, he said in what way, he said he should go and bring N50,000.00 to turn the case against the petitioner. He told him he was not interested that he saw some things which he can not reveal now. He told him he never committed such offence and neither will he bribe anyone to help him. He said we will see in court, tomorrow morning he should be with him at the State C.I.D. The next day he went to court with PW5 with two case files for rape, indecent assault and conspiracy for murder alongside with the complainants in instant case. When they got there the court was not sitting. The prosecutor at the magistrate court demanded for money for bail from him and when he refused he handcuffed him. His younger brother gave him N5,000.00 and the handcuff was removed. There is no Enogie in Ugbiyaya village, no one told him to sanctify the land, the PW1 was the Odionwere. They should have called the Enogie to testify. He reported the N5,000.00 to the Assistant Commissioner who called on Omokaro to explain the reason behind the N5,000.00 he could not explain. He enquired of the two case files, he said it was with the prosecution. He was sent back with him to retrieve the two case files and the five thousand Naira. After two days he went to the State C.I.D. and was informed that the D.P.P. came to collect the two case files.

Under cross-examination by S. E. Okojie (Mrs.) the witness stated that he is married, he has children. He holds an N.C.E. In 2007, he had a T.C.II. As at that time he had worked for nine years as a teacher, he was a level 7 officer. As a level 7 officer, it qualifies him to work as an assistant headmaster. There is no letter appointing him as an assistant headmaster, letter is not needed. He knows one Mr. Nosa. Nosa was an assistant headmaster when he was transferred there. Nosa was no longer there, he was then the assistant headmaster. He told the court he was married with children. He did not tell court he had a cordial relationship with the complainant family. Rafatu was his pupil. He was not deliberately giving books to Rafatu to carry to his house. Rafiatu was close to him and others. She was his pupil. He never raped

Rafatu, he never touched her and nothing like that happened. He did not go to the house of pw1 to beg. He went to rescue her when the pw3 was beating her at their backyard. PW3 testified in this court, his Counsel cross – examined PW3. He is not the headmaster of the school. The headmaster of the school is a man. He said he was framed up on this rape case because, he confronted them with his headmaster on the soakaway pit. Why they picked on him is that pw3 saw him talking to Rafatu. His headmaster was also roped into the petition when they said on two occasions he used his fingers on her she reported to the headmaster who said if she talks about it, he will drive her from the school. Why did she not report to other people? He told court that Rafatu do stay in his house up to 8 pm, he did not say she was allowed to stay in his house. He did not abuse Rafatu. He does not have a relationship with Rafatu's family. He did not defile her. In September 2007, he never put his fingers in her vagina, he did not flog her, he did not hold a cane. September till today he has not seen her private part, for what purpose.

DW2, is Ebogio Henry. He lives at No. 44 Ukpohi Street, Ehor. He is here on a subpoena. He received a witness summons on 14/5/2008. He is the headmaster of Osazuwa primary school, the accused was his assistant. When they resumed from 3rd term holiday on the 14/9/2007, he saw that there was a foundation made encroached into the school compound, at the back of his office, a soakaway was dug there by one Mr. Braimah Mohammed, who has a common boundary with the school. He went to meet him that he has encroached on the school compound he said he met him and the school in that village. He has no right to ask him that question. His assistant made complaint to the elders of the community. The elders came and instructed him to close the soakaway and put up a gutter in order that the flood does not enter the school compound. Also to close the gutter into the school. The PW1 Mr. Braimah said, now that he has summoned him to the elders that he is going to deal with him and his teachers. He wrote to the office to rescue them from the promise he made. He has a photocopy, the original was sent to the Council. On the 26/9/2007 at 1.30 he left the school to the local Education Council at about 2.30, he heard a call that he should come that a group of people want to kill the accused person. He got to Ugbiyaya, he met a crowd, when he got there he enquired who are these, he was informed it was P.W.1's children. He went into the room of accused to meet him. He was unable to speak, he came out he met a woman frying garri at the back of the house, he enquired of her what happened, she saw Rafatu enter into accused house not up to three minutes the brother came and beat her out of the house. He came out to go to PW1's house, he saw him in the next compound, he enquired what happened, he said the teacher who told the community he should not build a house, he has told him not to send any of his children message. He said is that enough for them to beat him to that state, he said yes that if he dies he will say he raped his child.

He said he wanted to take the accused to hospital, he said if he try it he will tell his children to beat him up. He decided to report to C.I.B. office at Ehor who accompanied him to carry the accused who was already in a state of coma. The Driver and policemen helped to carry the accused. He was taken to Dominion Hospital. While in hospital he got a call from Mr. Zani (PW2) enquiring where he was. He told him he was in the hospital and described the hospital. Zani PW2 came to the hospital with two policemen who were at the road block, he saw that the accused was in coma, the policemen said they should go to the station. When they got to the police station they were requested to make their statements. When he got home he received a call from PW1 that the daughter was in hospital. He asked the name of the hospital he did not disclose it. Later the brother of the accused came to take him to the hospital with the permission of the accused. The next day, he went to the local education office to make a report. The next day he went to check Rafiatu, he went to General hospital, they said there was no report, he went to Eguavoen she was not there. He went back to school, on getting there, he met her in class. He asked her what happened she said the brother Zani said she should not discuss with anybody. He has the school Register. He got a copy of the register and kept it with him and brought it to court. Edo State Universal Basic Education Board Primary school attendance Register Osazuwa Primary School dated 26, 27, 28th 29 and 30 of November 2007/2008 was admitted in evidence as Exhibit 'E'. The case was now transferred from Ehor police station to the State C.I.D. He was surprised when he was mentioned in the petition in paragraph 4 that the case of indecent assault was reported to him by the complainant and he threatened her that he will drive her away from the school. Also in the said petition, he was boasting that he is in charge of the police station which is false. He is surprised that the government he is fighting for is punishing him.

