IN THE CIRCUIT COURT "A", TEMA, HELD ON TUESDAY, THE 15TH DAY OF AUGUST, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH, CIRCUIT COURT JUDGE

SUIT NO: D10/23/22

THE REPUBLIC

VRS:

EMMANUEL DOME KOULEWOSSI

ACCUSED PERSON **PRESENT**

ASP STELLA NASUMONG FOR PROSECUTION PRESENT

EDWARD METTLE NUNOO, ESQ. FOR ACCUSED PERSON PRESENT

JUDGMENT

FACTS:

The accused person was charged and arraigned before this court on 17th March, 2022 on a charge of defilement contrary to **section 101(2)** of the Criminal offences Act, 1960(Act 29).

The brief facts presented by the prosecution are that the complainant, Emmanuel Tetteh Narh is the father of the alleged victim, Joseph Tetteh a seven-year-old class two pupil of Prime Systems School located at Old Ningo. The accused person is also the class teacher of the victim who lives at Old Ningo. The prosecution alleges that on 11th March, 2022 at about 2:30pm, whilst the alleged victim was at the school gate waiting for the school bus to go home, the accused person took him into the class two classroom and pulled down shorts of the alleged victim to his thigh level. The accused

person then opened his trousers zip, sat on a chair and ordered the alleged victim to sit on his laps. After that, the accused person inserted his penis into the anus of the alleged victim whilst holding his waist. The prosecution further states that some of the pupils in the school saw the accused person in the act and quickly informed the senior brother of the alleged victim in the school by name Paul Tetteh. However, when the said brother got to the school, the accused had finished defiling the victim. The senior brother of the alleged victim subsequently informed his mother Patience Tetteh who in turn informed the complainant who went with the alleged victim to the Old Ningo Police Station to lodge a complaint. Subsequent to that, a police medical report form was issued to the complainant to send the alleged victim to hospital for treatment. The Complainant returned the medical form duly endorsed by a medical officer. The prosecution further alleges that when the accused person was arrested, he admitted the offence in his caution statement. After investigations, he was charged with the offence and arraigned before the court.

THE PLEA

The accused person who was represented by Counsel pleaded not guilty to the charge after it had been read and explained to him in the English language. The accused person having pleaded not guilty to the charge put the facts of the prosecution in issue and the prosecution assumed the onerous burden to prove the guilt of the accused person beyond reasonable doubt.

BURDEN OF PROOF

A fundamental principle of our criminal justice system is that a person accused of a crime is presumed innocent until he has pleaded guilty or

proven guilty. It is trite learning that in criminal cases, the prosecution bears the burden to prove the guilt of the accused person beyond reasonable doubt. See **sections 11(2), 13(1) and 15** of the Evidence Act, 1975, (NRCD 323). In the case of **Gligah & Attiso v. The Republic** [2010] SCGLR 870, the Supreme Court held in holding one as follows;

"Under article 19 (2) (c) of the 1992 constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person was arraigned before any court in any criminal trial, it was the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond reasonable doubt. The burden of proof was therefore on the prosecution and it was only after a prima facie case had been established by the prosecution that the accused person would be called upon to give his side of the story."

The burden on the accused person, when called upon to open his defence, is to raise a reasonable doubt in the case of the prosecution. The standard of proof for the defence is proof on a balance of probabilities. In the case of **Osae v. The Republic** [1980] GLR, 446, the court held in its holding 2 that: *"although it was a settled law that where the law cast the onus of proof on the accused, the burden on him was lighter than on the prosecutor, and the standard of proof required was the balance of probability, if at any time of the trial, the accused voluntarily assumed the onus of proving his defence or some facts as happened in this case, the standard he had to discharge was on a balance of probabilities."*

ANALYSIS

Here, the accused person is charged with defilement contrary to **section 101** of Act 29. The section provides as follows;

"(1) For the purposes of this Act, defilement is the natural or unnatural carnal knowledge of a child under sixteen years of age.

