

IN THE CIRCUIT COURT "A", TEMA, HELD ON TUESDAY, THE 27<sup>TH</sup>  
DAY OF JUNE, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,  
CIRCUIT COURT JUDGE

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SUIT NO: D10/38/22

THE REPUBLIC

VRS:

PAA KOBINA TANOH

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ACCUSED PERSON

PRESENT

ASP. STELLA NASUMONG FOR PROSECUTION PRESENT

NO LEGAL REPRESENTATION

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JUDGMENT

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**FACTS:**

The accused person was arraigned before this court on 17<sup>th</sup> June, 2022 on a charge of defilement contrary to **section 101** of the Criminal Offences Act, 1960(Act 29).

The brief facts presented by the prosecution are that the complainant Comfort Acquah, aged 59 is a trader and lives at a place known as BBC within Community 2, Tema with the alleged victim Sandra Owusu aged 14 years whereas the accused person, aged 58 years is a security man with DJH International Company and lives within the premises of the company. According to the prosecution, the alleged victim normally hawks sachet water at the accused person's place of work and she became friends with the

accused person six (6) months prior to the alleged incident. The prosecution claims that anytime the alleged victim goes hawking at the company where the accused person works, he lures her with money and has sexual intercourse with her in the wooden kiosk. According to the prosecution, from January 2020 till date, the accused person has had sexual intercourse with the alleged victim on numerous occasions.

The prosecution further alleges that on 10<sup>th</sup> June, 2022, in the evening, the alleged victim complained of cold and headache and the complainant suspecting pregnancy, conducted a home pregnancy test on her which confirmed that she was pregnant. When the complainant confronted the alleged victim over the results of the pregnancy test, she mentioned the accused person's name as the one responsible for the pregnancy. A complaint was lodged at the Domestic Violence and Victim Support Unit, (DOVVSU) Community 2, Tema where police medical form was issued for the complainant to send the victim to the Hospital for medical examination. According to the prosecution, a medical officer at the Tema General Hospital, Dr. Alhassan Hanifa confirmed that the hymen was broken with five months gestation and a scan report also indicated a single viable intrauterine gestation at 19 weeks, 2 days with cardiac and fetal well-being being excellent.

Based on the foregoing, the accused person was arrested and charged with the offence and arraigned before the court. The prosecution states that during investigations, the accused person alleged that he is impotent and could therefore not have had sexual intercourse with the alleged victim resulting in pregnancy. Therefore, the prosecution prays for medical examination to be

conducted on the accused person to determine whether he is incapable of having sexual intercourse.

### **THE PLEA**

The self-represented accused person pleaded not guilty to the charge after it had been read and explained to him in the Fante language. The accused person having pleaded not guilty, the burden is on the prosecution to prove the guilt of the accused person beyond reasonable doubt.

### **BURDEN OF PROOF**

Under **Article 19(2)(c)** of the 1992 Constitution, a person charged with a criminal offence is presumed innocent until proven guilty or has pleaded guilty. Meaning, anytime a person is charged with a criminal offence, it is generally the duty of the prosecution to prove the guilt of the accused person beyond reasonable doubt. In the case of **Commissioner of Police v. Isaac Antwi** [1961] GLR 408 at page 412

*“The fundamental principles underlying the rule of law that the burden of proof remains throughout on the prosecution and that the evidential burden rests on the accused where at the end of the case of the prosecution an explanation is required of him, are illustrated by a series of cases. Burden of proof in this context is used in two senses. It may mean the burden of establishing a case or it may mean the burden of introducing evidence. In the first sense it always rests on the prosecution to prove the guilt of the accused beyond reasonable doubt; but the burden of proof of introducing evidence rests on the prosecution in the first instance but may subsequently shift to the defence, especially where the subject-matter is peculiarly within the accused’s knowledge and the circumstances are such as to call for some explanation... The law*

*is well settled that there is no burden on the accused. If there is any burden at all on the accused, it is not to prove anything, but to raise a reasonable doubt. If the accused can raise only such a reasonable doubt he must be acquitted”*

Therefore, the prosecution has a statutory duty to prove the essential ingredients of the offence of the charge of defilement against the accused person beyond reasonable doubt.

### **ANALYSIS**

Here, the accused person is charged with defilement contrary to **section 101(2) of Act 29**. **Section 101(2)** provides 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.”*

Under **section 101(1) of Act 29**, defilement is defined as *“the natural or unnatural carnal knowledge of a child under sixteen years of age.”*

The Court of Appeal, Kumasi, per Dzamefe JA, stated the essential ingredients of the offence of defilement which the prosecution must prove to secure conviction in the case of **Robert Gyamfi v. The Republic** (unreported), [Suit No. H2/02/19] delivered on 27<sup>th</sup> February, 2019, as follows;

1. The alleged victim is less than sixteen years of age.
2. That a person has had natural or unnatural carnal knowledge of the victim.
3. That person is the appellant (accused person).

