

AN APPRAISAL OF UNCORROBORATED EVIDENCE IN RAPE

By

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Abstract

Rape remains a pervasive issue in Nigeria, with its prosecution often impeded by evidentiary challenges. Central to these challenges is the reliance on corroborative evidence, despite its controversial nature in criminal jurisprudence. This paper critically appraises the doctrine of uncorroborated evidence in rape cases under Nigerian law. The paper aimed to evaluate the legal framework and judicial approach to uncorroborated evidence, assessing its impact on victims' access to justice and the broader implications for criminal accountability. Employing a doctrinal research method, the paper reviewed statutory provisions, judicial precedents, and scholarly literature to interrogate the evidentiary standards required for rape convictions. The findings revealed that while Nigerian courts no longer demand mandatory corroboration in rape cases, a pervasive judicial bias often disfavours uncorroborated testimonies from victims, leading to inconsistent application of the law. This approach not only undermines the credibility of victims but also perpetuates a culture of impunity for perpetrators. The paper therefore, recommended legislative reforms to codify the non-requirement of corroboration in rape cases explicitly and advocates for judicial training to mitigate biases. Further, it emphasised the need for comprehensive victim-support mechanisms, including access to forensic evidence and psychological counseling, to strengthen rape prosecutions and promote justice for survivors.

Introduction

With the emergence of new dimensions to sexual offences in Nigeria, especially rape and sexual exploitation, the two major federal legislations enforced against the crimes of sexual violence, among other criminal offences were the Penal Code¹ and the Criminal Code Acts.² These Codes were applicable to Northern and Southern Nigeria respectively. However, they were found not to adequately address the new dimensions to sexual offences, especially rape and sexual exploitation, and hence the need for further legislations became necessary and compelling. Besides the improvements of the substantive laws on rape, sexual exploitation and other sexual offences, the Nigerian Criminal Justice System has also recorded some remarkable improvements on the laws of procedure guiding prosecution and adjudication of criminal cases, including rape and other sexual offences.³

The improvements are as they relate to corroboration in rape, questions tending to x-ray past sexual life of victims of rape and other sexual violence, protection of victims of sexual violence and witnesses in the course of trial, award of compensation to victims and their estate as part of the criminal proceedings and restitution. The achievements which are legislative interventions are recorded in the Evidence Act,

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¹ Penal Code Act, 2004

² Criminal Code Act, 2004

³ H A Akuchie, 'Innovations in the Procedural Laws on Rape and Other Sexual Offences in Nigeria' [2019] (87) *Journal of Law, Policy and Globalization*.

2011 (as amended) and the Administration of Criminal Justice Act, (ACJA), 2015. Several Reasons have propelled the drafters of the Criminal Code Act⁴ applicable in the southern part of Nigeria and the Evidence Act, 2011⁵ that in some offences, it is unsafe to convict the defendant without a requirement of corroboration by the prosecution and as rightfully pointed out by a learned writer, some offences are, by virtue of their nature, committed in such a manner that it would be desirable to have at least some piece of evidence, apart from the evidence of the complaint.⁶ Implicit in these offences are Rape and offences that are of sexual nature.

To establish a case of rape against an accused person or a defendant, it must be shown by evidence that the person accused of rape actually had sexual intercourse with the victim without the real or genuine consent of the victim. This is the *actus reus*, meaning the physical element of the offence. To establish the *mens rea*, which is the mental element or the guilty-intention-element of the offence, the prosecution must also show by evidence that the offender had the intention to have such non-consensual sexual intercourse knowing or having reasons to know that the victim did not give free or genuine consent to the intercourse and/or cared less as to whether the victim consented to or freely permitted the intercourse. In other words, it must be shown by evidence that the accused rapist intentionally cared less about the free consent of the victim and went ahead with the sexual intercourse with the victim. The *actus reus* and *mens rea* of the offence of rape are present in the insight given by the Supreme Court in the case of *Popoola v. State*⁷ when the court said:

....., a man will be said to have committed rape if he had unlawful sexual intercourse with a woman or girl who at the time of the intercourse does not consent to it; and at the time, he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it.

With respect to the sexual offence of indecent assault, it must also be shown by evidence that the accused person or the defendant intentionally and actually touched the victim indecently knowing or having reasons to know that the victim did not give consent to the indecent touch or cared less about the consent of the victim. More specifically, the prosecution must show by evidence that the accused committed the act of indecency or of gross indecency upon the person of another, and that other person did not consent to the act, or that he/she compelled that person by use of force or threats to join in the commission of the indecent or grossly indecent act.⁸

Uncorroborated Evidence in Rape in Nigeria

There is a suspicion that in rape cases the presumption of innocence⁹ to which the defendant is entitled is likely to give way to “the respect and sympathy naturally felt by any tribunal for a wronged female

⁴ Criminal Code Act, 2004

⁵ Evidence Act, 2011

⁶ O Nuel, ‘Solving The Jigsaw Puzzle: A critical analysis of the evidence of an accused implicating a co-accused under the Nigerian law of evidence’ [2017] (3) *UNLSJ* 149.

