

IN THE CIRCUIT COURT HELD AT SOGAKOPE ON TUESDAY, 1ST
NOVEMBER, 2022 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT
COURT JUDGE

CASE _____ NO.

CC39/2021

THE REPUBLIC

VRS

KENNETH VORTIA

ACCUSED PERSON PRESENT

INSPECTOR ELIKPLIM AVORGBEDOR HOLDING THE BRIEF OF CHIEF
INSPECTOR JACOB AWIAGAH FOR THE REPUBLIC PRESENT

JUDGEMENT

Let me put it on record that just before reading the judgement in open court, the lawyer for the Accused person, Awuku Atakli, Esq. announced his withdrawal of his representation as counsel for the Accused person.

The Accused person was arraigned before this court charged with the following offences:

- i. Causing Harm contrary to section 69;
- ii. Robbery contrary to section 149; and
- iii. Defilement contrary to section 101, of the Criminal Offences Act, 1960 (Act 29).

The Accused person pleaded Not Guilty to the charges after same were read out and explained to him. By this, the Accused person submitted himself to full trial which lasted about two (2) years.

THE FACTS OF THE CASE

On the 26th October, 2020 at about 5:00pm, the victim was hawking pure water and soft drinks at the Sogakope Bread Market. The Accused person who was operating Okada (commercial motorbike) confronted the victim and convinced her that some people were at a site working and needed water to drink. The Accused person told the victim that he was ready to pick the victim on his motorbike to where the workers were. The victim boarded the motorbike and the Accused person took her to the bush, a distance of about 3 kilometers from the roadside. In the bush, the Accused person pushed the victim to the ground under a thorny tree after collecting GH¢180.50 sales money from her at knife point. The victim struggled with the Accused person but she was overpowered by the Accused person. The victim got injured at the right breast and the Accused person forcibly had sexual intercourse with her and left her in the bush. The victim managed to come to the roadside and with the help of some people she was escorted back for her items and thereafter reported the ordeal to her parents who lodged a complaint at the police station. A police medical form was issued to the complainant on behalf for the victim to be taken to the hospital for medical attention. On the 27th October, 2020 at about 4:00pm, the Accused person was spotted at the Sogakope District Hospital premises where the victim pointed him out and he was arrested.

The prosecution called four (4) witnesses to testify in support of its case as PW1, PW2, PW3 and PW4. The testimony of the victim, PW1 (Peace Atigah) confirmed the facts as presented by the prosecution.

PW2 (Regina Agbotah) testified as the mother of the victim (PW1). She told the court that when the incident happened, she lodged a complaint at the police station. That she was issued with a Police Medical Form on behalf of PW1.

PW3 (Detective Constable Habiba Arhin) stationed at the Divisional DOVVSU, Sogakope investigated the case. She relied on her Witness Statement together with the exhibits attached.

PW4 (Detective Sergeant Courage Akpaloo) told the court that on the 26th October, 2020 at about 5:00pm, she came out from his room to fetch water. That whilst fetching the water, one of his co-tenant's sister spotted a young girl running naked and wailing. That he called the victim and he instructed the woman to clothe her. Thereafter, the victim narrated the ordeal she went through to them. The victim led them to the scene where the victim's clothes were seen on the ground. So they picked them including a bowl of water and drinks the victim was selling.

After the close of the case of the prosecution, the court ruled that a prima facie case had been made out against the Accused person, and so he was accordingly called upon to enter into his defence.

THE CASE OF THE DEFENCE

The Accused person in opening his defence testified himself and called no witness. The Accused person denied knowing anything about the case before this court. According to the Accused person, before he was arrested and charged with the offence, he was in police cells. That the CID Officer came to ask him where his shorts were. When the investigator took his shorts outside, he stayed

for long time before returning. That he enquired from the investigator why he did that. It is the case of the Accused person that he was in police cells when another investigator came for him to be interrogated that he had taken a certain lady on a motorbike and taken her items away. So he asked to see the said lady but he was never shown the lady. That the police investigator insisted that he confessed to the crime that he committed the act whilst they assaulted him. The Accused person further added that one of the police men intervened and in three (3) days' time he was brought to court. That when they went back, they interrogated him further. So he asked the investigator when the said lady said the incident occurred and when did she make the report to the police. According to the Accused person, the police told him that the lady said the incident happened a long time ago but when she heard about the defilement of two victims, she also came to make the report.

The legal issues that emerged for determination after the end of the trial are as follows:

- i. Whether or not the Accused person intentionally and unlawfully caused harm to the victim.
- ii. Whether or not the Accused person robbed the victim of her GHC180.50 sales money at knife point.
- iii. Whether or not the Accused person had natural or unnatural carnal knowledge of the victim.