Under cross examination witness stated he has been at Osazuwa primary school for 15 years. He has a letter appointing him as headmaster of the school. There is no letter appointing an assistance the next person to him is an assistant. The accused was his assistant. Nosa was not around he was at Port Harcourt doing a Sandwich course. Nosa was not in school at that time when the incident happened. Sandwich course can encroach into school time. He had never heard anything until the date he saw that petition. He did not threaten the complainant. He did not hear anything and he did not warn anybody. The incident happened on a Monday, it was on Tuesday he went to look for her. The incident happened at about 2.30 pm after school hours. The complainant was in school on the 26/11/2007. No report was made to him so he did not do anything, he has never heard anything he reported to the elders Inu, Sanni all the elders were present, It was elder meeting day. He was not dealt with by the PW1. PW1 said he will send his children to beat him up. It is not true that he took the accused away in company of the police to PW1 that he was arresting

him. He was not amongst those who went to the Enogie of Ehor to beg for him. The accused person is not the class teacher, he is a primary two teacher. The accused person was not the only teacher in the school. It is not true he came to lie because the accused person accompanied him.

DW3 is Dr. T.A.E. Ikhuorah, He is the Medical Director Eguavoen Medical Centre Irukekpen. He resides at the Doctors quarters. He is on subpoena. On the 26/11/2007 a patient by name Rafatu Biramoh a young girl of about 12 years was brought for treatment. The complaint was that she had fainting attack, cough chest pain and she was sexually abused. On examination, at the time she was brought to him she was now conscious, she was not found to be pale. The chest cardiovascular examination of the abdomen was essentially normal. He conducted a vagina examination. There were no bruises or lacerations seen. There was no hymen tag seen. There was some creamy vaginal discharge and the vagina admitted two fingers. The vagina discharge was taken and sent to the lab. The main findings there were some pus cells and bacterial cells. However, he admitted her for three days for the chest infection and vagina infection. Thereafter he issued a medical report. He gave the medical report to one Sgt Omokaro of State C.I.D. through the elder brother of the patient Zini Braimah, this was on the instruction of Sgt. Omokaro on the phone. He has a duplicate copy of the medical report.

Duplicate copy of Medical Report, Eguavoen Medical Hospital dated the 6/11/2007 is admitted in evidence as Exhibit 'F'

Under cross-examination by S. E. Okojie (Mrs.) the witness stated that he holds an MBBS from the University of Ibadan 1980. Master Human Anatomy UNIBEN. He has been in practice since then, he was initially with the government. He retired. He admitted the complainant for three days. He will be surprised to hear that someone testified a few minutes ago that he came to his hospital and did not see Rafatu. He admitted her for three days. He saw the patient on the 26/11/2007 and the date on the medical report i.e. the 6/11/2007 is not deliberate. He examined the complainant and based on his findings and he admitted her. It is not true that he wrote the report twenty days before the incidence. He will be surprised to hear that Rafatu was present in school 26, 27 and 28th she was present with him in the hospital. He can only confine himself with what he saw. He has no reason to tell lies.

Under re-examination the witness stated that on the reverse of Exhibit 'F' is signed by Zini and one Sgt. Omokaro on the 6/11/2007.

D.W.4 is Obasojie Momanidodo. He lives at NO. 6 Uhunmwangho street off Sapele road Ekae off Sapele Road, he is a civil servant attached to the Local Government Authority board Ehor. He is here at the instance of a subpoena.

He is here to tender a letter written to his directorate in respect of a soakaway pit dug beside the head teacher's office.

Subpoena dated the 28/5/2013, is admitted in evidence as Exhibit 'G'. Letter written by H. M. Ebogie to the Secretary Local Government Education Authority is admitted in evidence as Exhibit 'H'. The name of the person that addressed the letter to him is Mr. Ebogie head teacher Osazuwa Primary School. The letter was minuted to him. He visited the school and found the soakaway where it was dug.

Under cross-examination the witness stated that he is a serving officer. The accused person is his staff, all staff are his friends and colleagues. Three of them went to Osazuwa Village, Mr. Osawe Peter and Okhomina Irowa. They went there to inspect the soakaway dug in the school by father of a pupil. They went there and discovered it was true, he reported back to the Secretary who sent him. It is not true that Exhibit 'H' was prepared solely for this case. If there is alteration in the numbering of Exhibit 'H' it is done by the officers in charge of the files. He did not alter Exhibit 'H'. He did not with the accused and DW2 prepare exhibit 'H' for the purpose of this case. He cannot go to a confidential file to bring this document. When he was served a subpoena, he went to his boss and Exhibit 'H' was given to him. He does not have access to any file as it is not his responsibility. It is not true that his superior is not aware that the document was removed from the file. He does not have access to the stamps in Exhibit 'H'. The stamp is not HSO stamp. He was not paid to come to court. It is not his job to beg the Enogie for the accused.

