

**IN THE CIRCUIT COURT '1', ADENTAN, ACCRA, BEFORE HER HONOUR JUDGE  
DORA G. A. INKUMSAH ESHUN (MRS.) SITTING ON FRIDAY THE 29<sup>TH</sup> DAY OF  
DECEMBER 2023**

**SUIT NO: D6/02/2021**

**THE REPUBLIC**

**V.**

**BENJAMIN ACHAAB**

**VERDICT**

The accused person is a pastor with the Oyibi Branch of the International Central Gospel Church (ICGC). The complainant is a trader, the mother of the survivor and one of the witnesses in the case. On 14<sup>th</sup> September 2020 the accused person was arraigned in court on a charge of defiling the victim who was eleven years of age at the time of his arraignment, in August 2020 at Oyibi, contrary to **section 101(2)** of the **Criminal and Other Offences Act, 1960 (Act 29)**.

During the case of the prosecution, the accused person was represented by Charles Brew-Hammond Esq. and George Ampiah-Bonney Esq. However, after the close of the prosecution's case, he was represented only by Charles Brew-Hammond Esq.

The brief facts reported by the investigator are that the complainant and her two children, attend the church of the accused person. Somewhere in February, the accused person contracted a keyboardist to teach some members of his church how to play the instrument. The victim and her brother expressed interested in joining the music class.

In August 2020, the victim and her brother went to the church for tutorials one Sunday, but the instructor did not turn up. They met the accused person in the church auditorium and decided to rehearse on their own in the presence of the accused person. The victim's brother left to go and urinate. As soon as he left, the accused person dragged the victim to the floor, tore her dress and had sexual intercourse with her in the auditorium. He then warned the victim not to tell anyone what happened, or else she would die.

The complainant found the victim crying and scratching her vagina. When she inspected the victim's vagina, the complainant found a smelly yellowish discharge. She then questioned the victim who told her it was the accused who had forcefully had sexual intercourse with her. The complainant filed a report at the Oyibi Police station, where the victim was given a medical form to go for an examination. The examination proved that the victim's hymen had been broken and was inflamed with bleeding. On 2<sup>nd</sup> September 2020 the accused was arrested and cautioned but denied having sexual intercourse with the victim.

The accused person was granted bail in the amount of GH¢15,000 with two sureties who shall be known to the police and ordered to report to the investigator twice a week at the Adentan DOVVSU. Following an application made by accused counsel, the accused was permitted to report to the Dansoman Police Station, which is in the vicinity of his current residence.

On 15<sup>th</sup> June 2022, the court ruled that the prosecution had made out a prima facie case sufficient for the accused person to answer. The accused person was ordered to open his defence and reminded of his right to remain silent, make an unsworn statement from the dock or give evidence on oath [**section 174 of the Criminal and Other Offences Procedure Act, 1960 (Act 30)**; Sarpong v. The Republic [1981] GLR 790].

The prosecution produced five witnesses:

1. Dr. Kennedy T. C. Brightson (PW1) of the Shai Osudoku District Hospital,

2. Augustina Sepenu Mawutor (PW2), the child survivor,
3. Perry Sepenu (PW3), the child survivor's younger brother,
4. Doreen Zodanu (PW4), the child survivor's mother and the complainant, and
5. # 44679 Det L/Cpl Daniel Kwofie (PW5), the investigator.

A sixth witness, Isaac Anum Mantey, the keyboardist, testified as a defence witness.

The prosecution filed the following documents:

1. Summary of evidence.
2. Charge sheet and facts.
3. Witness statement of Doreen Zodanu (PW4).
4. Witness statement of Augustina Sepenu Mawutor (PW2), survivor.
5. Witness statement of Perry Sepenu (PW3).
6. Witness statement of No.44679 Det. L/Cpl. Daniel Kwofie (PW5), the investigator.
7. Police statement of Isaac Anum Mantey dated 2/9/2020, Exhibit 'A'.
8. Investigation caution statement of accused dated 2/9/2020, Exhibit 'B'.
9. Charged caution statement of accused dated 2/9/2020, Exhibits 'B1' and 'B2'.
10. General Medical Form issued on 13/8/2020, Exhibit 'C'.
11. Photocopy of biodata page of Augustina Sepenu Mawutor's weighing book, Exhibit 'D'.
12. Call logs from the accused person's phone dated 2020-06-01 to 2020-09-30, Exhibits 'E' – 'E40'.
13. The survivor's dress worn on the material date, Exhibit 'F'.
14. Survivor's undershorts/leggings/tights referred to as "skinny" or "stretch" by PW2, PW3 and PW4, worn on the material date, Exhibit 'G'.
15. Report headed "*Re: Plea of Alibi by Accused Benjamin Achaab*" signed by the investigator and dated 18<sup>th</sup> November 2020, Exhibits 'H' and 'H1'.

The defence called the following witnesses:

1. Benjamin Achaab, the accused person,

2. Vera Adziah (DW1), the church administrator,
3. Isaac Anum Mantey (DW2), the keyboardist, and
4. Emmanuel Achaab (DW3), the accused's brother.

Rev. Eric Xexemeku who was listed as a defence witness, did not appear to testify.

The defence tendered:

1. WhatsApp messages dated May 23, 2020 between PW4 and the accused person (Exhibits '2' and '2A').
2. WhatsApp messages dated August 14, 2020 (Exhibits '3' and '3A').
3. WhatsApp message, un-dated, headed *Doreen Elorm Zo...* (marked Exhibit 'A' in accused's witness statement).
4. WhatsApp message from +233 27 959 5959 with a picture alleged to be that of the accused person dated "*Today*" (marked Exhibit 'B' in accused's witness statement).
5. Picture of keyboard on a square stand next to a set of drums by windows enclosed by burglar proof bars with a part of the bottom of a structure seen on the left side (marked Exhibit 'C' in accused's witness statement).

The initial WhatsApp messages between the accused person and PW4, the *Dairy of Action Taken in the Case* at Adenta DOVVSU dated 14<sup>th</sup> August 2020 and *Extract from the Oyibi Station Dairy* dated 13<sup>th</sup> August 2020 which were tendered by the defence through PW4 in her original cross-examination, were expunged along with her evidence after she was permitted to give oral evidence due to the absence of a jurat in her witness statement. Accused counsel did not tender these documents through PW4 when she gave oral evidence.

In **section 177(1)** of the **Criminal and Other Offences Procedure Act, 1960 (Act 30)**,

*"The court, having heard the totality of the evidence, shall consider, and determine the whole matter and may,*

*(a) convict the accused and pass sentence on, or make an order against the accused according to law, or*

*(b) acquit the accused, and the Court shall give its decision in the form of an oral judgment, and shall record the decision briefly together with the reasons for it, where necessary.”*

[Hausa v. The Republic [1981] GLR 840].

**Section 101(2) of Act 29** states that a person who naturally or unnaturally carnally knows a child under sixteen years of age, 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 elements of the offence of defilement are that:

1. The accused person naturally or unnaturally carnally knew the victim, and
2. The victim was under sixteen years of age at the time of the offence.

This is a strict liability offence as it does not matter whether the victim consented to the natural or unnatural carnal knowledge [Republic v. Yeboah [1968] GLR 248].

The photocopy of the personal information of the child in her weighing book (Exhibit D) tendered by the investigator, Detective Lance Corporal Daniel Kwofie (PW5), states that she was born on 21<sup>st</sup> October 2008 at Agbogba. This brings her age to over 11 years during the month of August 2020 when the offence allegedly occurred.

The issue the court must consider is whether the accused person has raised a reasonable doubt that he had natural or unnatural carnal knowledge of the female child survivor who is below the age of 16 years.

The survivor, Augustina Sepenu (PW2) lives at Oyibi with her mother Doreen Zodanu (PW4) and her brother Perry Sepenu (PW3). She is in JHS and was 12 years old when she gave her testimony. PW2 testified that she had been attending classes at the ICGC Oyibi branch with her brother PW3 to learn how to play the piano and drums on Saturdays and

Sundays. On the material day, which was a Saturday, her mother PW4, informed her that the pastor called to say the teachers would be coming and asked them to go for class. When they arrived, the pastor asked them to play what they were previously playing while waiting for the teacher. The teacher did not arrive. The pastor was sitting beside PW2 while PW3 was playing the drums. Then PW3 asked permission to go and urinate.

The pastor was charging his phone by PW2's side and got up. PW2 thought the pastor was going to remove his phone off charge, but he held her hand, pushed her against the wall and during the process her "*stretch*" hooked onto the edge of the piano and got torn. He then pushed her onto the altar and tore her "*stretch*" wide at the bottom. Her head hit the floor and she started feeling dizzy. The pastor pulled her trousers down to his knee, put her pant to one side, inserted his penis into her and had sexual intercourse with her. She was screaming for help, but the pastor told her that if she told anyone what he did to her, she would die. Then he used a duster to wipe her vagina. He heard PW3 coming, so he held her hand, pulled her from the altar and pushed her on the seat.

According to PW2, when her brother PW3 came, he asked her why she was crying, and she said it was nothing. The accused person looked into her face and made a sign with his eyes. She then lied to PW3 that she had missed their late father. PW3 told her not to worry because God would give them another father. At that point, the accused person shouted at them and told PW3 to wear his shoes so they could leave the church. His actions towards them was very harsh. PW2 did not remember the exact date of the assault but remembered that it was when the President said 50 people could attend church.

PW2 said she did not tell her mother what happened because she was afraid she would die. When her mother asked her about a bad scent she smelled in her room, PW2 said she did not smell anything. She did not tell her mother that she was itching. One day, she was scratching her vagina and crying while lying down. Then she told her mother everything the pastor did to her. Her mother asked her to remove her pant and asked her who did that to her. In fact, her mother knelt down crying and begging PW2 to tell her who did

that to her before she told her it was the pastor (the accused person). Her mother then called her godfather and told him everything. Her mother sent her to the Oyibi Police Station to lodge a complaint and then to the hospital for examination and treatment. They were invited to the Adentan DOVVSU where her statement was taken, and the police took her torn “*skinny*”.

**PW2 identified the accused person in the dock as the pastor who forcefully had sexual intercourse with her.**

In cross-examination PW2 testified that she and PW3 go for lessons on Sundays or Saturdays. She does not recall the exact date or month she was assaulted but she knows it is when the President said that 50 people could attend church. This was corroborated by PW4 who testified that her children attended the music classes on Saturdays and Sundays. PW2 told her the incident happened on a Saturday and she remembered that the children started classes when the President said people could start attending church in 50s and 100s. PW4 testified that she could not accept the dates (June) accused counsel claimed the incident occurred, because she did not check the dates.

