

An Examination of Challenging Issues on Sexual Offences in Nigerian Criminal Law Jurisprudence

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Abstract: In criminal law jurisprudence, punishment of an offender is usually secured after conviction following a successful prosecution based on evidence. The conviction of an offender can be secured by evidence from a single witness with or without corroborated. In Nigeria, evidence on issues of carnal knowledge, capacity, consent, corroboration and limitation period remain challenging in securing conviction of an offender in sexual offences. This work examines the challenging issues on sexual offences in Nigerian criminal law jurisprudence. The work made use of the doctrinal methodology and found that: (i) having carnal knowledge of the victim is sacrosanct in securing the conviction of an offender in sexual offence cases; (ii) there is absence of a provision on the age limits at which a female offender maybe held incapable of committing sexual offence; (iii) absent of consent before penetration is very germane in cases of sexual offence; (iv) the law requires evidence of corroboration in only specific named sexual offences for conviction of an offender; and (v) there is a time limit within which an offender can be prosecuted for committing sexual offence. Accordingly this work recommends that a provision on age limits at which a female offender maybe held incapable of committing sexual offence should be expressly provided in the law; the court should not insist on evidence of corroboration in sexual offences where such evidence is not required by law; and, the limitation of time for prosecution of offenders of sexual offences should be expunged from the Criminal Code Act and or any other law.

Keywords: Corroboration, Contending Issues, Criminal Law, Sexual Offences, Jurisprudence.

I. INTRODUCTION

Sexual violence which constitutes sexual offences have been shown to become one of the global phenomena and on an unprecedented increase in Nigeria.¹ In all parts of the world, these offences has left victims with unimaginable impacts including, disease, trauma and even death. These offences include rape, defilement of girls and boys, abduction and unnatural offences. Various countries of the world have designed and used various mechanisms in dealing with these offences in varieties of ways. One of such mechanisms is that of the legal framework. Accordingly, within the Nigerian criminal law jurisprudence, laws have been enacted which prohibits these offences and prescribes punishments against perpetrators. Amidst these laws, and in relation to sexual offences, there are issues which have not been sufficiently addressed in spite of the fact that understanding them is necessary when considering proceeding against perpetrators of these offences. Improper understanding of these issues can frustrate the purpose of criminal law jurisprudence in this regard, which aims at punishing offenders and deterring them and others from further committing the offence.

¹ Ifeanyi Emeka, Benjamin Tochukwu and Nweke Iggboanugo, Sexual Violence in Nigeria: A Challenge to Sustainable National Security and Development, *JUPEB Journal of Development and Educational Studies (JJDES)*, Vol. 1, No. 1, 2022, 78

According to, Dame Pauline Tallen, former Minister of Women Affairs and Social Development, two million Nigerians are raped every year in Nigeria.² In February 2022, it was also stated that Nigeria has recorded 646 cases of sexual offences and secured 110 convictions while 327 were still in court.³ Notably, before the conviction of anyone accused of committing these sexual offences is convicted and punished for the offence, these issues are normally considered and addressed by the court. Thus the consideration of these issues on sexual offences in Nigerian criminal law jurisprudence are germane in securing the conviction of an offender. This is more so as these issues usually operates as roadblocks in prosecution of offenders involved in the commission of these offences in spite of the increasing number of the offences in Nigeria.

This work examines these challenging issues on sexual offences in Nigerian criminal law jurisprudence. In doing that, the work is divided into four parts. Part one is the introduction and part two concerns itself with classifications of sexual offences and the law. Part three deals with Issues on sexual offences and part four accommodates Conclusion and Recommendations.

II. CLASSIFICATION OF SEXUAL OFFENCES

Although there are various classification of sexual offences, those considered in this work include rape, defilement of a girl under 13 years of age, defilement of a girl under 16 years of age but above 13 and of idiots as well as unnatural offences.

(a.) Rape

Rape is one of the types of sexual offences. It is prohibited and punished in the Criminal Code Act,⁴ Penal Code Act,⁵ as well as the Violent Against Persons Prohibition Act, 2015.⁶ In the criminal Code Act, the offence of rape is defined in section 357 as follows:

Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threat or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape.⁷

The offence defined in this section of the Act is punishable under section 358 with imprisonment for life, with or without canning. Although there are different views on how and why of rape, what stands out is that under the Criminal Code Act, there are basic elements that are required to be established in order to secure the conviction of the offender. Accordingly, in a charge of rape or having unlawful carnal knowledge of a female without her consent, it was held in *Ali v State*⁸ that the prosecution must prove the following: that the accused had sexual intercourse with the prosecutrix; 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; that the prosecutrix was not the wife of the accused; 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; that there was penetration.