Asurimen Charles Esq. of learned counsel for the Accused submitted on count 1 that for the prosecution to succeed in an offence of indecent assault, the prosecution must prove that:-

- i. There was an assault
- ii. The assault was indecent.

In other words the prosecution must prove the assault and prove that it was accompanied by circumstances of indecency on the part of the Accused person towards the complainant i.e. PW4 T. Akinola Aguda, the Criminal Law and Procedure of the Southern States of Nigeria; Sweet & Maxwell, Third Edition, 1982 at 789 article 1782, 1783. From the evidence before the court, the prosecution did not in any way try to prove the alleged indecent assault captioned in count one of the charge. The charge quoted the assault to have occurred in September, 2007. The evidence led by the PW4 centered on alleged events of 26/11/2007. The evidence is thus at variance with the charge. That the evidence of indecent assault was led by the prosecution to prove count one of the charge. That ingredients of the offence which are that:-

- (a) There was an assault and
- (b) The assault was indecent and was not made out in the evidence.

From the totality of the evidence led, no assault on PW4 was shown to have occurred on September, 2007. To show that the assault was indecent, all the prosecution need do was to show indecency on the part of the accused person such indecency could be merely kissing the PW4 against her will, accompanied with a suggestion of sexual intercourse or that sexual activity should take place between them. **T. Akinola Aguda the Criminal Law and Procedure of the Southern States of Nigeria; Sweet & Maxwell, Third Edition, 1982 (supra).** That no evidence was led by the prosecution showing any indecency on the part of the accused person in relation to count one of the charge. That to succeed in count one, the prosecution has a duty to prove the count beyond reasonable doubt. **Patrick Okoroji V The State (2001) FWLR (pt. 77) 871 at 894 paragraph C – E and State V Godfrey Ajie (2000) 3 NSCQR 53 at 65 paragraph G – H.** The prosecution failed to satisfy this burden of proof placed on her. That the PW4 in her evidence did not relay the alleged indecent assault on her to her parents. She only relayed it to DW2. However, DW2 denied ever hearing of it not to talk of being told by PW4. Counsel submitted that the evidence of DW2 does not corroborate the evidence of PW4 rather it completely shatters her evidence of indecent assault and show that she is not a witness of truth and urged the court not to rely on the uncorroborated evidence of PW4. **Sunmonu V Police (1957) W.R.L.R. 23; Anthony Isibor V The State (2001) FWLR (pt.78) 1077 at 1100 para E & F.**

On count two, Counsel submitted that to succeed in the court of rape, the prosecution must prove that:

- (a) Sexual intercourse had taken place
- (b) That it took place without the consent of the woman or girl
- (c) That the accused person was the man who committed the crime.

That to succeed in this count, the prosecution has a duty to by direct and credible evidence establish this three ingredients of the offence of rape. That from all the pieces of evidence elicited in the court, the prosecution failed to establish the offence of rape in count 2 of the charge. **Iko V The State (2001) 14 NWLR (pt. 732) 221, (2001) 7 SCNJ 383 AT 393.** The question to be answered is was there rape or did the accused actually rape the prosecutrix (PW4)? From the evidence before the court, counsel submitted that a case of rape has not been made out. That the doctor who first saw the PW4 after the alleged incident testified as DW3. He testified that PW4 was brought to him for treatment. According to him, “I conducted a virginal examination. There were

no bruises or lacerations seen”. The evidence of DW3 completely destroys the PW4’s evidence of rape. The evidence of DW3 does not corroborate the evidence of PW4. PW6 a medical practitioner like DW3 saw the pw4 on 5/12/2007. This is about 10 days after the alleged incident. Can court safely rely on his evidence or the report prepared by him? Can the evidence of the said PW6 be a corroboration of the PW4 evidence? Our answer to the questions is a resounding no. **Oludotun Ogunbayo V The State (2007) 146 LRCN 696 at 708 para. U 709 A.**

Counsel further submitted that the most important and essential ingredient of rape is penetration. The penetration must be linked directly with the accused. **Iko V The State (Supra) Jegede V The State (2005) 4 LRCN 148.** That apart from the evidence of the PW4 which was destroyed by the evidence of PW6 and DW3, no other evidence attempted to positively and cogently link the accused with the penetration of PW4 Virginia. Counsel submitted that the prosecution failed to satisfy the burden of proof placed on her. The prosecution again failed to established the entire ingredients of the offence of rape. A proof of one of the elements is not a proof beyond reasonable doubt. Counsel urged this Honourable court to discharge and acquit the accused person of all the charges laid against him. The accused person put up the defence of malice. Counsel urged the court to consider the defence put up by the accused. **Bozin V The State (1998) 1 ACLR 1 at 8 ratio 22.** The accused led evidence and called witnesses to show malice on the part of PW1, PW2, PW3 and PW4 who are all of the same family. That the entire evidence of the prosecution witnesses particularly PW1, PW2, PW3, PW4, PW5 and PW6 is riddled with contradictions. Counsel urged the court to resolve those contradictions in favour of the accused person.

S. E. Okojie (Mrs.) of learned Counsel of the State submitted on count 1, that the prosecution has proved beyond reasonable doubt that the accused person indecently assaulted PW4. PW4 gave a vivid account of how the accused person sent her to take his books to his room and indecently assaulted her on two different occasions in September 2007 by inserting his fingers into her vaginal after lubricating it with Vaseline without her consent and while threatening her.

