Increasing Cases of Rape in Nigeria: The Need to Take the Issue of Criminal Responsibility for Rape beyond the Realm of Uncertainty

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Abstract. In the recent past, there has been an upsurge in the number of crimes committed in Nigeria. This may not be unconnected with the rising cases of violence and distortion of moral values in many parts of the country. The case of the offence of rape, particularly, is assuming a very dangerous dimension. The failure of our system for criminal accountability to convict most of the perpetrators of rape seems to encourage the offence. The prosecution in most of the cases of rape fail to secure conviction more often than not because there was no corroboration of the evidence of the prosecutrix as to penetration. It is not our laws (substantive or procedural) that require that the evidence of the prosecutrix must be corroborated before there can be conviction. It is the common law that provides for same and yet says that a judge may however convict the accused upon an uncorroborated evidence of the prosecutrix after he has warned himself that it is not safe to convict upon such evidence. There is a compelling need now to re-examine our laws and its administration so as to cover whatever loophole that exist therein from where criminals escape justice so as to protect whatever remains of the dignity of our womenfolk.

Keywords: rape, crime, laws, criminal responsibility, corroboration.

1 INTRODUCTION:

Rape, like other offences are on the increase in Nigeria. From few isolated cases in the not too distant past, reports of rape and other violent sexual offences are now the order of the day in our country. The offences are committed in dark street corners, high institutions of learning, private homes, offices, hotel rooms etc. Children, particularly teenage female hawkers, are not left out of the said offences which its perpetrators do not have respect for class or age. It seems that reports of rape is growing in number as conflict situations grow in the country. It is reported frequently that gangsters who break into the home of other people do rape the females they find therein whether they be wives or daughters and more often than not abduct them from their homes to their hide-outs where such persons are kept and raped repeatedly by members of the gang. If any person had thought that it is only miscreants that commit rape then he had better had a rethink as the high and mighty in society now compete with miscreants in the unenviable race to out-do each other in the senseless gangsterism. Some of the victims of rape lose their lives in the process either through the violence that go with it or through the diseases with which they are infected. That the offence of rape devastates the victim physically and psychologically is an understatement as the scar of the offence on its victim always remains indelible. Ironically, however, in spite of the bitterness associated with rape, there are not many cases of rape that are reported at our Police stations. The number of cases of rape that get to Court are even fewer than the number that get to Police Stations for obvious reasons. The reasons include the fact that not many of such cases end up in the conviction of the offenders, neither do victims of such offences get the assistance necessary to rehabilitate them. In other nations of the world, it is not only that most of the perpetrators of

such offences are convicted, facilities are also provided for the rehabilitation and restoration of the victims.

Failure to secure conviction in majority of cases of rape is traceable to the fact that our courts have continued to rely on the age long common law requirement that the evidence of the prosecutrix in a case of rape must be corroborated in material particular by an independent evidence. What should constitute independent corroborative evidence remains as controversial as a decision as to when corroboration has been attained in any particular case. It seems that the level of liberalism afforded defendants in cases of rape is such as is defeating the course of justice in our country.

1.1 Definitionof Rape

The offence of rape is created in Section 357 of the Criminal Code[1] as follows:

> *Any person who has an 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 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.*

Rape therefore means unlawful sexual intercourse such as occurs without the consent of the victim or where such consent was obtained by means of force, fear or fraud. Demobilization of the will of a victim to resist the act by administering strong drink or drugs may be rape. Rape bears on the dignity of womanhood and is one of the most grievous forms of assault. Rape attracts life imprisonment with or without whipping upon conviction[2].

Unlawful carnal knowledge on its own has been defined as carnal connection otherwise than between husband and wife[3].To this end, a man cannot be convicted of the rape of his wife because carnal connection between them is not unlawful. Except there has been an order of judicial separation which exempts the wife from the obligation to cohabit with her husband.Carnal knowledge for the purpose of the offence of rape is complete upon the slightest penetration of the vagina of the woman by the penis of the accused person[4].