Notably, under Violence Against Persons (Prohibition) Act 2015 (VAPPA), the elasticity of what constitutes rape in Nigeria has been expanded with the introduction of the definitions and ingredients of rape against what is contained in the Criminal Code as well as other laws to cover novel ways and methods of sexual gratifications. In this Act, Section 1 concerns itself with the definition of rape and provides thus:⁹ 1 (1) A person commit the offence of rape if – (a) He or she intentionally penetrates the vagina, anus or mouth of another person with any part of his or her body or anything else; (b) The other person does not consent to the penetration; or (c) The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any

² Kunle Adebajo, Fact Check: Are 2 million Nigerians raped every year? Here's what we know < <https://www.icirnigeria.org/fact-check-are-2-million-nigerians-raped-every-year-heres-what-we-know/> > accessed 24 June, 2023.

³ Cecilia Ologunagba, 110 sexual offenders convicted in Nigeria: Pauline Tallen < <https://pmnewsnigeria.com/110-sexual-offenders-convicted-in-nigeria-pauline-tallen/> > accessed 24 June, 2023.

⁴ Criminal Code Act, Cap 38 Laws of the Federation of Nigeria 2004, s. 357 and 358.

⁵ Penal Code Act, Cap 53 Laws of the Federation of Nigeria 2004, s. 282.

⁶ Violent Against Persons Prohibition Act, 2015, s. 1.

⁷ *Utang v State* (2021) 16 NWLR (Pt. 1802) 381 @389 held 9; Child Rights Law of Akwa Ibom State 2008, s. 32(1) & (2)

⁸ (2021) 12 NWLR (Pt.1789) 159@167 held 6; *Posu v State* (2011) 2 NWLR (1234) 393; *Iko v State* (2001)14 NWLR (Pt. 732) 221.

⁹ See also Violence Against Persons (Prohibition Act) 2015.

substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.

In this Act, where a person is convicted of an offence under subsection (1) of this section such person is liable to imprisonment for life.¹⁰ However, where the offender is less than 14 years of age, the offender is liable to a maximum of 14 years of imprisonment.¹¹ In all other cases, such person when convicted is liable to a minimum of 12 years imprisonment.¹² And in the case of rape by a group of persons otherwise known as “gang rape”, the offenders are liable jointly to a minimum of 20 years imprisonment without an option to pay fine.¹³ Apart from the convict, the victim shall be awarded appropriate compensation as the court may deem fit in the circumstance of the case.¹⁴ Also, from the definition of rape in this Act, any person (man or woman) maybe held to have committed rape, once it is shown that he or she penetrated the vagina, anus or mouth of another person with any part of his or her body or anything else; that the other person did not consent to the penetration; or that the consent was obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.

It is clear that rape under this Act is distinct from what is obtainable under the Criminal Code Act and other legislation in view of the following: A woman can be liable for rape as well as a man. Accordingly, both a man and a woman are capable of committing rape and can also be victims; Penetration is not restricted to penetration of the penis into the vagina alone, but it has been expanded to include penetration with any part of the body (penis, finger, tongue) or anything else (stick, pen, cucumber, key, sex toy- otherwise called dildo) into the vagina, anus or mouth of another person; Consent obtained by the use of any substance or additive capable of taking away the will of such person raped, is a new form of consent which operates to render the accused guilty of rape; A married man can also be raped under this act where the woman impersonates his wife; Also, section 1(2) (a) of the Act has made a person under 14 years of age criminally liable for the offence of rape. This is different from Section 30 of the Criminal Code which absolves a male below 12 years of Criminal responsibility of the offence of rape;¹⁵ Also, the punishment for rape under section 1(2) (a) of the Act is different from that provided for in Section 358 of the Criminal Code; The provision of compensation for victims of rape in section 1(3) of the Act is absence in the Criminal Code Act.