(2) 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."

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

1. The alleged victim is less than sixteen years of age.

2. That a person has had natural or unnatural carnal knowledge of the victim.

3. That person is the appellant (accused person).

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 carnal or unnatural carnal knowledge is void and immaterial for purposes of proving a charge of defilement.

It is also instructive to note that the use of the word *"child"* under section 101 means that the offence is gender neutral and can be committed in respect of a male or a female below the age of 16 years. In the instant case, from the particulars of offence, the accused person is alleged to have had an unnatural carnal knowledge with one Joseph Tetteh, a male below 16 years at the time of the alleged incident.

Firstly, **the prosecution must prove that the alleged victim was a child below the age of sixteen years at the time of the alleged incident.** Throughout the trial, the age of the alleged victim as a child below the statutory age of 16 years was not challenged. PW1, the alleged victim gave his age as seven (7) years old. The weighing card of the child admitted and marked without objection as **Exhibit "C"** shows that the child was born on 2nd May, 2014. Meaning, at the time of the alleged incident on 11th March, 2022, the child was aged 6 years old. Indeed, the accused person in his defence admits that he teaches class two pupils with the ages of the children in his class ranging between 6 years to 12 years. The court also observed the physical appearance of the child when he came to give evidence and is satisfied that he is below the statutory age of 16 years. I therefore hold that the prosecution succeeded in proving the age of the alleged victim as a person below the age of 16 years at the time of the alleged incident beyond reasonable doubt.

Secondly, **the prosecution must prove that someone had unnatural carnal knowledge of the male below 16 years.** Section 99 of Act 29 states that "*where on a trial of a person for a criminal offence punishable under this Act, it is necessary to prove carnal knowledge or unnatural carnal knowledge, the carnal or unnatural carnal knowledge is complete on proof of the least degree of penetration.*"

Section 104 (2) of Act 29, defines unnatural carnal knowledge as sexual intercourse in an unnatural manner or with an animal. Sir Dennis Adjei in his book **Contemporary Criminal Law** in Ghana 2nd edition at page 241, states that though having sexual intercourse in an unnatural manner has not been defined in the Ghanaian context, having sexual intercourse through the anus should constitute sexual intercourse with another person in an unnatural

manner and also submits that sexual intercourse through the nose and ears also constitute unnatural manner.

To prove that the accused person unnaturally carnally knew the alleged victim, the prosecution called four witnesses and tendered in evidence **Exhibit "A"-**the Police medical report form, **Exhibit "B"**, the investigation caution statement of the accused person and **Exhibit "D"**, the charge statement of the accused person.

The first prosecution (PW1) the alleged victim testified that he is aged 7 years and attend Prime Systems School with his elder sibling and the accused person is his class teacher popularly called Sir Emma. According to his testimony, on the day of the alleged incident which was a Friday, they had closed from school and he was standing at the school's gate waiting for the school bus when the accused person called him to come to the class room. When they got to the classroom, the accused person sat on his chair and pulled his school shorts down to his knee level and he also opened his zip and ordered him to sit on his laps. When he sat on his laps, the accused person inserted his penis into his anus. According to his testimony, at the time, two of his school mates namely, Desmond and Eric who were passing by peeped through the window and saw what the accused person was doing to him but the accused person who was looking at a different direction did not notice them. The two students who saw them informed his elder brother who was waiting in the bus but when his brother got to the scene, the accused person had finished and he was coming out of the classroom. He then told his brother what the accused person had done to him. When they got home, his brother told his mother that the accused person inserted his penis into his

anus. Upon receipt of the information, his mother also informed his father and he confirmed to his father that the accused person had anal sex with him. PW1 further testified that his parents took him to the police station to lodge a complaint and he was later sent to the hospital for examination and treatment.

