

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON FRIDAY
THE 24TH DAY OF NOVEMBER, 2023 BEFORE HER HONOUR ENID
MARFUL-SAU, CIRCUIT COURT JUDGE**

CASE NO. D6/10/2023

THE REPUBLIC

VRS.

KWABENA ATTIM

ACCUSED PERSON PRESENT

PROSECUTION: C/INSP. AWUAH ANSAH HOLDING BRIEF FOR C/INSP.

SALIFU NASHIRU PRESENT

COUNSEL: KUUKU WELSING-JONES ESQ. ABSENT

JUDGMENT

The Accused Person is charged with one count of Defilement of a child under sixteen years contrary to section 101(2) of the Criminal Offences Act, 1960 (Act 29).

The facts as presented by Prosecution are that the complainant Priscilla Etefe is the mother of victim, Joyce Etefe and both reside in the same neighbourhood as the Accused. Prosecution says that on 26th December, 2022 at about 7:00pm there was a party in the neighbourhood and the victim and Accused both attended. Prosecution says that when the Accused spotted the victim sitting lonely, he called her to come and collect something. Prosecution says that the victim followed the Accused who took her to the back of her house and asked her to undress. According to Prosecution, the victim refused but the Accused pulled down the victim's pant and sat on a stone and made the victim sit on his laps. Prosecution says that the Accused tried to insert his penis into the victim's vagina, but he was not comfortable. Prosecution says that the Accused made the victim to now stand, and he inserted his penis into her vagina and after the act he told the victim to go home. Prosecution says that the victim bled but did not tell her mother. According to prosecution, the victim went to urinate and saw clots of blood in from her vagina and so confided in her mother on 11th January, 2022 when the bleeding became severe. The complainant reported

the case to the Dome-Sampaman Police and a medical form was issued to the victim. The Accused was arrested and arraigned before this court.

Prosecution called two witnesses in support of its case. PW1 was the victim, Joyce Etefe and PW2 was the Investigator D/PW/Cpl Dorcas Nimoh. PW1 testified that on 26th December, 2022 around 7:00pm she attended a party near her house and met the accused person who lives in the same area with her. She testified that the Accused approached her to come for something and when she went the Accused took her to the back of her house and asked her to remove her panties, but she refused. She testified that the accused forcibly removed her panties, and he sat on a stone and put her on his lap and inserted his penis in her vagina but he could not penetrate. She stated that the Accused again made her to stand up and he again inserted his penis in her vagina but he could not penetrate. She testified that the Accused released her to go and informed her not to inform anybody and if she did he would kill her. She testified that she went home and slept and on 27th December, 2022, she woke up and saw blood in her vagina and she was afraid so she informed her mother. She stated that her mother informed her father who took her to the Dome Sampaman DOVVSU and she was issued with a medical form to attend hospital.

PW2 testified that on 12th January, 2023 a case of defilement reported by the complainant was referred to her for investigation. She testified that the parties led police to the scene of crime at Abaaneke and the victim narrated how the accused sat on a big stone inside a small plantain farm behind her fence wall and asked her to sit on his laps and again asked her to stand and forcibly had sex with her. She stated that she took photographs of the scene. She tendered the following exhibits:

- Exhibit A & A1: Charge Sheet and Brief Facts
- Exhibit B: Statement of Priscilla Etefe
- Exhibit C: Statement of Joyce Etefe
- Exhibits D & D1: Investigative and Charge Caution Statements of Accused
- Exhibit E: Medical Report

At the close of Prosecution's case, the Accused person was called to open his defence. He elected to give evidence on oath by means of a witness statement which was filed on 20th October, 2023. He testified that somewhere in January, 2023, one James accused him of raping his daughter who is in her teens and he was reported at the Dom Kotoku Police Station and he was arrested and detained for three months. He testified that there

is no truth in the allegation, and he has no cordial relationship with the victim in any way. He questioned rhetorically that if it were true the allegation against him, why was he not arrested on 26th December, 2022 and James waited until 23rd December, 2023 [sic] before he reported the matter to the Police. He testified that since that time, the victim goes to school riding a bicycle and showed no signs of complications regarding her health and no medical report has been produced. He testified that while in cells, James informed him to give him GH₵4,000.00 but he refused.