⁷ (2013) 17 NWLR (pt. 1382) p. 96.

⁸ H A Akuchie, ‘Innovations in the Procedural Laws on Rape and Other Sexual Offences in Nigeria’ [2019] (87) *Journal of Law, Policy and Globalization*.

⁹ CFRN 1999 (as amended) s 36 (5).

...”¹⁰ This alleged danger of unfair prejudice against the accused has two elements. First, the heinousness of the offence may arouse such indignation in the judges and that they will be hasty to convict. Secondly, judges are thought to be “pre-inclined to believe a man guilty of an illicit sexual offence he may be charged with, and it seems to matter little what his previous reputation has been”.¹¹

The need for corroboration in the proof of rape has been expunged from the Evidence Act, 2011. The implication of this is that in cases where there is need to prove the commission of any of the sexual offences, corroboration is no longer required, at least procedurally. In the recent court of appeal decision viz *Lucky Jacob v Akpan*¹² counsel to the appellant submitted that there was no rule of law requiring corroboration of the evidence of the prosecution before an accused could be convicted of the offence of rape. He noted, however, that as a matter of practice, courts, always, demand that the evidence of the prosecutrix must be corroborated in some material particular, citing *Ibeakanma v Queen*,¹³ *IGP v Sumonu*.¹⁴ Surprisingly, the same counsel also came to the conclusion that there must be corroboration of any of the above ingredients in some material particular before an accused person could be convicted of rape, citing *Upahar v State*.¹⁵

The Court of Appeal, then cited a Supreme Court case, to wit- *Habibu Musa v State*¹⁶ where the apex court noted, most perspicaciously, that:

...it has to be restated that in offences of a sexual nature it is very desirable that the evidence of the prosecutrix or complaint (sic, complainant) is buttressed by other pieces of evidence implicating the accused in a substantial way.

Interestingly, the Court of Appeal still pointed out in a subsequent paragraph that:

This does not detract from the fact that the court is not hindered from convicting an accused on the uncorroborated evidence of the complainant. In the use of corroborative evidence however little or slight it may be there is no rule as to what a corroborative piece of evidence is and how it can be applied. This is because the trial judge is best suited to make use of the evidence being well situated and having the opportunity and singular privilege of hearing firsthand the witnesses, considering their demeanor including that of the appellant. Also, where there was enough on ground from which the trial judge can reach a decision then there is no need to warn itself of the danger of acting on the uncorroborated evidence of the prosecutrix.

¹⁰ J H Wigmore, *Evidence in Trials at Common Law* (Boston, Chadbourne, Little Brown & Co, 1978) 331.

¹¹ *Ibid.*

¹² (2014) LPELR -22740(CA)

¹³ [1963] 2 SCNLR 191,194

¹⁴ [1957] WRLR 23

¹⁵ [2003] FWLR (Pt.1234) 393

¹⁶ (2013) AELR 3628 (SC)

Conversely in *State v Ogwudiegwu*,¹⁷ it was held that the offence of rape, in order to secure a conviction, corroboration of the evidence of the complaint implicating the accused is not essential, but a judge must warn himself of the risk of convicting on the uncorroborated evidence of the complaint. However, in *Sambo v The State*,¹⁸ the Supreme Court held to the contrary that it is the law that before the prosecution can secure the conviction of the offence of rape, the evidence of the prosecutrix must be corroborated in some material particular that sexual intercourse did take place, and that it was without her consent.¹⁹

It is imperative to note that in *Ogunbayo v. The State*,²⁰ the Supreme Court per Niki Tobi JSC (of blessed memory) stated that:

I am not comfortable with the case law that corroboration is necessary to secure conviction of the offence of rape. This is because, I see no statute foisting on the prosecution, evidence of corroboration before convicting an accused. Section 350 of the Criminal Code Act, Cap. 77 Laws of the Federation of Nigeria, 1990, which is similar to the States Criminal Codes, does not provide that evidence of corroboration is necessary for conviction. And the Criminal Code specifically provides for offences where corroboration is necessary. Rape is not one of such. The above apart, neither the Evidence Act nor the Criminal Procedure Act or Code provides for corroboration in the offence of rape. I therefore ask, where did we get that law?

