CORAM: HER HONOUR MRS ADWOA AKYAAMAA OFOSU, CIRCUIT COURT JUDGE SITTIING AT THE CIRCUIT COURT MPRAESO, EASTERN REGION ON THE 23RD OF OCTOBER, 2023

B6/32/2023

THE REPUBLIC

V

EMMANUEL YAW GYAMFI

……

…….

TIME: 8:55

ACCUSED PRESENT

CHIEF INSPECTOR M. POMEVOR FOR PROSECUTION PRESENT

LAMBERT ASOBAYIRE ESQ H/B PHIDELIS OSEI DUAH ESQ FOR THE ACCUSED PRESENT

JUDGMENT

On the 1st of June, 2023, the accused person was arraigned before this court charged with ***defilement of a female under sixteen years*** contrary to section 101(2) of the **Criminal Offences Act 1960, (Act 29).** The accused pleaded not guilty to the charge. The case was thus set down for trial for the prosecution to prove the guilt of the accused person beyond reasonable doubt.

The facts in support of the charge are that the complainant Kwasi Simpeh is a tailor and the father of the victim Godstime Nyantakyiwaa aged one and half years. The Accused is 25 years old and a cobbler staying at Nkawkaw Amanfrom and also a friend to the complainant. On 25th May, 2023 about 7:30 am, the accused visited the complainant in his house and met him with the victim watching a movie in the living room and he joined them. In the process, the complainant left the room leaving the accused and the victim. The accused after the departure of the complainant carried the victim on his lap while he was sitting in the sofa chair. The accused then opened his jeans shorts zip, brought out his penis and had sexual intercourse with the victim on his lap.

The complainant later noticed some fluid stains between the thighs of the victim and so questioned the accused who admitted having sexual intercourse with the victim. A report was made to the police and a medical form was later prepared and the victim was accompanied to the holy family hospital, Nkawkaw for treatment. The endorsed police medical form was later received from the said hospital which stated that during vagina examination, the hymen was found to be torn in the middle with circumferential remnants seen and that there was reddening of the mucosa surrounding the hymen area also. The accused was therefore arrested and he admitted the offence in his investigation cautioned statement obtained in the presence of an independent witness. After investigations the accused was charged with the offence as stated on the charge sheet and arraigned before this court.

The foundation of our criminal justice system is premised on Article 19(2)(c) of the 1992 constitution which provides that a person charged with a criminal offence until he is proven guilty or has pleaded guilty.

The law is trite that in criminal cases, the burden is on the prosecution to prove the guilt of the accused beyond reasonable doubt. See sections 11, 13 and 15 of the **Evidence Act, 1975 (NRCD 323).** In the case of **Banousin v. The Republic [2015-2016] 2 SCGLR 1232 at page1241,** the Supreme Court held that:

The burden the prosecution has to prove is the accused person's guilt, and this is beyond reasonable doubt. This is the highest burden the law can impose; and it is in contra distinction to the burden a plaintiff has in a civil case which is proof on a preponderance of probability of the evidence. What beyond reasonable doubt means is that the prosecution must overcome all reasonable inferences favouring the innocence of the accused. Discharging this burden is a serious business and should not be taken lightly. The doubts that must be resolved in favour of the accused must be based on the evidence; in other words, the prosecution should not be called upon to disprove all imaginary explanations that established the innocence of the accused person

Furthermore, the term "reasonable doubt" was explained by Lord Denning in the case of **Miller vs. Minister of Pensions (1947) 2 All ER 372** is as follows;

"It needs not reach certainty but must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The Law would fail to protect the community if it admitted fanciful positions to deflect the course of justice"

In an effort to discharge its burden of proof, the prosecution led evidence through two witnesses being the complainant Kwasi Simpeh, PW1 and the investigator Detective Inspector Masawudu Manaf, PW2. The prosecution tendered in evidence **Exhibit A,** the cautioned statement of the accused person, **Exhibit B** the Charge statement of the accused

person, **Exhibit C** the medical report on the victim and **Exhibit D** the chair in which the accused had sexual intercourse with the victim.

At the close of the case for the prosecution, this court differently constituted ruled that there was a case for the accused to answer. He was thus called upon to testify in his defence.

The accused person is charged with defilement contrary to **section 101(2)** of Act 29. **Section 101(2)** of Act 29, states as follows;

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

Defilement is defined under **section 101(1)** of Act 29 as *"the natural or unnatural carnal knowledge of a child under sixteen years of age."*

In the case of **Asante (No.1) v. The Republic (No.1)[2017-2020] I SCGLR 132,** the Supreme Court, per Pwamang JSC, at page 143, identified the following ingredients of the charge of defilement which the prosecution must prove to secure conviction;

1. That the victim is under the age of sixteen;
2. Someone had sexual intercourse with her; and
3. That person is the accused;

Further to that, under **section 14 of Act 29**, a child under 16 years of age lacks the capacity to consent to sex. Thus, any consent to natural or unnatural carnal knowledge is void and such a defence is not open to an accused person on a charge of defilement.

On the first ingredient of the offence, **the prosecution must prove the age of the victim as a person below the age of 16 years.**

In the instant case it is alleged that the accused had carnal knowledge of a female child aged one and half years. The prosecution did not tender any document in evidence which directly proves the age of the victim like for example a birth certificate or a baptismal certificate.

