

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON THURSDAY, THE 16<sup>TH</sup> DAY OF MARCH 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM VIDA DANQUAH AND MADAM PHILOMENA SACEYAS PANEL MEMBERS

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SUIT NO. R16/16/23

THE REPUBLIC  
VS  
OSWALD QUANSAH

Juvenile present with Father.

Complainant present.

Inspector Luke Taylor with Sgt Lydia Agyeman for the Republic.

Lawrence Boampong Wereko Esq. with Papa Yaw Nyamekye Junior for Martin Kpebu Esq. for the Juvenile.

**JUDGMENT**

**Background**

The Juvenile, on the 19<sup>th</sup> day of January 2023 was charged before the Juvenile Court with One (1) count of Defilement of a female under the age of 16years of age contrary to Section 101(2) of the Criminal Offences Act, 1960 (Act 29). The Particulars of Offence: in the month of January 2023 at Nsufa, a suburb of Sowutuom in the Greater Accra Region and within the jurisdiction of this court, did carnally know one Rashidatu Musah, a female child age 10 years. The Brief Facts as incorporated from the Charge Sheet is that the Complainant is a driver and resides at Sowutuom with his family together with victim Rashidatu Musah who is 10 years and the last child of the complainant. Juvenile is a JHS 2 student and stays with his mother. Both complainant and Juvenile stay together as co-tenants. Victim on the 4<sup>th</sup> of January 2023 at about 3.30pm was sent by another tenant by name Charity to give money to the Juvenile to buy something for her. Juvenile who was alone in his mother's room, after receiving the money from the victim pulled her back into the room covered her mouth and had sexual intercourse with victim on his mother's bed. Victim was in pains and started bleeding on the bed

profusely and was rushed to Deseret hospital for treatment on the same day but the bleeding did not cease and on the 5<sup>th</sup> of January 2023 at about 9am, the victim was transferred to the Korle Bu Teaching Hospital Gynae Emergency Unit. A medical report from received from the hospital indicates that he victim had a second-degree perianal tear extending from about 1cm below the post-fornix to the introits with active bleeding hymen absent with raw surface and abrasions around it.

The Juvenile was arraigned before the court and on the 2<sup>nd</sup> of February 2023, the Juvenile pleaded guilty to the charge of defilement and the Court convicted the Juvenile on his own plea. Consequently, Social Enquiry Report (SER) to be conducted for onward sentencing of the Juvenile.

## **SENTENCING**

In sentencing the Juvenile, the Court is guided by Section 24(1) of the Juvenile Justice Act, 2003 (Act 653) which provides, among others, that *“where a Juvenile is charged with an offence, the Juvenile Court shall order a Social Enquiry Report (SER) to be submitted to the Court which shall be taken into account in making an Order”*. The Probation Officer, Mr. Richard Tegbey, conducted the investigation and presented same to Court. The SER revealed the nature of the offence, the character, antecedents and home surroundings of this Juveniles as well as the circumstances that led to offence being committed.

### ***The Social Enquiry Report (SER)***

The SER gathered that the Juvenile is an only child of his parents who have been separated since the Juvenile was about Three (3) years old but the mother had custody of the Juvenile. The Juvenile is currently in Junior High School Form 3 and according to his parents, no adverse report has ever been received about the Juvenile from his infancy until this very incident and are therefore shocked. With respect to the offence, the Juvenile informed the Probation Officer that the victim came to him in his mother's room with GH¢ 11.00 that one Aunty Charity who also lives in the house asked him to buy fish to prepare food. He said when the victim gave the money to him, she left but returned and sat on him when he was lying on his mother's bed but later left. The Juvenile claimed that after some few minutes, the victim came for the second time and

repeated the same act, prompting him to hold the victim, put her on his mother's bed, removed his dress and that of the victim and put his penis into her vagina. The Juvenile mentioned that during the sexual intercourse, the victim bled and cried.