Section 252 of the Criminal Code Cap 48 laws of Bendel State (1976) defined assault inter alia as when a person strikes, touches, or moves or otherwise applies force to the person of another either directly or indirectly.

Section 252 of the Criminal Code Cape 48 laws of Bendel State (1976) define the term “deals with’ to include doing any act which, if done without consent

would constitute assault. The evidence of PW6 that the hymen of PW4 was broken in two places corroborates this fact.

On Count II Counsel submitted that the elements of the offence of rape are:

- (1) That there was unlawful carnal knowledge
- (2) Lack of consent or with consent if such was obtained by force, fear or intimidation or by force or fraudulent representation as to the nature of the act.
- (3) That there was penetration. **State V Ajulo & Anor (1989) 1 CLRN 249 at 257**

On the first and second elements that there was unlawful carnal knowledge and lack of consent, that the prosecution proved these two elements beyond reasonable doubt. It is trite that the victim of a crime of rape is always a competent witness and her evidence is always vital in deciding the vital question of consent or absence of consent. **Ekpo & Anor V The State (1976) ANLR 391 at 395.** PW4 is the victim of the rape in this case and counsel referred court to her evidence as it will help this Honourable court in reaching the conclusion that she never consented to the unlawful carnal knowledge accused person had of her. That PW4 informed this court that at the time she was raped in 2007, she was 11 years old. Counsel submitted that her account of how the accused person forced her to take his books to his room and finally raped her on the third occasion without her consent is very clear, cogent, unequivocal and compelling. She testified that after the second assault on her, the accused person flogged her when she refused to go on the errand of taking his books to his room. PW4 stated further that accused person held a knife and threatened to kill her if she told anyone. That admission of an offence by an accused person to other person(s) amounts to sufficient corroboration in law. **Iko Vs The State (2003) 3 ACLR** PW3 and PW4 testified that accused person came to their house as soon as he discovered the rape was known to all, to beg PW1 and his wife on his knees to forgive him. If he is innocent as he now claims before this court, why then did he go begging them for forgiveness? Counsel submitted that this act of the accused person is an admission that he indecently assaulted and raped PW4 and amounts to corroboration. That independent evidence of the distressed condition of the rape victim soon after the alleged offence amounts to corroboration. **The State V Ajulo & Anor (1989) 1CLRN 249 at 257.** That both the prosecution and the defense are agreed on this point that the victim, PW4 was in a distressed condition soon after the rape. Counsel referred the court to the testimony of all the prosecution witnesses and DW3. That this corroborative evidence have confirmed that there was sexual intercourse, that it took place without the consent of PW4 and also that the accused person was the man who committed the crime.

Counsel further submitted that for sexual intercourse to constitute the offence of rape, there must be penetration however slight. **The State V Ajulo & Anor (1989) 1 CLRN 249 at 256.** That the prosecution has proved beyond reasonable doubt that there was penetration. PW4 testified before this court that accused person had sex with her. She reaffirmed during cross examination that the accused person penetrated her but does not know if something came out of him. That in the absence of an eye witness to an act of penetration, the most reliable evidence is that of a medical doctor. **State V Anolue (1983) 1 NLR 71 at 80.** PW6 is the police medical doctor who examined PW4. He told this court inter alia that when he examined pw4, he found out that her secondary sexual characteristics were just developing and that pw4's hymen was lacerated in two places; one at 3 o'clock and the other at 9 o'clock. He stated further that one of the things that could have lacerated pw4's hymen is a penis. PW6 stated further during re examination that when he examined pw4, she was erudite and he did not have any doubt as to her claim. Counsel therefore urged the court to hold that there was penetration. Counsel relied on exhibit 'F' (wrongly tendered by the defense), the medical report made by DW3, where the DW3 stated that "the signs are in keeping with sexual exposure."

On the defense Counsel's address, counsel submitted that his address is misconceived, lacks merit and should be discountenanced as address of counsel can never take the place of evidence. Counsel submitted that the submission of counsel that the evidence led by the prosecution is at variance with the charge is misconceived and should be discountenance. Counsel referred the court to count 1 of the charge. The particulars of the offence of indecent assault on PW4 in the charge sheet stated that it took place sometime in September 2007. Pw4 in her evidence before this court stated that she was indecently assaulted by the accused person in September 2007. Counsel referred court to the evidence of the said pw4. That the evidence was led by the prosecution to show the act of penetration proved count 1 beyond reasonable doubt. Counsel submitted that the submission of counsel that pw4 is not a witness of truth is misconceived and should be discountenanced. Counsel for the accused submitted that PW4 never told her parents about the indecent assault but claimed to have told only DW2 and because DW2 denied ever been told, pw4's claim is not corroborated and as such pw4 is not a witness of truth. Counsel submitted that DW2 denying knowledge of the indecent assault is one of the many lies he told this court on oath. That his denial does not make pw4's evidence uncorroborated. That DW2 at the time this crime was committed, was the headmaster of Osazuwa Primary school where pw4 was a pupil and DW1 a teacher. That the court should not believe the testimony of the said DW2 at all particularly when he stated on oath that pw4 did not inform him of the accused person's indecent assault on her. For reasons best known to the said