In view of the above, it is clear that the frontiers of the offence of rape in Nigeria have been expanded by the VAPPA, which now contains the current legal position of rape in Nigeria, which is applicable in the Federal Capital Territory Abuja and the states where the Act has been enacted as state laws.¹⁶

(b.) Defilement of Girls Under 13

This is an offence that is provided for in Section 218 of the Criminal Code Act. According to the section, any person who has unlawful carnal knowledge of a girl under the age of 13 years is guilty of a felony, and is liable to imprisonment for life, with or without canning. The words ‘defilement of a child’ have been interpreted to mean having sexual intercourse with a child.¹⁷ Any person who attempts to have unlawful carnal knowledge of a girl under the age of 13 years is guilty of a felony, and is liable to imprisonment for 14 years, with or without canning.¹⁸

(c.) Defilement of Girls Under 16 and Above 13 and of Idiots

This offence is prohibited and punished under Sections 221 of the Criminal Code Act. According to this section, any person who (1) has or attempts to have unlawful carnal knowledge of a girl being of or above 13 years and under 16 years of age;

¹⁰ Ibid, s. 1(2).

¹¹ Ibid, s. 1(2)(a).

¹² Ibid, s. 1(2)(b).

¹³ Ibid, s. 1(2)(c).

¹⁴ Ibid, s. 1(3).

¹⁵ See also Penal Code Act (PCA), s. 50.

¹⁶ See Violence Against Persons (Prohibition Law) of Akwa Ibom State, 2020, s. 1.

¹⁷ *Adenekan v The State of Lagos* (2021) 1NWLR (1756) 130 @142 held 1.

¹⁸ CCA, s. 218.

or (2) knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her; is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without canning.

(d.) Unnatural Offences

Unnatural offences are part of offences against morality, which include sodomy and bestiality. Under Section 214 of the Criminal Code, any person who has carnal knowledge of any person against the order of nature or has carnal knowledge of an animal; or permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for 14 years. An attempt to commit any of the unnatural offences is a felony and attracts the punishment of imprisonment for 7 years.¹⁹

There are other sexual offences, which also form part of offences against morality. These include: dealing with indecent treatment of boys under 14;²⁰ indecent practices between males;²¹ house holder permitting defilement of young girls on his premises;²² and other offences involving causing or encouraging seduction or prostitution.²³

III. CONTENDING ISSUES ON SEXUAL OFFENCES

The successful establishment of a case of commission of sexually offence against an offender is associated with many contending issues which sometimes operate as obstacles in getting the offender punished. Since punishment remains in the center of Nigerian criminal law jurisprudence, understanding these issues as well as their determination are apropos. These include issues relating to carnal knowledge, consent, capacity of the offender, mental element, corroboration and limitation period.

a. Canal Knowledge

According to Section 6 of the Criminal Code Act, when the term carnal knowledge or carnal connection is used in defining any sexual offence, the implication is that the offence, so far as regards that element of it, is complete upon penetration. The court in *Adenekan v The State of Lagos*²⁴ defined carnal knowledge to mean sexual intercourse, especially with an underage female. Sexual intercourse has been defined as the physical activity of sex, usually describing the act of a man putting his penis inside a woman's vagina.²⁵ And in view of the VAPPA, sexual intercourse would also include putting any object, or any part of the body of one person into any opening in the body of another.²⁶ That the accused had sexual intercourse with the prosecutrix is one of the essential ingredients that must be proved in order to succeed in securing the conviction of the offender in a charge of rape. For this purpose it is not necessary to prove that the hymen was ruptured or that there has been an emission of semen. This is so because, as it is applicable to all sexual offences where prove of penetration is required, the law is that the emission or the rupture of the hymen is unnecessary to establish the offence.²⁷ What is required is that there was a penetration and this is the most important and essential ingredient of the offence.²⁸ The penetration required by law now in such an offence is the entry of the penis or some other part of the body or a foreign object into the vagina or other body orifice.²⁹ This has been held in the case of *Ali v State*³⁰ as the typical meaning of penetration today in many statutes defining sexual offences. The degree of penetration is immaterial. Thus, the slightest penetration of the penis into the vagina is sufficient proof of sexual intercourse and its completion.³¹ And because the offence is complete upon

¹⁹ CCA, s. 215.

²⁰ CCA, S. 216.

²¹ CCA, s. 317.

²² CCA, s. 219.

²³ CCA, s. 222A.

²⁴ (2021) 1 NWLR (Pt. 1756) 130@143 held 6. See also *Ahmed v Nigerian Army* (2016) 17 NWLR (Pt. 1540)34.

²⁵ *Adenekan v The State of Lagos* (2021) 1 NWLR (Pt. 1756) 130@143 held 5.

²⁶ VAPPA, s. 1.

²⁷ *Ali v State* (2021) 12 NWLR (Pt.1789) 159@167 held 8;

²⁸ *Ibid* held 7.

²⁹ *Ibid* held 9.

³⁰ *Ibid*.

