IN THE CIRCUIT COURT "A", TEMA, HELD ON TUESDAY, THE 20TH DAY OF JUNE, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH, CIRCUIT COURT JUDGE

SUIT NO: D10/04/23

THE REPUBLIC

VRS:

EDWARD DJANGMAH

ACCUSED PERSON PRESENT

C/INSP. SUSANA AKPEERE FOR PROSECUTION PRESENT

ERIC ASUMAN ADU, ESQ. FOR THE ACCUSED PERSON PRESENT

RULING ON SUBMISSION OF NO CASE

FACTS:

The accused person was arraigned before this court on 7th September 2022 on a charge of defilement of a child under sixteen years of age contrary to **Section 101(2)** of Act 29.

The briefs facts alleged by the prosecution in support of the charge are that Dengmeyo Teyekpiti, aged 50 years is a fishmonger and the grandmother of the alleged victim, Layer Mandey Teyekpiti, aged 7 years at the time of the supposed incident. Also, the accused person, Edward Djangmah, aged 34 years is a fisherman and lives at Ada-Foah with the complainant and the alleged victim. The prosecution claims that somewhere in September 2021, one afternoon, the alleged victim was playing with her peers when the

accused person sent her on an errand. On her return, he lured her into his room and had sexual intercourse with her. According to the prosecution, after the act, the accused person warned her not to disclose her ordeal to anyone which she obliged. Two months later, the complainant noticed an unusual discharge from the alleged victim's vagina and sent her to the hospital where she was treated and discharged. A few days later, the medical condition resurfaced which startled the complainant. She therefore interrogated the alleged victim who disclosed her ordeal in the hands of the accused person to her. Based on that, a report was made to the police and a medical report form was issued to the complainant to send the alleged victim to the hospital for examination and treatment which was duly endorsed by a Medical Officer. The prosecution further claims that the accused person went into hiding but was arrested on 16th August, 2022, and charged with the offence and arraigned before the court.

THE PLEA

The accused person who was represented by Counsel pleaded not guilty to the charge after it had been read and explained to him in the Dangbe language. The accused person having pleaded not guilty to the charge put the entire facts of the prosecution in issue and thereafter the prosecution assumed the burden to prove the guilt of the accused person beyond reasonable doubt.

To prove their case, the prosecution called four witnesses and tendered in evidence the following documentary evidence; **Exhibit "A"**- Weighing card of the alleged victim, **Exhibit "B"**-Investigation Caution Statement of the accused person, **Exhibit "C",** the charge statement of the accused person, **Exhibit "D"**- the medical report on the alleged victim. At the close of the case

for the prosecution, learned Counsel for the accused person submitted that there is no case sufficiently made out requiring the accused person to open his defence and filed a written submission of no case on 30th May, 2023. It is provided for under paragraph 21 of the Practice Direction (Disclosures and Case Management in Criminal Proceedings), *"at the close of the case for the prosecution, the Court shall, on its own motion or on a Submission of No case to Answer, give a reasoned decision as to whether the Prosecution has or has not led sufficient evidence against the accused person".* The court has a duty to evaluate the evidence led by the prosecution in support of the charge to determine if a case is made out against the accused person to require him to open his defence.

ANALYSIS

The law governing a submission that there is no case for an accused person to answer is laid down in **section 173** of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), which states that:

"Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."

In the case of **Michael Asamoah & Another v The Republic, Suit No. J3/4/2017,** (unreported) dated 20th July, 2017**,** the Supreme Court, per Adinyira JSC (as she then was), restated the law on submission of no case at page 5 as follows;

"The underlying factor behind the principle of submission of no case is that an accused should be relieved of defending himself where there is no evidence upon which he may be convicted. The grounds upon which a trial court may uphold a submission

of no case as enunciated in many landmark cases whether under summary trial or trial on indictment may be restated as follows:

a. *There has been no evidence to prove an essential element in the crime;*
b. *The evidence adduced by the prosecution has been so discredited as a result of cross-examination; or*
c. *The evidence was so manifestly unreliable that no reasonable tribunal could safely convict on it;*
d. *The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, and one with innocence".*