Section 19 of the Juvenile Justice Act, 2003, (Act 653), which deals with presumption and the determination of age, provides as follows;

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

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

In the case of **Robert Gyamfi v. The Republic** (unreported), [Suit No. H2/02/19] CA, Kumasi per Dzamefe JA, delivered on 27th February, 2019, the court stated: *"…The three certification mentioned there are not the only means of identifying one's age in our jurisdiction. Yes, I know the statute is specific for children below eighteen years. Aside those certificates mentioned, the National Health Insurance Card for now is one of the official documents for the identification and age of all Ghanaians, either young or old. The class or school register is also one of such official records accepted as indicating the identity and age of school children".*

Here, as aforementioned, the prosecution did not provide direct proof of the age of the victim however **Exhibit C** which is the medical form endorsed by one Dr Osam Frimpong of the Holy Family Hospital, Nkawkaw who physically examined the victim described

her as a toddler. *A toddler is defined in the* ***7th edition of the Oxford Advanced learner's Dictionary*** *as "a young child who has recently learnt how to walk"* The **Merriam Webster Dictionary** also defines a toddler as *"a person who toddles: especially a young child between one and three years old".*

Furthermore, it is also noted that the age of the child was never in contention throughout the trial. This means that there is a consensus as to the age of the child. I am therefore satisfied from the evidence that the victim, Godstime Nyantakyiwaa is a female under the age of sixteen years as stipulated by the law under section 101 of Act 29.

On the second ingredient of the offence, **the prosecution must prove that someone carnally knew the victim.** Section 99 of Act 29 states that:

"where on a trial of a person for a criminal offence punishable under this Act, it is necessary to prove carnal knowledge or unnatural carnal knowledge, the carnal or unnatural carnal knowledge is complete on proof of the least degree of penetration."

In the case of **Gligah & Attiso v. The Republic** [2010] SCGLR 870, SC@ page 879, *Dotse JSC* defined carnal knowledge as

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

PW1, the father of the victim told the court that he left the accused and his daughter in the room to attend to something. When he returned, he called the accused to send him but it took a while before he came out. When he entered the room the victim started pointing to her buttocks area. Upon inspection, he saw some fluid between her thighs and on her buttocks.

Obviously the victim in question who is a little over a year old could barely talk and therefore there was no direct testimony from her concerning the degree of penetration. PW2, the investigator told the court that after the complainant reported the case, he accompanied him to the Holy family hospital where the victim was receiving treatment and he issued a medical form to her. According to PW2, the victim could not give any meaningful statement to her due to her age and her condition at the time. PW2 further told the court that **Exhibit C** the medical form endorsed by a medical officer indicated that there has been a penetration. Specifically, the report states that *"the hymen is torn in the middle with circumferential remnant seen. There is reddening of the mucosa surrounding the hymen area. These findings are consistent with vaginal trauma"* The report thus concludes that there was defilement.

Furthermore, the accused in **Exhibit A** stated that:

'... I then carried the victim on my lap while sitting in the sofa chair. In the process, I opened my jeans knicker zip and brought out my penis and tried to insert same into the vagina of the victim Godstime Nyantakyiwaa @Maa Adwoa. In the course of that I was finding it difficult to penetrate due to the fact that my penis was bigger than the victim's vagina..."

It is instructive to note that the prosecution need not prove a discharge of spermatozoa into the vagina and the penetration need not necessarily lead to the tearing of the hymen or that the victim must bleed to constitute carnal knowledge since the least degree of penetration suffices for purposes of proving carnal knowledge. On the basis of **Exhibit A** wherein the accused states that he tried penetrating the victim, coupled with the vaginal examination conducted on the victim which shows that her hymen was torn as per **Exhibit C**, I find that the victim was carnally known.

Proving the last ingredient of the offence being that it was the accused and no one else who had carnal knowledge of the victim in this case did not pose any challenge. The

accused person in **Exhibit A** admitted the offence. Furthermore after PW1 testified and the accused was called upon to cross examine him, he said at page 3 of the record of proceedings that *"Everything the complainant has said is correct". I have no question to ask him except to say he should forgive me".* The accused thus did not cross examine PW1 on his evidence. Again after PW2 testified and the accused was asked to cross examine him, he said he had no questions to ask him.

During cross examination of the accused the following ensued:

Q: In your statement to the police, you said on the 25th May, 2023 at about 9:00am you visited the complainant is that correct?

A: Yes that is so

Q: In the same statement, you said when you went to the house, you saw the complainant and the victim in the sitting room watching movie. Is that correct?

A:Yes that is so

Q:Again in your own statement, you said the complainant left the room and left you and the victim in the room. Is that correct?

A: Yes

*Q:*In your own statement, you said you picked the girl and put her on your lap and you removed your penis and inserted in her vagina. Is that so?

A: Yes

From the forgoing therefore, the issue is put beyond doubt that it was the accused person and no one else who had carnal knowledge of the victim in the instant case.

On the totality of the evidence of the prosecution and the accused, it is my view that the prosecution successfully proved the guilt of the accused person beyond reasonable doubt. The accused person is thus pronounced guilty and convicted accordingly as charged.

SENTENCING

In sentencing the accused person, the court takes into consideration his plea in mitigation, the fact that he is a first time offender, in accordance with Article 14(6) of the 1992 constitution time spent in custody awaiting trial. The court further takes into consideration aggravating factors such as the age of the victim being one year six months old and the failure of the accused to plead guilty simpliciter thereby necessitating the court to conduct full trial. I therefore sentence the accused to serve a term of 15 years imprisonment in hard labour.

H/H ADWOA AKYAAMAA OFOSU (MRS)

CIRCUIT COURT JUDGE