

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON TUESDAY
THE 8TH DAY OF AUGUST, 2022 BEFORE HER HONOUR ENID MARFUL-
SAU, CIRCUIT COURT JUDGE**

CASE NO. D6/13/2023

THE REPUBLIC

VRS.

RICHARD YAO

ACCUSED PERSON PRESENT

PROSECUTION:PW C/INSP. SALIFU NASHIRU PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

The Accused Person is charged with one count of Carnal Knowledge contrary to section 102 of the Criminal Offences Act, 1960 (Act 29).

The facts as presented by Prosecution are that the complainant Wisdom Adupey Dogbe lives at Pokuase with his 15-year-old daughter victim named Janice Etonam Serwaa Dogbe who is an imbecile. According to Prosecution on 26th March, 2023 the complainant went out and returned to find that the victim was not at home. Prosecution says that the victim returned around 5:00pm and when asked where she went, she stated that she did not go anywhere. According to Prosecution, one James Otoo together with some other men came to the complainant's house holding the Accused person stating that the said James saw the Accused person having sexual intercourse with the victim in an abandoned building nearby hence he was arrested by him. The complainant lodged a complaint at the police station and a medical form was given for the victim to attend the hospital. Based upon these facts the Accused was charged and arraigned before this court.

Prosecution called three witnesses in support of its case. PW1 was the complainant Wisdom Adupey Dogbe, PW2 was James Otoo and PW3 was the investigator D/PW/Cpl. Eva Adu.

PW1 testified that he is the father of the victim and lives in the same house with her. According to him, the victim was born an imbecile and is unable to talk. He stated that on 26/03/2023, he returned from church around 4:30pm and saw the victim come from outside. He stated that when he asked her where she was coming from, she nodded her head and he immediately saw a group of people coming to his house together with PW2 and Accused. He says that PW2 informed him that he arrested the Accused because he was having sex with the victim behind a house near his shop. He testified that he took the Accused and victim to the Police Station and a medical form was issued to him to take the victim to the hospital which he did.

PW2 testified that he lives in Pokuase and has his barbering shop is by the roadside in the same vicinity. According to him, anytime he sees the victim going out, he sacks her to go back home. He says that on 26th March, 2023 around 4:30pm, he was in his shop when he saw the victim walking along the road so he was monitoring her to see where she was going. He testified that he suddenly saw the Accused coming from the other side of the road and hold the hand of the victim and pull her to the back of a certain house. He stated that he suspected the Accused, so he followed him to the back of the house and to his surprise he met the Accused lying on the victim and having sex with her. He testified that immediately when he shouted the Accused attempted to run and he arrested him, but the Accused struggled with him. According to him, people came around and helped him. He says that he saw something like sperms on the ground where the Accused had sex with the victim. He says that the people around helped him and they sent the victim to her father. PW3 tendered the following Exhibits which were admitted and marked as follows:

- Exhibit A & A1: Charge Sheet and Brief Facts
- Exhibit B: Statement of PW1
- Exhibit C: Statement of victim
- Exhibit D: Statement of PW2
- Exhibit E & E1: Investigative and Charge Caution Statement
- Exhibit F: Psychological Assessment Report
- Exhibit G: Certified Copy of Entry in Register of Births
- Exhibit H: Medical Report
- Exhibit J & J1: Photographs

Accused person testified on oath on 27th July, 2023. He stated that he does not know the victim. According to him, on 26th March, 2023, he went to his

uncle at Abensu and on his way back home he met a mob who attacked him and he was rescued by the police and sent to the Pokuase police station. According to him, it was at the police station that he was told that he was having sex with the victim.

As already indicated, Accused is charged with Carnal Knowledge contrary to Section 102 of Act 29. The section provides as follows:

“A person who has carnal knowledge or has unnatural carnal knowledge of an idiot, imbecile or a mental patient in or under the care of a mental hospital whether with or without the consent of that other person, in circumstance which prove that the accused knew at the time of the commission of the criminal offence that the other person has a mental incapacity commits a criminal offence and is liable on summary conviction to a term of imprisonment of not less than five or and not more than twenty-five years.”