The Supreme Court in the case of **Tsatsu Tsikata v. The Republic** [2003-2004] 1 SCGLR, 1068, stated that the standard of proof at this stage is a prima facie case. What the term *"prima facie case"* means was stated in the case of **Kwabena Amaning Alias Tagor and Anor. v. The Republic** (200) 23 MRLG 78, where the court held that:

"Prima facie evidence is evidence, which on its face or first appearance, without more, could lead to conviction if the accused fails to give reasonable explanation to rebut it. It is evidence that the prosecution is obliged to lead if it hopes to secure conviction of the person charged. ***At this stage, the trial court is not supposed to make findings of facts since the other side has not yet spoken to determine who is being factual.*** *What the trial court has to find out at this stage that the prosecution has closed its case is whether or not the evidence led has established all the ingredients of the offence charged for which the accused person could be convicted if he failed to offer an explanation to raise doubts in the said evidence"*

In the case at bar, the accused person is charged with defilement contrary to **section 101(2)** of Act 29. Defilement is defined in **section 101(1)** of Act 29, as *"the natural or unnatural carnal knowledge of a child under sixteen years of age."* Section 101(2) of Act 29, which proscribes defilement states as follows;

"A person who naturally or unnaturally carnally knows a child under sixteen years of age, whether with or without the consent of the child, commits a criminal offence and is liable on summary conviction to a term of imprisonment of not less than seven years and not more than twenty-five years."

The essential ingredient of the offence as gleaned from the statutory provision which the prosecution must prove to secure conviction as stated in the case of **Yeboah v. The Republic** [1968] GLR 248 at page 252, are as follows:

(1) That the victim is a child under 16 years of age.

(2) That someone has had sexual intercourse with the child; and

(3) That person is the accused.

On the first ingredient of the offence charged, **the prosecution must prove that the victim is a child below 19 years of age.** Throughout the trial, the age of the alleged victim as a person below the age of 16 years was not challenged. Counsel for the accused person in his written address states that the defence does not challenge the age of the alleged victim in view of the weighing card tendered in evidence by the prosecution admitted and marked as **Exhibit "A",** which shows that the alleged victim was born on 5th February, 2014. Meaning, at the time of the time alleged incident, she was 7 years old. The court also observed the physical appearance of the alleged victim when she appeared to give evidence in court and is satisfied as to her age as a person below 16 years of age. Thus, the prosecution established the age of the prosecutrix as a person below the statutory age of 16 years.

Secondly, **the prosecution must prove that someone had natural or unnatural carnal knowledge of the child below 16 years.** Section 99 of Act 29

states that "*where on a trial of a person for a criminal offence punishable under this Act, it is necessary to prove carnal knowledge or unnatural carnal knowledge, the carnal or unnatural carnal knowledge is complete on proof of the least degree of penetration.*" In the case of **Gligah & Atiso v. The Republic** [2010] SCGLR, 870 the Supreme Court per Dotse JSC held that:

"Carnal knowledge is the penetration of a woman's vagina by a man's penis. It does not really matter how deep or however little the penis went into the vagina. So long as there was some penetration beyond what is known as brush work, penetration would be deemed to have occurred and carnal knowledge taken to have been completed"

To prove that the accused person had carnal knowledge of the alleged victim, the first prosecution, the victim, and the star witness for the prosecution, Mandey Teyekpiti Layer, testified that she knows the accused person in the case who previously lived in the same house with them before they relocated to a different house in the same vicinity. PW1 testified that about two months prior to the complaint to the police, one Monday afternoon, when she returned from school and was playing with other children in the neighborhood, the accused person called her and gave her GH¢2 and sent her to buy Kenkey for him which she did. When she returned with the kenkey, the accused asked her to send the kenkey into his room and upon entering the room, he again asked her to lay on the bed and after she complied, he removed her pant, undressed himself and laid on her. The accused person then covered her mouth to prevent her from shouting. The accused person then inserted his penis into her vagina and had sexual intercourse with her. According to her testimony, she felt pains whilst the accused person was laid on her but there was no one in the house to come to her rescue and after the act, the accused person asked her to wear her pant and leave his room.