An issue I am inclined to address from the outset is the issue of how long it took for PW1 to make a Statement to the Police. From the evidence before me, the incident was said to have taken place on 26th December, 2022 and the matter reported in January, 2023. The case which has been put across by the Accused is that since PW1 made a report to the Police much later, (even though he quoted the wrong dates in his witness statement) then the alleged incident is untrue. It is settled that a delay in reporting defilement cases is not fatal. (See. **REPUBLIC v. YEBOAH [1968] GLR 248 & CONTEMPORARY CRIMINAL LAW IN GHANA, 2ND EDITION AT PAGE 237**).

I shall now turn offence as charged. Section 101(2) of Act 29 provides as follows:

“Whoever naturally or unnaturally carnally knows any child under sixteen years of age, whether with or without his or her consent commits an offence and shall be liable on summary conviction to imprisonment for a term of not less than seven years and not more than twenty-five years.”

The key factors requiring proof under this Charge are that:

1. The victim is aged less than 16 years at the time the offence was committed.
2. The Accused has naturally or unnaturally carnally known the child.

PW1 testified that she is 11 years old. On her Statement to the police tendered as Exhibit C, the age of PW1 was indicated as 11 years old. On the Medical Report tendered as Exhibit E, the date of birth of PW1 is indicated as 1st May, 2011. Indeed, the age of the victim was not disputed by the Accused. Having also observed the victim, I am satisfied that the victim is below the age of 16 years.

The direct evidence of PW1, the victim, is that on 26th December, 2022 around 7:00pm she attended a party near her house and met the accused

person who lives in the same area with her. The Accused approached her to come for something and when she went the Accused took her to the back of her house and asked her to remove her panties, but she refused. The Accused then forcibly removed her panties and sat on a stone and put her on his lap and inserted his penis in her vagina but he could not penetrate. The Accused again made her stand up and he again inserted his penis in her vagina but he could not penetrate. The Accused released her to go and informed her not to inform anybody and if she did he would kill her. She therefore went home and slept and on 27th December, 2022, she woke up and saw blood in her vagina and she was afraid so she informed her mother.

Exhibit E, which is the Medical Report by Dr. Stephen Siaw Agyeman of the Ga West Municipal Hospital is also worth considering. It provides in part as follows:

“On Examination: Scanty blood seen at introitus with small cuts seen on the vaginal wall when parted. Remnants of torn hymen seen when speculum used.”

The combined effect of PW1’s evidence as well as Exhibit E clearly point to the fact that PW1 has been carnally known.

From the evidence, on two tries in two different positions, the Accused tried to penetrate PW1’s vagina but he could achieve a full penetration. After the act, he asked PW1 to go and warned that she should not inform anyone or else he would kill her. It is trite that on a charge of rape or defilement, any extent of penetration of the penis of the vagina constitutes an offence. The law therefore does not require full penetration of the penis into the vagina in order to establish a charge of rape or defilement. From the evidence, the victim is aged 11 years old and is still developing while the Accused is aged 45 years, it is therefore rational how the Accused person did not achieve a full penetration of the victim. In the case of **STATE V. GYIMAH [1963] 2 GLR 446** it was held as follows:

“In a charge of rape, the offence of indecent assault is an alternative verdict which the court can consider where it is not satisfied that penetration had taken place...”

Under the law, a charge of indecent assault would lie where there is no evidence of carnal knowledge. In the instant case I find on the evidence before me evidence that PW1 has been carnally known. There was therefore some degree of penetration of PW1.

In the case of **LUTTERDOT V. C.O.P (1963) 2 GLR 430**, it was held as follows:

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

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

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

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

The defence raised by the Accused Person is a total denial of the offence charged. In one breath the Accused Person claimed that he knew the victim as a neighbour and in another he claimed that he did not know her at all. The following ensued during cross examination of Accused by Prosecution:

Q: Mr. Attim do you know the victim Joyce Etepe

A: Yes, we live in the same neighbourhood

...