DW2, he connived with the accused person and DW4 to cook up a story of PW1 encroaching on the said school land and even went ahead to tender exhibit "H" a letter obviously prepared for the purpose of this case. A look at exhibit "H" clearly shows the numbering was altered for DW4 to be able to be put it in the file at his office. Investigations at DW4's office showed DW4's superiors were not aware of any complaint of encroachment of the said school land or of exhibit "H". That DW2 lied to this court on oath that the accused was his assistant when in actual fact his assistant was one Nosa surname unknown, which fact he admitted during cross examination. DW2 lied that the accused person was beaten up by pw1 and his family and was admitted for treatment in a certain "Domino hospital. There was nobody or anything from the said Domino hospital in court to prove this allegation. DW2 in his desperation connived with the accused person to forge exhibit "E" and lied that pw4 was in class on the 26th and 27th of November 2007 and not in any hospital. That from the above, it is very clear that DW2 is not a witness of truth and should not be believed. Counsel urged the court to believe the account of pw4 and hold that she did inform him of the indecent assault and that DW2 warned her not to tell any person. DW3, one doctor Ikhuoria, is the Managing Director of Eguavoen hospital. During cross examination, he corroborated the testimony of the prosecution witnesses that pw4 was on admission in the said hospital on the 26th and 27th of November, 2007 the same time accused person and DW2 claimed PW4 was in class and was actually marked present in class in exhibit "E".

On the submission of counsel that the evidence of DW3 completely destroys pw4's evidence of rape. That the testimony of DW3 and exhibit "F" corroborates the testimony of pw4. That the fact that DW3 testified and stated that there were no bruises or laceration on pw4's Vagina corroborates pw4's testimony that accused person rubbed Vaseline on his penis before inserting it into her vagina. That the DW3, as much as he tried to doctor exhibit "F" in favour of accused person by among other things, dating it wrongly, corroborated pw4's evidence when he stated in his report that the signs are in keeping with sexual exposure. That assuming but not conceding that pw4 was a common prostitute, her consent will still be required before accused person can have sexual intercourse with her.

Counsel submitted further that proof of rupture of hymen is unnecessary to establish the offence of rape. That prosecution does not need to prove that the rapist ejaculated on his victim. That all the prosecution need to prove is that there was penetration however slight. Counsel urged the court to hold that the prosecution has proved his case beyond reasonable doubt. **Jegede V The State (2003) 3 ACLR; Igbine V The State 9 NWLR pt. 519 at 101; Iko V The State (2003) 3 ACLR 49 at 74.** That there are no contradictions whatsoever in

the case of the prosecution as argued by the defense. It is settled that human faculty may miss some minor details, mostly due to lapse of time and even error in narration in order of sequence. For contradiction to be fatal to the prosecution's case, it must go to the substance of the case and not be of a minor nature. If every contradiction however trivial to the over whelming evidence before the court, will vitiate trial, then of course nearly all prosecution will be frustrated. **Ogbuagu JSC in Archibong V The State; Lazarus Atato V Attorney General Bendel State (2005) 4 ACLR 25 at 51.** Counsel urged the court to treat the minor details if any as mere discrepancies. That the prosecution witnesses were not shaken at all during cross examination.

Counsel further submitted that the submission of counsel that the accused led evidence to show malice on the part of PW1, PW2, PW3 and PW4 who are all members of same family is misconceived and should be discountenanced. Assuming but not conceding that this was the true position, the position of the law is that where the evidence of a witness is sufficiently probative of the offence charged as in the instant case, the fact that such witness may have other interest of his own to serve, is by itself not sufficient to reject such evidence. Even where such interest exists and trial court did warn itself on it, the evidence, if true, will not be weakened in validity merely because the witness has a grouse against the accused. **Shaffu Atiku V The State CA/K/114C/2007.** **Also cited in (2010) 9 NWLR (Pt.1199) 241 at 251.** That the fact that the prosecution witnesses are members of the same family does not mean they can not testify for the prosecution and the case of the prosecution is not weakened for that reason. There is no law that says the testimonies of PW1, PW2, PW3 and PW4 should be inadmissible simply because they are related.

Counsel further submitted that PW5 and PW6 are not relations of pw1-4. That the evidence of all the prosecution witnesses are undoubtedly similar, unequivocal, direct and not punctured by cross examination and are to the effect that the accused person indecently assaulted and raped PW4. **Uwagboe V The State (2006) 6983 at 6997.**

On reply on point of law, Charles Asurimen Esq of learn Counsel for the Accused person submitted that the pw4 did not state throughout her evidence on record that accused person did anything to her in September, 2007. All her evidence centered on 26/11/2007. The evidence of PW6 cannot corroborate evidence that is not on record. Furthermore, pw6 saw pw4 5/12/2007 when indeed pw4 claimed she was defiled on 26/11/2007. Can the court safely rely on his evidence to say it was the accused who broke the pw4's hymen. **Jegede V The State (2005) 4 LRCNCC 143 at 147 paras. AO and 148 AP.** Pw6 saw prosecutrix 10 days after the alleged rape.

On the evidence of DW3 and state that prosecution failed or refused to call DW3 to testify because they are concealing from the court facts which will be favourable to accused person. they owe court the duty to place before the court the whole fact. **Clement Okereke V The State (1993) 3 NWLR (pt.340) 75 at 86 paras. B-D** .

On Count II, the prosecution submitted that PW1, PW3, and PW4 testified that accused person came begging is an admission. The accused person did not admit begging anybody.

