

IN THE COURT OF APPEAL  
HOLDEN AT LAGOS

BETWEEN

DR. OLUFEMI OLALEYE

AND

THE STATE OF LAGOS



APPEAL NO: \_\_\_\_\_  
CHARGE NO: ID/20289C/2022

}...APPELLANT

4.08 Pm  
e

}...RESPONDENT

NOTICE OF APPEAL

I, **DR. OLUFEMI OLALEYE** currently at the Nigerian Correctional Service, Kirikiri Maximum Prison, Apapa, Lagos State, having been convicted for the offences of Defilement and Sexual Assault by penetration contrary to **Sections 137 and 261 of the Criminal Law of Lagos State, Cap. C17, Vol. 3 Laws of Lagos State, 2015** at the High Court of Lagos State, sitting at the Ikeja Judicial Division in **Charge No: ID/20289C/2022** wherein the Judgment was delivered by Coram: **Hon. R. A. Oshodi** (the Honourable Lower Court) on the 24<sup>th</sup> day of October, 2023, do hereby appeal to the Court of Appeal on the following grounds:

2. **PART OF THE DECISIONS COMPLAINED OF:**

The whole decision.

3. **GROUND OF APPEAL**

**Ground One**

The Honourable Lower Court erred in law when in the absence of any direct evidence it held that the alleged victim of the crime was a child of 16 at the time of the offence.

## **Particulars**

1. There was no direct evidence from anyone who witnessed the birth of the alleged victim of the crime contrary to the decisions in **Agwasim vs. Ejivumerwerhaye (2001) 9 NWLR pt. 718 pg. 395; Gusua vs Akpata (2000) FWLR pt. 30 pg. 2573.**
2. The prosecution did not tender any documentary evidence in support of its case that the alleged victim of the crime was 16 years.
3. No document which pre-dated the investigation and commission of the crime were tendered to prove and establish the age of the alleged victim of the crime.
4. The evidence of **PW1, PW2, PW4, PW5 and PW6** in relation to the age of the alleged victim of the crime were all hearsay evidence which in our law is statutorily prohibited and case law deprecated. See: **Section 38 of the Evidence Act 2011; Osho v. State (2012) 8 NWLR (Pt. 1302) 243; Odogwu v. State (2013) 14 NWLR (Pt. 1373) 74; State v. Masiga (2018) 8 NWLR (Pt. 1622) 383.**
5. The evidence of **PW4, PW5 and PW6** on the age of the alleged victim of the crime were information derived after the fact from **PW2** herself.
6. There was no reliable and credible evidence before the Court to back up the decision of the Honourable Lower Court.

## **Ground Two**

The Honourable Lower Court erred in law when notwithstanding the failure of the Prosecution to present the Birth Certificate or any document in respect of the alleged victim's date of birth, it failed to invoke **Section 167(d) of the Evidence Act 2011**.

### **Particulars**

1. The Law mandates a Court of law to presume that evidence which could be and is not produced by a party has been willfully withheld by that party because same was unfavorable to it.
2. The birth certificate or any document in relation to the date of birth of the alleged victim of the crime ought to have been in the custody of the prosecution or the victim.
3. The prosecution elected not to present the said birth certificate or any document in that regard.
4. In the circumstances the Honourable Lower Court ought to have invoked **Section 167(d) of the Evidence Act 2011**. See: **State vs. Sunday (2019) 9 NWLR pt. 1676 pg. 115; State vs. Salawu (2011) 18 NWLR pt. 1279 pg. 580**.

## **Ground Three**

The Honourable Lower Court erred in law when in the absence of any explanation in respect of the Prosecution's failure to produce the Birth Certificate or any document in relation to the birth of the alleged victim of the crime, it proceeded to rely on the oral evidence of the Prosecution Witnesses.

**Particulars**

1. The particulars of ground 1 are hereby repeated.

**Ground Four**

The Honourable Lower Court erred in law when in the absence of reliable and credible evidence on the age of the purported victim of the crime at the time the alleged offence was committed, it proceeded to convict the Appellant for defilement under **Section 137 of the Criminal Law of Lagos State 2015**.