As a matter of requirement of law, since offences in sections 218, 221, 223 and 224 of the Code requires corroboration; it is demanded of the court to satisfy itself that this requirement was met.

It is clear from the foregoing that even though corroboration requirement is merely a matter of practice in Nigeria, it has become a legalized practice which must of compulsion, be duly and dutifully observed by judges. Failure to so do will undoubtedly lead to the conviction so obtained quashed; thereby laying too much emphasis on technicality. In *Rabiu v State*,²¹ the Court of Appeal held that where the prosecutrix testified that the accused inserted his penis into her vagina, the law requires such evidence to be corroborated by an independent witness.

A further criticism of the rules was the fact that they were an exception to general principles and considered to be a glaring anomaly, and contrary to the interest of justice. As Karibi-Whyte said in *Abdu Mohammed v. State*,²² “unless corroboration is required by law, the evidence of a single witness of the right probative value has always been accepted as sufficient proof for the offence as charged.” The evidence of a prosecutrix should be judged based on the strength of her case and the accused should, according to the law, be found guilty only if the prosecutrix can prove the accused beyond reasonable

¹⁷ [1968] NMLR 117

¹⁸ [1993] 6 NWLR (pt. 300) 399

¹⁹ *Iko v State* [2001] FWLR (pt.68) 1161

²⁰ [2007] All FWLR (Pt. 365) 408

²¹ (2005) 7 NWLR (Pt. 925) p. 496

²² [1991] NSCC 265.

doubt. The formal rules of proof in law should be applied and not any other perfunctory method of proof in cases of law. Our legal system has developed the formal rules of proof and this should be applied to sexual cases.

Therefore, the removal of the need for corroboration makes the procedural law lucid but has not cleared every uncertainty which existed as a result of the corroboration rules. The existence of the provision in the affected sections of the Criminal Code implies that for the prosecution to prove its case beyond reasonable doubt there must be other evidence in corroboration of the complainant's testimony. This has the effect of producing the same result as under the repealed Evidence Act.

From the view point of the legislature and the general public, the absence of the requirement for corroboration in sexual offences, except in respect of unsworn testimony of a child of less than 14 years under the Evidence Act, 2011, persons prosecuted for rape and other sexual offences can be convicted upon the uncorroborated but cogent evidence of one witness who could be the prosecutrix, the victim of the rape. However, with the traditional precautionary practice of the Courts in insisting on corroboration as a practice of the Court, and not as a matter of statutory requirement, the exit of corroboration in the prosecution and adjudication of rape and other sexual offences may not be on sight.²³

Be that as it may, it is expected that our courts will in practice, relax or jettison the old rule of insisting on corroboration in sexual offences and convict and sentence the offenders upon credible and cogent testimony or evidence of one witness, especially the victim who, most times, suffer the animalistic, barbaric and beastly act of rape and/or other forms of sexual violence without the opportunity of having another witness.²⁴

The requirement of many legal systems to meet "a particular level of proof in order to prosecute", coupled with the widespread distrust of women, has led to the continued demand for authentication of a victim's claim.²⁵ However, the question again is how and who will be this independent witness. If the offence is complete upon the slightest penetration without emission and done in secret, who then is qualified to be this independent witness.

Analysis of the Elements of Rape

Under the common law, a victim of rape was expected to show that she resisted to her utmost ability. This often-entailed actual physical resistance to the sexual advance and mere verbal objection to such advance would not suffice. Thus, some of the elements of rape will be discussed below:

Lack of Consent

Lack of consent can be proved, though not all the time, by bruises, torn clothing, state of the victim etc. Consent obtained by force or by means of threats or intimidation or fear of harm is no consent. Consent

²³ H A Akuchie, 'Innovations in the Procedural Laws on Rape and Other Sexual Offences in Nigeria' [2019] (87) *Journal of Law, Policy and Globalization*.

²⁴ *Ibid*.

²⁵ K E Edward and M D MacLeod, 'The Reality and Myth of Rape: Implications for the Criminal Justice System' [1999] (7)(37) *Expert Evidence*, 58.

given because of exhaustion after persistent struggle and resistance would appear to be no consent. For instance, in *Igboanugo v. State*,²⁶ the torn pant, bra and clothes of the prosecutrix were taken as evidence of non-consent. It can also be proved by permitting the defense to introduce evidence of the victim's prior sexual involvement with the accused or other people generally, the assumption being that someone who had engaged in sexual acts previously, or who was promiscuous, would be more likely to have consented.