Firstly, the prosecution must prove that the alleged victim is below the statutory age of 16 years. Section 19 of the Juvenile Justice Act, 2003, (Act 653), which deals with presumption and the determination of age, provides as follows;

*“(1) Where a person, whether charged with an offence or not, is brought before a Court otherwise than for the purpose of giving evidence and it appears to the Court that the person is a juvenile, the Court shall make inquiry as to the age of that person.*

*(2) In the absence of a birth certificate or a baptismal certificate, a certificate signed by a medical officer as to the age of a person below eighteen years of age is evidence of that age before a Court without proof of signature unless the Court directs otherwise.”*

In the case of **Kwesi Donkor v. The Republic** [Suit No.42/2017) delivered on 10<sup>th</sup> May, 2019, the Ho High Court presided over by Eric Baah stated as follows:

*“The legal proposition of establishing the age of a prosecutrix beyond reasonable doubt does not presuppose proof only by documents such as birth or baptismal certificates. The age of a prosecutrix in a rape or defilement case can be established by (oral) testimony, by documents in the form of birth certificate, baptismal certificate, weighing card, school records or by medical examination (ossification). None of the above methods is foolproof...”*

In the instant case, there is no birth certificate evidencing the age of the alleged victim as below 16 years. PW1, Comfort Acquah, testified that the victim is her niece and has been living with her for the past ten years. She estimated her age to be 14 years. To further prove the age, the prosecution tendered in evidence **Exhibit “D”** which is a bone age assessment report which estimates the age of the alleged victim as between 14 and 16 years. The evidence of the prosecution is also that the alleged victim was in Junior High School Form 2 at the time of the alleged incident and the accused person

throughout the trial never challenged the age of the alleged victim as a person below the age of 16 years. I therefore find that the prosecution established the age of the alleged victim as person below the statutory age of 16 years.

Secondly, **the prosecution must prove that someone had carnal knowledge of the victim aged 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 English case of **R v. Hughes** (1841) 9 C & P at 752, it was held that for purposes of proof of penetration, it is sufficient if the prosecution led evidence to show that any part of the virile organ of the accused was within the labia of the pendulum of the female, and however slight this may be, it is sufficient to establish penetration. The law is that, it is only when carnal knowledge has been proven that it becomes necessary to find the man responsible See the case of **Hanson v. The Republic** [1978] GLR 477, Court Marial Appeal Court, Accra.

To prove that someone has had sexual intercourse with the alleged victim, PW1, the complainant testified that when the alleged victim returns home from school, she sends her to hawk groundnut and sachet water. On 10<sup>th</sup> June, 2022, she asked the alleged victim to perform house chores and when she finished, she complained of headache and cold and prior to the complaint, she had noticed changes in her. When she questioned her if she was pregnant, she denied. Consequently, she conducted home pregnancy test on her which

confirmed her suspicion and she mentioned the name of the accused person as the one responsible for the pregnancy. PW1 further testified that based on the information, she went with her two children to confront the accused person over the issue, got him arrested and sent him to the police station where she lodged a formal complaint. Thereafter she was issued with a police medical form to send the victim to the hospital for examination and the medical officer confirmed that the victim was 19 weeks pregnant. Subsequently, the victim was sent to the hospital for age assessment to be conducted on her. During cross-examination, when questioned by the accused person if she has any evidence linking him to the alleged crime, PW1 was emphatic that the medical staff who delivered the alleged victim of the baby at the hospital where she had stillbirth took photographs of the baby who was the exact replica of the accused person and that she asked the nurses to keep the photographs of the still baby for evidential purposes and the resemblance of the baby to the accused person is proof that he had sexual intercourse with the victim resulting in pregnancy.

The second prosecution witness, who is the star witness for the prosecution, the alleged victim, testified that after school, she also sells as a petty trader and through that she became friends with the accused person who promised to take care of all her needs. According to her testimony, the accused person asked her to go and sell her water and thereafter come to him for money. After selling, she went back to the accused person's kiosk and after a brief conversation, he pushed her onto his bed, removed her pant and he also removed his clothes and forcibly had sexual intercourse with her. After the act, the accused person promised to give her money so she again went there another time and he had sexual intercourse with her the second time. According to her testimony, she has had sexual intercourse with the accused

person several times. PW2 maintains that sometimes, the accused person comes to her school to signal her to come to his house after closing which she goes for him to have sex with her.

Additionally, PW2 testified that on 10<sup>th</sup> June, 2022, PW1 noticed changes on her and a pregnancy test conducted on her confirmed that she was pregnant. When she was confronted, she mentioned the name of the accused person as the one who has been having sexual intercourse with her. She led PW1 to the place of abode of the accused person where he was arrested. When she was sent to the hospital, a test conducted on her also confirmed that she was pregnant. In cross-examining PW2, the accused person challenged her on the delay in reporting since she waited for five months before telling PW1 that he had sexual intercourse with her. When the accused person queried her on whether DNA was conducted on the child to prove that he had sexual intercourse with her, PW2 answered that she had a still birth and as a result, no DNA test was conducted.