Accused counsel insisted that he visited the scene and saw a piano with a round edge, so, the piano has a smooth round edge and could not tear PW2’s clothes. PW2 testified that it was square and rectangular. The prosecutor objected saying that the piano may have been changed and PW5 testified that the keyboard stand could hook onto PW2’s clothes and tear them.

Perry Sepenu (PW3) PW2’s brother, a Class 2 pupil by the date of his testimony, testified in his witness statement that he has not known the accused person for long. When he and his sister developed an interest in playing the organ and drum, the accused person organized classes for them and they had teachers who teach them. On the date of the incident, none of the teachers came, so he was at the class with PW2 and the pastor. He needed to urinate, so he asked the accused person permission to go and urinate. At this

time, he was playing the drums, and the accused person was in the church sitting with PW2 by the organ. A certain man told him to go further to urinate, so he went further, but another man also warned him not to urinate there again. He did not know either man. While he was going to urinate, he did not hear the sound of the organ and he does not know the time it took to go and urinate.

When PW3 was returning to the church auditorium, he heard the sound of the organ. He found the accused person playing the organ and his sister sitting down and crying. When he asked PW2 why she was crying, she didn't answer. He asked her three times why she was crying, and she said it was because she had missed their departed father. While she made that statement, she was looking into the face of the pastor. PW3 told PW2 to stop crying because God would give them another father. The pastor then rudely shouted at PW3 to wear his shoe because they had to close. So, PW3 wore his shoes and left the church with PW2.

Under rigorous cross-examination, PW3 confirmed that he and PW2 had two teachers for drum and organ lessons. He does not know their names and he could not tell how many minutes the lessons took on average. He testified that his mother did not tell him what to say and insisted there was a defilement incident at the time he went to urinate.

Accused counsel attempted to impeach PW3's signature asserting that the two signatures on PW3's witness statement, differ. PW3 refused to re-sign his signature, saying his mother told him never to give his handwriting out to anyone. PW4 confirmed that because of how intelligent her children are, she told them a long time ago before the incident that if someone asked them to write something, they shouldn't. He testified that "*signature*" means your identity and it should be written as something that you don't understand. The witness statement was not the first time he used his signature. The court found that the issue raised about PW3's signature did not affect the substance of his testimony, as an educated child creating a signature for himself when required, is not unusual and the signature was regarded in the context of the age and experience of the child.



The court must note that PW3, as a seven year old child, was a very astute and well-spoken witness, handling a very rigorous and controversial cross-examination by two counsel, quite well for his age, thereby proving himself to be a very credible witness. PW2 also proved to be a credible witness under similar circumstances.

Doreen Zodanu (PW4) the mother of PW2 and PW3, a trader, testified orally after she testified that part of her witness statement was not what she had told the investigator to write down. PW4 said she did not go to school. She understands English but cannot read the English alphabets when they are put together. The witness statement was read to her in English and signed without a jurat while PW4 cannot read or write fluently in the English language. Her testimony and cross-examination taken under the witness statement filed on 28<sup>th</sup> January 2021 was struck out and expunged accordingly.

PW4 gave the following oral testimony,

*“I got to know the accused person as a pastor whose church we started attending. I do not remember the exact date, but we started going to the church not long before the Corona outbreak. On the 14<sup>th</sup> of August 2020, I reported a case at Oyibi Police Station against the accused person. Please, I was at home, and I took my bath to go to the market. I leaned on the edge of the bed and fell asleep. My children’s father came to me in a dream to tell me that someone was spoiling the children I am suffering for. So, I woke up and I realized my children were not in the sitting room. When I went to their bedroom, the younger one was sleeping on his bed. The elderly one was also sleeping but not fast asleep. She was crying. Tina was crying but not loudly and she was scratching her vagina.*

*So, I asked her what was wrong with her. She wanted to tell me, but she said she was scared, if she told me, she would die. So, I convinced her for a while before she told me. She told me that if she told me what happened to her, she would die, because pastor told her if she talked about it, she would die. So, I convinced her to*

*tell me, and she would not die. So, I asked her to get up so I could look into her vagina. When she took off her panties, her whole vagina was smelling and there was something like phlegm mixed with blood in her vagina, so I shouted, “Who did this to you?” and she answered, “The ICGC pastor. When Perry was going to urinate, he pushed me onto the altar”. Then Augustina said, “He pushed me onto the altar” and when he pushed her, Augustina’s shirt got stuck on the edge of the piano she was playing, and that part got torn.”*

She continued to testify that PW3 told her the accused tore the clothes she was wearing – her “stretch” leggings. After her leggings got torn at the edge of the piano, he tore it further, pushed her panties aside, inserted his penis into her vagina and had sex with her. She shouted but the windows were closed, and no one heard her. PW2 told PW4 that the windows in the church are normally kept closed. When the pastor pushed her, and she hit her head on the ground, she shouted but could not shout at the top of her voice. When the accused heard PW2 was returning from the urinal, he pulled her to sit on the chair. When Perry came inside, he asked her why she was crying but because the accused told her she would die, she lied to PW3 and told him she was crying because she remembered their deceased father. The pastor asked PW2 and PW3 to leave because PW3 kept asking PW2 questions.

After PW2 told her everything, PW4 took her to the Oyibi Police Station where they were given a medical form and an extract to take PW2 to Adenta DOVVSU. The investigator took them to the scene where PW2 demonstrated what happened.

PW4 testified in cross-examination that she does not know Pastor Eric Awuku, the ICGC Pastor at Adonai Temple at Haatso. She knows Pastor Abraham Watavi, whose senior pastor according to accused counsel is Rev Eric Awuku. Rev Abraham Watavi was introduced to PW4 by her husband. He is her godfather at ICGC. She spoke to him about the matter and asked him to come and see how the pastor slept with her daughter on the day she took PW2 to the police station and hospital. She denied speaking to both Rev

Abraham Watavi and Rev Awuku on the 13<sup>th</sup> – the day the case was reported. She told accused counsel Pastor Watavi came to her house that day – she did not call the accused person because she was angry. The pastor usually called her at 7am on the day, or the evening before to let her know the teachers would come. She would then let the children know and have them bath and leave for the church. Sometimes they would call her on the pastor's phone after they closed from the class.

PW4 admitted that she had a cordial relationship with the accused before the incident. The accused would call her to ask of the children and find out how they were doing. Once, the accused called and she told him it was her birthday. She denied sending text messages to the accused, stating that it was her children who replied to the accused's message. She also testified that it was the accused person who filled her form on the first day she attended his church.

PW4 denied concocting the story for the police or plotting with Pastor Watavi to set up the accused person. The doctor confirmed her daughter had sexual contact when she took her to the hospital. She confirmed that she saw blood in her daughter's vagina which was smelling and stated that the cuts in her daughter's vagina are still present till date.

No. 44679 Det. L/Cpl Daniel Kwofie (PW5) the investigator, testified that on 14<sup>th</sup> August 2020, PW4 came to the unit with an extract of occurrence from the Oyibi Police Station indicating that a pastor at the Oyibi Branch of ICGC had sexual intercourse with her 11 year old daughter. PW2 handed over an endorsed police report form by the medical superintendent of the Shai-Osudoku District Hospital (PW1) which revealed that the victim's hymen had been broken and was inflamed. The case was referred to him for investigation.

On 1<sup>st</sup> September 2020, the police went to the Regional Office of ICGC at Adenta to verify the identity of the accused person and find out which pastor oversaw the ICGC Oyibi Branch. The Regional Administrator confirmed that indeed it was the accused person who

was the pastor in charge of the Oyibi Branch and referred the police to Pastor Nathaniel Ahadzi who was the accused's immediate supervisor for assistance. On 2<sup>nd</sup> September, Pastor Nathaniel Ahadzi led the police to Adjiringanor to meet Rev. Eric Xexemeku who is the Area Head of ICGC at Adjiringanor where they met the accused person who had been invited by Rev Xexemeku in the company of three others.

The accused was taken to Adenta DOVVSU for investigations. He was cautioned on the offence of defilement but insisted he would not speak until his lawyers were available. That same day, the police visited the crime scene with PW2 and PW4. PW2 led the police to the ICGC auditorium and pointed out the exact place the accused had sexual intercourse with her. She demonstrated to the police and accused person how the accused pounced on her while she was rehearsing with the organ, placed her on the floor in the auditorium of the church and had intercourse with her. The accused person was formally charged with the offence of defilement after investigations.

PW5 confirmed in cross-examination that PW4 told them the incident happened in August, but she did not know the exact date. The children went to the church after the accused person called her. The police determined the date of the incident from Exhibit E series, the call logs, to be 1<sup>st</sup> August 2020 on which date a call was identified at 09:26:06 on Exhibit E20. From June and July there were calls between the accused person and PW4. The call logs and the police statement of Mr. Mantey confirmed that the children went for lessons on Saturday. The only Saturday between August 1<sup>st</sup> and 13<sup>th</sup> is the 1<sup>st</sup> of August 2020. The court notes that August 1<sup>st</sup> and 8<sup>th</sup> were Saturdays before August 13<sup>th</sup>, which was a Thursday, when the case was reported to the Oyibi Police and August 14<sup>th</sup>, a Friday, when the case was reported to the Adenta DOVVSU. However, there was no call on August 7<sup>th</sup> or 8, 2020 between the accused person and PW4 in the call logs.

PW2 and PW4 deposited PW2's clothes and leggings with the police on 14<sup>th</sup> August 2020, the date they reported the case to the Adenta DOVVSU. PW4 told the police she had kept them as is. Counsel referred to Exhibits F and G as rags with many torn parts, stains, and

punch holes. PW5 testified that these indicated the struggle between the victim and the accused person. When counsel put it to him that the clothes were frame ups and not PW2's clothes, PW5 testified that the clothes and the fact that they were torn were hardcore, cogent, and collaborative evidence of defilement.

PW5 testified that he asked PW3 to show him where he went to urinate and based on the distance, it was possible he did not hear PW2 screaming. In response to accused counsel's assertion that the accused was not present that day, PW5 testified that the accused filed a plea of alibi (Exhibits H and H1) that he was with his father at Dansoman in the whole month of August. To investigate his alibi, MTN was requested to produce his call logs. The logs indicated that in August, including 1<sup>st</sup> August, the accused made several calls from the Oyibi area. Therefore, the claim that the accused was not at the scene or in Oyibi in that month is palpably false.

Accused counsel questioned PW5 on his statements in the police *Dairy of Action* that the evidence in the case was circumstantial. PW5 responded that it was a submission made to his supervisor, the station officer, which led to the police requesting further evidence such as the call logs. After PW4's initial evidence and cross-examination was expunged, the defense did not re-tender the *Extract from the Oyibi Police Dairy and Dairy of Action*.

