

**"She Said No!": What Nigerian Law Really Says About Rape and Consent**

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## **INTRODUCTION**

There are justifications put forward for offences such as murder, theft, assault or robbery, however, the offence of rape stands apart.

Black's Law Dictionary describes rape as "the unlawful carnal knowledge of a woman by a man forcibly and against her will."<sup>1</sup>

This definition reflects an older legal tradition, however it opens the way for examining how Nigerian law now understands rape and how consent is interpreted.

Rape remains one of the most sensitive subjects in Nigeria, as it shapes public debate, legal reforms and social attitudes. The question of what the law considers rape, and how consent is recognised or denied, forms the centre of this discussion.

This article sets out to explain these issues in clear terms. It introduces the legal meaning of rape under Nigerian statutes, explores the idea of consent, and explains the circumstances that may remove or weaken the possibility of free agreement. Each part flows into the next to show how the law constructs the offence and what this means for victims, offenders and the justice system.

## **STORY**

Bolu and Aina had been close friends for a long time, and over time their friendship shifted into what many would call a "situationship".

They were students in different institutions, yet distance did not weaken their bond. They often engaged in online sexual conversations, exchanging messages about their fantasies and how eager they were to explore each other when they finally met.

These conversations continued for about a month until they agreed to meet at a hotel during a particular week.

When the day arrived, both of them were excited to see each other and act on the intimacy they had discussed. After checking into their room, Aina initiated sexual activity and Bolu responded without hesitation. They undressed together, touched each other freely and appeared to be participating willingly.

The situation changed when penetration was about to begin. Bolu became frightened and told Aina to stop. She made it clear that she no longer wished to continue. Her refusal came with repeated pleas, warnings and clear statements that she did not want to proceed.

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<sup>1</sup> Black's Law Dictionary, Rape, (8th edn, 2004) p. 1289.

Aina insisted that they had already gone too far to stop and continued with penetration against Bolu's express refusal.

Following this incident, Bolu reported the matter to the authorities and filed a charge of rape against Aina.

#### **COMMENTATOR'S FINAL LEGAL ANALYSIS WITH AUTHORITIES.**

**Can sex constitute rape under Nigerian law if a woman initially consented through sexting or undressing, but later withdrew consent and the man still had sex with her?**

**The Nigerian Constitution itself does not have a specific section that defines or directly addresses rape. However, rape is addressed in statutes (laws) enacted by the National Assembly and state legislatures.**

According to **Section 357 of the Criminal Code Act** "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 threats 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."

This reflects a long-standing legal view that consent must exist at the moment of penetration and must be free of any improper influence.

A more modern approach appears in the **Violence Against Persons (Prohibition) Act 2015. Section 1(1)** redefined the offence of rape as "when a person intentionally penetrates the vagina, anus or mouth of another person with any other part of his/her body or anything else without consent, or with incorrectly obtained consent. Consent can be incorrectly obtained where it is obtained

- A) By force/threats/intimidation
- B) By means of false or fraudulent representation as to the nature of the act.
- C) By the use of substances capable of taking away the will of that person.
- D) By a person impersonating a married woman's husband in order to have sex.

These statutory provisions place consent at the centre of the offence.

This raises the question of what happens when a woman who had previously shown willingness later withdraws it at the point of penetration?

Festus Ogun posits that "carnal knowledge after withdrawal of consent becomes unlawful and therefore constitutes rape. A woman or girl that previously consents to intercourse with a man may withdraw such

consent in the course of the act. Thus, in the eye of law, it is rape if a man continues with the act after the consent has been withdrawn.”<sup>2</sup>

A useful illustration comes from contract law. Past consideration, which refers to an act or promise made before an agreement, cannot support a valid contract.

Bolu’s sexting, flirting or earlier intimacy with Aina falls into this category. They may create an atmosphere of willingness, yet they do not amount to present consent at the time of the act.

The law requires consent to be active, informed, specific to the moment and capable of being withdrawn at any stage. Once a person says “No,” the encounter must stop. Proceeding further turns the act into rape. This aligns with the principle that consent must be an active, ongoing agreement between parties.

This position aligns with the decision in **Oladotun Ogunbayo v The State**, where the court stated that lack of consent is the core element upon which other components of the offence rest, and without valid consent, the act becomes unlawful.<sup>3</sup>

Applying these principles to the scenario, Aina would be liable for rape under **Section 357 of the Criminal Code Act**. The same outcome arises under **Section 282 of the Penal Code** applicable in Northern Nigeria. The punishment provisions also make the seriousness clear. **Section 358 of the Criminal Code Act** prescribes life imprisonment, with or without caning. **Section 283 of the Penal Code** also provides for life imprisonment or a lesser term in addition to a possible fine.

These statutory and judicial authorities, therefore show that Nigerian law protects the right to withdraw consent at any moment. Once that right is exercised, any continuation of the act becomes rape.

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<sup>2</sup> Festus Ogun, "On Rape And The Controversies Over Withdrawal Of Consent" (Law Essays, 13 February 2018) <https://ogunfestus.wordpress.com/2018/02/13/%E2%80%8Bon-> accessed 24 October 2025.

<sup>3</sup> (2007) 8 NWLR (Pt 1035) 157,