³¹ CCA, s.6; See also CCLAKS, s. 6; *Nseudo v State* (2021) NWLR (Pt. 1787) 234@237 held 2; *Iko v State* (2001)14 NWLR (Pt. 732) 221; *Ogunbayo v State* (2008) 8 NWLR (Pt. 1035) 157.

penetration,³² it has been held that the act of sexual intercourse which follows penetration, is part of the offence itself, so that aid given after penetration, makes the aider a party to such sexual offence.

b. Capacity

Generally, a person under the age of seven years is not criminally responsible for any act or omission made by such person.³³ And with reference to sexual offence, under the Criminal Code Act, a male person under 12 years is presumed to be incapable of having carnal knowledge and cannot therefore, be guilty of any sexual offence or attempt of it, where having carnal knowledge is in issue.³⁴ It follows that in today's position of what constitutes rape in Nigeria, a female person under the age of 12 is equally presumed to be incapable of having carnal knowledge. Also, a husband cannot be held guilty of rape upon his wife.³⁵ This is so because there is an implied consent for sexual intercourse given by the wife to the husband at marriage. However, if there is a separation order from a competent court containing a clause that the wife be no longer bound to cohabit with her husband then the implied consent to intercourse given by the wife at marriage is thereby revoked. Thus while the order is in force it will be rape for the husband to have intercourse with the wife without her consent.³⁶ A mere filing of petition for divorce by the wife, without more, does not by itself revoke the implied consent to intercourse.³⁷ An undertaking by a husband (in lieu of an injunction) 'not to assault, molest or otherwise interfere with his wife ...' is equivalent to an injunction and has the effect of revoking the implied consent to intercourse.³⁸ Importantly, although a husband may not be guilty of rape upon his wife, he may, on the same facts, be held guilty of assault or wounding if he uses force or violence to exercise his right to intercourse.³⁹

It may, firstly, be argued that under section 357 of the Criminal Code Act, a woman cannot be guilty of committing rape upon a man because according to this section, the offence can only be committed upon a woman or girl. And secondly, it may be argued that such position would not be the case where she is charged under the Violent Against Person's Prohibition Act, 2015 and other like legislation as a man or boy is capable of being raped in those legislation.⁴⁰ Arguments on the issue of validity or otherwise of criminal trial or conviction of an offender where such offender is charged with a wrong law or no law at all, has been addressed by the Supreme Court in the case of *Nyame v FRN*,⁴¹ where it held that the accused person need not be charged with the punishment section for his conviction to be valid. That he can be charged under the definition section or the penal section of the law cited in the charge or any other law wrongly cited in the charge or not cited in the charge at all, so far as that law exists prohibiting the act and attaching punishment in respect of the facts showing that the accused committed the offence. In every case where a person is incapable of committing rape he or she may be charged with the offence by virtue of section 7 of the Code for aiding, counseling or procuring the commission of the offence only if he is twelve years old and above.⁴²

c. Consent

Absence of consent is usually one of the ingredients required to be shown to have existed in prove of sexual offence. Thus in order to succeed in proving the case of sexual offence against the offender, it must be established that the act of sexual intercourse was done without the consent of the person against whom the offence was committed or that the consent was obtained by fraud, force, threat, intimidation, deceit or impersonation.⁴³ With regards to consent in the case of rape, the court in *Nseudoh v State*⁴⁴ held that in a charge of rape, the prosecution must prove that the act was done against her will;

³² CCA, s. 6. See also CCLAKS, s.6.

³³ See CCA, s. 30.

³⁴ Ibid.

³⁵ Unlawful carnal knowledge is defined in CCA, s. 6 as carnal connection which takes place otherwise than between husband and wife.

³⁶ *R v Clarke* (1949) 33 Cr App R 216.

³⁷ *R v Miller* (1954) 2 Q B 282.

³⁸ *R v Steele* (1977) Crim LR 290.

³⁹ *R v Miller* (1954) 2 Q B 282; CCA, s. 253.

⁴⁰ Violence Against Persons (Prohibition) Act, 2015 (VAPPA) s. 1.

⁴¹ (2021) 6 NWLR (Pt. 1772) 289 @302 held 2.

⁴² *R v Cogan and Leak* (1975) Crim LR 584.

⁴³ *Ali v State* (2021) 12 NWLR (Pt.1789) 159@167 held 6.