**Particulars**

1. For the purpose of the offence spelt out in **Section 137 of the Criminal Law of Lagos State 2015**, a child is any person below the age of 18 years.
2. The age of the alleged victim of the crime is a critical ingredient to be proved in the offence of defilement.
3. Where there is a doubt in the age of the alleged victim of the crime, the doubt must be resolved in the Defendant's favour and a Court of law ought not to convict an accused person. See: **Aliyu v. State (2000) 2 NWLR (Pt. 644) 178; Modupe v. State (1988) 4 NWLR (Pt. 87) 130**.
4. In the absence of ANY evidence or reliable and credible evidence on the age of the alleged victim of the crime to support such a critical ingredient of the offence of defilement, the Honourable Lower Court ought to have discharged and acquitted the Appellant.



## **Ground Five**

The Honourable Lower Court erred in law when in convicting the Appellant for defilement of the named Blessing Ahamfeuia, it held that the alleged victim: -

**“...was consistent in her evidence that the Defendant raped her.”**

## **Particulars**

1. The alleged victim of the crime, **PW2** in her extra-judicial statement to the Police never alleged that the Appellant raped her
2. At the time the alleged victim wrote her Statement to the Police, the incident if any was fresh in her mind and no such allegation of rape was made.
3. **PW2** only made reference of rape incidents when she was interviewed at the Gender department, four months after her extra-judicial statement to the police. This she repeated in the course of trial.
4. There was a long time-span between when the alleged victim wrote her statement to the Police and when she gave evidence in Court.
5. The sudden allegation by **PW2** in the course of trial that the Appellant raped her was clearly an after-thought.
6. The inconsistency in the assertion of rape is fundamental and critical to the prosecution's case.

7. The Honourable Lower Court in the circumstance ought to have drawn the necessary interference and resolved the inconsistency in the alleged victim's testimony in favour of the Appellant.
8. Where the extra-judicial statement of a witness is inconsistent with the testimony in Court, such witness ought to be regarded as unreliable and not credible.

### **Ground Six**

The Honourable Lower Court erred in law when it held that it did not “...**believe that Aunty Tessa was a vital witness**” while believing the testimony of **PW1** and **PW2**.

### **Particulars**

1. **PW1** was demonstrably a tainted and interested witness and as such her evidence was manifestly unreliable.
2. The presence of the named Aunty Tessa was very vital as it related to the incidents of November, 2021 and the allegations torture and physical abuse leveled against **PW1** by **PW2** at the said meeting.
3. The presence of the named Aunty Tessa was vital in so far as the Honourable Lower Court relied on her experience as a retired school teacher and psychologist in extracting a confession from the alleged victim of the crime.
4. Aunty Tessa was an independent witness who had received the allegations leveled against **PW1** by **PW2**.
5. She was a key and vital witness.

6. In the absence of the named Aunty Tessy, the Honourable Lower Court ought not to have relied on the testimony of **PW1** and **PW2**.

### **Ground Seven**

The Honourable Lower Court erred in law when it held that:

**“I must disagree with the defence that there are inconsistencies in the Prosecutrix’s (PW2) evidence compared to the medical report.”**

### **Particulars**

1. In her statement at the Gender Department, **PW2** alleged that the sexual episodes were about four times.
2. In her evidence-in-Chief **PW2**, the alleged victim stated that the Appellant had sex with her four times a week.
3. The Honourable Lower Court had held that the Medical Report tendered by the prosecution did not indict the Appellant.
4. This clearly contradicted the facts contained in the medical report and the alleged victim’s extra-judicial statement.

### **Ground Eight**

The Honourable Lower Court erred in law when it held that:

**“I believe the Prosecutrix (PW2). The Defendant often had sexual intercourse with her, He forced her to suck his penis repeatedly. He released semen in her mouth. I believe the first time he had sexual**

**intercourse with her, blood oozed out of her vagina. She was tired and exasperated. She was in anguish and pain. Her evidence was strengthened during cross-examination.”**

### **Particulars**

1. **PW2** in her extra-judicial statement to the police never stated that the Appellant raped her.
2. The evidence of **PW2** in Court was a total departure from the facts contained in her extra-judicial statement.
3. There was video recording tendered and played in open Court where **PW2** stated categorically that the Appellant never released semen on her.
4. In the circumstances the Honourable Lower Court ought to have treated the testimony and evidence of **PW2** with a pinch of salt.
5. Particulars of ground 5 are repeated seriatim.

### **Ground Nine**

The Honourable Lower Court erred in law when notwithstanding its holding that the evidence of **PW5** evidence and medical report did not indict the Appellant, it proceeded to hold that the evidence of **PW5** corroborated the evidence of **PW2**.

### **Particulars**

1. The Honourable Lower Court confirmed that the medical examination conducted by **PW5** on the alleged victim of the crime was conducted months after the commission of the crime.