BURDEN OF PROOF

The common law rule that a person was presumed innocent until the contrary was proved or he pleaded guilty is reinforced by Article 19(2)(c) of the 1992 Constitution which reads:

“A person charged with a criminal offence shall ----- (c) be presumed to be innocent until he is proved or has pleaded guilty.”

The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in sections 13 and 15 of the Evidence Act, 1975 (NRCD 323). Significantly, whereas the prosecution carries that burden to prove the guilt of the Accused beyond reasonable doubt, there is no such burden on her to prove her innocence. At best she can only raise a doubt in the case of the Prosecution. But the doubt must be real and not fanciful.

In *Republic v. Adu-Boahen & Another* [1993-94] 2 GLR 324-342, per Kpegah JSC, the Supreme Court held that:

“A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt”.

THE LAW AND EVALUATION OF THE EVIDENCE

Section 69 of Act 29 provides:

“A person who intentionally and unlawfully causes harm to any other person commits a second degree felony.”

From the above section, the elements of causing harm are:

- i. that the accused person has caused harm,

- ii. it was caused to a person, and
- iii. the harm was unlawful.

Section 76 defines unlawful harm as:

“Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in Chapter One of this Part.”

Section 149(1) of Act 29 provides:

(1)

Whoever commits robbery is guilty of an offence and shall be liable, upon conviction on trial summarily or on indictment, to imprisonment for a term of not less than *ten years*, and where the offence is committed by the use of an offensive weapon or offensive missile, the offender shall upon conviction be liable to imprisonment for a term of not less than *fifteen years*. (Emphasis mine)

Section 150 of Act 29 defines Robbery as follows:

“A person who steals a thing commits robbery

(a) if in, and for the purpose of stealing the thing, that person uses force or causes harm to any other person, or

(b) if that person uses a threat or criminal assault or harm to any other person, with intent to prevent or overcome the resistance of the other person to the stealing of the thing.”

In *Frimpong @ Iboman v. Republic* [2012] 1 SCGLR 297, the Supreme laid out the following five (5) elements to establish by the prosecution in a charge of robbery in order to secure a conviction:

1. That the appellant stole something from the victim of the robbery of

which he is not the owner.

2. That in stealing the thing, the appellant used force, harm or threat of any criminal assault on the victims.
3. That the intention of doing so was to prevent or overcome the resistance.
4. That this fear of violence must either be of personal violence to the person robbed or to any member of his household or family in a restrictive sense.
5. The thing stolen must be in the presence of the person threatened.

Section 101 of Act 29 defines defilement as the natural or unnatural carnal knowledge of a child under sixteen years of age with or without the child's consent. It needs be said that a person under sixteen (16) years of age lacks capacity to give consent with respect to carnal or unnatural carnal knowledge and any such consent given by the child is void. In *The Republic v. Yeboah* [1968] GLR 248-256, the Court laid out the three essential elements of the offence of defilement as follows:

- i. The alleged victim is less than sixteen years of age.
- ii. That a person has had natural or unnatural carnal knowledge of the victim.
- iii. That, that person is the accused person.

It must be noted that the victim was the only eye witness at the crime scene. According to PW4, after the act, the victim run naked and was wailing until his cotenant saw her and brought the victim to him. PW1 was consistent, clear and

unshaken in her answers given under cross examination. In the words of PW1 per her Evidence-In-Chief, the following is what she told the court:

"3. I stay with my mother, Regina Agbota at Sokpoe and has been selling pure water and soft drinks for Francisca Sodohia in Sogakope Township. On 26/10/2020, whilst hawking I met accused person on a motorbike at Sogakope bread market who called me to come and I went. I removed a sachet of water but he told me he was not buying water but rather some workers were at a place who needed water. He convinced me that he had already taken my sister who was wearing black and white dress to the workers and her water got finished.

4. That he will pick me with the motorbike to where the workers were. I sat on the motorbike and he took me to a bush, he ordered for my sales I made the whole day which was One Hundred and Eighty Ghana Cedis, Fifty Pesewas (GH¢180.50). I refused and he removed a black headed knife with silver blade threatened to stab me. He dipped his hand into my local purse and took all the money.

5. He instructed me to remove my dress and pant with the knife pointed at me and I did so. He asked me to lie down and open my legs and he penetrated 5 times before having sexual intercourse with me forcefully. I shouted and he started beating me up. I tried running but he booted my legs and I fell on a thorny tree which I sustained serious injuries on my right breast and he left me in the bush.

6. I managed and walked to the roadside. By the help of some people, I reached home and narrated the ordeal to my mother."