⁴⁴ (2021) NWLR (Pt. 1787) 234@237 held 1.

without her consent; with her consent when the consent has been obtained by putting her in fear of death or of hurt; with her consent when the man knows that he is not her husband; with or without her consent, when she is under fourteen years of age or of unsound mind. Absence of consent is therefore very important and in order to succeed the prosecution has to prove that the offender had carnal knowledge of a woman or girl, despite her age, without her consent.⁴⁵ Accordingly, it is no excuse that the complainant is a common prostitute or the girlfriend of the accused and has consented to intercourse with the accused on other occasions; or that she is the accused person's concubine. These facts may make the court reluctant to believe the complainant's denial of consent although it is usually a difficult one. In the case of *Utang v State*, where the complainant denied having consensual sex, the appellant, DSP James Utang, failed to convince the court with his claims that he gave a jolly ride to the complainant and happily had drinks with her before having consensual sex with her.⁴⁶

Consent obtained by force or by means of threats or intimidation or fear of harm, hurt/death or by means of false or fraudulent representation is no consent.⁴⁷ Accordingly, to have carnal knowledge of a sleeping woman in the absence of her consent, is rape. Consent obtained by personating the husband of the complainant who is the victim, is no consent.⁴⁸ Also, consent given by a person of weak intellect or of unsound mind or a person under the age of fourteen years or too young to understand the nature of the act done is not consent.⁴⁹ These are persons under the age of consent. As such, unlawful sexual intercourse with a person under the age of consent, regardless of whether it is against that person's will is known as statutory rape.⁵⁰ Similarly, no consent is effective which is obtained by fraud or false representation relating to the nature of the act,⁵¹ or to some other fundamental matter of misrepresentations.⁵² However, where the matters constituting misrepresentation are not fundamental, consent obtained in that regard will not be vitiated. Thus if the complainant understood the nature of the act to be done, the fact that the offender deceived such complainant about his state of wealth is immaterial.⁵³

Notably, although the prosecution need not prove a positive descent by the complainant, it is sufficient if he or she did not accept. That is to say that it was done against his or her will or without his or her consent. This is the position held in the case of *Nseudo v State*,⁵⁴ where the prosecutrix while hawking fruits one day, was taken by the accused to his room, asked to lie down on a mat and the accused used Vaseline to rub on her vagina and also on his penis and raped her. The prosecutrix cried and wanted to shout but he covered her mouth with his hands. The accused repeated this act on three occasions before he was arrested, charged and convicted of rape. In stating the essential ingredients to be proved in order to secure the conviction of the accused, the court held, regarding the mental element required, '...that the act was done in circumstances falling under the following: (i) against her will, (ii) without her consent,...'.

Markedly, consent is different from submission. Although submission maybe taken as evidence of consent, it is not every submission that is evidence of consent. Therefore, submission made as a consequent of force, intimidation, deceit, fraud or any false representation would operate as evidence that the act was done against the victim's will or without his or her consent, especially where the victim is below fourteen years of age or of unsound mind.⁵⁵

Importantly, consent need be given, either expressly or by conduct before the commencement of sexual intercourse and not in the course of intercourse. As such, the mere animalistic or encouraging sound made by a person against whom sexual offence is committed in the course of sexual intercourse would not be sufficient to prevent the act from constituting the offence. This is so because such sound cannot represent an inference that consent, which was not given before sexual intercourse has been given by implication during sexual intercourse by virtue of the making of such animalistic or encouraging sound. Although it may be debatable when consent begins and when it ends, it is clear that consent should

⁴⁵ *Nseudo v State* (2021) NWLR (Pt. 1787) 234@237 held 1; *R v Kufi* (1960) WLNR 1.

⁴⁶ *Utang v State* (2021) 16 NWLR (1802) 381

⁴⁷ *Nseudo v State* (2021) NWLR (Pt. 1787) 234@237 held 1. See also, CCA, s. 357.

⁴⁸ CCA, s. 357.

⁴⁹ *Ali v State* (2021) 12 NWLR (Pt.1789) 159@167 held 5. In this case the victim was just 5 years old when she was raped and so by every standard - a child, who could not give consent to the sexual intercourse. Thus, any such consent given is no consent in law. See also *R v Flattery* (1877) 2 QBD 410.

⁵⁰ *Ali v State* (2021) 12 NWLR (Pt.1789) 159@167 held 5.

⁵¹ *Ibid.*

⁵² CCA, s. 357.

⁵³ *R v Clearance* (1888) 22 QBD 23.

⁵⁴ (2021) NWLR (Pt. 1787) 234.