The standard of proof in a criminal trial includes the burden of persuasion and the burden of producing evidence [**sections 10 and 11 of the Evidence Act, 1975 (NRCD 323)**]. The burden of persuasion is the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court [**section 10(1) of NRCD 323**]. It requires a party in a criminal trial to raise a reasonable doubt concerning the existence or non-existence of a fact, or to establish the existence or non-existence of a fact by proof beyond a reasonable doubt [**sections 10(2) of NRCD 323**].

The burden of persuasion in a civil or criminal action “...as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt” [**section 13(1) of**

**NRCD 323**]. *“In a criminal action, the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence, a reasonable mind could have a reasonable doubt as to guilt”* [section 11(3) of NRCD 323]. In Ali Yusuf Issa (No. 2) v. The Republic [2003 – 2004] SCGLR 174, the Supreme Court held that the burden of producing evidence and the burden of persuasion are the components of *“the burden of proof”*.

When the defense opened its case, the accused testified that he is a pastor with the International Central Gospel Church Oyibi Branch. He lives at Oyibi but is currently residing at Dansoman. He was the pastor at that branch for six months before the Corona outbreak in March 2020. PW4 and her children came to the church on March 1<sup>st</sup>, 2020.

According to the accused person, in February 2020, to equip church members with skills in musical instruments, he announced that he would be bringing instrumentalists to teach interested persons how to play the drums and keyboard. On 23<sup>rd</sup> February 2020, PW2 and PW3 came to the church when it was closed and said their mother asked them to come and see how the church was, as she would come the next Sunday. On 1<sup>st</sup> March 2020, PW4 came to church with the two children to complete a form to indicate that she wanted to join the church. The form is given to all the people attending the church for the first time.

When the accused insisted in cross-examination that it was PW4 who filled the form because any new person who comes to the church fills the forms themselves, PW4 had an incredulous look on her face. The accused further stated that all the members of his church are literate, so they only speak the English language in the church and there is no translator. According to the accused, everybody speaks English, and everybody can write in his church. He therefore insisted it was PW4 who filled the form because he does not fill the form for anyone who comes to the church for the first time, and it is not his handwriting on the form. **The court notes that this form was not tendered in evidence to prove the accused person’s account.**

The court finds it incredible that a church located in Oyibi, a suburb on the outskirts of Accra, and not the center of the city like Cantonments where the affluent and well educated live, contains a membership, 100% made up of literate church goers, all able to write and speak English, to the intimate knowledge of the pastor. Even in Osu and Cantonments, people can be found who speak Ga and other languages. **This testimony affected the accused person's credibility.**

The accused also argued with the prosecutor about whether PW2 was 10 or 11 years at the time of the incident – **the court finds that this fact is not material as both ages are well below the age of 16 years.** There were questions on the discrepancy between the accused's account of the date he was reported to the police which he stated as 14<sup>th</sup> August 2020. **Suffice it to say, the court finds that PW4 reported the matter to the Oyibi Police Station on 13<sup>th</sup> August 2020 and then to the Adenta DOVVSU on 14<sup>th</sup> August 2020.**

The accused testified that PW4 informed him that she heard about the announcement of music lessons for church members, and she wanted her children to participate. He refused, because it was for the adults in the church, but PW4 pleaded with him until he finally agreed. This testimony, corroborated by DW1 and DW2, became a hotly contested issue during the cross-examination of the accused person. **Eventually, the accused admitted that he did not announce to the church that the lessons were for adults.** However, he testified that he told PW4 it was for adults only when she approached him to have PW2 and PW3 join the classes but seeing *"how desperate she was"*, he finally agreed to add the children.

The court finds that this issue is not relevant to the charge laid against the accused person and demonstrates an attempt to posit that the accused person did PW4 a favour by including her children in the lessons. The court takes judicial notice of the fact that music lessons generally begin in a person's life when they are younger. Although it is possible for adults to commence music lessons at a later stage in life, unless one had time on their hands, or were studying for professional purposes, it would be difficult to commit to the



discipline studying music requires. Hence, it is young people who are usually introduced to music education. **Indeed, DW3 testified, and the accused admitted in his charged statement to the police and testimony that the adult church members stopped attending music classes.**

The accused testified that on Sunday 15<sup>th</sup> March 2020 after the usual church service, the government announced the lockdown in the evening in respect of movement and church activities because of the COVID-19 outbreak. On 7<sup>th</sup> May 2020, Isaac Anum (DW2) the keyboardist, informed the accused that he could start lessons with interested members on 9<sup>th</sup> May 2020 at 2pm and lessons were subsequently held from 3 – 4pm. Drum lessons also started on 9<sup>th</sup> May 2020 when the lockdown was lifted. Although the lockdown was lifted, there were no in-person church services because the ICGC Head Office suspended in-person services for all assemblies until further notice. Isaac Anum and his brother were the instructors for the lessons **and the lessons were held on 9<sup>th</sup> May and 16<sup>th</sup> May 2020 respectively.** Isaac Anum's brother was not called to testify. The accused person then testified that **the last time PW2 and PW3 attended lessons with the keyboardist and his brother was in June 2020.** When he enquired from their mother, she said the children started private classes at home. According to the accused person, the children did not attend keyboard lessons in July and August 2020.

The accused person testified that as part of his pastoral care, he calls members of the church including PW4, two or three times a week to check on their welfare and pray with them to allow them to stay connected. **He admitted that the children attended class on Saturdays and that he would communicate with PW4 to tell her the teacher was there before she sent the children for lessons.** On 27<sup>th</sup> June 2020, PW4 called to ask him when the in-person church service would start. She called him again on 1<sup>st</sup> August 2020, but he could not answer, and he called her back about a minute later. She told him she wanted to know when church would resume because she heard the General Overseer, Dr. Mensah-Otabil, say in his TV broadcast that the ICGC assemblies were going to start in-person services from August 2020. He told her the local assemblies were not starting in-person



services, but he would communicate it to her and post it on the church platform. However, he claimed they did not speak about rehearsals because the last time they met was in June 2020. He could not specify the date the children last attended a keyboard and drum lesson in June 2020.

**The prosecutor pointed out to the accused person that the police investigation of his plea of alibi showed that he was not in Dansoman in the whole of August as he alleged, but in Appolonia City and Oyibi in the Kpone Katamanso District. The accused admitted he was at Appollonia City when PW4 called him on 1<sup>st</sup> August 2020. The accused then admitted that on 1<sup>st</sup> August 2020 he was at Appolonia City, Oyibi and Obeyie. He said he lives at Oyibi and that is where his things are, however, he was also in Dansoman per the call logs. The accused confirmed that the church is located at the Oyibi Community Station just opposite the Oyibi Police Station. The court takes judicial notice of the fact that this location is in the middle of a busy thoroughfare at a junction of the Accra to Dodowa road with another junction going straight down to Appolonia City across from the police station. It is therefore reasonable that the accused could be in all three places within a short period of time.**

On 13<sup>th</sup> August 2020, while he was attending to his sick father in Dansoman, Rev Eric Awuku, the pastor of ICGC Adonai Temple at Haatso called the accused on an unknown number – and asked to meet him for a discussion. Rev Awuku told the accused person he contacted Rev Eric Xexemeku, the accused's senior pastor by phone for the accused's number and asked to meet the accused person. The accused asked his brother Emmanuel Achaab (DW3) to go to the meeting at Haatso with him since DW3 had a car. DW3 testified that the accused asked him to drive him to the meeting at Adonai Temple and they arrived at 10:48am. When they arrived, they met Rev Abraham Watavi, another ICGC pastor there.

Rev Awuku allegedly asked the accused in the presence of Rev Watavi whether he had completed ICGC Pastoral School and whether he was a virgin. When the accused

responded that he was a virgin, Rev Awuku immediately said it was not true and asked if the accused wanted to tell them he did not have female friends or a girlfriend. When he said he did not understand, Rev Awuku told the accused he was a big liar when he said he was a virgin and asked him if he wanted to say he did not have feelings towards the opposite sex as he, Rev Awuku, a senior pastor, had feelings towards his female members and when he sees them he sometimes gets an erection. When the accused asked whether this was what Rev Awuku wanted to discuss with him, Rev Awuku asked him whether he knew a woman named Doreen and her two children who attended his church. Rev. Awuku said the woman said the accused had raped her daughter on either a Saturday or Sunday when they came for keyboard lessons, and he sent the brother to buy waakye. When the accused realized the brother left, he raped the girl on the church altar, wiped her vagina with a white handkerchief and rubbed it on his pulpit. The accused told Rev Awuku and Rev Watavi that nothing like that ever happened, and it had been a long time since he saw the children. Rev. Awuku then told him not to challenge him but to admit it so they could help him since they were all ICGC pastors. The accused asked him why he should accept an offence he never committed. Rev Awuku then told Rev Watavi that he studied psychology at school and just by looking at his forehead, he could clearly say that the accused did it.

When they realized they could not persuade the accused person to admit the defilement, Rev Awuku called Rev Xexemeku on speaker phone and told him the accused said he did not do it. Rev Xexemeku asked the accused before the other two pastors whether he did what he was accused of, and the accused said he had not done anything. Rev. Awuku cut the call and asked the accused to leave. On the evening of 13<sup>th</sup> August 2020, Rev Xexemeku called the accused to tell him Rev Awuku called to say he would bring the woman and the children to his office the next day to ask the girl in front of them and the accused person to see if Rev Awuku was telling lies. Rev Xexemeku was asked to tell the accused to come to the meeting at 9am.

On 14<sup>th</sup> August 2020 the accused went to Rev Xexemeku's office with two of his brothers, Emmanuel Achaab and Rev Crownwell Achaab. They waited for some hours for Rev Awuku. When they called to ask where he was, Rev Awuku asked Rev Xexemeku whether the accused still denied the act. Rev Xexemeku confirmed that the accused said he did not commit any offence, whereupon Rev Awuku said if that was so, they should leave the matter to rest. Rev Xexemeku then told Rev Awuku that in that case, he did not want the accused to be disturbed when his assembly was told to start in-person church services. This evidence was corroborated by DW3 who testified that on 14<sup>th</sup> August 2020 at Rev Eric Xexemeku's request, DW3 and another brother named Rev Crownwell Achaab went with the accused to Rev Xexemeku's office for a meeting with Rev Awuku, PW4 and her children. Rev Awuku, PW4 and the children did not turn up, so Rev Xexemeku called Pastor Awuku to find out why they were not coming.

The accused said that while in the meeting, at that time, PW4 sent him a message wishing him good morning and asking him how he was. He showed the message to Rev Xexemeku and his brothers who told him not to reply. **This testimony was not corroborated by DW3. There is no evidence in Exhibit E series of a text or voice communication between the accused and PW4 on 14<sup>th</sup> August 2020. The court notes that the WhatsApp message tendered as the accused's Exhibit A with part of PW4's name written on top followed by "last seen today at 6:16pm" does not indicate the date of the message.** The messages "Gm ooo" is stamped 12:35pm and the last message on the page "Pls How are u" is stamped 12:39pm.