2. It was the holding of the Lower Court that the report did not indict the Appellant in anyway.
3. If the examination report of **PW5** did not indict the Appellant, it was indeed absurd for the Honourable Lower Court to have held that the **PW5**'s testimony corroborated the testimony of **PW2**.
4. By the decision in **Igbine vs State (1997) 9 NWLR pt. 519 pg. 101**, corroborative evidence must be evidence which confirms in some material particular not only that the crime was committed but that it was the Appellant who committed the offence.
5. The decision of the Honourable Lower Court with respect amounted to a judicial summersault.

### **Ground Ten**

The Honourable Lower Court erred in law when in relying on the evidence of **PW5** to convict the Appellant it held that the testimony of **PW5** was not impeached.

### **Particulars**

1. **PW5** saw the alleged victim of the crime **PW2** on 15<sup>th</sup> March, 2022 months after the alleged offence was committed.
2. The medical certificate issued by **PW5** stated categorically that **PW2** was being examined in respect of a sexual assault that occurred at 2.45pm on the 15<sup>th</sup> of March, 2022 contrary to her evidence in Court that she was defiled and sexually assaulted by the Appellant between 2020 and 2021.

3. **PW5** only offered evidence on the physical structure of the female genital and nothing more.
4. It was the finding of the Honourable Lower Court that **PW5's** medical examination did not indict the Appellant.
5. The Medical report of **PW5** served no useful purpose at the Trial Court in so far as it was unable to establish that the Appellant had sexual intercourse with the alleged victim of the crime. See: **Danladi vs State (2019) 16 NWLR pt. 1698 pg. 342.**
6. The Honourable Lower Court ought not to have relied on the worthless testimony of **PW5** in the circumstances of this case.

### **Ground Eleven**

The Honourable Lower Court erred in law when in relying on the evidence of **PW1** it held that her testimony corroborates the evidence of **PW2** that the Appellant had sexual intercourse with **PW2**.

### **Particulars**

1. **PW1** did not offer any direct evidence that she had witnessed the Appellant defiling or having sexual intercourse with **PW2**.
2. Corroborative evidence must be direct and derived from an independent source.
3. **PW1** from the video evidence tendered was confronted with allegations of torture, child abuse and physical assault against **PW2**.
4. There was also evidence on record that while the Appellant was in custody **PW1** had taken steps to defraud the Appellant.

5. It was apparent that **PW1** stood to benefit from the Appellant's conviction and incarceration.
6. The evidence of **PW1** was so badly discredited and it was wrongful for the Honourable Lower Court to have relied on it in convicting the Appellant.

### **Ground Twelve**

The Honourable Lower Court erred in law when in relying on the evidence of **PW1** it held that the failure of CSP Patricia Amadi to testify was not fatal to the case of the Prosecution

### **Particulars**

1. The prosecution had alleged that the Appellant confessed to the commission of the crime before CSP Patricia Amadi and not any other person.
2. The purported confession as relayed by **PW1** was relied upon by the Honourable Lower Court even when the confession was directed at **PW1**.
3. The testimony of **PW1** having been tainted with malice was so badly discredited that the Honourable Lower Court ought not to have considered or relied upon same in that regard.
4. The presence of CSP Patricia Amadi was vital and the failure of the Prosecution to call her was fatal to the Prosecution's case in so far as the Prosecution relied on the confession purportedly made before her.

**Ground Thirteen**

The Honourable Lower Court erred in law when without inquiring into the allegation of the Appellant that he wrote **Exhibit H** under duress, it proceeded to rely on the said Exhibit and its contents.

**Particulars**

1. At the stage of tendering **Exhibit H**, the Appellant had stated categorically that the said statement was written by him under **extreme duress**.
2. Duress implies that the statement was not written by the Appellant voluntarily. See: **CCCTCS vs Ekpo (2001) 17 NWLR pt. 743 pg. 649; Oilserv ltd vs. L.A. Ibeanu & Co. Nig Ltd (2008) 2 NWLR pt. 1070 pg. 191.**
3. The Appellant also stated that the date on the statement was clearly altered and his lawyer was not with him on the 29<sup>th</sup> of November, 2021 when the statement was purportedly written.
4. The law is settled that where a Defendant challenges the voluntariness of a confessional statement the Court ought to conduct an inquiry through a trial within trial proceedings. See: **Giki vs State (2018) 6 NWLR pt. 1615 pg. 237; Olayinka vs State (2007) 9 NWLR pt. 1040 pg. 561.**
5. Having failed to conduct a trial within trial, the Honourable Lower Court was wrong to have relied on the said confessional statement in convicting the Appellant.
6. The decision of the Honourable Lower Court has occasioned a travesty of justice.