Q: I put it to you that on that day you took the victim behind the house and had sexual intercourse with her.

A: I did not take her anywhere; I do not know her from anywhere”

In his Investigative Cautioned Statement tendered as Exhibit D, the Accused person stated that on 26th December, 2022 at about 8:00pm there was a party in his neighbourhood, so he went there at about 10:00pm and PW1 came to him to buy her biscuit but he told her he did not have any money on him and left. He stated that at about 10:00pm when he was sleepy and was going home PW1 followed him and asked him to show her his penis so he did and she held it and he had an erection. According to him, he then pulled off her panties and brushed his penis on her vagina and when he ejaculated he asked her to go home and he also went to sleep. He stated that he never inserted his penis into her vagina. At trial, the Accused stated that he made his Statement in desperation.

In the case of **STATE v. OTCHERE AND OTHERS [1963] 2 GLR 463** it was held as follows:

“(3) A confession made by an accused person in respect of a crime for which he is being tried is admissible against him provided it is shown by the prosecution that it was made voluntarily, and that the accused was not induced to make it by any promise or favour, or menaces, or undue terror.

(4) Where counsel for an accused person is instructed that a confession has been obtained in circumstances which violate the fundamental requirements of admissibility, it is the duty of the counsel to object to the confession going in evidence and thereby invite an adjudication by the court on the issue of admissibility. If he fails to object to its reception, he may nevertheless cross-examine prosecution witnesses in respect of the confession statement or lead evidence to establish circumstances which violate the fundamental requirements and if he succeeds in establishing such circumstances, the evidential value or weight of the confessions although already admitted in evidence, will be negligible...”

In this case, though counsel was before this court on 29th June, 2023 when the case was scheduled for Case Management Conference and he showed a desire to represent the Accused pro bono, he failed to appear subsequently hence the Accused conducted the case himself. The Accused not being learned in the law would thus not know how and at which point to raise an objection to the tendering of a document. Having however raised issue with the investigative statement during cross-examination, I shall place little probative value on Exhibits D and D1.

In the case of **REPUBLIC v. YEBOAH [1968] GLR 248** it was held as follows:

“That the evidence of the victim on oath in law needed no corroboration but it was a prudent rule of practice to look for corroboration from some extraneous evidence which confirmed her evidence in some material particular implicating the accused. Apart from the fact that the evidence of a victim in a sexual offence must be corroborated there was the added factor that the victim was a young person of only nine years and the evidence of a young person must as a rule of prudence be well corroborated before being acted upon by the court. There was ample circumstantial evidence corroborating the

testimony of the victim that the accused ravished her. In all the circumstances of the case, even if there was no corroboration at all of the evidence of the victim, which implicated the accused in some material particular, the court was sufficiently warned of the danger of acting on the uncorroborated evidence of a victim in a sexual offence, who was a young person and was satisfied that the victim was a witness of truth.”

Based upon the direct evidence of PW1 and Exhibit E, I find that Prosecution has established that it is the accused person who carnally knew PW1. It could not have been coincidental that the Accused person is named as the perpetrator of the defilement of PW1. I consider that PW1 is a credible witness who understood the requirement to be truthful to the court and in the face of cross examination, she maintained her account of events. I do not however consider the Accused person to be a truthful witness.

Based on the evidence before this court, I accept entirely the evidence of PW1 and find that the prosecution has discharged the burden of proving its case beyond any reasonable doubt. I reject the Accused's evidence as not reasonably probable and also as untrue. In the circumstances, I find the Accused guilty as charged and hereby convict him accordingly.

I must admonish the parents of PW1 for causing an 11-year-old girl to attend a party which started at 7:00pm alone and permitting her to stay till after 11:00pm. This is definitely not in the best interest of the child and sins against the most basic principle underpinning the Rights of Children in Ghana being the Welfare Principle. Parents have rights and responsibilities imposed by law toward the child and such responsibilities include the duty to protect the child from neglect, violence, abuse, exposure to physical and moral hazards and oppression. The Parents of the victim are to henceforth provide good guidance, care, assistance and discipline for the child.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**