**The court notes that neither Rev. Awuku, Rev. Watavi nor Rev. Crownwell Achaab were called to testify. Although the accused stated in his case management conference that he would call Rev Xexemeku as his witness, he did not appear to testify.** Therefore, the portions of the testimony of the accused and DW3 (of what the accused recounted to him) relating to matters told by these pastors that were not within their personal knowledge amount to hearsay under **section 116 of the Evidence Act, 1975 (NRCD 323).**

The portions the accused recounted as having heard himself were not supported by any other evidence.

The accused continued to testify that on 26<sup>th</sup> August 2020, a person with an unknown number (054-676-8289) named Pious Baidoo Banson called at 3:18pm to tell him that he was a journalist at Peace FM. He allegedly said a certain Madam Doreen had come to report the accused person to their FM station that he had raped her daughter, so he was calling for explanations on the matter. The accused told him he could not grant him an interview and asked if he had seen a police report. The journalist said he had not and ended the call. At this time, the police had not called the accused person or invited him to the police station.

On 1<sup>st</sup> September 2020 at 9:10am, Mr. Kwadwo Aboagye sent the accused a WhatsApp message from an unknown number issuing a threat to him to come and see him so they could talk. In the message, the person told him he can never hide, and it would be better to meet him since he knew it was the work of the devil. He asked him to contact him by 12pm otherwise he would publish him.

On 2<sup>nd</sup> September 2020 Rev Xexemeku called to say the investigator would be coming to his office to meet him, so the accused should come to his office to answer a few questions from the CID (investigator) on the accusation. When the CID arrived, he asked them to follow him to the station and asked the accused to sit. He then told the accused he had arrested him. He called PW4 to come to the station with the children later in the afternoon and the accused asked DW3 to bring the church key from the lady who kept it because the CID wanted to go to the church. When they got to the church, the accused opened the door and sliding windows because of the heat for the CID another police officer, PW4, PW3 and PW2. He showed them the washroom downstairs and went with the CID to urinate there. The CID asked the accused to call the keyboardist and sent him to the station for a statement. They returned to the Adenta Station where the accused was detained.

In his investigation caution statement (Exhibit B) the accused stated,

*"It is not true. I have not done anything, and I have nothing more to say until I see my lawyer."*

In his charged caution statement (Exhibit C), the accused said,

*"I've been a pastor at Oyibi branch of ICGC for about a year now. I know the victim, the brother, and the mother as members of my church. During the lockdown, I contracted one Isaac Anum to teach some of my church members how to play musical instruments. Initially we were four when we started the lessons (learning), but later one stopped coming, leaving the victim and the brother and we progressed with the lessons till 6<sup>th</sup> June 2020 and that was the last time I saw the victim and the brother on [not legible] on that day. Isaac Anum who happens to be the instructor was there. I [not legible] knew about this case until 13<sup>th</sup> of August 2020 when Rev Awuku is a pastor at ICGC Adonai Temple at Haatso invited to come and see him. On reaching there, Rev Awuku in the presence of Pastor Abraham Watavi started questioning me on this case. They started accusing me to have committed the offence and that I should accept it for them to help me. I insist I have not committed the offence and know nothing about it. On 14<sup>th</sup> August 2020, Rev Awuku scheduled a meeting with Rev Xexemeku in which I was supposed to be part with my brothers as well as the victim and the complainant. I got to the office of Rev Xexemeku at 9:00am and he called Rev Awuku on phone. Rev Awuku asked him what have I said, but he told I am still insisting I have not committed any offence. Rev Awuku then said the case should be left."*

According to the accused person, the church is a small place and has no altar. There are no curtains, but there are two sliding glass windows and one door in front of the building. The church building produces a lot of heat, so the windows and doors are always opened to allow fresh air in and out. There are also two washrooms in the church and another washroom downstairs that is always open and that is what all members use when they come to church. DW2 also testified that the sliding windows and doors were opened to allow fresh air to come into the church.

The court finds that the testimony of the accused and DW2 that the sliding windows and glass doors are always open during service does not mean they were opened on the material date. It is reasonable that they would be open during church service when the entire congregation was present. During music lessons, which were mostly attended by the accused person and the two children, the children's testimony that the windows and glass doors were closed is reasonably probable. This reasoning also applies to the accused's claim that the church has washrooms downstairs while PW3 testified that he had to go far from the church building to urinate – the church washrooms could have been closed on a Saturday when church service was not being held on Sundays due to COVID and only the accused person and the two children were present.

The issue of whether the church has an altar or not was another hotly debated point in cross-examination. The accused person gave varying answers to the prosecutor's questions about whether the church does not have an altar, as stated in paragraph 12 of his witness statement. It is worth replicating the cross-examination on that point here:

Q: *Are you trying to tell this court that in your church, you don't have an altar? I am putting it to you.*

A: *My lady yes, in my church there is no altar. I am a bit confused.*

BC: *Do you have an altar, or do you not have an altar in your church?*

A: *No. There is no altar.*

Q: *I am putting it to you that where you stand to preach and where the pulpit is, serves as an altar in the church and the victim knows that place to be an altar.*

A: *My lady, please there is no altar in the church. Where we put our pulpit cannot be termed as the altar. My lady, an altar is always raised to the level of where you are seated and we put the pulpit on, but in this case, it just the bare floor.*

Q: *You will agree with me that the place housing the church wasn't built specifically for a church. It is somebody's house that you've rented and using that place for a church, so there wasn't anything raised – but there is an altar in your church.*

A: *My lady it is not a house but three stores which we converted to a church, and it was uncompleted and so there is not altar in it.*

By Court

*Accused is cautioned to answer questions directly.*

Q: *Do you have a pulpit in your church?*

A: *Yes, my lady.*

Q: *Where do you stand to preach?*

A: *My lady I move around in-between the congregation.*

Q: *But where does the pulpit stand?*

A: *Please the question is not clear to me.*

BC: *[Repeats question].*

A: *The pulpit is in the church, and it faces the congregation. So, it's in the middle, where... it's the description. So, it's in the middle of the church.*

Q: *I am putting it to you that where the pulpit stands and where you stand to preach, the victim refers to it as an altar.*

A: *No, my lady, it is not an altar – where I stand and where the pulpit is, is not an altar because we have not raised something that the pulpit is on.*

In further cross-examination the following ensued when the accused was questioned about the keyboard, setup of instruments at the church and the altar in reference to his Exhibit C attached to his witness statement:

Q: *Is that the setup of your church in Exhibit 'C'?*

A: *Yes.*

Q: *I am putting it to you that this chair was the one the victim was sitting on it (in Exhibit 'C') and that was the socket that you were charging your phone (refers to socket close to chair).*

A: *No please my lady. There was no keyboard lesson and drum lesson in the month of August (blinking furiously). The last time was in June 2020.*

Q: *As she was struggling with you – the organ is the keyboard – that is the edge that tore the skinny trouser she was wearing.*

A: *My lady, no, please. There was no struggle between, with the accused person, with the victim, because there was no lesson in the month of July and August because the last lesson was in June 2020. Moreover, my lady, the keyboard in question here, does not have any edge or hook by it that can tear a dress, leggings and etcetera.*

Q: *Through the struggling, you pushed the victim on the floor – that's the altar – which you are alleging you don't have an altar – you placed the victim on it.*

A: *No please my lady. I have never pushed the victim and moreover, this is not an altar – like I explained the other time, an altar is a platform that has been raised where we put our pulpit on – **and also deemed as a holy place.** But what I have in my church is a carpet on the floor and all of us walk on it. A bit about the description about the altar. It's also a platform made with either wood or cement block.*

Q: *Altar is one of the requisites of a church, I'm putting it to you.*

A: *No please, my lady it's not one of the requisites for a church.*

Q: *Tell the court the requisites for a church. What are the requirements that a church has?*

A: *My lady requisites of a church – even where we have here now. Where we are gathered, we can turn it into a church. When people of the same faith especially Christians, gather at a place to worship their God, the gathering alone is what we term as a Church. Therefore,*



*church is not the instruments or the pulpit or the chairs in a particular confined building,  
but church is the people.*

By Court

*Is this (Exhibit C) the only picture of the church?*

Prosecutor

*Yes. They brought it. The investigator did not take any pictures of the church.*

Accused Counsel

*I just want to explain that his Church is a Charismatic Church. It is not like the Orthodox Church.  
That is, Catholic or Anglican Church where we have a raised platform as the altar.*

Prosecutor

*Counsel I don't agree with you. Are you saying a church like ICGC does not have an altar before  
the accused person was confirmed as a pastor?*

By Court

*Let the accused person answer the questions. Counsel and the prosecutor cannot testify for the  
accused person.*

*Q: I am putting it to you that a big church like ICGC can never open a branch without an altar.*

*A: No, please my lady. This is a rented place of worship and moreover there are some of ICGC  
churches or assemblies who even meet under tents and canopies and uncompleted buildings  
without an altar.*

*Q: I am putting it to you that because of the contention on the altar, you are trying to deceive  
the court that there is no altar in the church.*

*A: No please my lady, it is not because of the contention but this is a fact as clearly shown in  
the picture that this is not an altar.*

BC: *Where is the church pulpit in relation to the picture in Exhibit C?*

A: *The pulpit is here, where your hand is - next to the flower (points to the left side of Exhibit C where the edge of a flower and the bottom corner of a metal stand is showing).*

BC: *In your church, do you call members forward to pray for them?*

A: *Yes, please my lady. I call them twice or three times to check on them for visitation.*

BC: *I don't mean on the phone. In the church, during service, do you call members forward to pray for them?*

A: *No please my lady.*

BC: *How do you invite people to accept Christ into their lives during your services?*

A: *During my services, I have never had any – this is a new church. So I have never had any new soul coming forward to say he will accept Christ.*

BC: *When did the church have its first service?*

A: *On the 29<sup>th</sup> of September 2019. The corona outbreak came so 15<sup>th</sup> March 2020, corona came, so when everything stopped.*

BC: *When did the church reopen after corona?*

A: *The church reopened in October 2020.*

BC: *So, are you telling the court that during your services from 29 September 2019 to March 2020 and October 2020 till present day January 2023, you have never given an invitation to your church members or attendees to come forward to be prayed for, or to come forward to accept Jesus Christ as their personal Savior?*

A: *My lady no, please. Between the September 29<sup>th</sup> and the 15<sup>th</sup> March 2020, that was the last time I pastored the church over there. And so, from the October, the Oyibi church was reopened till date, I am not the pastor there.*