1.2 Proof of the Offence of Rape in Nigeria:

Rape, as every other crime must be proved beyond reasonable doubt[5]Proof beyond reasonable doubt has been stated however, not to mean proof beyond all shadow of doubt Proof beyond reasonable doubt simply means proof upto a point where the probability of the guilt of the defendant is brought almost to certainty.

The burden of proving the guilt of an accused charged with rape rests on the prosecution at all times during the trial[6].

It does not shift to the accused person to prove his innocence as the law presumes him innocent until he is proved guilty[7].The prosecutrix, (the victim of the offence) who has come

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[1] Cap C38 Laws of the Federation of Nigeria 2004 (hereinafter referred to simply as the Criminal Code)

[2] See Section 358 of the Criminal Code, Cap C38, Laws of the Federation of Nigeria, 2004

[3] See Section 1 of the Criminal Code *ibid.*

[4] See section 6 of the Criminal Code, also R v Mayberry (1973) Qd.R. 211. However, in R v Chapman (1969) 2 GB 100, it was held that the act of ravishment that follows penetration as well as ejaculation of semen are all part of the offence.

[5] Section 135 (1) of the Evidence Act, 2011.

[6] Section 135 (2) of the Evidence Act, 2011.

under a tremendous emotional stress carries the burden to prove in the open court the occurrence of actual sexual intercourse between her and the accused and lack of genuine consent. It is instructive that more often than not, the prosecutrix is faced with unpleasant cross-examinations in the open court by the defence counsel who is bent on puncturing the case of the prosecution and securing the acquittal of the defendant by asking the prosecutrix embarrassing but relevant questions which end up in assaulting further her already wounded pride, dignity and self esteem. She may be compelled by these circumstances to withdraw from the trial.

It needs not be stated that many victims of the offence of rape, in a bid to escape the embarrassment that accompany report of the offence, starting from the Police Station to the Court, decide not to report the offence at all thereby allowing the hoodlums to walk home free. The case of the prosecution trying to secure conviction for rape is made more difficult by the requirement by our courts that the evidence of the prosecutrix must be corroborated by another independent evidence[8]. A perusal of our laws will reveal that there is no law in our legal system that requires corroboration of the evidence of the prosecutrix before a defendant in a case of rape can be convicted. Where the Evidence Act requires corroboration it has provided for such[9].

Section 200 of the Evidence Act[10], provides as follows:

> *Except as provided in sections 201-204 of this Act no particular number of witnesses, shall in any case be required for the proof of any fact.*

Certainly, it is neither the Criminal Code which creates the offence of rape nor the Evidence Act, which is concerned with admissibility of evidence in proof of offences, that provides for the requirement that there can be no conviction for rape upon the uncorroborated evidence of one witness. By virtue of the *exclusio alterius* rule of judicial interpretation, what is not expressly included in a list is intended to be excluded. If the legislature had intended to require corroboration before conviction for rape, it would have stated so.

It is trite law that in its role of interpreting statutory provisions, the court must stop where the statute stopped[11] if there is a gap in the law, it is the duty of the legislature to fill the gap by statutory amendment. Surprisingly, that is not the case as regards trial for the offence of rape in Nigeria. The greatest challenge to successful prosecution of persons that commit violent sexual offences in Nigeria today is the requirement of corroboration.

It is appreciated that there is every need to balance the interest of the accused person who also deserves justice in his trial with the interest of the state which should live up to the duty of protection it owes to its citizens including the victim of the offence who deserves justice. Presently, under our legal system, there seems to be a near total failure of justice as regards victims of rape. In the trials for these offences, it seems that both society and the institution of

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[7] See Section 36 (5) of 1999 Constitution(as amended), see also Woolmington v. D. P. P, [1935] A. C. 462, Ibeziakor v. C.O.P [1964] 1 All NLR.

[8] See Okoyomon v The State [1969] NMLR 117;Sambo v The State [1993] 6 NWLR [PT. 300] 399; Iko v The State [2001] 14 NWLR [pt 732] 221 Upahar v The State(2003) 6NWLR(pt.816.)230

[9] See generally Sections 197-204 of the Evidence Act, 2011.