In the opinion of this court, it will be hard to infer that a twelve (12) year old victim (at the time of making a complaint to the police) can make out all these on her own to put the Accused person into trouble. It is also obvious that the victim and the Accused person did not know each other before the said incident. It is

also on record that the victim narrated the same story to her mother (PW2) and PW4. During investigations, PW1 was able to identify the pair of jeans shorts worn by the Accused person on that fateful day in committing the offences. This pair of jeans was tendered in evidence and marked as Exhibit 'D'. It was also the victim who identified and pointed out the Accused person on the premises of the District Hospital, Sogakope as the perpetrator of the crime leading to his arrest. This was when the victim had gone there to seek medical attention with a Police Medical Form and coincidentally, the Accused person had also gone there to visit his son who was on admission on the day after the incident. In the case of Ameshinu vrs The Republic [2010] 34 MLRG 207 @ 215, the Court of Appeal per Apaloo J.A. held that:

“Where the identity is in issue, there can be no better proof of the identity than the evidence of a witness who swears to have seen the accused person committing the offence charged.” See also Regina v. Christie (1914) AC 545 per Viscount Haldane, L.C., Yamoah & Razak v The Republic [2012] 2 SCGLR 750, Howe v. The Republic [2010] 33 MLRG 90 C.A., Dogbe v. The Republic [1975] 1 GLR 118.

I therefore have no cause to disbelieve her testimony given to the court.

What then is the defence of the Accused person?

On the part of the defence, that is the Accused person, all that he needs to do by way of producing evidence is to raise a doubt as to his guilt. The case of Woolmington v Director of Public Prosecution [1935] AC 462 is the locus classicus on this principle where the Appeal Court of England per Sankey LC expressed the view that:

“...while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence.”

The Accused person flatly denied all the charges against him. In compliance with section 131 of the Criminal Offences (Procedure) Act, 1960 (Act 30), the Accused person through his lawyer filed a Notice of Alibi on the 30th November, 2020. The meaning of alibi is that the accused puts forward a defence that he or she did not commit the offence of which he or she is being accused to have committed and even if that crime was in fact committed it was not he or she as he or she was at that time at a different place. To support it, the law enjoins the accused person to adduce evidence to support the claim on the preponderance of probabilities that the accused person was at that material time at a different place. See *Bediako & Others vrs The State* [1963] 1 GLR 48, *Razak & Yamoah vrs The Republic* [2012] 2 SCGLR 750.

Section 131 of Act 30 reads:

“(1) If the person charged intends to put forward as a defence a plea of alibi, he shall be bound to give notice thereof to the prosecutor or his counsel with particulars as to the time and place and of the witnesses by whom it is proposed to prove it, prior in the case of a summary trial to the examination of the first witness for the prosecution and prior in the case of trial on indictment to the sitting of the trial Court on the date to which the case has been committed for trial.

(2) If such notice is given the Court may upon the application of the prosecution grant such adjournment as in the circumstances appears to the Court to be reasonable.

(3) If the person charged puts forward a defence of alibi without having given such notice the Court shall call upon him to give notice to the prosecution of the particulars

mentioned in subsection (1) either forthwith or within such time as the Court may allow and after such notice has been given shall, if the prosecution so desires, adjourn the case.

(4) If the person charged refuses to furnish the said particulars as required the case shall proceed but no evidence in support of a plea of alibi shall be admissible evidence."

The following is what is contained in the Notice of Alibi:

"..... I, KENNETH VORTIA of Unnumbered House, Kortortsikope-Fevie give notice of alibi in accordance with Section 131 of the Criminal Procedure Act, Act 30.

1. On 26th November, 2020, between 3pm-5pm, I was at the District Hospital, Sogakope, with my father, my wife, my brother and some nurses of the District Hospital attending to my son who was on admission at the Paediatric Ward of the District Hospital, Sogakope.

2. My father is Samson Vortia, my wife Yayra Norvor and my brother is Hope Vortia and the nurses including Asiwome Amedetorwu, a cleaner.

The above mentioned persons can attest that at the time I was alleged to have committed the crimes for which I have been charged I was at the Paediatric Ward of the District Hospital, thus it is impossible to commit the crimes I am accused at time and place as alleged by the prosecution."

In the above notice, the Accused person at paragraph 2 mentioned his father, Samson Vortia, his wife Yayra Norvor and his brother Hope Vortia, the nurses at the hospital and a cleaner by name Asiwome Amedetorwu as the potential witnesses. Surprisingly, the Accused person did not call any of these people to

testify in proof of his alibi. Before the trial, the prosecution filed a report and denied the notice of alibi filed by the Accused person.

While the Charge Sheet per the Particulars of Offence and the Facts of the case indicate that the offences were committed on the 26th October, 2020, the defence rather put before the court the activities of the Accused person on the 26th November, 2020. The said date as stated by the defence in the Notice of Alibi is not a subject of dispute before this Court.

The Accused person also gave a Cautioned Statement to the police on the 28th October, 2020. This statement was tendered in evidence and marked as Exhibit "A" without any objection. This Cautioned Statement was taken in compliance with section 120 of the Evidence Act, 1975 (NRCD 323).