BC: *Kindly answer the question with respect to the period of 29 September 2019 – 15 March 2020 [repeats question]. So, are you telling the court that, during your church services from 29 September 2019 to 15 March 2020 you never gave an invitation to your church members or attendees to come forward to accept Jesus Christ as their personal Savior?*

A: *Yes. I did that when I go out for Evangelism but not in the church. Moreover, all those who come to the church for the first time are given forms and the forms, it indicates the person who invited you, your reason, if you want to join the church or if you want to be born again. So, after the service, this form help us to be able to attend to the people but not at the pulpit.*

BC: *Where do you attend to those who want to give their lives to Christ?*

A: *Please it is those who attend the church for the first time.*

BC: *Where in the church building do you attend to those who want to give their lives to Christ?*

A: *At the back of the church within the church building.*

By Court

*Accused person is clearly nervous and keeps craning his neck to read from the record book.*

BC: *Where do you stand and preach in the church?*

A: *My lady I move about in the church.*

BC: *So, what do you use the pulpit for?*

A: *When I am coming to preach, I put my Bible and notes on it.*

BC: *When you were giving the court your definition of an altar, you said it is also deemed as a holy place. Where was the holy place in your church at the time you were the pastor?*

A: *My lady like I said there is no altar.*

BC: *That is not the question I asked you.*

A: *Maybe I did not get you.*

BC: *[Repeats question].*

A: *The church itself. Per the church I was in church, the room where we gather to call upon God is our holy place.*

BC: *Therefore, from your own definition, your entire church hall is an altar.*

A: *No, my lord. My lady the entire place is not an altar. Like I said earlier on, an altar is a raised platform.*

Q: *I am putting it to you that after dragging the victim from where she was sitting, you placed her on the altar, which the victim and complainant know to be the altar.*

A: *No, my lady, I have never dragged the victim and there is no altar in the church.*

Q: *And this very altar is where the pulpit stands and that's where they stand and read the bible.*

A: *No, my lady, there is no altar in the church.*

An **altar** is defined by the Encyclopaedia Britannica in religion, as, “a raised structure **or place** that is used for sacrifice, worship, or prayer”.<sup>1</sup>

The American Merriam Webster’s Dictionary Online, provides the following definitions of the noun **altar**, stating that it is often attributive<sup>2</sup>:

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<sup>1</sup> Encyclopedia Britannica. Altar, Religious Ceremonies and Symbolism. ©2024 Encyclopaedia Britannica Inc. Retrieved from: <https://www.britannica.com/topic/altar>

<sup>2</sup> Merriam-Webster. Altar Definition and Meaning. @ 2024 Merriam-Webster Incorporated. Retrieved from: <https://www.merriam-webster.com/dictionary/altar>

1. a **usually raised structure or place** on which sacrifices are offered or incense is burned in worship, often used figuratively to describe a thing given great or undue precedence or value especially at the cost of something else.
2. a tablelike construction used in the Christian church in celebrating the Eucharist.
3. a **table or place** which serves as a center of worship or ritual often used with “*the*” to refer to the act of getting married e.g. “*She left him at the altar*”.

The British Collins Dictionary Online gives various definitions for the word **altar**<sup>3</sup>. It defines the word as a noun in **American English** as:

1. (a) **an elevated place or structure**, as a mound or platform, at which religious rites are performed or on which sacrifices are offered to gods, ancestors, etc. or  
(b) **a place, especially a raised platform**, where sacrifices or offerings are made to a god, an ancestor etc.
2. (a) *Ecclesiast*, See “*Communion table*”.  
(b) a table, stand etc. used for sacred purposes in a place of worship, as the Communion table in Christian churches.
3. [*cap*] *Astronomy* – (as a named constellation).
4. [*in a dry dock*] - a ledge for supporting the feet of shorings.
5. See “*lead to the altar*”.

The word **altar** is defined as a noun in **British English** as,

1. A **raised place or structure** where sacrifices are offered, and religious rites performed.
2. (In Christian churches) – the communion table.
3. A step in the wall of a dry dock upon which structures supporting a vessel can stand.
4. See “*lead to the altar*”.

The court finds from the various definitions of the word “*altar*” that within the context of the Christian religion, it is either a table used for communion or worship, or an elevated

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<sup>3</sup> Collins COBUILD Advanced Learner’s Dictionary. Altar. @Collins 2024. Copyright: @ Harper’s Collins Publishers.  
Retrieved from: <https://www.collinsdictionary.com/dictionary/english/altar>

place, structure or platform used for worship or sacrifice. **However, it is also a place *simpliciter*, used as a centre for worship, sacrifices, and rituals etc.**

**Section 80 of the Evidence Act, 1975** (NRCD 323) provides the following criteria a court should consider, to determine the credibility of a witness in a matter that is relevant to prove or disprove the truthfulness of their testimony:

- a) the witness' demeanour,
- b) the substance of the testimony,
- c) the existence or non-existence of a fact testified to by the witness,
- d) the capacity and opportunity of the witness to perceive, re-collect or relate any matter about which he testifies,
- e) the character of the witness as to traits of honesty or truthfulness or their opposites,
- f) a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial,
- g) the statement of the witness admitting untruthfulness or asserting truthfulness.

When it was put to the accused that the victim was sitting on the chair while the accused charged his phone in the socket close to the chair in Exhibit C of the defence, the accused evaded the question and answered that there was no keyboard or drum lesson in the month of August, the last time was in June 2020 – **while blinking furiously**. The court notes that Exhibit C, the picture the accused tendered of the set-up of instruments shows the keyboard on a stand with a chair behind it, with its back to windows that are closed and enclosed by burglar proof bars, with a drum set to the right of the keyboard and a long electric adapter/extension cord lying below the chair. The accused pointed to a stand showing on the left side of the picture a few steps away from the drum set as the podium where he sets down his Bible when he preaches. The area around the podium which PW2 called the altar where she was pushed to the floor by the accused person before he defiled her, was the subject of prolonged controversy during cross-examination. **The accused's Exhibit C gives credence to the testimony of PW2 and PW3 about where they were seated and the set up of the church on the date PW2 was defiled.**

The accused denied that there was a struggle between himself and PW2 because there was no lesson in July and August and the keyboard did not have an edge or hook which could tear her dress or leggings. **The court finds that Exhibits F and G, which were made of soft flimsy material could have easily gotten torn on the keyboard itself or on the stand which had sharp edges, on which the keyboard was placed.**

The accused also assisted the court by defining an altar to include a raised platform or a holy place in church. What other holy place could a church have than the area where the pastor preaches to, prays for, and addresses the congregation? **The court finds that although churches in their own buildings tend to have raised altars, it is reasonable that a church renting a place, particularly a small place, would not have a raised platform for the use of the pastor, deacons, and musicians. However, this does not preclude the space in front of the congregation used for that purpose, from being an altar.**

It is also curious that the accused person who managed a branch of ICGC, a well-known organised charismatic church, would testify that he did not call members up for prayer or to give them an invitation to accept Jesus Christ as their Saviour during service, but would only do so when he went out for evangelism. The accused person testified that persons who wished to give their lives to Christ were attended to at the back of the church. **The court takes judicial notice of the fact that anyone who has attended a Christian service knows that invitations to give one's life to Christ or to come forward for prayer are made at the front of the church at what is referred to as *the altar*, whether it is on a raised platform or on the bare ground.** Thereafter, those persons are ushered to another part of the church where they can be attended to in person or in small groups. **The accused's testimony that this did not happen and persons who wanted to give their life to Christ were attended to at the back of the church without any invitation during or after the sermon – which is a basic practice in Christian preaching and services – is bizarre.**

The court also found curious, the accused's reaction – smiling – when it was put to him after extensive cross-examination that he drew PW2's underpants aside and inserted his penis into her vagina and used a white handkerchief to wipe PW2's vagina – the court notes that PW2 told her mother and the court the accused used a (dirty) duster. The accused smiled and said he had never had carnal knowledge with the victim and did not have a white handkerchief. He took out a yellow handkerchief from his pocket and declared he has multi-coloured handkerchiefs. He also denied threatening PW2 that she would die if she revealed what he did to her, while smiling. **The court finds that the accused person's reactions to these questions which are the substance of the charge against him, and which have caused the ongoing grave injury to the victim, uncharacteristic of a reasonable accused person declaring his innocence of such a serious charge.**

When it was put to him that he asked PW2 and PW3 to leave the church and go home after PW3 continued asking PW2 why she was crying, which was not his usual behaviour towards them when they attended classes, the accused responded, *"No. please my lady, this has never happened and moreover, before the last day when they came for choir rehearsal, erm for keyboard and drum lesson which was before that, which was, the last time they came – they normally are the first to leave."* The accused denied that his behaviour was why PW3 described him as being very harsh and rude to them that day.

The court finds that the accused person was not a credible witness from the;

- a) accused person's demeanour,
- b) accused's evasiveness when asked questions about the altar in his church
- c) contradictions in the accused's testimony,
- d) fact that the alibi that the accused was in Dansoman attending to his aged, precariously ill, and ailing father throughout the month of August 2020 and could not have been at the alleged crime scene was disproved by the police through the call logs of the accused's phone and by the accused's own admission, and



e) accused's admission under cross-examination that he was in the area of the church on the date the police surmised the offence was committed.

Vera Enam Adziah (DW1), a member of the ICGC Oyibi Junction Assembly testified that she is the administrative secretary of the church. She lived at Malejor Lam Fam and currently lives at Teiman in Burger Town. **She did almost everything in the church (church duties) with the accused person.** Whenever there was a service, she would go to the church on Saturdays to clean up the church because she sometimes kept the keys to the church. One Sunday, PW4 visited the church with her two children and completed the form stating that she was coming to join the church. The previous Sunday, her children came to the church when service was closed.

Before PW4 came to the church, the pastor announced every Sunday that he would bring someone to the church to teach those who wanted to learn instruments and some members wrote their names. Since it was a small church at that time, they did not have rehearsals on Saturdays for various departments but **instrument lessons for those who showed interest after lockdown.** According to DW1, she was often at the church premises on Saturdays for cleanup and mostly saw the children when they came for lessons because she was often around. She remembers very well that in June 2020 "*Pastor Ben*" gave her the keys to the church since she is the one who cleans the church, because his father was sick, so he normally travelled to Dansoman to see his father. The last time she saw the children in the church was in June 2020 when some of the members were called to go to the church for benefits (food items), on a weekday. After that day, no one has been to the church because she is mostly there on Saturdays to tidy up and have personal prayers.