The third prosecution witness (PW3), the investigator, D/Sgt. Daniel Kwame Lartey testified that on 13<sup>th</sup> June, 2022, at about 8:00, PW1 together with about five young men arrested the accused person and reported an alleged defilement in respect of PW2 against him and the case was referred to him for investigations. He catalogued the steps taken during investigations. He tendered in evidence the investigation cautions statement of the accused person admitted and marked as **Exhibit "A"**, the medical report form admitted and marked as **Exhibit "B"**, photographs of the alleged scene of crime admitted and marked as **Exhibit "C" series**, the age assessment admitted and marked as **Exhibit "D"** and the charge statement of the accused



person admitted and marked as **Exhibit "E"**. According to PW3 during investigations, the accused person denied having sexual intercourse with the alleged victim and maintained that he was impotent and could not erect as such cannot impregnate a woman as the victim is alleging but the victim was insistent that it was the accused person who had sexual intercourse leading to the pregnancy.

Furthermore, the accused person in his investigation caution and charge statements admitted and marked as **Exhibits "A" and "E"** respectively denied having sexual intercourse with the alleged victim and maintained that he is impotent. Again, in his testimony on oath again, maintained his innocence and testified that prior to his arrest, he had known PW2 for six months but has never had sexual intercourse with her. In fact, the accused person on his first appearance in court, agreed to subject himself to medical examination to determine his sexual capacity. However, the report from the Ghana Police Hospital dated 27<sup>th</sup> June, 2022 indicates that the facility is not seized with a device called Nocturnal tumescence monitor that is connected to the penis at night to monitor the frequency, rigidity and changes in the circumference of the penis during reactions and recommended prenatal non-invasive paternity test to determine if the accused person was responsible but the prosecution failed to conduct the test and opted to conduct DNA test upon delivery which also did not materialize.

From the evidence led by the prosecution and the spirited defence put up by the accused person, the only evidence implicating the accused person is the insistence of the of PW2 that the accused person had sexual intercourse with her on several occasions resulting in pregnancy. It is trite learning that

corroboration is not required and that the court can act on the uncorroborated evidence of a single witness provided the witness was credible. See **section 7** of the Evidence Act, 1975 (NRCD 323). However, it has been held in a plethora of cases on the danger of acting on the uncorroborated evidence of an alleged victim in cases of sexual offences. Thus, the case of the **Republic v. Yeboah** [1968] 2 GLR 248, where the victim, aged nine years, testified that the accused had intercourse with her in his workshop. Even though she felt pains she never reported the incident till about a week after when she confessed to her mother. A doctor who examined the accused and the victim testified that the victim had a tear in her hymen, inflammation in her vagina, and that both the accused and the victim had gonorrhoea infection. The accused denied the offence and maintained that he was impotent and incapable of having intercourse. The court, based on the corroborating evidence found as a fact that the victim was defiled. On the issue of whether it was the accused who defiled her, the court held in its holding 1 that:

*“that the evidence of the victim on oath in law needed no corroboration but it was a prudent rule of practice to look for corroboration from some extraneous evidence which confirmed her evidence in some material particular implicating the accused. Apart from the fact that the evidence of a victim in a sexual offence must be corroborated there was the added factor that the victim was a young person of only nine years and the evidence of a young person must as a rule of prudence be well corroborated before being acted upon by the court. There was ample circumstantial evidence corroborating the testimony of the victim that the accused ravished her. In all the circumstances of the case, even if there was no corroboration at all of the evidence of the victim, which implicated the accused in some material particular, the court was sufficiently warned of the danger of acting on the uncorroborated evidence of a victim in a sexual offence, who was a young person and was satisfied that the victim was a witness of truth”*

Here, the prosecution tendered a medical report indicating that PW2 had been defiled and was five months pregnant at the time of examination but failed to call the medical doctor who prepared the report to be subjected to cross-examination. From the medical report, dated 16<sup>th</sup> June 2022, the medical doctor Dr. Alhassan Hanifa also recommended for a pelvic scan to be conducted but the prosecution failed to tender the report of the scan showing that the alleged victim was indeed pregnant. The baby who could have linked the accused person to the alleged crime according to the prosecution died at birth without any proof. This leaves a lingering doubt in the mind of the court as to the genuineness of the claim that PW2 was at any time material to this case pregnant. In so holding, I am mindful that the absence or presence of a pregnancy and DNA test is not dispositive in a case of sexual assault but where, as in the instant case the fulcrum of the entire case of the prosecution is that the accused person had sexual intercourse with PW2 resulting in pregnancy, such scientific evidence is relevant to link the accused person to the crime charged.

On the totality of the evidence led by the prosecution and the defence put up by the accused person, I hold that the prosecution woefully failed to prove their case that the accused person had sexual intercourse with the alleged victim resulting in pregnancy. I therefore pronounce the accused person not guilty of the charge and I acquit and discharge him on a charge of defilement.

**H/H AGNES OPOKU – BARNIEH  
(CIRCUIT COURT JUDGE)**