Under cross-examination by Counsel for the accused person, PW1 was emphatic that when the accused person had sexual intercourse with her, she did not bleed but some liquid came out of her vagina. When questioned by Counsel for the accused person why she failed to report the alleged sexual intercourse to her grandmother, PW1 mentioned for the first time that the accused person threatened to kill her if she disclosed the incident to anyone and the first person, she disclosed the alleged incident to was one Auntie Bee.

The second prosecution witness, Dengmeyo Teyekpiti, the complainant, testified that the alleged victim is her granddaughter and she lives at Azizanya in Ada. According to her account, about two months prior to the report, PW1 fell sick and she observed that she had vaginal discharge and she also complained of pains in her vagina when urinating. She tried series of medications but the condition of PW1 did not improve so she took PW1 to the hospital where she was admitted for three days, treated and discharged. She later noticed after a few days that PW1 still had vaginal discharge. She left PW1 one day at home with her sister named Bee who lives in the same house with them and went out. Upon her return, her sister informed her that she questioned PW1 several times about the cause of her vaginal discharge and PW1 confided in her that, the accused person had sexual intercourse with her one Monday afternoon and warned her not to tell anyone. She informed PW1's mother and they reported the case to the police for assistance.

Contrary to the evidence of PW1 that when the accused person allegedly had sexual intercourse with her, she did not bleed, PW2 who was informed two months after the alleged sexual intercourse testified as follows under cross-examination by Counsel for the accused person;

Q: Did you ever witness blood oozing out of the victim's vagina.

A: Yes, My Lord. The pants that I sent to the court, there was blood in it. The pant is in my car.

Q: When did you notice that the victim was bleeding?

A: I saw the blood stain in her pants, I picked the pants to be used in this court as evidence.

Q: You did not mention anywhere in your witness statement that the victim was bleeding and stained the pants

A: The day I went to lodge the complaint, I did not know about the blood. It was when later I packed the things to wash that I saw the blood stains and I picked it to be brought to the court as evidence.

Q: So, the 2 months that you claim your granddaughter was defiled, you did not see blood until you were going to report. Is that what you want the court to believe.

A: It was until she fell ill and I sent her to the hospital. After that I saw blood stains in her pants when I was going to her wash her things. So, I kept the pant to be used as evidence.

The third prosecution witness, *No. 12157* PW/Constable Augustina Agbeti, the investigator testified that on 30th November, 2021, PW2 reported at the station with an extract of occurrence and an already endorsed medical report form which was received from Ada Foah station and reported that the accused person had sexual intercourse with PW1 and requested for police assistance to arrest the accused person. On 7th December, 2021, the police visited the house of the accused person for questioning but he was not at home and the police gathered information that, the accused person had run away upon hearing that a complaint had been lodged against him. On 16th August, 2022,

one Sergeant Atsu Sampson with the assistance of PW2, arrested and brought the accused person to DOVVSU. She tendered in evidence the caution statement of the accused person admitted and marked as **Exhibit 'B'**. PW3 further testified that she visited the scene of crime with the accused person and PW1 pointed to the place where the accused person allegedly had sexual intercourse with her and photographs were taken for evidential purposes. According to her, the accused person denied the charge and said he has been sending PW1 to buy things for him but he has never sent her to buy Kenkey. She also tendered in evidence the charge statement of the accused person admitted and marked as **Exhibit "C".** The accused person in his investigation caution statement and the charge statements admitted and marked as **Exhibit "B"** and "**C"** respectively vehemently denied having carnal knowledge of PW1.