### **Ground Fourteen**

The Honourable Lower Court erred in law when in relying on **Exhibit H**, it held that:

**“...there is consistent evidence that his lawyer was there when he wrote it...I believe he wrote Exhibit H on 29/11/2021. It was made in the presence of his lawyer. His evidence that he wrote it on 05/12/2021 is an after-thought. It is inconsistent with other pieces of evidence. It is a lie.”**

### **Particulars**

1. Particulars of ground 13 are hereby repeated.

### **Ground Fifteen**

The Honourable Lower Court erred in law when notwithstanding the Appellant's allegation that **Exhibit H** was written under duress, it came to the conclusion that it was counter-signed by the Appellant and CSP Patricia Amadi who never gave evidence at the Trial.

### **Particulars**

1. Particulars of ground 13 are hereby repeated.
2. CSP Patricia Amadi who allegedly counter-signed the said **Exhibit H** with the Appellant never gave evidence before the Court.

3. Having not had the opportunity of listening to the testimony or evidence of the named CSP Patricia Amadi, the Honourable Lower Court was wrong to have come to the conclusion that the said **Exhibit H** was written by the Appellant and counter-signed by the said CSP Patricia Amadi.
4. No video evidence was presented to the Court in accordance with **Sections 15 (4) of the Administration of Justice Act 2015**.
5. The decision of the Honourable Lower Court was not based on credible evidence before it.

### **Ground Sixteen**

The Honourable Lower Court erred in law when notwithstanding the allegation of torture and child abuse levelled against **PW1** by **PW2** it proceeded to rely on the testimony of **PW1** in convicting the Appellant.

### **Particulars**

1. There was evidence on record that **PW1** had tortured and abused **PW2** which culminated with the meeting in the residence of the named Aunty Tessy.
2. It was in the course of **PW1** torturing and abusing **PW2** that **PW2** said she was tired and that “you people want to kill me.”
3. It was the evidence of the defence that **PW1** had tortured **PW2** to implicate the Appellant.
4. The inference to be drawn is that **PW1**'s complaint was clearly a deflection plan from the allegation against her.

5. With the evidence of torture and child abuse against **PW1** the evidence and testimony of **PW1** was unreliable.
6. The Honourable Lower Court ought to have been cautious and wary in ascribing any credibility to the testimony and evidence of **PW1**.

### Ground Seventeen

The Honourable Lower Court erred in law when notwithstanding the evidence of the matrimonial dispute between the Appellant and **PW1** it proceeded to treat the testimony of **PW1** as credible.

### Particulars

1. There was evidence of the matrimonial dispute between the Appellant and **PW1**.
2. It was apparent that **PW1** had scores to settle with the Appellant arising from their matrimonial dispute.
3. **PW1** was the Complainant and the mastermind behind the allegations leveled against the Appellant.
4. With the evidence of the matrimonial dispute it was apparent that the evidence and testimony of **PW1** was tainted with malice.

### Ground Eighteen

The Honourable Lower Court erred in law when it resolved the issue of voluntariness of **Exhibit H** from the contents on the face of the document and the demeanour of the Appellant without conducting a trial within trial proceedings.

### Particulars

1. Particulars of ground 13 are hereby repeated.

**Ground Nineteen**

The Honourable Lower Court erred in law when it held that:

**“...Exhibit H is consistent with other established evidence. Exhibit P13 – 14 is not. For this reason, I must reject the Defendant’s denials in Exhibit P13 – 14 as an afterthought.”**

**Particulars**

1. Particulars of ground 13 are hereby repeated.
2. The law is settled that when an accused person makes two contradictory statements, one being a confessional statement and the other a retraction of the latter, neither of the statements is reliable. See: **Ekpo vs State (2003) 17 NWLR pt. 849 pg. 392; Oladejo vs State (1987) 3 NWLR pt. 61 pg. 419; Yongo vs. COP (1990) 5 NWLR pt. 148 pg. 103.**
3. With **Exhibit H** and **Exhibits P13-P14** being contradictory of each other, the Honourable Lower Court ought not to have relied on **Exhibit H** in convicting the Appellant.