The victim narrated that on the fateful day, one Auntie Charity, a tenant in their house sent her to give GH¢ 11.00 to the Juvenile to buy meat for her to prepare food. She said having given the money to the Juvenile and whilst turning to leave the room, the Juvenile cupped her mouth with his hand from behind and dragged her backwardly to his mother's room. The victim stated that in the room, the Juvenile put her on his mother's bed, undressed her and himself and put his penis into her vagina. The victim indicated that the act was so painful and when she attempted to shout for help, the Juvenile covered her mouth again of which she had to bite his hand before he got up off her and then reported the ordeal to Auntie Charity who also reported to her grandmother.

According to the victim's parents they were all at their various work places when they were called by Auntie Charity to come home because the Juvenile defiled the victim. Upon their arrival, they saw the victim bleeding profusely of which they ended up at the Korle-Bu Teaching Hospital, upon a referral, where the victim was sutured. The Probation Officer concluded the SER by recommending Detention as a form of reforming the Juvenile, and the said recommended sentence as provided in *Section 46 (1) of Act 653, provides that where a Juvenile or young offender is ordered to be sent to a Centre, the detention order shall be the authority for the detention and the period shall not exceed ... three years for a serious offence*'.

### ***Analysis***

In determining what sentence to impose on a child, the best interest of the child must be a paramount consideration. In dealing with such children in conflict with the law, the Court must opt for an option which is appropriate to their well-being and proportionate both to their circumstances and to the offence. In other words, when dealing with child offenders, the emphasis should be on reformatory justice and not necessarily punishment. According to Sir Dennis Dominic Adjei, in his book **Contemporary Criminal Law in Ghana**, 3<sup>rd</sup> Ed., 2021 at page 19 stated that '*Juveniles and young persons*

*are still young and maybe first-time offenders, they are therefore more likely to reform when given the opportunity'. The question therefore is whether or not the recommendation of the Probation Officer, which is a custodial sentence will be in the best interest of the child? Custodial sentence of Three (3) years will certainly deprive the Juvenile his liberty and one of the objectives of Juvenile justice is to ensure that deprivation of liberty is used only as a measure of last resort, especially when there are a variety of non-custodial options available as well as the fact that the law has given the Court broad flexibility and discretion in choosing the most appropriate penalty in each case. The **Juvenile Justice Bench Book** provides the following guidance on the best interest of the child: "The considerations for assessing what is in the best interest of the Juvenile are not reflected in any legislation. It is however important to note that the objective of the Juvenile justice system is to fashion out specific provisions which are appropriate to the needs of Juveniles. The measures which are in the best interest of the Juvenile offender must be guided by the principles of reformation, education and the proper growth of the Juvenile into adulthood and not punishment or deterrence. Additionally all interventions resorted to must be proportional to the seriousness of the offence committed by the Juvenile."*

The evidence on record and particularly the SER shows that the Juvenile's actions were heinous and caused severe injury to the victim to the extent that she had to be sutured. The victim had a very severe and traumatic experience with the Juvenile which still lingers in her mind. The Juvenile defiled the victim and per the law, the punishment for such offences is detention for a maximum period of Three (3) years. Before passing the appropriate sentence, there is the need to consider the mitigating factors in this case.

## **Mitigation**

The Court takes note of the fact that the Juvenile pleaded guilty simpliciter and thereby saving the court the process of going through a full trial. Additionally, the SER revealed that the Juvenile is a first time offender and is the only child between his parents who got separated when the Juvenile was about Three (3) years old with the mother having custody of the Juvenile. The SER again revealed that the Juvenile is currently in Junior

High School Form 3 and is about to write his first major examination in a couple of months from now. The Juvenile has also been very remorseful since the day his plea was taken and further volunteered to openly apologize to the victim and the parents which he did in open court.