⁵⁵ *Nseudo v State* (2021) NWLR (Pt. 1787) 234.

either be given or refused before sexual intercourse. However, withdrawal of consent can be made before or during sexual intercourse. This is so because the law aims at ensuring that no sexual intercourse takes place (commences) between adults without consent from both parties. And that such intercourse should be discontinued once any of the parties withdraws consent. Therefore once it commences without consent, any consent purported to have been given in the course of sexual intercourse, whether expressly or by implication cannot be consent contemplated by the law.

Absent of consent is the mental element required in establishing sexual offences. Accordingly, in order to succeed in securing the conviction of the accused, the prosecution must prove 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.⁵⁶ Thus the mental element is intention to have sexual intercourse without the victim's consent or with indifference as to whether he or she consented or not.⁵⁷ However, if an accused believed that, the victim was consenting, the accused will not be guilty even though he or she had no reasonable grounds for his/her belief. So, a person cannot be convicted of rape if he/she believes albeit mistakenly that the complainant gave his/her consent even though he/she had no reasonable ground to that belief.⁵⁸ If an accused believed that the complainant was consenting, it does not thereby bear the burden of establishing a defence of honest or reasonable belief. The prosecution has the burden at all times of proving the *actus reus* and *mens rea* of the offence.⁵⁹

d. Corroboration in Sexual Offences

In some sexual offences, the law specifically requires that the accused cannot be convicted upon the uncorroborated testimony of one witness in the trial of a person charged with the commission of such offences. These offences include: defilement of girls under 13; defilement of girls under 16 and above 13 and of idiot; procuration and procuring defilement of a woman by threats or fraud or administering drugs as provided for under Sections 218, 221, 223 and 224 of the Criminal Code respectively.⁶⁰ Therefore, it is a matter of law that a person charged for committing any of these offences cannot be convicted on the uncorroborated evidence of one witness. However, in any other sexual offence case including rape, there is no such requirement for corroborative evidence in law. Accordingly, the court in *Damuna v State*⁶¹ held that the Penal Code Act did not make provisions that evidence of a witness in a charge for rape requires further corroborative evidence as it is the case under the Criminal Code Act. In *Ali v State*,⁶² the court held that there is no legal requirement for corroboration in rape cases.

Notwithstanding these clear provisions of the law in this regard and the decisions of courts in support, the courts have adopted the practice of seeking corroborative evidence in such cases on the ground that it is unsafe to convict upon the uncorroborated testimony of one witness only. Therefore it has remained as a rule of practice that in sexual offences, including rape, an accused person should not be convicted on the uncorroborated evidence of a prosecutrix. Where this practice is not followed and the accused is convicted by the lower courts on an uncorroborated evidence of one witness, such conviction is usually, set aside by the higher courts and the accused discharged and acquitted. In *Damuna v State*⁶³ the accused and one other were charged with conspiracy and rape of the prosecutrix. The evidence of the prosecutrix alone was used to convict the accused. On appeal, the Court of Appeal upturned the decision of the trial Court, discharged and acquitted the accused. In this case, the court held that the practice where allegations of rape are made in criminal prosecutions is for the court to look out for corroborative evidence which materially support the charge.

It is noticed that the practice that the court should not convict an accused person on a charge of rape upon an uncorroborated evidence of one witness has now taken the form of law. Accordingly, a prosecutor cannot secure the conviction of such accused without the required corroborative evidence. This is so because failure to provide such corroborative evidence has been taken to constitute failure on the part of the prosecution to prove his case beyond reasonable doubt. And the law is that

⁵⁶ *Ali v State* (2021) 12 NWLR (Pt.1789) 159@167 held 6.

⁵⁷ *Ali v State* (2021) 12 NWLR (Pt.1789) 159@ 167 held 6; *DPP v Morgan* (1975) 2 All ER 347.

⁵⁸ CCA, s. 25.

⁵⁹ *Utang v State* (2021) 16 NWLR (1802) 381. See also Evidence Act 2011, s. 136(1).

⁶⁰ CCA, ss. 218, 221, 223, 224 – Proviso.

⁶¹ (2021) 4 NWLR (Pt. 1767) 419 @423 held 6. See also *Sambo v State* (1993) 6 NWLR (Pt. 300) 399.

⁶² (2021) 12 NWLR (Pt.1789) 159@170 held 15; *Posu v State* (2011) 3 NWLR (Pt. 1234) 393.

⁶³ (2021) 4 NWLR (Pt. 1767) 419 @423 held 6.

such doubt, once shown to exist, must be settled in favour of the accused person.⁶⁴ Thus in *Damuna v State*,⁶⁵ the court stated;

In the absence of any independent evidence to establish the fact that appellant's penis penetrated the vagina of the prosecutrix, and thus had sexual intercourse with the latter, as a form of corroborative evidence, implicating the appellant, this absence should have dawned on the trial court below that the case of the prosecution fell short of the standard required of them, of proof beyond reasonable doubt. It is unsafe to convict in those circumstances.