**Ground Twenty**

The Honourable Lower Court erred in law when despite the Appellant’s allegation that **Exhibit H1** was edited by **PW1** and **Exhibit H2** written by him under duress it proceeded to rely on both documents to convict the Appellant without conducting a trial within trial proceeding.

**Particulars**

1. At the stage of tendering **Exhibits H1 and H2**, the Appellant had stated categorically that **Exhibit H1** was edited by **PW1** and **Exhibit H2** written by him under duress.



2. Clearly the Appellant had put the voluntariness of these Exhibits in issue.
3. In the circumstances, the Honourable Lower Court ought to have immediately conducted a Trial within Trial to determine if the said Exhibits were voluntarily written by the Appellant before relying on same.

### **Ground Twenty-One**

The Honourable Lower Court erred in law when notwithstanding its holding that:

**“I have considered the whole of Exhibit H1. It is inconsistent with other pieces of evidence that the Defendant had sexual intercourse with the prosecutrix and penetrated her mouth with his penis.”**

it proceeded to hold that **Exhibit H1** constituted an admission against the Appellant.

### **Particulars**

1. The Honourable Lower Court had held that **Exhibit H1** was inconsistent with the evidence that the Appellant had sexual intercourse with **PW2**.
2. Yet the Honourable Lower Court proceeded to hold that the said **Exhibit H1** constituted an admission against the Appellant.
3. How a document which is/was inconsistent with the evidence before the Court amounted to an admission for the purpose of convicting the Appellant beats the Appellant’s imagination.

4. The Honourable Lower Court approbated and reprobated at the same time.

### **Ground Twenty-Two**

The Honourable Lower Court erred in law when it held that:

**“...I have looked at Exhibit H2. Olalekan Gureje witnessed it. He also attached his NBA seal with the number SCN091270. I do not believe it was done under duress.”**

### **Particulars**

1. The Appellant had challenged the voluntariness of **Exhibit H2**.
2. The law is settled that where a purported confessional statement is challenged on the grounds on involuntariness, the Trial Court is duty bound to conduct a Trial within Trial. See: **Emeka vs State (2001) 14 NWLR pt. 734 pg. 666**.
3. The page of **Exhibit H2** that had the seal of the named Olalekan Gureje did not indict the Appellant in respect of the offences for which he was charged.
4. The named Olalekan Gureje never gave evidence before the Court that he was present.

### **Ground Twenty-Three**

The Honourable Lower Court erred in law when it held that:

**“The confession was corroborated by other pieces of evidence already established, including the evidence of his wife (PW1), the prosecutrix (PW2) and even the videos (Exhibit G1 – G2) tendered by the defence.”**

**Particulars**

1. Both **PW1** and **PW2** were demonstrably not credible witnesses.
2. The video recordings before the Court showed **PW1** coaching **PW2** on the nature of evidence to give against the Appellant.
3. **PW2** in the video recording stated clearly that the Appellant never released sperm on her contrary to her testimony in Court.
4. The Appellant by his defence did not corroborate the case of the prosecution rather the Appellant created sufficient doubts in the case of the prosecution.
5. The case of the prosecution was punctured by the defence.

**Ground Twenty-Four**

The Honourable Lower Court erred in law when it failed to consider the defence of the Appellant that **PW1** his wife was motivated by financial gains, including taking the family home in Maryland, Lagos, the Appellant's car and monies in their joint account.

**Particulars**

1. The Appellant had led evidence that **PW1** was motivated by greed and her personal desire to acquire and takeover all his assets.
2. The representative of Wema Bank Plc had tendered **Exhibit J** dated 28<sup>th</sup> day of February, 2021 but received in the Bank on the 17<sup>th</sup> of March, 2022 presented by **PW1** to remove the Appellant as a signatory of their joint account and make her the sole signatory.

3. **Exhibit J** was clearly written in the handwriting of **PW1** and submitted by her to the Bank.
4. The Honourable Lower Court ought not to have treated the Appellant's defence on the peculiar interest of **PW1** with a wave of the hand particularly as **PW1** was to gain more from the conviction and incarceration of the Appellant.
5. The Honourable Lower Court with respect slaughtered justice.

### **Ground Twenty-Five**

The Honourable Lower Court erred in law when it held that the prosecution had established beyond reasonable doubt that the Appellant had sexual intercourse with **PW2** and penetrated her mouth and ejaculated into it repeatedly between March, 2020 and November, 2021.