Counsel for Juvenile during the pre-sentence hearing pleaded with the court to show mercy to the Juvenile. He submitted, among others, that the offence and the facts are very difficult to digest and the Juvenile has not attempted in any way to cover up those facts. He admitted that there is a Ten (10) year old victim whose is in pain and suffering as well as angered parents but pleaded with the court to take into consideration of the fact that right from the beginning, the Juvenile's parents attempted to reach out to express their sympathy to the victim and the parents but they were too angered to listen to them. Counsel submitted further and prayed the court to consider another form of sentence other than custodial as the Juvenile and his parents are willing to do the following;

- a) Comply with any order not to come within a certain radius of the community within which the incident happened as that will help both the victim and her parents not to relive the pain and suffering;
- b) Assist the victim to receive psychological treatment of the victim at any facility;
- c) Pay some compensation to the victim and parents to cater for expenses that have been occasioned as a result of the incident;
- d) Pay a fine;
- e) Serve any other punishment the court will impose.

Counsel concluded his submissions by stating that the Juvenile informed him that he wanted to voluntarily plead and apologize to the victim and her parents before the court. He therefore prayed the court that even if it is just for symbolic a symbolic effect, the Juvenile should be given the opportunity. The court granted counsel's prayer and the Juvenile together with his parents apologized to the victim and her parents in court.

In the case of *Daniel Yaw Owusu vs The Republic*; Suit No.: CC No. CR 0489/2021 delivered on the 8<sup>th</sup> of December 2021, the learned Judge stated as follows; '*...I have also considered the circumstances of the case and I find that the trial court in sentencing the Accused*

*person...did not consider his personal circumstances as well as mitigating or aggravating factors before imposing the maximum sentence. As has been correctly submitted and argued in this appeal, the trial judge should have taken into consideration the mitigating factors on record, the mitigating factors as gleaned from the records indicate that the Juvenile is a first time offender, has no previous criminal record and also pleaded guilty to the charge, thereby not wasting the court's time'.*

In spite of all that has been stated above, the Court is also of the opinion that it is best to be “tough” on a first time Juvenile offender so as to serve as a deterrent to him and also prevent him from re-offending. **At the same time, the Court takes into consideration the offence, which Act 653 includes as a serious offence, the Juvenile's age, the Juvenile's background and all circumstances surrounding the case and is of the opinion that the custodial sentence which will mean detaining the Juvenile for the next Three (3) years of his life will not be in his best interest and may to a large extent defeat the main purpose of the Juvenile Justice System which aims at reformation, education and the proper growth of the Juvenile into adulthood and not punishment or deterrence.** It is the duty of the court to consider the effect the sentence is likely to have on the child or young person, both positive and negative, as well as any underlying factors contributing to the offending behavior. The Court is again guided by Section 2(1) of The Children's Act, 1998 (Act 560) which provides that *'the best interest of the child shall be the primary consideration by any Court, person, institution or other body in any matter concerned with a child.'* The Court takes cognizance of the fact that the Juvenile is preparing to write the first major examination in his life, which is the BECE and acknowledges the Recommendations of the Probation Officer and but shall depart from the recommendations of the Probation Officer.

#### **SENTENCE:**

Pursuant to Section 29 and 31 of Act 563, the Juvenile is sentenced as follows:

1. Released on probation for a period of One (1) year and is to be committed to the care of his parents.
2. The Father of the Juvenile is to give security for good behavior of the Juvenile.

3. The Juvenile is ordered not to come within Fifty (50) meters close to the victim.
4. Compensate the victim with an amount of Five Thousand Ghana Cedis (Ghc5,000.00) and same shall cover the medical expenses.
5. The Juvenile and his parents are to oversee and assist the victim to receive the psychological treatment.

**SGD**

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**H/H HALIMAH EL-ALAWA ABDUL-BAASIT.**  
**PRESIDING JUDGE**

**I AGREE**

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**MADAM PHILOMENA SACKY**  
**PANEL MEMBER**

**I AGREE**

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**MADAM VIDA DANQUAH**  
**PANEL MEMBER**