[10] In Sections 201,202,203 and 204 of the same Act, it listed the offences for which there can be no conviction upon the uncorroborated evidence of one witness. The listed offences are treason and treasonable offences, charge of perjury, exceeding speed limit, sedition, the offences created in sections 51 (1), (b) 218, 221, 223 or 224 of the Criminal Code and matters bothering on breach of promise to marry found in section 197 0f the Act. It is instructive to note that even the requirement of corroboration that existed in section 179(5) of the Evidence Act, Cap E14, L.F.N, 2004 for some sexual offences seen in sections 218,221,223 and 224 of the Criminal Code was deliberately removed from the Evidence Act, 2011.

[11] See the case of Ngige v. Obi (2006)14 NWLR [pt 999] 1

justice are tied hand and feet and laid prostrate while the accused person and technicality stand tall.

A situation in which our courts are ready to acquit defendants in charges of rape on mere technicality is indeed deplorable[12]. Such situations are similar to the one that Professor Bakerdescribed as "Liberalism run wild[13]"Justice, after all is not a "one way traffic[14]". A situation where our mothers, sisters and daughters of all classes and ages are being debased constantly without consequences is certainly mind-boggling and stands the chance of destroying the very fabrics of our society because of the impact of same on the physique and psychology of this all important specie of humanity. Justice as an ideal is all embracing. It is imperative that while society considers justice in the prosecution and ultimate conviction of the perpetrators of violent sexual abuses of women, some thought should also be spared for the collateral injury inflicted on the hapless victims of such offences otherwise justice may be made to appear as a partial ideal. The reality that the victims of such offences do end up being infected with HIV and AIDS, the husband or prospective husband of the abused and infected may have rejected her and married a new wife, the victim who got impregnated would end up having a child born of rape, the victim whose reproductive system was affected would have been left with a completely compromised system for life, while a traumatized victim may be forced to become a recluse, withdrawing herself from others for fear of being raped again or being ridiculed ought to weigh against the temptation to afford the offender a technical justice.

1.3 Requirement of Corroboration in Trial for Rape in Nigeria, is it Legally Justifiable?

It is in the interest of justice and the public that offenders and offenders only be punished. It is a public policy relating to the administration of justice that it is rather better that a thousand criminals escape conviction than that one innocent man be convicted for an offence he did not commit. It is therefore imperative that the court should scrutinize properly the evidence presented to it in proof of offences before it convicts the defendant. The duty of the court, however, must be discharged according to law. In some cases such as in cases of rape, the law does not prohibit conviction on the evidence of one witness alone, it is the common law practice that requires the court to warn itself that it is dangerous to convict upon such uncorroborated evidence alone but that the court can thereafter convict if it is satisfied as to the cogency and veracity of the evidence presented to it. In the case of proof of rape, there is no provision for such warning at all under our laws neither does the law require corroboration at all. It can be said therefore that the practice of our courts, that do discharge defendants in cases of rape for want of corroboration, may not have its origin in law. The practice which is a carry - over from the English common law brought into Nigeria by the colonial masters has attracted different judicial attitudes to its application.

In Okoyomon v State[15]the Supreme Court held that the evidence of the prosecutrix in a charge of rape must be corroborated. In Sambo v State[16]the court held that it is the law that

[12] See generally the attitude of our courts embedded in recent judicial pronouncements on technicality and substantial justice

[13] Baker A: *The Hearsay Rule,* cited in Cross on Evidence, 5th ed., 536

[14] See Oputa JSC in Josiah v The State (1985)1 NWLR [pt 125] at 133 where the Supreme Court reminded us that justice is indeed a three way traffic; for the defendant, for the victim of the offence and finally for the society.

[15] (1969) NMLR 117.