### **Particulars**

1. The medical examination purportedly took place on the 15<sup>th</sup> day of March, 2022 about four months after the allegation was made against the Appellant.
2. The Medical Certificate of **PW5** showed that **PW2** was being examined in relation to sexual assault that took place at 2.45pm on the 15<sup>th</sup> of March, 2022 after the Appellant had left the matrimonial homes.
3. In the video recording played in open Court, **PW2** stated emphatically that the Appellant never released sperm on her or inserted his penis into her.



4. From the two count information filed against the Appellant, it was alleged that the Appellant committed the offence between February, 2020 and November, 2021.
5. It was the finding of the Honourable Trial Court that the medical examination of **PW5** did not indict the Appellant.
6. There was nothing before the Court to link the Appellant to the allegations which resulted to the medical examination contained in the medical certificate tendered by **PW5**.
7. There was nothing to show and point to the fact that the only person capable of committing the offence as charged was the Appellant.
8. Sufficient doubt was created in the prosecution's case and as such it was unsafe of the Trial Court to have convicted the Appellant.

### **Ground Twenty-Six**

The Honourable Lower Court erred in law when in relying on the evidence of **PW2** and **PW3** and **Exhibit P – P10**, it held that:

**“There were threats and cohesion by the Defendant to maintain control of the prosecutrix.”**

### **Particulars**

1. The evidence of **PW3** and the report tendered by her was based solely on what was reported to her by **PW2**.
2. There is evidence on record that **PW1** had tortured and abused **PW2**.

3. **PW2** had stated in her evidence that the Appellant had seen her with the gateman in the past and she was afraid that the Appellant will report her to **PW1**.
4. In the circumstances it was wrong for the Honourable Lower Court to have accepted the evidence of **PW2** and **PW3** hook, line and sinker.

### **Ground Twenty-Seven**

The Honourable Lower Court erred in law when it failed to consider, evaluate or ascribe any value or weight to the Appellant's defence that **PW1** his wife was motivated by her ill intentions in bringing the complaint against him.

### **Particulars**

1. Particulars of grounds 17 & 24 are hereby repeated.

### **Ground Twenty-Eight**

The Honourable Lower Court erred in law when it refused to follow the decision in **Simon vs. State (2022) LPELR-78178 (CA)** where it was held then an inquiry is necessary where the age of an accused is in issue on the basis that the:

**“...issue in Simon arose from a conviction of a minor for armed robbery and his sentence to death.”**

### **Particulars**

1. The law is settled that where the age of a person is in issue before the Court, the Court is duty bound to conduct an inquiry into the age.

2. The fact that the case of **Simon vs State (Supra)** arose from a conviction of a minor was not a material or substantial dissimilarity to make the principle on the need to conduct an inquiry inapplicable in the instant case.
3. The principle of stare decisis enjoins a court to follow the earlier judicial decisions when similar points or issues arise before the Court. See: **Mailantarki v. Tango (2017) LPELR-42467 (SC)**.
4. By the decision of Tobi JSC in the case of **Adetoun Oladeji (Nig) Ltd v. N.B. Plc (2007) 5 NWLR pt. 1027 pg. 415 at 436** the facts need not be on all fours before a lower court would be bound to follow same. **Once the facts are materially or substantially the same then the lower court is bound to follow the decision of the superior court.**
5. The Honourable Lower Court ought to have followed the decision in **Simon vs State (Supra)**.

### Ground Twenty-Nine

The Honourable Lower Court erred in law when in relying on the decision in **James v. State of Lagos State (2021) LPELR-52456 (CA)** it held that circumstantial evidence can be used to determine a person's age.

### Particulars

1. The law is settled that an earlier decision will only constitute a binding precedent when the facts of such previous decision are on all fours with the facts of the present case. **Dalhatu v. Turaki (2003) 15 NWLR pt. 843 pg. 310; Nobis-Elendu v. INEC &**

**Ors (2015) LPELR-25127 (SC); Dr. Umar Ardo v. Admiral Murtala Nyako & Ors (2014) LPELR-22878 (SC); Nigeria Agip Oil Company Ltd v. Chief Gift Nkweke (2016) LPELR-26060 (SC).**