The law is that corroboration must be an independence testimony, direct or circumstantial, which confirms in some material particular, not only that an offence has been committed, but that the accused person committed it.⁶⁶ Also, such corroborative evidence must implicate the accused person in some material particular in respect of the offence charged. It is not enough that the evidence tends to confirm or corroborate any part of the story told by the complainant. Thus in *Ali v State*,⁶⁷ the court held that generally, corroborative evidence of rape must confirm that sexual intercourse has taken place, that it took place without the consent of the victim and that the accused was the person who committed the offence. It must be noted that in the case of rape as well as other cases, where a witness is a child below the age of 14, the evidence given by such child requires corroboration by law otherwise no court would convict an accused based on such uncorroborated evidence.⁶⁸ This implies that where the only person whose evidence is used in corroboration of evidence against the accused in a sexual offence case is a person below the age of 14 years, the evidence of such witness also needs further corroboration.

The practice of requisition of corroborative evidence for securing conviction of offenders of sexual offences, which has been shown to receive the force of law by virtue of consistence use by the courts is at variance with clear provisions of the law. This is so because the law has identified those sexual offences where evidence of corroboration is required. The holding that failure to provide evidence of corroboration constitutes failure on the part of the prosecution to prove the case of the offender beyond reasonable doubt amounts to over drawing the elasticity of "prove beyond reasonable doubt". This is so because whether the prosecution proves a case beyond reasonable doubt or not, does not depend on the number of witness or corroboration of any evidence given by any witness unless where such corroboration is required by law. Discharging and acquitting offenders of sexual offences on account of absence of evidence of corroboration, leaves the victims without justice, returns offenders to the society unpunished and frustrates the essence of the Nigerian criminal law jurisprudence that seeks punishment of offenders to achieve deterrent and other purposes.

e. Limitation Period

Like some other offences, particularly offences against the state, there is a time frame set by law within which a person accused of committing sexual offence is expected to be prosecuted. Outside the time limit prescribed by law, the accused person cannot be held responsible for the commission of such offence. Thus in the offence of defilement of a girl under the age of 13, Section 218 of the Criminal Code Act provides for limitation period within which an accused for the offence or the attempt of it can be prosecuted. According to the section, such prosecution for either of these offences must be commenced within two months after the offence is committed.⁶⁹ Thus after two months, such prosecution becomes statute barred.⁷⁰ This therefore operates to limit the criminal responsibility of offenders and clothes them with a defence which sets them free from prosecution and conviction.

The limitation period for the offences of Defilement of girls under 16 and above 13 and of idiots is provided for in Section 221 (proviso) of Criminal Code Act. Under this section a prosecution for any of the offences, must be commenced within two months after the offence is committed. This also operates as a defence to free the offender of criminal responsibility even if it were true that the accused actually committed the offence.

⁶⁴ Evidence Act, 2011, s. 135(1) & (2).

⁶⁵ (2021) 4 NWLR (Pt. 1767) 419 @423 held 10.

⁶⁶ *Ali v State* (2021) 12 NWLR (Pt.1789) 159@170 held 15.

⁶⁷ *Ibid* held 19.

⁶⁸ The Evidence Act, 2011, s. 209(3). See also *Ali v State* (2021) 12 NWLR (Pt.1789) 159@170 held 18.

⁶⁹ *State v Amechi* (1974) 4 E.C.S.L.R. 345.

⁷⁰ Some other crimes that are statute barred include: treason, instigating invasion of Nigeria, promoting inter-communal war, limited to 2 years – CCA, s. 43.

The two months period of limitation within which an offender of these offence has to be prosecuted provides a window of escape from prosecution and punishment of such offender after such months. Many times where these offences are committed, reporting of the cases, arrest of the offender, investigation, collection and processing of evidence as well as commencement of trial take longer time than two months. This is usually influenced by many factors including threats, stigmatization and absence of willing witnesses to testify for the prosecution. The two months period provided by the law is, without doubt, too short to achieve this. The implication is that where the two months period elapses, the offender is in law free of all criminal responsibility in that regard while the victim is denied justice and the effect of the offence on her remains. This is antithetical to the hallmark of the jurisprudence of criminal law in Nigeria.