According to DW1, on 31<sup>st</sup> July 2020 the accused informed her that some people from the ICGC Regional and District Office would be coming to the church on 1<sup>st</sup> August 2020 to inspect their readiness for church service before giving them approval. He asked her to go early to clean the church, washrooms, sliding windows and doors etc. She was at the church premises the whole day and left after 5 or 5:30pm. The Prosecutor put it to DW1

that she could not have been at the church on 1<sup>st</sup> August 2020 since she testified that she only went to the church to clean on Saturdays if there was going to be service on Sundays. However, she said she remembered being called by the accused to go to the church and she got there at about 8am but the people never showed up. Curiously, the accused person whose church was being inspected by officers from the ICGC District Regional Office did not show up either on that day and she could not tell where he was.

According to DW1, when the people did not show up she gave the accused the information on WhatsApp. The WhatsApp message was not tendered to support her evidence. DW1 said DW3 came for the keys to the church on 21<sup>st</sup> September 2020 and told her the accused had been arrested because of the accusation against him.

When she was asked where the pastor lives, DW1 said, *"I am not sure. I don't really know the name of the place. I don't want to say it, but I know where it is."* When she was asked where the exact location was, she said, *"I'm not sure. Please its not that I don't want to say it, but I don't know, actually"*. The prosecutor noted that the accused person never mentioned DW1's name or said she was present at the church in any of his statements at the police station. The court notes that the accused person did not mention DW1 in his witness statement or during the case management conference for the prosecution when the case completion plan was filled in and signed by accused counsel on March 24, 2021.

DW1 gave her phone number to the court because she could not recall when the accused called her on 31<sup>st</sup> July. The call logs showed the accused called DW1 three times between 9 – 11:35am on July 31, 2023, on Exhibit E19. The prosecutor asserted that the calls were made by the accused person not to ask her to go and clean the church, but to check on DW1, who said the accused tended to call her once or twice in a day to check on her.

DW1 told the court she unofficially became the administrative secretary of the church when she joined – at that time the church members were not many, she was willing to do the work and the accused *"saw that in"* her. At that time, she was 23 years and a Senior

High School graduate. She could not remember the month she joined the church but stated it was in 2019. She has not furthered her studies. Part of her duties included recording offerings, counting money, meeting officers and other pastors for meetings, **or accompanying the accused person to learn.** She also welcomed visitors and took their records. **She was working with the pastor alone to perform all the duties in the church.** When asked her relationship with the pastor she said, *“Okay, please he is my pastor. Emmm.... he, he is my pastor”*. She testified that she is married and says she sees the accused as a sort of mentor or father figure.

The court finds that there is no evidence to corroborate DW1’s testimony that she was present at the church all day on August 1, 2020, till 5pm. Considering she did not give a statement to the police in 2020, the veracity of her account on the times, dates and location of the accused person and the children in March 2023, cannot be accepted as a fact, vis-à-vis the testimony of PW4 and her children. The court finds that DW1’s testimony cannot be relied on as an objective account of the events that occurred in August 2020 because of;

- a) her demeanor,
- b) her close relationship with the accused person,
- c) her evasive answers to some of the questions in cross-examination,
- d) the fact that she was not mentioned by the accused in his testimony or to the police at the time the accused person was arrested, and
- e) the fact that she did not give a statement to the police to assist in investigations when the accused was arrested in 2020, if she was indeed present at the church on the material date and at all times, as she stated in her testimony.

Isaac Anum Mantey (DW2) testified that he is a keyboardist who lives at Oyibi. He admitted that he told the police he was a salesperson in Exhibit A, as that was his profession at the time. DW2 met the accused after the lockdown and has known the accused since 2020. The accused came to his workplace to print some documents where he was a printing and photocopier attendant. After printing his documents, Pastor Ben started sharing the Word of God with him, which led him to realize that they had a

common interest – they both delighted in the Word of God. He told the accused he attends the Christ Apostolic Church and is a keyboardist there. The accused then told him he needed a keyboardist and drummer to teach some of his members who expressed interest in learning, so DW3 decided to help him. On Thursday 7<sup>th</sup> May 2020, DW2 told the accused he was ready to teach the members beginning Saturday 9<sup>th</sup> May 2020.

DW2 continued to say, *“Honestly, the first day the children (i.e. Perry and Augustina) came, I asked Pastor Ben what they were doing here, and he said their mother begged him to include them although it was for adults in the church”*. **According to DW2, he would usually communicate with Pastor Ben on every lesson day to tell him whether the lessons would be held or not. Since the accused lives around his area in Oyibi, DW2 and his brother (who was not named) would meet the accused and go to the church. Then the accused would call PW4 to let the children go to the church. DW2 testified that the accused did not know how to play the keyboard, but he was always there to make sure his people were serious.**

According to DW2, whenever they went for lessons, because the church is small, the sliding doors and windows were always opened to allow in fresh air. During the programme, three members stopped coming for keyboard and drum lessons and PW3 and PW2 stopped coming later. This makes the total number of people initially attending the lessons 7, including the accused person. **This contradicts the accused’s statement in Exhibit C that only four members took music lessons and one stopped attending, leaving him and the children to continue with the lessons.**

DW2 testified in his witness statement, that he began giving lessons on 9<sup>th</sup> May 2020 and the last time he saw the children was 6<sup>th</sup> June 2020. In Exhibit C, the accused also stated that DW2 gave lessons until 6<sup>th</sup> June 2020 which was the last time the accused saw the children. DW2 further testified that in June 2020, the accused told DW2 his father was not well. DW2 started attending music school to upgrade himself and became busy. There were no lessons in July and August 2020. Yet, in Exhibit A, DW2 told the police he started

lessons around February 2020. **None of the other members who attended the lessons were called to testify.**

The prosecutor pointed out that DW2's evidence in his police statement differed from that in his witness statement on the accused asking him to teach his congregation to play the keyboard. In Exhibit A, he stated that the accused asked him to teach him how to play the keyboard, but in his witness statement he testified that the accused asked him to teach his members how to play the keyboard. DW2's response was,

*"Ok, as at then, because he was the one asking me to teach his people how to play the keyboard, because we were in a haste, or because we were in a prison, no, a police station. Because we were at the police station and that was my first time writing a statement, you know, the pressure and stuff. Because of the pressure, I was not so detailed."*

The prosecution also noted that DW2 told the police in Exhibit A that he started the keyboard lessons in February 2020 – DW2 attributed the discrepancy in his statements to the pressure at the police station. He said he went through his chat list to check and confirmed the date there. **DW2's chat list was not tendered in evidence.**

The third discrepancy in DW2's statement was that he told the police that he started lessons with the accused person and PW2 and PW3 later joined the lessons. However, in his witness statement, he stated that he met PW2 and PW3 on the day he started giving lessons. He attributed all the discrepancies in his statement given on 2<sup>nd</sup> September 2020 and 29<sup>th</sup> August 2022 to the pressure of going to the police station and filing a statement.

**DW2 confirmed that the music classes normally took place on Saturdays. Since he stopped attending in June 2020 after giving 3 or 4 lessons for about four weeks from May to June, he was nowhere near the church on 1<sup>st</sup> August 2020 and could not know what transpired between the accused person and PW2 on 1<sup>st</sup> August 2022.**

**The court finds that the discrepancies in DW2's police and written statements affect his credibility as a witness.** Feeling the pressure of going to the police station for the first time is not a valid reason for such discrepancies as DW2 could have filed a further statement with the police to correct any anomalies in his first statement before the trial. **The court finds that DW2's police statement given closer to the date of the incident is more credible than the witness statement filed in August 2022, two years after the incident.**

DW2's evidence, therefore, only corroborates the prosecution's evidence that the children attended classes on Saturdays (though they said they attended class on Sunday too). DW2's evidence also corroborates the usual practice that the accused person would call PW4 to tell her the teachers were present for class before she sent the children to the church for music lessons.

Emmanuel Achaab (DW3), the accused person's brother, testified that he is a pastor at Fresh Miracle Ministry Accra and lives at Dansoman. Regarding the events on 13<sup>th</sup> August 2020, he stated, *"According to my brother, the meeting was held at Rev Awuku's office, and the following were present; Rev Awuku and Pastor Abraham Watavi. My brother informed me that the two pastors asked him if he was a virgin and when he answered yes, they started accusing him of telling lies and that a woman by name Doreen who is a member of my brother's church had come to report that he has raped her daughter"*. **This statement amounts to hearsay as it was not made in DW3's presence.**

According to DW3, on Sunday 16<sup>th</sup> August 2020, Rev Xexemeku asked DW4 and Rev Crownwell Achaab to go and see Rev Awuku at ICGC Adonai Temple at Haatso to ask him about what he said. When they got there, Rev Awuku told them the accused sent PW3 to buy him waakye. DW3 said this was a life and death issue, then Rev Awuku quickly said Pastor Abraham Watavi knows everything about the issue so they should wait for him. After 45 minutes to an hour, Pastor Watavi came and narrated the issue to them. He told them he was not sure, but the incident happened on a Sunday. The victim's brother went to urinate and on his way, a vulcanizer told him not to urinate there. He went further

to another place and another man warned him that the next time he came there to urinate, he would beat him. When the victim's brother got back, the accused's mood had changed.

Pastor Watavi said PW4 called him, and he went to her home on the day of the incident. When PW2 got home, her mother saw her demeanor had changed. She sat down and not too long after, the girl fell asleep. While she was sleeping, she shouted, "*Leave me, leave me*", so her mother took her to check her vagina and saw a hole, but when she asked her about it, she said nothing. Afterward, her mother started having dreams where people warned her that somebody was spoiling her daughter and doing something to her child. PW4 then took the child to the hospital and the police station and according to the medical report, the girl is to sit on hot water. **The court finds that, although Rev Watavi was not available to testify and DW3's reporting is at variance on some minor points, his report of Rev Watavi's statement largely corroborates the testimony of PW2, PW3 and PW4.**

DW3 testified in cross-examination that he was at many places on 1<sup>st</sup> August 2020 including Dansoman Opetekwe, where he lives, Mpoase, Dansoman, Obeyie which is near Oyibi, and Appolonia City. He admitted that he did not know anything about what occurred on 1st August 2020. He claimed that the investigator did not permit him to give a statement because he was working with the accused, however he did not state so in his witness statement.

DW3 admitted that he did not sit in the meeting the accused had with Rev Awuku and Pastor Watavi on 13<sup>th</sup> August 2020 as he was outside. However, he sat in the meeting on 14<sup>th</sup> August 2020 in Rev Xexemeku's office. On 16<sup>th</sup> August he went with Rev Crownwell Achaab to meet Rev Awuku and Elder Watavi who said his brother had an affair with someone and mentioned "*rape*". When Rev Xexemeku sent them to make further enquiries, Rev Awuku said the accused sent PW2 to buy him waakye but did not mention the day he sent him. Neither PW4, PW2 nor PW3 were present at that meeting.