2. In the case of **James vs Lagos State (Supra)** the Honourable Court of Appeal recognized the modes of establishing the age of a child to include, direct evidence of a person that witnessed the birth, birth certificate and opinion of an expert who examined the person whose age is in issue. All of which were not met in that case.
3. In that case the prosecution had put the age of the victim of the crime at 14 years while the defence put the age at 16 years. The Court was of the view that whichever may be the case, the victim was a Child by virtue of the **Child's Right Law of Lagos State**.
4. It was also apparent from the record in that case that a **birth certificate from the National Population Commission** had been shown to the victim of the crime which she confirmed was not fake even though the defence was of the view that it was fake. Unfortunately, that **birth certificate** did not form part of the records of appeal and the Court of Appeal was of the view that if the defence alleged the **certificate** was fake the burden of proof was on the defence to so prove.
5. The Court of Appeal was of the view that in the absence of the **birth certificate** forming part of the records of appeal it could not interfere with the finding of facts of the Trial Court.



6. All these facts were not present in the instant case and as such the Honourable Lower Court ought not to have followed the decision in **James vs Lagos State (Supra)**.
7. No birth certificate or any evidence of any relative that witnessed the birth of the alleged victim was adduced at the Honourable Lower Court.

### **Ground Thirty**

The Honourable Lower Court erred in law when in relation to **Exhibit G**, it held that:

**“...One day...the prosecutrix challenged the Defendant’s wife (PW1). She admitted she was rude to the Defendant’s wife (PW1). She said she was tired that “you people want to kill me.” The Defendant’s wife (PW1) beat her. The video (Exhibit G) was played in court. The defence submits that that was when the Defendant’s wife (PW1) tortured the prosecutrix (PW2) to implicate the Defendant. But that is not true.”**

### **Particulars**

1. **Exhibit G** as played in the open Court showed **PW1** torturing and physically abusing **PW2**.
2. With the manner in which **PW1** had beaten **PW2** and her statement that “you people want to kill me” it was apparent that **PW2**’s grievance was with **PW1** who had beaten her up and not the Appellant.

3. It was the incident of **PW1** torturing and assaulting **PW2** that led to the meeting in Auntie Tessy's house.
4. The burden was on the prosecution to prove and establish that **PW1**'s act of torture and abuse on **PW2** and subsequent complaint was not a deflection to implicate the Appellant.

### **Ground Thirty-One**

The Honourable Lower Court erred in law when notwithstanding the evidence of **PW2** that the Appellant had seen her conversing with the gateman Meshach and she was scared that the Appellant will report her to his wife, it proceeded to ascribe probative value to the testimony of **PW2**.

### **Particulars**

1. **PW2** had admitted in her evidence that the Appellant had seen her with the gateman Meshach.
2. **PW2** had also stated that she was scared that the Appellant would report her to his wife **PW1** that she was conversing with the gateman, Meshach.
3. The allegation of rape was made four months after the initial complaint.
4. There was sufficient opportunity before and after the allegation for some other person to have been responsible for the sexual experience purportedly contained in the medical certificate.
5. In the circumstances of the case, **PW2** evidence and testimony was unreliable for the purpose of convicting the Appellant.

## Ground Thirty-Two

The Honourable Lower Court erred in law when it held that:

“...I do not believe the prosecutrix (PW2) was tortured to give the evidence she gave... Also, she was not tortured to give such damning evidence against the Defendant. The testimony of the Child Forensic Interviewer (PW3) shows that the prosecutrix (PW2) was not tortured. The video recording of her evidence (Exhibit P1) demonstrates the interview’s independence and openness. I do not believe the Child Forensic Interviewer (PW3) had an ulterior motive. I also must disagree with the defence that I must discard the Child Forensic Interviewer’s (PW3) evidence because it was conducted on 5 October, 2022, when the prosecutrix (PW2) was over eighteen.”

### Particulars

1. Particulars of ground 30 are hereby repeated.
2. The allegation leveled against the Appellant was in November, 2021.
3. **PW2** ought to have been interviewed by **PW3** soon after the allegation was made against the Appellant at the Gender Unit.
4. Time had lapsed between the purported time of commission of the crime and the time **PW2** was interviewed by **PW3**.
5. In the circumstances of the case, the evidence of **PW3** and **Exhibit P1** were manifestly unreliable.