To provide independent proof of the account of PW1 and PW2 that the accused person had carnal knowledge of PW1, the fourth prosecution witness (PW4), Dr. Joseph Kwabena Amoah Tetteh of the Ada East District Hospital testified and identified the medical report admitted and marked as **Exhibit "D"** as a document prepared by him. He testified that on 28th November, 2021 at about 12:15pm, he attended to a seven-year-old client in this case who was accompanied by the mother with a complaint of vaginal discharge which had allegedly occurred for two weeks and a complaint of the child having been allegedly defiled 2 months prior to the visit. According to the testimony of PW4, upon vaginal examination, the vulva appeared normal but he observed a whitish vagina discharge. The hymen also appeared normal with no abrasion or laceration on the vulva or perianal area. He further testified that based on his findings, he concluded that the child had vulva vaginitis and treated that with clotrimazole cream. He also states that an allegation of

defilement cannot be ruled out and added that a child of her age can develop cognitive maps and link them to make logic and can also be influenced to see the world in another person's perspective According to him, based on that, he considers the history the child gave him as credible.

The medical officer under cross-examination by Counsel for the accused person testified as follows;

Q: You said the vulva appeared normal, what could lead to the disfigurement of the vulva?

A: Your Honour, congenital abnormalities, trauma can lead to disfigurement of the vulva.

Q: So, you will agree with me that none of these was present at the time you were examining her?

A: Yes please.

Q; You have also stated that the hymen was normal and intact. Is that correct?

A: Yes please.

Q: Can you tell the court what occasion the breaking of the hymen.

A: My Lord, rigorous sporting activities can lead to the rupture of the hymen, penetration during sexual intercourse can lead to the rupture of the hymen.

Q: An you will agree with me that in many occasions, hymen is ruptured during sexual intercourse when there is penetration.

A: Yes please.

Q: You will agree with that under no circumstance will the hymen be ruptured if there is no sexual intercourse or rigorous exercise as you have stated.

A: Yes, My Lord.

Q: I am suggesting to you that in the case of the accused, he did not have any carnal knowledge with the victim otherwise the hymen would have been broken.

A: Your Honour, based on the history I took from this 7-year-old child, her understanding of peno vaginal intercourse could also be represented as the assailant introducing his penis around the vagina whether with penetration or not.

Q: I am suggesting to you that there was no penetration otherwise the hymen would have been broken.

A: My Lord, it is not possible to penetrate without the hymen being broken.

The evidence led by the fourth prosecution witness does not corroborate the account of the first and second prosecution witnesses that the accused person had sexual intercourse with PW1. On the one hand, PW1, the child says that there was no blood when the accused person allegedly had sexual intercourse with her but PW2, the grandmother who allegedly heard about the incident for the first time more than two months after it allegedly happened says that she saw blood in PW1's pant which she kept for evidential purposes but this crucial piece of evidence was not tendered in evidence. The evidence of the medical officer also shows that the alleged victim had vaginal infection which was treated but did no state that this infection was sexually transmitted or in any way linked to sexual intercourse. The hymen of the alleged victim was also intact. The belligerent demeanour of PW2 in the witness box smacks of someone with a personal vendetta with the accused person with the present case as a camouflage. The Auntie of PW1 who allegedly questioned her and she disclosed this alleged sexual assault to was not called as a witness to give first hand information on how she obtained information from the seven-year-old. Also, none of the friends PW1 was playing with on the day of the alleged incident when the accused person called her to buy kenkey for him was called

as a witness to corroborate the account of PW1 that indeed she entered the room of the accused person. PW2 who claims that PW1 was on admission at the hospital for some days as a result of the alleged sexual intercourse failed to provide evidence on same. The evidence led by the prosecution does not establish a prima facie case that someone had carnal knowledge of the alleged victim and the evidence is so manifestly unreliable that no reasonable tribunal can safely convict upon it.

On the totality of the evidence led by the prosecution, I find that the prosecution failed to establish that someone had carnal knowledge of the victim which is an essential ingredient of the offence charged. Thus, the submission of no case is upheld. The accused person is acquitted and discharged.

H/H AGNES OPOKU-BARNIEH

(CIRCUIT COURT JUDGE)