**The court finds that DW3's testimony only confirms that the accused person met with Rev Awuku and Pastor Watavi on 13<sup>th</sup> August 2020 and Rev Xexemeku on 14<sup>th</sup> August 2020.**

In The Republic v. Yeboah [1968] GLR 248 it was held that in cases such as rape, it is prudent to look for corroboration of sexual assault by the accused person from extraneous evidence. Where there is evidence proving the least degree of penetration of the victim by the accused person, rape (or in this case – defilement), is complete in law.

Dr. Kennedy T. C. Brightson (PW1), testified that he is the Director and Principal of the Maternal and Reproductive Health Section of the Shai Osudoku District Hospital who has been practicing for about 24 years. He tendered the victim's medical report (Exhibit C). According to PW1, he attended to the victim on 13<sup>th</sup> August 2020 and wrote his medical report that same day. PW1 wrote in his report that *"She was sexually assaulted by Pastor of ICGC"* as part of the patient's complaint. PW1 admitted that he did not witness the accused person sexually assaulting the victim at any point but said that the statement was written as part of the patient's complaint. The doctor's report continued, *"ODQ/Patient (child) is conscious and alert. OE/A little girl looking traumatized and frightened about dying when she informs anybody about her ordeal."*

PW1 testified under cross-examination that as a doctor, it is not his duty to look for the person who defiled the victim. He stated, *"Your honour, permit me to say that there is no peno-vaginal address in the world so that when you examine a vagina you can trace the type and owner of the penis that entered the vagina. There is nothing like that."* He explained further that in the clinical examination, it was found out that the child was traumatized and when he probed further, she explained she was afraid of dying if she attempted to tell anybody that she had been sexually assaulted.

PW1 declined accused counsel's request to have another examination of the child for the following reasons, *"My lord, examinations are circumstances-based. So, at the given time, based*



*on what the child went through, certain exact clinical findings would be realized. Therefore, after a prolonged period of time, when I examine the child, I will not find those clinical findings that I got during the first examination because healing might have taken place completely. Other traumatic effects might have gone and a new set of findings which may not be related to the premise in question could be found. That is why I object to re-examining the patient to go and get those results."*

PW1 admitted that he has never seen Section B of the Police General Medical Form which is specifically for examination of victims for sexual offences but testified that he has conducted many defilement examinations – the form the police usually send is the General Medical Form A.

In his report, he stated under "*Vaginal Examination*", "*Vulva looks normal, the introitus looks bruised and healing, the hymen is broken and inflamed, traumatized and bleeding upon gently examination. Examining finger freely enters. Diagnosis: Forceful vaginal penetrative sexual intercourse*".

In his written address filed on 3<sup>rd</sup> November 2023, accused counsel argued that there was no clarity in the case of the prosecution, partly on the ground that PW1 did not fill out Section B of the Police Medical Form. PW1 testified that he has been filling Section A of the Police Medical Form because that is what the police give victims when they are sent to his hospital and that was the form PW2 and PW4 were given. **The court finds that Section B of the Police Medical Form is aimed at eliciting further details specifically provided on that form for sexual assault victims. The absence of that form, however, does not negate the examination, findings and diagnosis made by the doctor in Section A of Exhibit C.**

Accused counsel also argued that the prosecution did not prove their case because PW3 informed his station officer in the *Dairy of Action* that was not re-tendered in court after PW4's testimony was expunged, that the evidence in the case was circumstantial. **This was addressed by PW3 as the reason the police acquired the call logs for the accused's**

**phone number which placed him in Appolonia City and the Oyibi area on 1<sup>st</sup> August 2020.**

Counsel also argued that PW1's evidence did not prove the accused had sex with PW2. Therefore, there was no evidence that the accused had sex with PW2, and the accused proved through his evidence that he was innocent.

The major issue in contention in this case is the date the alleged incident occurred. PW2 and PW3 could not remember the exact date but remembered that it was when the President said 50 or 100 people could attend church. At that time, according to the accused person, his branch, a small assembly, was still not permitted by the ICGC Head Office to begin church services. Counsel intimated that this happened in June 2020 while the prosecution, going by the statements of PW2 and PW3 and the call logs, focused on August, pinpointing 1<sup>st</sup> August from the call logs.

In a report authored by Dr. Lori Haskell, C. Psych. and Dr. Melanie Randall submitted to Canada's Department of Justice, it was stated,

*"Because the victim-witness in a sexual assault trial is, in the overwhelming majority of cases, the primary or even exclusive source of evidence, her testimony is of crucial importance. Yet it is precisely in how this testimony is heard, received, and understood, including misunderstood, that many of the difficulties in how the criminal justice system processes sexual assault cases arise. This is because many of the misunderstandings continue to arise from still commonly held rape myths, failures to understand common trauma reactions, and mistaken assumptions about small and apparent inconsistencies in recall about upsetting and traumatic events. These lead to the mistaken belief that victim-witness testimony lacks credibility or reliability."*<sup>4</sup>

*"Sexual assault is an experience of trauma, and trauma has a neurobiological impact – that is, it affects our brains and our nervous systems. For this reason, it is imperative that those working*

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<sup>4</sup> Haskell, L & Randall M. (2019). *The Impact of Trauma on Adult Sexual Assault Victims*, Report Submitted to Department of Justice, Canada, 7, cited from: [https://justice.gc.ca/eng/rp-pr/trauma/trauma\\_eng.pdf](https://justice.gc.ca/eng/rp-pr/trauma/trauma_eng.pdf)

*within the criminal justice system understand the impact of trauma on victims of sexual assault so they can process sexual assault cases more effectively and hear evidence in these cases fairly and impartially.”<sup>5</sup>*

*“Insufficiently trained police can contribute to assaulted women experiencing secondary victimization. If victims feel unsafe when questioned, they may not be able to use their prefrontal cortex to understand the questions and retrieve certain memories. If victims feel traumatized by the questioning, it may trigger the retrieval of fragmentary sensations and emotions that are nearly as intense as those they experienced during the assault itself. Also, poor memory retrieval is associated with high levels of stress and high arousal, which in turn is associated with the prefrontal cortex being threatened.”* [Haskell, L & Randall M. (2019; 26)].

The testimony of the prosecution and defence witnesses on whether the accused person was actually in the church with PW2 and PW3 on the day PW2 was defiled, amounts to oath against oath evidence. In Lutterodt v. COP [1963] 2 GLR 429-440 the Supreme Court held that,

*Where, as in this case, the decision turns upon the oath of one prosecution witness against that of a witness for the defence, it is incumbent upon the trial court to examine the evidence of each of those two witnesses carefully along with other evidence in the case, oral, documentary and circumstantial as well, before preferring one of the conflicting evidence to the other; and where his preference is for the prosecution, he must make it appear from his judgment that his said preference is reasonable, for the principle of law is that, if the court could not find reasonable grounds for preferring the evidence of the prosecution witnesses to contradictory evidence given by a defence witness, the prosecution has failed, because there would, at least, be reasonable doubt as to which of the two conflicting versions of the story is true, and the benefit of that doubt must be given to the defence.*

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<sup>5</sup> Ibid p 8.

<sup>6</sup> Ibid. p. 26

In Lutterodt v. COP (*supra*), the Supreme Court further held,

*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:*

*(1) Firstly, it should consider whether the explanation of the defence is acceptable, if it is, that provides complete answer, and the court should acquit the defendant;*

*(2) If the court should find itself unable to accept, or if it should consider the explanation to be not true, it should then proceed to consider whether the explanation is nevertheless reasonably probable, if it should find it to be, the court should acquit the defendant; and*

*(3) Finally, quite apart from the defendant's explanation or the defence taken by itself, the court should consider the defence such as it is together with the whole case, i.e., prosecution and defence together, and be satisfied of the guilt of the defendant beyond reasonable doubt before it should convict, if not, it should acquit.*

The call logs show communication between the accused person and PW4 on:

1. 2020-06-07 12:10:24 – when the accused called PW4 (Sunday).
2. 2020-06-07 13:02:51 – when the accused sent PW4 an SMS (Sunday).
3. 2020-06-07 16:30:59 – when the accused called PW4 (Sunday).
4. 2020-06-13 13:37:44 – when the accused called PW4 (Saturday).
5. 2020-06-13 13:38:37 – when the accused called PW4 (Saturday).
6. 2020-06-18 15:36:09 – when the accused called PW4 (Thursday).
7. 2020-06-19 17:17:46 – when the accused called PW4 (Friday).
8. 2020-06-20 19:17:02 – when the accused called PW4 (Saturday).

9. 2020-06-20 19:25:01 – when PW4 called the accused person (Saturday).
10. 2020-06-27 13:06:54 – when PW4 called the accused person (Saturday).
11. 2020-07-05 14:35:56 – when the accused called PW4 (Sunday).
12. 2020-07-08 13:58:04 – when the accused called PW4 (Wednesday).
13. 2020-07-12 09:29:53 – when the accused called PW4 (Sunday).
14. 2020-07-12 16:55:21 – when the accused called PW4 (Sunday).
15. 2020-07-16 09:32:47 – when the accused called PW4 (Thursday).
16. 2020-07-18 09:05:58 – when the accused called PW4 (Saturday).
17. 2020-07-18 17:10:24 – when the accused called PW4 (Saturday).
18. 2020-08-01 09:25:08 – when PW4 called the accused person (Saturday).
19. 2020-08-01 09:26:06 – when the accused called PW4 (Saturday).
20. 2020-08-29 11:40:40 – PW4 called the accused person (Saturday).

The court finds that most calls between the accused and PW4 occurred on Sundays and Saturdays. There were a few calls on other days of the week. Notably, in June 2020, there was a call on a Friday after which there were two calls on the Saturday after. This pattern fits with the testimony of the prosecution and defence that the lessons were held on Saturdays (and possibly Sunday) and that the accused and PW4 communicated before the lessons and communicated sometimes when the lessons were over before the children returned home.

**In The Republic v. Yeboah (*supra*) the court found that though the victim in that case was of a young age (10 years old), she was a witness of truth. I find the same for the survivor and her brother in this case. The court finds from the evidence that PW2's inability to remember the exact date she was defiled does not negate the overwhelming evidence that she was defiled and that she was defiled by the accused person when her mother sent her and her brother to the accused person to supervise them for music lessons in his church.**

The court finds the prosecution witnesses to be credible as previously stated. PW2 and PW3, the survivor and her 7 year old brother, in particular, were unshakeable and credible in their testimony in the face of grueling cross-examination. The accused person and his witnesses were however found to be unreliable witnesses who lacked credibility. The accused's defence was not acceptable, neither did it provide a complete answer, nor was it reasonably probable, considering the inconsistencies in his testimony, his demeanor, and the lack of credibility of the testimony adduced by himself and his witnesses. Considering the case of both the prosecution and the defense, the court is satisfied of the guilt of the accused beyond a reasonable doubt.