[16] (1993) 6 NWLR [PT. 300] 399. Earlier in Akpanefe v. The State (1969) 1 ANLR 420 it was held that by section 178(5) of the Evidence Act, LFN 1958 (*inpari materia with the provisions of section 179 of the Evidence Act Cap E14, LFN 2004,* the court cannot convict an accused on a charge of rape without corroboration and in this regard an early report of the commission of the offence is not tantamount to corroboration. It is instructive to note that in Iko v. The State (2001)14

before the prosecution can secure conviction for 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; and that an accused can never be convicted on the uncorroborated evidence of the prosecutrix. Earlier in Reekie v R[17]it was held that such corroborative evidence is required and must implicate the accused person in some material particular.

However, in Sumonu v I.G.P[18], Adetokunbo Ademola J. (as he then was) put what he believed to be the position of the law in Nigeria succinctly thus:

> *It is not the rule of law in Nigeria that in sexual offences, accused persons should not be convicted on the uncorroborated evidence of a prosecutrix but the proper direction is that it is not safe to convict upon the uncorroborated evidence of the prosecutrix: that the court may after paying attention to the warning nevertheless convict if they are satisfied of the truth at law of evidence.*

In Ukut v State[19] it was also stated that in sexual offences including rape, the court should be wary of convicting an accused without corroboration. In State v Ogwudiegwu[20]it was stated that there is no requirement that the evidence of the prosecutrix must be corroborated but that the judge must warn himself of the risk of convicting on such evidence alone.

In Iko v State[21] it was held that it is not the rule of law that an accused person in a charge of rape cannot be convicted on the uncorroborated evidence of the prosecutrix. The proper direction is that it is not safe to convict upon an uncorroborated evidence ofthe prosecutrix but the court can still convict the accused if satisfied with the truth of her evidence.

The requirement of corroboration in rape cases as a matter of practice and the duty of the trial judge to warn himself has been greatly questioned.

In Ogunbayo v. The State[22], Niki Tobi JSC stated:

> *Let me take here the "warning business" that the appellate courts have given to the trial judge in England where the principle emerged and is applicable, the trial by jury is in force. In view of the fact that the jury convicts, the procedure is that the judge should warn the jury of the danger in convicting on the uncorroborated evidence ofthe complainant. Is that really necessary in Nigeria where the jury system is no more? What is the practical effect of the law expecting the trial judge to warn himself of the danger of convicting without corroboration. If he does not warn himself in reality and writes down in his judgment that he did, how useful is that in the entire truth searching process. Is our adjectival law not pretentious here? And can law afford to be pretentious? 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 fostering on the prosecution evidence of corroboration before convicting an appeal… I therefore asked where did we get that law in all practicality what evidence of*

NWLR [pt. 732] 321 decided 8 years after Sambo v. The State (supra) it was held that it is not the rule of law that an accused person in a charge of rape cannot be convicted on the uncorroborated evidence of the prosecutrix. The proper direction is that it is not safe to convict on the uncorroborated evidence of the prosecutrix. The court may, after paying due attention to the warning, nevertheless can convict the accused person if it is satisfied with the truth of her evidence.

[17] (1954) 14 WACA 501 at 502.
[18] (1957) WRNLR 23.
[19] (1992) 5NWLR (pt.240) 202.
[20] (1968) NMLR 117.
[21] (2001) 14 NWLR [pt 732] 221.
[22] (2007) 8 NWLR [pt 1035] 157 at 188-189 paras E-E.

> *corroboration is really needed in the offence of rape. In most cases, the offence is committed in private ... and so it is difficult to secure corroboration of the evidence of an eye witness. This is the more reason why it is difficult to secure evidence of corroboration that the accuse inserted his penis into the vagina of the prosecutor.*

1.4 What is Corroboration?

Corroborative evidence has been defined as a piece of evidence which confirms or supports another piece of evidence of the same fact. Corroborative evidence can be found but is not necessarily confined to the testimony of another witness. In Upahar v State[23] it was held that a piece of evidence offered as corroboration for the offence of rape must be cogent, compelling and unequivocal as to show without more that the accused committed the offence charged. In Iko v State[24]what constitutes corroborative evidence was stated in these words:

> *Evidence in corroboration must be independent testimony which affects the accused by connecting or contending to connect him with the crime. In other words, it must be evidence which implicates him; that is which confirms in some material particular not only the evidence that the crime has been committed but also that the accused committed it.*

The court went further to state that corroboration need not consist of direct evidence that the accused person committed the offence it does not need to amount to a confirmation of the whole account given by the witness, provided that it corroborates the evidence in some respects material to the charge in issue. Corroborative evidence may be found in the attitude or confessional statement of the defendant to the effect that he committed the offence with which he was charged. In Edwin Ezigbo v. State[25], it was held that corroboration need not consist of direct evidence that the accused committed the offence charged, nor need it amount to a confirmation of the whole account given by the witness/prosecutrix. It must, however, corroborate the said evidence in some respects material to the charge in question. Corroborative evidence must in itself be a completely credible evidence. In considering whether some evidence is corroborative of some other, the court must take all the little items of the former together and consider whether they add up to corroboration as a whole. In the instant case, PW2 gave evidence of the appellant having sexual intercourse with her as a result of which blood and white substance came out of her vagina. The evidence of PW2 was sufficiently corroborated by other material evidence, particularly that the appellant offered money to the parent of the prosecutrixfor the purpose of persuading them not to report the matter to the Police. There was evidence of penetration when PW2 gave evidence herself. That evidence was sufficiently corroborated by the evidence of PW5, a medical doctor, who examined Pw2 and her sister[26].
The court stated Per Ngwuta, JSC[27] that:

[23] (2003) 6NWLR [pt 816.]230 at p. 253 paras D-E, see also Sumonu v I. G. P (1957) WRNLR 23.
[24] (2001)14 NWLR [pt 732]221
[25] (2012) 16 NWLR (pt 1326) 318
[26] see pp. 329 paras C-D and 336 paras D-H. In Okoh v Nigerian Army (2013) 1 NWLR (pt 1334) 16 at pp. 37-38, paras G-F, the Court of Appeal stated that "where rape is denied as in the instant case, the nature of corroboration to look for is the medical evidence showing injury to the private part of the complainant, injury to other parts of the body of the complainant which may have been occasioned in a struggle, seminal stains on her clothes or the clothes of the accused or on the place where the offence is alleged to have been committed".
[27] P. 337, paras E-H

> *The rupture of the hymen of PW2 as testified to by the medical doctor PW5 and as shown in the report exhibit 2 which he tendered shows that the PW2 had been violated several times by the opposite sex. It corroborated the evidence of the PW2 that she was raped. Though the evidence of the PW5 on exhibit 2 fell short of corroborating the evidence of PW2 that she was raped by the appellant, the appellant himself provided the missing link between himself and the crime with which he was charged. He did so when he approached the parents of the PW2 and pleaded with them for forgiveness for what he had done to their daughter the PW2, in my view, this plea amounted to a voluntary the crime and corroborated the evidence of the PW2. By his plea to the parents of the PW2 (his victim) appellant gave himself up to the law and became his own accuser.*

Regrettably, the analysis of Obadina, JCAinUpahar v State[28] is instructive on why most prosecutions for violent sexual offences fail. He stated:

> *"In the instant case, the prosecutrix testified as PW3 to the effect that on the 2nd of August, 1994, the prosecutrix went to the village stream to fetch water and on her way back, she met the appellants at the crossroad. The appellants forcibly removed the water she was carrying, pushed her down and dragged her into the bush and while the 1st appellant removed his shorts down to his knees, the 2nd appellant held the prosecutrix's legs astride and pressed them down for the 1st appellant to take out his penis and inserted it into the prosecutrix's vagina. To stifle her cries and protests the 1st appellant put sand in her mouth. This was the scenario met by the PW2 who was going to his farm when he came to the cross road and heard someone crying in the bush. Pw2 went into the bush in the direction of the cries and to his dismay, met the 1st appellant on top of the prosecutrix copulating with her while the 2nd appellant held the legs of the prosecutrix. The evidence of pw2 to my mind, is an independent evidence and it corroborates in material particulars the prosecutrix's story that the 1st appellant was on top of her but not as corroborating the actual act of penetration. The evidence of PW2 therefore has a limited probative value in corroborating the prosecutrix's evidence that the 1st appellant was on top of her while the 2nd appellant held her two legs astride and pressed them down.*
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> *The probative value of PW2's evidence is not as corroborating the actual act of penetration. The prosecutrix also gave evidence in her evidence in chief and under cross-examination that the 2nd appellant tore apart Exhibit D (her pant) to allow the 1st appellant insert his penis into her vagina ... It seems to me that pw2's evidence and exhibit D corroborate the story of the prosecutrix that the appellants laid down the prosecutrix in the bush and while the 2nd appellant held her legs astride and pressed them down, the 1st appellant was on top of the her and she was naked. In other words the evidence of PW2 and exhibit D tendered by PW4 corroborated the evidence of the prosecutrix to the effect that the 1st appellant did everything that is necessary to have unlawful carnal knowledge of the prosecutrix but failed to gain* complete penetration, *that*

[28] Ibid, P. 257 – 258 paras D - E

> *is to say appellant attempted to commit rape on the prosecutrix". (underlining mine for emphasis)*

The decision of the court in this matter just as others similar to it, are liable to criticism to the extent that they purport to import into the law the requirement of complete penetration and proof of same before there can be conviction for rape.Section 6 of the Criminal Code[29] provides that the slightest penetration of the vagina by the penis is enough to ground conviction and that it is immaterial whether the hymen of the vagina has been ruptured or not. In the instant case involving a virgin, the court declined conviction because in the words of the court, the prisoner failed to gain complete penetration. There was medical report tendered in the case which stated that "upon examination, the patient (prosecutrix) was found to have tender vulva with whitish secretion, the hymen was lax, lacerated but there was no active bleeding".

It is submitted, most respectfully, that the decision in this case seems to bother on a misapprehension of the facts therein. The fact that the prosecutrix in that case, according to a medical report tendered in the case, "had a tender vulva on which was found a whitish discharge and hymen that was lax and lacerated" showed that there was forceful contact made with it using a hard object that tended to stretch same. The fact that there was no active bleeding may be as a result of the length of time between the incident and the time of medical examination or the extent of the force used in the attempt by the prisoner to gain penetration into the vagina of the prosecutrix. It is submitted that these evidence of penetration, coupled with the testimony of the prosecutrix would be enough to conclude that there was penetration no matter how slight and enough to ground conviction. That complete penetration is not necessary to ground conviction for rape can be seen from the decision in Iko v State[30] where the court stated, per Iguh J.S.C, that:

> *the fact that a prosecutrix who is allegedly defiled is found to be virgo intacta, (a virgin) is not inconsistent with partial sexual intercourse and the court will be entitled to find that sexual intercourse has occurred if it is satisfied on that point from all the evidence led and the surrounding circumstances of the case. Where penetration was proved but not of such a depth as to injure the hymen, it is sufficient to constitute the crime of rape.*

Therefore proof of the rupture of the hymen is unnecessary to establish the offence of rape. In Okoyomon v State[31] the victim of the offence found herself in similar circumstances as the prosecutrix in Upahars case[32]. In that case, however, there was medical evidence that revealed that there was venereal disease in the prosecutrix. There was evidence of recent sexual assault yet the case failed only upon the fact that there was no corroboration of the evidence of the prosecutrix.

It was not proved that the venereal disease found in the prosecutrix was found in the accused. This was in spite of the evidence of the prosecutrix that when the accused pulled her down in the bush, he removed her pant, pulled down his shorts and climbed on top of her "shaking his waste up and down". It was in this position that one of the prosecution witnesses who rescued the prosecutrix met them and gave evidence of same. If this fact is put side by side with the fact that venereal disease and other evidence of sexual assault was found on the