IV. CONCLUSION AND RECOMMENDATION

Sexual offences have been shown to be on the increase in all parts of the world. Its impact has left victims with great consequences. Various countries of the world have designed and used different legal mechanisms in dealing with these offences in varieties of ways. In Nigerian criminal law jurisprudence, sexual offences have been shown to consist of sexual assault on persons against whom they are committed. These offences have been variously classified having been proscribed with prescribed punishments. The offence of rape and defilement of girls of ages under thirteen and of idiots as well as unnatural offences are examples of sexual offences considered in this work. To secure the conviction of an offender on these offences, several issues have been identified as and addressed as remaining top considerations. These include issues of carnal knowledge, capacity, absent of consent, corroboration and limitation of time within which to prosecute an offender of sexual offences. These identified issues operates to frustrate proceedings against perpetrators of offences, where they are not sufficiently understood and considered.

Accordingly, this work makes the following recommendations. On the capacity of an offender to be held criminally responsible for committing sexual offence, this work recommends that a provision on age limits at which a female offender maybe held incapable of committing sexual offence should be expressly provided in the law. This is necessary because there is a clear provision of law providing age limit of twelve years as the age below which a male offender of sexual offence, such as rape, cannot be held to have capacity to have carnal knowledge of another. But there is no corresponding age limit expressly provided as such to accommodate a female sexual offender. This situation leaves the resolution of this issues on the presumption that in today's position of what constitutes rape in Nigeria, a female person under the age of 12 is equally presumed to be incapable of having carnal knowledge. An express provision to accommodate the age limit of female offenders of sexual offences would eliminate the discrimination and end the presumption.

On the issue of corroboration, the court should not insist on evidence of corroboration in sexual offences where such evidence is not required as a matter of law. This is so because the law has specifically stated that the accused cannot be conviction upon the uncorroborated testimony of one witness in the trial of a person charged with the commission of named sexual offences which include: defilement of girls under 13; defilement of girls under 16 and above 13 and of idiot; procurement and procuring defilement of a woman by threats or fraud or administering drugs as provided for under sections 218, 221, 223 and 224 of the Criminal Code Act respectively. This makes it a matter of law that a person charged for committing any of these named offences cannot be convicted on the uncorroborated evidence of one witness. It therefore follows that outside these named offence, an offender of any other sexual offence, such as rape, can be convicted without evidence of corroboration. This is why the court in *Damuna v State*⁷¹ held that the Penal Code did not make provisions that evidence of a witness in a charge for rape requires further corroborative evidence as it is the case under the Criminal Code. And in *Ali v State*,⁷² the court held that "there is no legal requirement for corroboration in rape cases. Therefore, the importation of a practice where courts have adopted of seeking corroborative evidence in such cases is not in accordance with the law. This has led to the discharge and acquittal of many offenders who have committed sexual offences like rape that ought to be punished. To ensure that this does not continue, the court should adhere to the law and do justice to all cases of sexual offences in accordance with the law. An introduction of a practice that is not supported by the law is a dangerous practice in Nigerian criminal law jurisprudence and should be jettisoned.

On the issue of limitation period, this work recommends that the time limit at which an offender can be prosecuted for commission of sexual offences should be expunged from the law. This is so because although there must be an end to

⁷¹ (2021) 4 NWLR (Pt. 1767) 419 @423 held 6. See also *Sambo v State* (1993) 6 NWLR (Pt. 300) 399.

⁷² (2021) 12 NWLR (Pt.1789) 159@170 held 15; *Posu v State* (2011) 3 NWLR (Pt. 1234) 393.

litigation, the strict application of this rule in Nigerian criminal law jurisprudence operates to frustrate the aim of securing punishment of the offender for the offence committed. Since the limitation period remains as a window of time that an offender can be proceeded against, in the absence of processed evidence within such time, the offender would be excused of criminal liability and the victim left unprotected and without justice. This is more so with offence such as defilement of a girl under the age of thirteen and others, which time limit for prosecution is two months. This time is without doubt too short for arrest, proper investigation, process of evidence and commencement of prosecution. Sexual offences are such offences that direct impact is borne by victims. As such many victims who, because of many factors including stigmatization, do not report cases of sexually offences for prosecution of perpetrators after the limitation period provided are shut out from obtaining justice in that regard. Consequently, perpetrators walk free and undeterred which frustrates the essence of the Nigerian criminal law jurisprudence of punishing an offender for offences committed. The removal of this time limit would put perpetrators on the know that there is no window of escape for them once they commit this offence and would operate to a great extent in deterring them and others from further committing the offences.