In Exhibit "A" the Accused person mentioned one Emmanuel Dorlegbanu as the one he went to the hospital with and that he (Accused person) spent the whole day at the hospital until 8:33pm when he called Emmanuel to pick him to the house. The Accused person however failed to call the said Emmanuel Dorlegbanu to testify to corroborate his story. For the avoidance of doubt, I reproduce the content of Exhibit "A" as follows:

"On Sunday 25/10/2020 at about 7:30am my son was sick so I called my father to help me when my father came I took a neighbour's motorbike to buy porridge for my son. When I came back my father had already bought him malt. I took the motor and in company of one Mansah we took my son to a nearby clinic. I did not ride the motorbike myself but a cotenant did so. When we got to the clinic the nurse asked of my wife so I immediately took the motor to sister Happy's house that's where she normally sells her

kenkey. On arrival at the clinic the nurse transferred us to the District Hospital. At the district hospital my son was admitted. I called my neighbour's son Emmanuel Dorlebenu to come for the motor. I called Emmanuel again to pick me and it was around 7:00pm, he came to pick me and I left my wife and son at the hospital. **The next day, Monday 26/10/2020 I and Emmanuel Dorlegbanu went to the hospital with his motorbike, I spent the whole day at the hospital until 8:33pm and I called Emmanuel to pick me to the house.** The next day 27/10/2020 my brother Hope and I came to Sogakope District Hospital. Around 11:30am I called my friend Kalifa at Agorkpo and sent me to Kortortsikope. When it was around 2:00pm I took Emmanuel's motor to the hospital to give my wife money. So at the Children's Ward I saw Regina Agbota the complainant and she asked me what is my name and I asked her why is she asking my name. I told her I can't mention my name to her. It turned into argument and one nurse came and the complainant told the nurse I had sexual intercourse with her daughter. The nurse defended me as we were arguing the police came to arrest me." (Emphasis mine)

On a careful look at Exhibit 'D2' which is a photograph of the right breast of the victim, an injury or a cut is seen on the nipple area. The medical report which was authored and signed by Dr. Ahmed of the District Hospital, Sogakope and dated 30th October, 2020 reads:

"..... Status localis:

- (1) The upper part of the nipple had a laceration about 1cm in length.
- (2) There was significant vaginal bleeding seen, which stained the panties.
- (3) Vaginal trauma cannot be excluded

The medical report was tendered in evidence and marked as Exhibit 'C'. Exhibit 'C' confirms the victim's story that as a result of the kick of her legs by the

Accused person, she fell on thorns and sustained injury to the nipple of her right breast. Also, per Exhibit 'B', the victim also suffered vagina trauma and bleeding. The Accused person also forcefully collected the sum of GHC180.50 being the sales money of the victim.

I conclude this judgement by relying on the case of *The State v. Sowah & Essel* [1961] GLR 743-747, S.C., where Crabbe J.SC stated and I quote:

"..... In the instant case the defence put forward by the two accused left the judge with three possible positions, namely

- (1) if he accepted the explanations of the appellants he must acquit them;*
- (2) short of accepting that explanation, if it left him in doubt, he must acquit them; and*
- (3) he must be satisfied of the guilt of the appellants of the crimes alleged against them only on consideration of the whole evidence adduced in the case. (See R. v. Murtagh and Kennedy (1955) 39 Cr. App. R. 72).*

On the totality of evidence adduced before me, I am fully satisfied of the guilt of the accused person as I find that, the defence put forward by the accused person is an afterthought, infantile and lacks merit. In the circumstances, I find the accused person herein guilty of the offences of Causing Harm, Robbery and Defilement and he is accordingly convicted.

SENTENCING:

In sentencing the Accused person, the Court took into consideration of plea in mitigation made by Lawyer Awuku Atakli, Esq., as a friend of the court. The court also considered the gravity of the offences committed by the Accused person, the prevalence of the offences especially Defilement, the revulsion felt by

law abiding citizens, age of the victim and the trauma the victim had gone through. The court also considered the fact the acts of the Accused person on that fateful day was premeditated. Such a person is a canker to the society and must be kept away from the society for a considerable length of time. This will serve as a deterrent to others who intend to engage in these heinous crimes. Notwithstanding his previous conviction of Stealing in Case No. 40/2021 before this same Court, the court hereby imposes the following sentence on the Accused person:

Count 1: Accused person will serve a prison term of Three (3) years IHL.

Count 2: Accused person will serve a prison term of Twenty (20) years IHL.

Count 3: Accused person will serve a prison term of Ten (10) years IHL.

All sentences shall run concurrently.

.....
ISAAC ADDO
CIRCUIT JUDGE
1ST NOVEMBER,

2022