For this charge to succeed, the following ingredients must be proved by prosecution:

1. That the Accused had natural or unnatural carnal knowledge of the victim.
2. That the victim is an idiot, imbecile or mental patient, in or under the care of a mental hospital.
3. That victim did or did not give her consent to Accused.
4. That the Accused knew at the time of the commission of the offence that the victim has a mental incapacity.

PW1's testimony before this court is that his daughter, the victim in question was born an imbecile and is unable to talk. Indeed, from Exhibit C, which is supposed to be the Statement of the victim, the said statement contains no statement from the victim. It only contains the following words:

“Victim stated in twi language and same recorded down in English language in the presence of her father one Wisdom Adupey Dogbe as follows.”

PW3 tendered Exhibit F which is a Psychological Assessment Report dated 7th June, 2019 endorsed by a Clinical Psychologist name Eric Howusu-Kumi. In the said Report, the following were among the findings made:

- a. Janice has intellectual and motor coordination deficits.

- b. Janice's inability to perform the Bender-Gestalt Test was evidence of visual maturity challenge and neurological deficits.
- c. A diagnosis of intellectual disability was made.

Also, from Exhibit H which is the medical report, the examining doctor, Dr. E. Agyekum-Obeng indicated that victim was a "mentally challenged looking young girl."

By Section 58 of the Evidence Act, 1975 (NRCD 323), a person is competent to be a witness and a person is not disqualified from testifying to a matter. Section 59 of NRCD 323 provides that, a person is not qualified to be a witness if that person is:

*"(1)(a) incapable of coherent expression so as to be understood, directly or through interpretation by another person who can understand that person; or
(b) incapable of understanding the duty of a witness to tell the truth.
(2) A child or a person of unsound mind is competent to be a witness unless the child or that person is disqualified by subsection (1)."*

As already indicated, the victim was not called as a witness in this matter. It is apparent that Prosecution was unable to procure a statement from victim due to her intellectual disability hence the inability of prosecution to call her as a witness. On the entirety of the evidence before me, I am thus satisfied that it has been established that the victim is an imbecile. The medical report, Exhibit H indicates that on vaginal examination "vagina looks clean, not bleeding actively, tenderness on examination with hymen broken." I find that Exhibit H establishes carnal knowledge of victim.

The direct evidence of PW2 is that he saw the Accused person having sexual intercourse with the victim and upon shouting the Accused tried to get away but with the assistance of other people the Accused was arrested and sent to the home of the victim where PW1 was met. The Accused on the other hand has testified that he does not know the victim and that he was walking home when was attacked by a mob for no reason and saved by the Police and sent to the police station. However, during cross examination of Accused by Prosecution, he admitted as follows:

Q: When you were arrested you were taken to victim father's house not so

A: They took me to a certain house"

From Accused person's own admission, it was therefore not the case that he was just randomly walking home, was attacked by a mob, and rescued by the Police and sent to the Police Station.

In the case of **LUTTERODT v. COMMISSIONER OF POLICE [1963] 2 GLR 429, SC** it was held as follows:

“In all criminal cases where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:

(a) if the explanation of the defence is acceptable, then the accused should be acquitted;

(b) if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;

(c) if quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict.”

The Accused person testified that he did not know the victim, yet from the evidence, PW2 saw him send the victim to the place pictured in Exhibit J where he was caught having sex with the victim. The probative value of the direct evidence of PW2 stands uncontroverted. I find Prosecution's witnesses credible, and I am unable to find from the evidence before me that they have been discredited through cross examination. I find that all the ingredients of the offence have been established.

In the case of **BROBBEY AND OTHERS v. THE REPUBLIC [1982-83] GLR 608** it was stated that “*proof beyond reasonable doubt in a criminal trial implies that the prosecution's case derives its essential strength from its own evidence.*”

I do not consider that the evidence adduced by the prosecution has been diminished by the evidence of the Accused which encompasses palpable falsehood.

Based on the entirety of the evidence before me, I find that the explanation given by the Accused is neither acceptable nor reasonable. I therefore find the Accused Person guilty, and he is hereby convicted.

H/H ENID MARFUL-SAU

**CIRCUIT JUDGE
AMASAMAN**