The court makes the following findings from the evidence:

1. PW4 joined the accused person's church, the Oyibi Branch of ICGC, with her children, PW2 (the survivor) and PW3 soon before the outbreak of the Corona virus around February 2020.
2. Before the family joined the church, the accused person had announced that he was procuring the services of instrumentalists to teach interested members how to play the drums and the keyboard.
3. After they joined the church, PW4 expressed her desire to have her children PW2 and PW3 join the music lessons.
4. DW2 and his brother taught the accused person, PW2 and PW3 and other interested members how to play the keyboard and drums respectively on Saturdays and possibly Sundays.
5. The adults in the class dropped out of the music class, leaving the accused person, PW2 and PW3 to continue the classes.
6. After the music classes began, the church stopped holding Sunday services on the instructions of the President and the General Overseer of ICGC.
7. DW2 began classes in February 2020 according to his statement to the police in September 2020, but stated in his evidence that he gave four lessons in May – June 2020.

8. The accused person, who had also asked DW2 to teach him how to play the keyboard, attended every lesson.
9. DW2, his brother the drum teacher, and the accused, employed a system where DW2 would communicate with the accused person that they would have the lesson and DW2 and his brother would meet the accused person to go to the church, after which the accused person would call PW4 to send the children to the church for their lessons.
10. The accused person and PW4 had a system regarding the children's attendance of music lessons: the accused would call PW4 the day before or the morning of the lesson to tell her that the teachers were present or ready to teach and PW4 would prepare the children to meet the accused person and the teachers at the church for their lessons.
11. On the material date which was surmised by the police to be 1<sup>st</sup> August 2020 based on the testimony of the prosecution witnesses and the call logs of the accused person's phone number, the accused person and PW4 communicated with each other and based on the accused's communication, PW4 got her children ready and sent them to meet the accused person at the church for lessons with the music teachers.
12. The accused person communicated with PW4 that the children should come for lessons based on the practice and system that had been in place, knowing that the teachers had stopped coming for lessons in June 2020.
13. On their arrival, the children found that the teachers were absent, and the accused instructed them to play what they were taught by the teachers at their previous class.
14. PW3 played the drums while PW2 played the keyboard.
15. The accused person sat beside PW2 as she played the keyboard.
16. At a point while they were playing, PW3 sought permission to go and urinate.
17. As soon as PW3 left to urinate, the accused person got up, pulled PW2 from her chair behind the keyboard, pushed her against the wall then dragged her to the altar and pushed her onto the floor causing her to hit her head.

18. As the accused dragged or pulled PW2 around the keyboard, her leggings (referred to as "*stretch*" in the evidence, which were made of very soft material, tore on the keyboard or keyboard stand.
19. While on the floor/altar and while PW2 was dizzy from her head being hit on the floor, the accused person tore her leggings wider at the bottom, pushed her panties aside and inserted his penis into PW2's vagina, causing PW2 to shout in pain.
20. PW3 who had gone quite a distance to urinate, did not hear his sister's shouts.
21. When the accused finished defiling PW2 he wiped her vagina with a duster.
22. The accused person warned PW2 that she would die if she revealed what he had done to her.
23. When the accused heard PW3 returning, he quickly pulled PW2 up from the altar and put her back in the chair behind the keyboard.
24. When PW3 entered the church, he noticed PW2 was crying and when he kept asking her why she was crying, she said, after the accused looked into her eyes, that she was missing their dead father.
25. PW3's persistent questions to find out why PW2 was crying caused the accused person to harshly demand that PW3 should wear his shoes and they should go home.
26. PW2 initially failed to tell her mother what happened for fear of the accused's threat that she would die.
27. PW4, upon receiving a warning from her deceased husband and the father of her children in a dream while at home, that someone was hurting or spoiling the children she was working hard for, went to investigate what was happening to her children.
28. PW4 walked into the children's room to find PW2 crying in troubled sleep while scratching her vagina, with a foul scent permeating the children's room.
29. PW4 woke PW2, convinced her to tell her what had happened to her and inspected PW2's vagina, finding a foul scent and discharge coming out of PW2's vagina.
30. PW2, after being reassured by her mother that she would not die, told her mother what happened and identified the accused person as the perpetrator.
31. PW4 called her godfather Rev. Watavi, another ICGC pastor, to inform him of what happened and reported the matter to the police.



32. A visit to the hospital showed that PW2 had been defiled.
33. After several meetings and investigations – the police procured the accused’s call logs to prove that he was in the Oyibi area after the accused person filed a notice of alibi claiming he was with his aged and very sick father in Dansoman throughout August 2020 and could not have been in Oyibi that month.
34. The accused person admitted during his evidence that he was in the Oyibi, Obeyie and Appolonia area, which are a very short distance from each other, on 1<sup>st</sup> August 2020.
35. DW1, a surprise reverse alibi witness, was found not to be a credible witness.
36. The evidence of DW2, the keyboardist, confirmed vital parts of the prosecution’s evidence particularly, the system of communication between the accused and PW4 before the children were sent for lessons, which was confirmed by the call logs; the fact that lessons were held on Saturdays; and the fact that the adult church members who subscribed for lessons dropped out leaving the accused person and the children to attend the music lessons.
37. Save for the parts of his evidence that collaborated the evidence of the prosecution, DW2 was also found not to be a credible witness largely because his testimony during the trial contradicted his statement to the police at the material time the offence occurred.
38. DW3’s evidence revealed that he had no personal knowledge of the accused’s movements or the occurrences at the church on the material date the offence was committed.
39. The accused was found not to be a credible witness due to *inter alia*, his demeanour, evasiveness in cross-examination and contradictory statements.

The offence of defilement in **section 101(2) of Act 29** attracts a sentence of 7 to 25 years in prison. There is no option of a fine. In Frimpong alias Iboman v. The Republic [2012] 1 SCGLR 297, the Supreme Court cited Kamil v. The Republic 2011 1 SCGLR 300 and

Kwashie v. The Republic [1971] 1 GLR 488 CA, on the factors a court should consider to determine the length of a sentence<sup>7</sup>. They are;

- (1) *The intrinsic seriousness of the offence,*
- (2) *The degree of revulsion felt by law-abiding citizens of the society for the particular crime,*
- (3) *The premeditation with which the criminal plan was executed,*
- (4) *The prevalence of the crime within the particular locality where the offence took place, or in the country generally,*
- (5) *The sudden increase in the incidence of the particular crime, and*
- (6) *Mitigating or aggravating circumstances such as extreme youth, good character, and the violent manner in which the offence was committed.*

*Thus, a judge in passing sentence may consider the offence and the offender as well as the interest of society.*

After the case of the defence, PW4 submitted to the court that her daughter was still attending the hospital for treatment for the effects of the defilement. The prosecutor filed a medical report dated 18<sup>th</sup> October 2023 showing that PW2 was seen on 21<sup>st</sup> March 2021 at the Gynaecology Emergency Department of the 37 Military Hospital. The mother told the hospital PW2 had been defiled 8 months prior to the visit. She was treated and discharged on 30<sup>th</sup> March 2021.

On 15<sup>th</sup> September 2023, PW3 made the following submission to the court,

*“My lord, the child has been bleeding on and off for a long time. It would stop for two weeks and start again. Now, it stops for just a week and resumes. She says there is something pricking her in her private parts. She can only wear pampers, not panties. That is what she wore to write her exams.”*

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<sup>7</sup> Cited in Mensah, K. & Nyinevi C. (2016). *The Lawyer’s Companion, A Guide to Researching Ghanaian Case Law: Cases from 1959 – 2015*. 561-562.

When submitting the impact of the offence on the survivor to the court, Madam Doreen Zodanu said,

*"I thank the court. All I have to say now is, I am concerned about how frequently the child discharges blood from her vagina. When we went to 37, they said its abnormal bleeding. They gave her medicine, but when the medicines get finished, she starts bleeding again. Because of that, the victim is not herself anymore. She is not herself. She easily forgets things."*

The accused person made the following submission to the court before sentencing,

*"Madam, for now, I don't have anything to say. I don't have anything to say. I just plead with the court. I have never been in trouble with the police. Currently, I am a pastor at ICGC Open Heavens Temple at Adjiringanor under Rev. Eric Xexemeku, under Prophet Yaw Annor. I am 36 now. I was 33 at the time."*

The accused's actions have caused serious damage to the genealogical health of the survivor. Although the offence occurred in 2020, the survivor has consistently bled unless she takes constantly drugs. The survivor therefore requires continuous medical intervention and care at such a young age due to the harm inflicted upon her by the accused person's actions. The court must also note the fear the survivor experienced from being told by the accused person, her pastor, that she would die if she revealed what he did to her.

Considering the law, evidence, facts and circumstances of the case, the accused person, Benjamin Achaab, currently a 36 year-old pastor at ICGC Open Heavens Temple, Adjiringanor, is convicted of defiling Augustina Sepenu Mawutor, an 11 year old female at the time of the offence, contrary to **section 101(2) of the Criminal and Other Offences Act, 1960 (Act 29)**. In sentencing the accused person, the court considers that he is a first time offender. However, the court must also take into consideration;

- (1) The prevalence of the offence of defilement, creating a generation of sexual abuse victims who will have challenges overcoming psychological, physical, emotional, and other trauma from this offence,

- (2) The large age difference between the accused person and the survivor (33 v. 10 or 11 years at the time of the commission of the crime),
- (3) The violation of what should have been the survivor's safe space (the church hall),
- (4) The position of trust the accused person held with the survivor who had been placed in his care by her mother with her brother, as their pastor and shepherd,
- (5) The loss of the survivor's virginity and ongoing damage done to the survivor's health as a result of the offence,
- (6) The level of violence used which could have caused trauma or damage to the survivor's brain, and
- (7) The physical, gynecological, emotional, and psychological trauma the survivor has been subjected to, which she must battle to overcome.

**These aggravating factors push the crime to the highest level. Consequently, the accused person is sentenced to serve a term of 23 years at the Nsawam Medium Security Prison in hard labour.**

- a) The accused person shall undergo counselling if it is available in prison.
- b) The accused person shall be enrolled in a work programme during his sentence.
- c) The accused person shall pay compensation to the complainant in the amount of 500 penalty units, which may be recovered via civil action.
- d) The accused person shall pay the survivor's medical bills that are related to the offence which shall be filed by the complainant at the police station or in court.

The accused person is advised of his right to appeal the sentence.

Prosecutor: C. I. Juliana Awuku

Accused Counsel: Charles Brew-Hammond Esq. led by George Ampiah-Bonney Esq.

(SGD)

**DORA G. A. INKUMSAH ESHUN  
CIRCUIT JUDGE**