On the issue of the distressed condition of the rape victim, the prosecution submitted that the prosecution and defense are agreed on it. Counsel submitted that the defense did not agree anywhere on this issue with prosecution. DW3 is a prosecution witness concealed by prosecution.

On penetration, that the prosecution must link the accused with the penetration. Merely proving that someone penetrated the victim is not enough. **Sunday Jegede V The State (2005) 4 LRCNCC 143 at 148A**. That merely claiming that the accused penetrated the complainant is not enough. There must be a corroboration of such an evidence. **Iko V The State (2002) 3 LRCNCC 15 at 35 paras. UZ**. That where the accused deny ever having canal knowledge of the prosecutrix, the only corroborative and convincing evidence the court would require is medical. **Iko V The State (supra) at 46 AT and 47 AP**. On Exhibit F, prosecution submitted that it was doctored by DW3 to favour accused person. Exhibit F was not prepared for the accused neither was it given or shown to him. Accused did not take PW4 to DW3's hospital. That merely alleging fraud on the document is not sufficient. Prosecution must show and indeed prove particulars of fraud.

I had earlier set out the evidence of PW4 and prosecution witnesses. The offences of which the accused person is standing trial are the offences of indecent assault punishable under section 222 of the Criminal code cap 48 Vol. II Laws of the defunct Bendel State and rape punishable under sections 358 of the criminal code cap 48 vol. II Laws of the defunct Bendel State.

In a charge of rape or unlawful canal knowledge of a female without her consent, it is the duty of the prosecution to prove the following:

- (a) That the accused had sexual intercourse with the prosecutrix.
- (b) That the act of sexual intercourse was done without her consent or that the consent was obtained by fraud, force, threat, intimidation, deceit or impersonation.
- (c) That the prosecutrix was not the wife of the accused..

- (d) That the accused had the mens rea, the intention to have sexual intercourse with the prosecutrix without her consent or that the accused acted recklessly not caring whether the prosecutrix consented or not.
- (e) That there was penetration. **Posu V State 2011 Vol. II WRN pg. 1 at 5; Ogunbayo V State (2007) 30 WRN 172; Upahar V The State (2003) 6 NWLR (pt.816) pg. 230; State V Ogo (1980) 2 NCLR 391.**

The most important and essential ingredient of the offence of rape is penetration. The court will deem sexual intercourse is complete upon proof of penetration of the penis into the vagina. Any or even the slightest penetration will be sufficient to constitute the act of sexual intercourse. Emission or the rupture of the hymen is unnecessary to establish the offence of rape. **State V Ojo (1980) 2 NCR 39; Jegede V State (2001) 35 WRN 84; Ogunbayo V State (2007) 8 NWLR (pt.1035) 157; Iko V State (2001) 35 WRN pg. 1 at 5. (Per Adekeye, JSC (p21) lines 25 -15.)**

“A person commits the offence of rape if:

- (a) He intentionally penetrates the vagina with his penis
- (b) The prosecutrix did not consent to the penetration.

That is to say the offence of rape is complete when a penis is inserted into the vault of the vagina without the consent of the prosecutrix. Evidence of rupture of the hymen or emission of semen is not necessary. Rape can thus be said to be unlawful carnal knowledge, or non-consensual sex. Penetration without consent.”

In all cases of rape, it must be corroborated. Corroboration simply means confirming or giving support to a person, statement or faith. What is the purpose of corroborative evidence. the answer to this poser was answered in the case of **Iko V State (2001) 35 WRN 1;** where Kalgo JSC referred to the case of DPP V Hester (1973) A.C. 296 where Lord Morris said.

“The purpose of corroboration is not to give validity or credence to evidence which is insufficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible and corroborative evidence will only fill its role if it, itself is completely credible evidence.”

While corroborative evidence must be independent and capable of implicating the accused in relation to the offence charged, it must be credible and must go to confirm and support that evidence which is sufficient satisfactory and credible whether the case is one in which corroboration is required by statute or by rule

of practice. In sexual offences, corroboration though not a statutory requirement, yet as a matter of practise, corroboration though not essential is almost always required before conviction. **Popoola V State (2011) Vol 47 WRN pg.100 – 101) lines 40 – 20.**

I shall proceed to examine the evidence put forth by the prosecution. The pw4 the prosecutrix stated that prior to the 26/11/2007 the accused (her teacher) gave her some books to take to his house. She got there dropped the books on his table as she was leaving, he forced her on the bed put cream on one of his fingers then inserted it into her vagina. She was crying and the Headmaster (DW2) saw her crying and asked her why, she told him what the accused did to her. He told her not to tell anyone that he will warn the accused. on the second occasion the accused put cream on his two fingers and inserted it into her vagina, she reported to the Headmaster who said if she tells anyone, he will send her away from the school, on the third occasion the accused sent her to his house, she refused, he brought out a cane flogged her, she collected the books and took it to his house. As she was leaving, he locked the door forced her to lie on the bed, tore her tight and put his penis in her vagina. She shouted he brought out a knife, threatened to kill her. On her way home she met the pw3 her brother who enquired why she was crying, she told him what the accused did to her. On getting home they met the accused kneeling down begging their mother.

The prosecutrix has stated categorically that she was forced to bed by the accused person and she was threatened with a knife. The incident occurred in 2007 at that time the prosecutrix was eleven years old. The issue of consent becomes relevant only when a female has reached the age of consent. In **R V Cameron 1965 – 69 WLR 51** it was held that a female of twelve is too young to consent to sexual intercourse. From the evidence before me, of the prosecutrix she was eleven years old at the time the incident occurred.