**Ground Thirty-Three**

The Honourable Lower Court erred in law when in convicting the Appellant on the evidence and testimony of PW2 it held that:

**“...corroboration is not compulsory.”**

**Particulars**

1. The law is trite that in cases of defilement or sexual assault of a child, the evidence of such child must be corroborated. See: **James vs State of Lagos (2021) LPELR-52456 (CA); Eze vs State (2019) LPELR-47984 (CA); Aje vs State (2019) LPELR-46828 (CA).**
2. Such corroboration must be credible, outside and independent of the testimony of the child.
3. The evidence of all the witnesses of the prosecution that purportedly corroborated the testimony of PW2 were all derived from PW2 herself.
4. Furthermore, such corroboration must not only indicate that the crime was committed it must show that the Defendant indeed committed the offence.
5. The prosecution’s case was bereft of any cogent and or credible independent corroborative evidence.

**Ground Thirty-Four**

The Honourable Lower Court erred in law when in relying on the evidence of PW1, it held that:

**“...She said the Defendant confirmed he was a sex addict. In law, an oral confession is as potent as a written confession. It is a piece of direct and convictable**



**evidence... It also corroborates the prosecutrix's (PW2) testimony that the Defendant had sexual intercourse with her and forced her to suck his penis."**

### **Particulars**

1. The Appellant was not charged for being a sex addict.
2. By the provision of the Evidence Act a confession is an admission made by a person directly. It is a statement made by a person charged with a criminal offence. See: **Uluebeka vs State (2000) LPELR-3354 (SC)**.
3. The testimony or evidence of **PW1** against the Appellant could not constitute a confession against the Appellant.

### **Ground Thirty-Five**

The Honourable Lower Court erred in law in resorting to use of circumstantial evidence in the determination of the age of **PW2** and thereby wrongly concluded that **PW2** was a child as at the date of the alleged offence.

### **Particulars**

1. Recourse to circumstantial evidence is only permissible where direct evidence is for a good cause, unavailable.
2. By the provision of **Sections 7 and 15 of the Births, Deaths, etc. (Compulsory Registration) Act, Cap. B9, Laws of the Federation of Nigeria 2004**, every birth is mandatorily required to be registered with the registration evidenced by issuance of a Birth Certificate and which Birth Certificate constitutes a direct *prima facie* evidence of the date of birth of the registrant.

3. It is inconceivable that the birth of **PW2** was NOT registered.
4. It was incumbent on the prosecution to adduce explanation of its inability to produce the Birth Certificate of **PW2** to justify reliance by the Honourable Lower Court on circumstantial evidence and which burden was not discharged.
5. In the precise reliance of the Honourable Lower Court on circumstantial evidence in substitution for direct evidence (ie. Production of **PW2**'s Birth Certificate) cannot sustain the finding that **PW2** was 16 years old as at the date of the alleged commission of the offence.

#### 4. RELIEFS SOUGHT FROM THE COURT OF APPEAL

- i. **AN ORDER** of this Honourable Court allowing this appeal.
- ii. **AN ORDER** of this Honourable Court setting aside the decision of the Honourable Lower Court contained in the judgment delivered on the 24<sup>th</sup> day of October, 2023 in **Charge No: ID/20289C/2022**.
- iii. **AN ORDER** setting aside the conviction of and quashing the sentence against the Appellant by the Honourable Lower Court on the 24<sup>th</sup> day of October, 2023 in **Charge No: ID/20289C/2022**.
- iv. **AN ORDER** of this Honourable Court discharging and acquitting the Appellant of the offences spelt out on the face of the information filed in **Charge No: ID/20289C/2022**.

5. **PERSONS DIRECTLY AFFECTED BY THE APPEAL****NAME****ADDRESS**

**DR. OLUFEMI OLALEYE**  
Appellant

}...C/o His Solicitors  
} **Pinheiro LP.**  
} **5/7, Folayemi Street,**  
} **Off Coker Road, Ilupeju, Lagos.**

**THE STATE OF LAGOS**  
Respondent

}...C/o The Attorney General and  
} **Commissioner for Justice of Lagos State**  
} **Ministry of Justice,**  
} **Alausa, Lagos State.**

Dated the 24<sup>th</sup> day of November, 2023



**SIGNATURE OF THE APPELLANT**  
**DR. OLUFEMI OLALEYE**



**SIGNED BY: Dr. 'Kemi Pinheiro, OFR, SAN, FCI Arb.,**  
**COURT OF LAGOS.** *Qlaniyi Olopade, SAN, FCI Arb.,*  
*Babatunde Ogala, OFR, SAN.,*  
*Olusegun Fabunmi, SAN.,*  
*Chukwudi Adiukwu, Esq.,*  
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**FOR SERVICE ON**

The Respondent,  
The Attorney General and Commissioner for Justice of Lagos,  
Ministry of Justice, Alausa,  
Lagos State.