Penetration

Section 6 of the Criminal Code provides "that when the term carnal knowledge or carnal connection is used in defining an offence it is implied that the offence, so far as regards that element of it is complete upon penetration".²⁷ Penetration is a determining factor in finding out if there was carnal connection or not even if there was a release of sperm or semen and penetration however slight is sufficient and penetration is when the male sexual organ which is the penis makes contact with the female sexual organ which is the vagina and the vagina does not have to be ruptured to prove that the victim has been defiled it cannot be by using objects such as pens, sticks or any other object and in the case of *Adeoti v State* the court made emphasis that in proving the offence one of the most important element to prove is penetration and if the prosecution is not able to prove this then they will fail.²⁸

Corroboration in Unlawful Sexual Offence Cases

This is one of the most contentious issues in proving that an accused person actually committed the offence of defilement and once evidence is given in corroboration it must show that indeed the crime was committed and also by that person.²⁹ It has also been stated in some Nigerian courts that the victim must provide corroborative evidence or risk the accused person going scot-free without punishment and such cases include *Afolalu v State*³⁰ and *Ndidi v State*.³¹

Also, corroborative evidence could be given through any lawful means which includes the provision of the child's birth certificate or even through evidence given by the parents of the child. The use of medical evidence is also acceptable in courts especially to link the suspect to the rape charges. For example, testing samples for the Deoxyribonucleic Acid popularly known as DNA.³²

Corroboration is a mandatory requirement unlawful sexual offence cases in Nigeria to the point that most times if any of such cases comes before the court and there is no corroborative evidence then the court can rule that there was no proof that the victim was defiled and there have been cases where the courts have stressed the importance of corroboration and one of such cases is *State v Olumuyiwa and Ors*³³ where the court stated that even though Sections 177(1) and 178(1) of the Evidence Act are not clear provisions it is still important that there must be corroborative evidence.

²⁶ [1992] 3 N.W.L.R. (pt. 228) p.176

²⁷ (2011) 1 NWLR (Pt. 1227) 89.

²⁸ Child Rights Act, Cap C50 LFN 2010, Section 31.

²⁹ Criminal Code Act, s 6

³⁰ *Afolalu v The State* (2009) ALL FWLR (Pt. 454) 1450.

³¹ *Ndidi v The State* (2010) 16 NWLR (Pt. 519) 101.

³² E E Alobo, *Criminal Law and Sexual Offences in Nigeria* (Lagos: Princeton and Associates Publishing Co. Ltd, 2016) 184.

³³ *State v Olumuyiwa & Ors* (1982) NCLR Vol.2 297 at 298.

Conclusion

There are no (or no longer) formal rules regarding corroboration of a woman's testimony in cases of rape in many parts of the world (e.g., parts of Latin America, Canada, Ghana, South Africa, the United Kingdom, and most parts of the United States). However, the requirement of many legal systems to meet "a particular level of proof in order to prosecute", coupled with the widespread distrust of women, has led to the continued demand for authentication of a victim's claim. The historical assumption of an inherent lack of credibility of the evidence of women and girls in sexual offences cases which led to the evolution of the corroboration rules under the common law is now widely regarded as discredited and without any scientific basis. It was therefore vital that the common law practice should be abrogated, and that the statutory provisions, which are based on the same discredited assumption, be abolished consequentially. Assessments of credibility should be made not by assumption but by a full evaluation of the merits of the case.

The laws on rape particularly on child defilement is long overdue for urgent reformations especially the part of corroboration of the offence. It is evident that to witness such a crime is almost an impossibility since most accused persons abuse children in hidden places far from where they could get caught. Without the creation of more awareness, there will continue to be the under-reportage of defilement cases which is a major reason for the increase in child defilement cases and causes negative effect in the lives of the victim such as depression, trauma, teenage pregnancy, low self-esteem, fear of perpetrator, death as well as negative effects on the society at large.

Recommendations

This paper proceeds to make the following recommendations:

- i. The courts are urged to loosen the parameters of what they consider as corroborative evidence and in apposite cases, convict with cogent evidence of one witness with or without corroboration.
- ii. There must be sustained efforts by the State (such as continuous training of law enforcement personnel and judicial officers, sensitizing the media, educating the public) to challenge the stereotype attitudes dominant in Nigeria which help to perpetuate violence against women and girls. Especially on the issue of consent which is very important as it is the only thing that differentiates ordinary sexual intercourse from rape. Such progress as this will help the society's move towards a wholesome legal and overall development.
- iii. The medical treatment of victims of rape is prompt as long as the victim or victim's parent/guardian can afford it, but since poverty is one of the major causes of defilement in Nigeria, it means not all victims can afford the treatment. In view of this, it is recommended that the treatment for victims of rape be made free for all victims especially in government owned hospitals so that they can have access to extensive treatment.