The next issue to be determined is whether or not there was penetration. The pw6 the medical doctor testified and stated thus:

“He examined Rafatu, her secondary sexual characteristics were just developing like the breast and the pubic hair so there was no reason for mistaking her for an adult. The vagina examination revealed that the hymen was lacerated in two areas one at the 3 o'clock position and the other at 9 o'clock position.”

I have also borne in mind the fact that the medical examination was conducted on the 5/12/2007 while the incident occurred on the 26/11/2007. The most important fact in my consideration is the laceration of the hymen at the 3 o'clock position and 9 o'clock position as opined by the police doctor was it caused by

the act of penetration? The issue to be resolved at this stage is what was the object that caused the laceration./penetration of the hymen? The pw6 further stated in his evidence thus:

“The hymen can be broken by a number of things, the penis, finger, a piece of stick anything that can go in there. In this instance, because of the time lag he did not say whether it was a particular object, the penis or finger that lacerated the hymen. When he was called upon by the Investigative team to explain his report, he gave them these same options and told them they have more facts and should be able to infer from which of these options caused the laceration of the hymen.” It was decided in **Saidu Adamu V The State 1979 2 C.A 129**

“With respect a medical report cannot prove penetration but can provide corroboration to it as in the instant case. Exhibit ‘A’ the medical report made by pw6 stated that the hymen was lacerated at 3 and 9 o’clock positions. Exhibit ‘A’ corroborates the penetration of the vagina.

The pw1, father of the prosecutrix stated that after the incidence the prosecutrix came with the pw3 crying and he enquired as to what happened as she was narrating the incident, the accused person came to his house to beg him that he should not tell anyone that he wants to marry the prosecutrix. The pw3 stated that on getting to their house they met the accused person in their mother’s room knelt down begging his mother that she should not shout out that he is ready to do anything that his mother asked him to do, he is willing to marry the prosecutrix. Admission by an accused to other people that he committed the crime of rape is a sufficient corroboration. **Iko V State (2001) Vol.35 WRN pg. 1 at 5**; “So in **R V Francis Kufi (1960) WNLR 1**, the accused was charged with indecent assault against a young girl of 10 years. It was held, and rightly in my view, that the admission of the offence by the accused to the father of the girl was sufficient corroboration in law.” Per Iguh JSC (p.33) line 25 – 30.

In the instant case, the corroborative evidence confirmed in some material particulars that:-

- (1) Sexual intercourse has taken place, and
- (2) That it took place without the consent of the woman or girl, and also;
- (3) That the accused person was the man who committed the crime.

I shall now proceed to examine the defence of the accused person. DW1 the accused person stated that on the 26/9/2007 he did not rape the prosecutrix. That the case of rape was instigated against him by the family of the prosecutrix as a result of soakaway pit the father of the prosecutrix dug in the school compound. On the 26/9/2007 he sent the prosecutrix and one Abu Blessing to

clean his room, on getting home he saw the prosecutrix coming out of his house. She informed him that her brother said she should not come to their house again to assist him. That there is only one house demarcating his house and prosecutrix. That the pw3 saw the prosecutrix talking to him and shouted at her, she left. She left to meet pw3, that women were trying garri in the house that day. He entered his house, he heard the voice of the prosecutrix shouting. He came out and met pw3 flogging the prosecutrix, he interrupted the beating. PW1 came from the village meeting gave him a slap and other relations came out and started to beat him. He ran to his house, they were shouting he raped their sister, others came and joined in beating him. The prosecutrix was in school on the 26th – 30th November, 2007, the alleged dates of her being hospitalized. He also has another Eguavoen medical hospital report to show that the prosecutrix was not raped. That the case he had with the prosecutrix family is that of attempted murder he is surprised to find a case of rape made against him in Exhibit 'D'. He did not put his fingers in her vagina.

DW2 stated that on the 26/9/2007 he was informed that people wanted to kill the accused. The accused was in a state of coma. He took him to Dominion hospital. He went to the General hospital to look for the prosecutrix she was not there, he also went to Eguavoen hospital she was not there. He went to school and met the prosecutrix there. He has the school register which was tendered in evidence as exhibit 'E' to show that the prosecutrix was in school on the 26th, 27th 28th 29th 30th of November 2007/2008. He is surprised that the prosecutrix reported a case of indecent assault to him in the petition.

DW3 is Dr. T.A.E. Ikhutoriah, Medical Director Eguavoen Medical Centre Iruokpen, that on the 26/11/2007, he conducted a medical examination on the prosecutrix, the complaint was that she had a fainting attack, chest pain and was sexually abused. On examination there were no bruises or lacerations seen. There was no hymen seen. The vagina discharge was taken to the lab. The main findings were some pus cells. Thereafter he issued a medical report. The duplicate copy of the medical report was admitted in evidence as Exhibit 'F'.