[29] Cap C38 L.F.N 2004
[30] *op cit.*, note 25.
[31] *op cit.*, note 16
[32] *op cit.*, note 24

prosecutrix, (a young person of about 12 years) when she was examined later, the court ought to believe that there was penetration of the prosecutrix's vagina done by the accused person.
It is heartwarming, however, to note that after many years of uncertainty in this area of the law, it seems that the courts are returning to the very point where the deviation started.
Some recent decisions of the Supreme Court of Nigeria will suffice to illustrate this change of bearingby the Apex Court on the requirement of corroboration in matters of rape. In State v. Azeez & ors[33] The Supreme Court stated per Mohammad, JSC that:

> *Although a conviction may be made on the evidence of a single witness, it is always safer that the trial judge warns himself of the dangers of conviction on the uncorroborated evidence of such a witness more so in a case where there existed inter-family dispute.*(underlining mine for emphasis)

Recently, in Nkebisi & anor. v The State[34] it was held per Ogbuagu JSC that:

> *A single credible witness can establish a case beyond reasonable doubt unless where the law requires corroboration ... in other words, the evidence of one credible witness accepted and believed by the court is sufficient to justify a conviction unless of course, such a witness, is an accomplice in which case his testimony would require corroboration.*

In Okoh v Nigerian Army[35], it was held that there is no law which says that there must be corroboration in a charge of rape. It is therefore true that an alleged can be convicted on the uncorroborated evidence of the prosecutrix. A single credible witness can establish a case beyond reasonable doubt unless where the law requires corroboration. In other words, a court can act on the evidence of one single witness if the witness can be believed, given all the surrounding circumstances of the case.
Earlier in the case of Iko v. The State[36], Kalgo JSC had stated thus:

> *"The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible…"*

It is submitted that if the views expressed by His Lordship, Kalgo J.S.C in the case of Iko v The State[37]is right and one believes it is, then much injustice may have been meted out to victims of rape and persons who prosecute rape cases who are made to go home in shame after presenting credible, sufficient and satisfactory evidence in court because such evidence were not corroborated.

If the views expressed in most of the earlier authorities that corroboration is imperative to secure conviction for the offence of rape remains unassailable, it seems then that in charges of rape, it is only through medical evidence that penetration of the vagina of the prosecutrix can be corroborated and proved in court. It is not possible for any person other than the prosecutrix whose body was penetrated and the defendant that did the penetration to know whether there was penetration or not.

The challenges of producing medical evidence in cases of rape in Nigeria is undoubtedly great since there may not always be facilities readily available for medical examination and where it is available, the length of time between the incident and medical examination may render the result of such examination useless. Furthermore, it is not out of place to say that

[33] (2008) 4 S.C. 188.
[34] (2010) Suit No. SC.395/2002 (unreported) judgment delivered on the 5th day of February, 2010.
[35] (2013) 1 NWLR (pt 1334) 16 at pp 31-32, paras H-A, E-F. See also Sule v State (2009) 17 NWLR (pt 1169) 33.
[36] *op cit.*, note 25 at 240.
[37] ibid.

some of the Policemen that investigate such cases are not experienced enough to know what they require even as regards medical reports. In addition to the problem of inexperienced Police investigators, the medical personnel that conduct such examinations do not always bring out what is required or put same in the proper language because of their ignorance of the requirements of the law on the subject matter.

2 CONCLUSION

It has been discovered that one major reason why prosecution for rape fails is the issue of consent. More often than not, defendants in cases of rape succeed in creating doubt so to whether there was consent or not, which doubt they benefit fromand get acquitted. It must be noted that in cases of rape involving minors, what the court is looking at is the evidence of the *actus reus* and not the *mens rea*. The issue of consent to the act cannot be pleaded by the defendant since the minor who obviously does not understand the nature of the act is not in a position to give genuine consent to intercourse as to absolve the defendant of criminal responsibility. It would have been expected that the court would be pro-active in convicting the defendants involved in the uncountable number of rape cases involving minors that are reported daily.

More often than not also, prosecution for the offence of rape fail at trial due to the inexperience of Police Officers that investigate or prosecute such cases. Because of the same inexperience, proper direction may not be given to medical personnel that conduct medical examination.