I have given consideration to Exhibit 'F'. Exhibit 'F' is dated 6/11/2007 that is about 20 days prior to the date of the incident. Though the DW3 stated under cross examination that it was not deliberate. Section 157 of the evidence Act, 2011 states. "When any document bearing a date has been proved, it is presumed to have been made on the date it bears." In the instant case, the oral testimony of the DW3 cannot be given to correct same, more so this is a criminal trial. It is a material contradiction. It is trite law that documentary evidence is the yardstick or hanger by which to access the veracity of oral testimony or its credibility. **Fashanu V Adekoya (1974) 1 All NLR (pt.1) 35; Omoregbe V Lawani (1980) 3-8 S.C. pg. 137; Kindley V Mil. Gov. of Gongola State (1988)**

2 NWLR (pt.77). This fact is buttressed by the evidence of the PW5, the I.P.O. when he said “This medical report from Irukepken hospital was not seen by him, it was not one of the documents duplicated by him. The police only have dealings with the police doctor and not a private doctor.” The pw6 the police doctor stated under cross examination that “It seems like a doctor’s report. He does not know the signatory of the report from the general practitioner. When he receives a report from a General practitioner, he throws it away as he does not trust them”. The pw6 after examining the prosecutrix found that the hymen was lacerated despite the fact that the incident took place days before the examination. Having said the following, of what probative value is exhibit ‘F’ and the testimony of the DW3? The answer to the poser is NIL.

The DW1 and DW2 stated that the prosecutrix was in attendance at school on the 26th to 30th of November 2007, Exhibit E was tendered by the defence. Exhibit E is the school attendance register. I perused Exhibit ‘E’ and found the name of the prosecutrix marked as being in attendance. This evidence is contrary to the evidence elicited under cross examination of the DW3 private medical doctor that the prosecutrix was in the hospital during that period where he said “He will be surprised to hear that someone testified a few minutes ago that he came to his hospital and did not see Rafatu.” The question that comes to the mind of a reasonable man bearing in mind these contradictions why did the defence tender exhibit ‘E’ to portray the fact that the prosecutrix was in school on the 26th to the 30th of November 2007? This in my view is one of several falsehood told by the defence. The DW2 told court that the accused was his assistant whilst it was proven under cross examination that one Nosa was his assistant. The DW2 also testified that the accused person was beaten up and was hospitalized at the Dominion clinic. No evidence was put forth to support this allegation. The DW4 tendered Exhibit ‘H’ written to his office by the DW2. The summary of Exhibit ‘H’ is that the PW1 threatened to deal with DW2 and his teachers one after the other as a result of the soakaway pit he dug in the school compound.

I have examined the issue of malice or grouse raised in the defence of the accused person. The issue of the soakaway pit arose in the month of September 2007, Exhibit ‘H’ is dated the 17/9/2007. The incident of rape occurred on the 26/11/2007. I see no nexus between the two incidents so long as such evidence has been carefully considered by the trial court and is found to be direct unassailable and true, the mere fact that the witness is the accused’s mortal enemy will not render his evidence unreliable **Ogulana V State (1995) 5NWLR pt. 395 266 at 285**. Bearing in mind the material contradictions in the evidence of the Defence so far can it be said that the defence has been able to carry along this court, the answer to the poser is NO.

On Count 1, there is evidence from the prosecution and the defence that something occurred in the month of September 2007. The DW1 and DW2 relied on the 26/9/2007 in their evidence. The prosecutrix stated that the accused person on two separate occasions sent her to his room to keep some books and on both occasions forced her to bed, lubricated his finger with Vaseline and inserted it into her vagina. On the first occasion he inserted one finger and on the 2nd occasion he inserted two fingers. She was crying and DW2 asked her why, she told him, he said she should not tell anyone that he will warn him. On the 2nd occasion, she reported to the DW2 who told her that if he hears it from any other person he will send her away from the school.

As I had earlier stated the DW2 is not a witness of truth, he denied being informed by the prosecutrix of the indecent assault by the accused person in September 2007. Corroboration in my understanding simply means “confirming or giving support to” either a person, statement of faith. **Iko V State 2001 7 SCMJ 382 at 396.** The evidence led so far by the prosecution in Count II confirms and gives support to the charge of indecent assault in count I. The proof of the rape of the prosecutrix in count II confirms the fact that the accused person on two previous occasions lubricated his finger and later two fingers with Vaseline inserted it into the vagina of the prosecutrix.

In considering whether some evidence is corroborative of some other, one must take all the little items of the former together and consider whether they add up to corroboration as a whole. **Na’an Uppaha and other V State 2003 All FWLR (pt.139) 1512 at 1525.**

The learned Counsel for the defence submitted that the case of the prosecution is riddled with contradictions. Learned Counsel did not state the nature of contradictions. I have examined the prosecution’s case, I find no contradictions in their evidence.

Having considered the totality of the evidence adduced before me, I have come to the conclusion that the medical evidence was not the only corroboration of the prosecutrix evidence available. Corroboration was also provided in the evidence of the PW1 and PW3 both of whom said that the accused had admitted the offence.

In the result, arising from the foregoing analysis, I hold that the prosecution has proved the guilt of the accused person beyond reasonable doubt. In the circumstances, I find the accused person Bright Asiriwa (m) guilty in count I and Count II and I hereby convict in count II.

Allocutus:

Sentence:

Bright Aisiruwa (m) you have been found guilty of this court for the Rape of Rafatu Braimoh. The sentence of this court upon you is that you shall be sentence to life imprisonment. You are cautioned and discharged in count I

HON. JUSTICE G. O. IMADEGBELO
J U D G E
15/10/2014

COUNSEL

S. E. Okojie (Mrs.) with G. Osaigbovo Esq.	State
Asurimen Charles Esq.	Accused person