One such clear case is Okoyomon's case where medical evidence disclosed venereal disease on the prosecutrix. An experienced investigator would have gone a step further to subject the accused person to test to discover if such venereal disease was present in the accused person. Similarly, in Upahar's case, if the medical evidence had gone a step further to give the date when the laceration of the hymen occurred and it is found consistent with the date of the assault done by the accused person on the prosecutrix, proof of penetration would have been easier.

The general result of these lapses and the technical approach of our courts to prosecutions for rape is that perpetrators of such offences are hardly convicted. Failure to secure conviction in such cases do create the impression that it is a waste of time and unwarranted exposure of the victim to report, investigate or prosecute for such offences in the first place because the victim will be left alone at the end to lick her wounds at the end of it all while the offender goes home acquitted. Violent Sexual offences grow in proportion with civil unrest in any society. Once there is conflict, the maintenance of law and order suffers set back and human rights abuses become the order of the day.

Women face special problems in conflict situations. Statistics show that about half a million women were raped during the 1994 violence in Rwanda, about 50% of the women in Sierra Leone were abused sexually according to a 2002 report by "Physicians for Human Rights" and a host of other examples.[38]

In Nigeria, we are not yet in a full blown armed conflict but the situation in the Niger Delta area of the country before now and some parts of Northern Nigeria presently is not too distant from situations found in theaters of armed conflicts. Generally, moral depravity has degenerated to a level near insanityin many human beings in the country it is indeed an unbelievable situation where there is a near breakdown of law and order with security at its

[38] See IRIN, our bodies – their battle ground: Gender based violence in conflict zones 3. (Sept. 2004), http: //www.Irinnews. Org/pdf/in-depth/GBV-IRIN-in-depth. pdf. cited in Noami Cahn, Beyond Retribution and Impunity: Responding to War Crimes of Sexual Violence, I STAN J. C v RTS & CI v. LIB 217, 200 & n. 9, 21-22 (2005), 356, note 91.

lowest ebb. Situations such as these encourage crime and impunity generally and the abuse of women in particular as perpetrators do often get away with it. Reports of such abuses of women are on the increase in Nigeria[39]and is assuming a more saddening dimension now that more highly placed people in our society and even law enforcement agents allegedly get involved in it. This is the time for the law and its administrators to take proactive steps more than ever before so as not to be overwhelmed by this monster of social injustice called rape.

3 RECOMMENDATIONS

As a starting point, there is every need for pro-activeness on the part of victims, investigators, prosecutors and adjudicators of cases of rape to secure the conviction of many of the perpetrators of rape so to serve as deterrent to other persons who may be minded to engage in such crimes. The courts should realize the grave dangers that face the womenfolk in the nation presently and ensure that no offender who ought to be convicted is let off the hook on grounds of mere technicalities. There is every need now to re-assure the victims of such offences and the general public that the provisions of the law against rape and prosecutions for offences of rape are not merely fanciful.

As a further way out, the legislature may amend the extant laws to differentiate between attempted rape where the offender committed the offence of rape but for technical difficulty in securing his conviction for the substantive offence, he should be made to get a conviction for the full offence in which case the punishment should be made the same as that for the substantive offence. On the other hand, where the attempt as a matter of fact has not proceeded up to the point of consummation of the offence, the punishment may be made to be one half of the punishment for the full offence.

There should be also be a conscious effort in the area of public enlightenment aimed at encouraging victims of the offence to speak out so as to enable the offender to be prosecuted. That the rate of the offence is growing at an alarming rate today may be the course victims keep quiet and bear their injuries alone why the offender walks the street in triumph, being emboldened to undertake his "adventure" next time on another victim. Further to that, society should learn or be enlighten to empathise with rather than chastise the victims of rape by stigmatization.

Finally, the law and its administrators must certainly find an answer somehow to this disturbing trend.

[39] See the mind boggling report of the gang rape of school girls home on Easter holidays as reported on the front page of the Daily Sun Newspaper on Tuesday,3rd April, 2012. There are scores of other such cases of abuse of our womenfolk that go without notice because it happened to the less privileged.