The father of PW1 testified as the second prosecution witness, that he lives at New Ningo with his wife and children and work as a commercial driver. On 11th March, 2022, he was at work when he received a call from his wife that when his children returned from school, PW1 informed her that his teacher by name Sir Emma, the accused person herein, had anal sex with him in the school. Upon interrogation, PW1 recounted how the accused person, had anal sex with him in the school. Based on that, he went with his wife, his eldest son and PW1 to the police station to lodge a complaint and he was issued with police medical form to send the victim to hospital for examination and treatment. From the hospital, he returned the endorsed medical form to the police and the police took down their statements. After that, he together with PW1 led the police to the accused person's house where he was arrested by the police. He was also asked to produce any record of birth of the victim which he did.

The third prosecution witness, Dr. Alhassan Haifa, a Senior Medical Officer at the Tema General Hospital who examined PW1 after the alleged incident tendered in evidence **Exhibit "A"**, the medical report he prepared after examination. According to him, anal examination revealed penetrative marks with bruises and the internal anal region minimally widened. According to him his findings suggests that something either penis, a hand or any other object passed through the anal region of the child. Under cross-examination by counsel for the accused person, PW3 testified that the test he requested for

were mainly for infections and could not say for certain if the recommended tests were conducted after PW1 left his consulting room. Also, he further testified under cross-examination that since in this case, the alleged sexual intercourse was anal, even if sperms are emitted, the sperms will move to the rectum which will make it difficult for sample to be taken for analysis to confirm that sexual intercourse had taken place or to match with the DNA of the accused person.

The fourth prosecution witness D/Inspr. Chigati Lenard Adda stationed at Old Ningo testified that on 11th March, 2022, PW2, accompanied by his wife and two sons, Abraham Tetteh and PW1 lodged a complaint at the police station that the accused person had defiled PW1 and the case was referred to him for investigations. PW4 narrated the steps he took during investigations. According to him, he left to the place of abode of the accused person together with PW1 and PW2 on enquiries. PW2 led him to an unmarked house located at Awusavu at Old Ningo and PW1 identified the accused person as his class teacher and the person who inserted his penis into his anus in the classroom. Based on the identification, the accused person was arrested. He tendered in evidence the investigation caution statement of the accused person admitted and marked as **Exhibit "B"** in which the accused person admitted to the commission of the alleged crime.

Additionally, PW4 testified that on 14th March, 2022, PW1, PW2 and the accused person led him to Prime Systems School, Old Ningo on enquiries. At the school, he met the headmistress of the school who pleaded that for the sake of the reputation of the school and the protection of the other pupil in the class room, the accused should not be sent there. The headmistress and PW2

led him into the Class 2 classroom where PW1 pointed to a wooden chair and table at the corner of the classroom as where the accused person sat and defiled him. PW1 also mentioned two pupils as those who saw the accused person in the act and went and report to his senior brother on the day of the incident. He then took witness statement from the two pupils by name Desmond Seshie and Eric Oduro, who both indicated on how they saw the accused person through the school window defiling the victim in the presence of the Headmistress and her staff inside her office. After gathering the above information, the accused person Emmanuel Dome Koulewossi was charged with the offence of Defilement. He tendered in evidence **Exhibit "D"**, the charge statement of the accused person.

The evidence of PW4 regarding what the said children told him out of court is clearly hearsay. In the instant case, school mates of the alleged victim were not called as witnesses and their statements given to the police were also not tendered in evidence. In the case of **Logs & Lumber Ltd. v. Oppon** [1977] 2 GLR 263 CA holding 3 held that:

"Hearsay evidence was inadmissible per se and could not form the basis of a judgment, and if such inadmissible evidence was received with or without objection, it was the duty of the judge to reject it when giving judgement and if he had not done so, it would be rejected on appeal as it was the duty of the courts to arrive at their decision upon legal evidence only"

Consequently, the court will not rely on the hearsay evidence in evaluating the evidence though received without objection.

From the evidence led by the prosecution witnesses, I find that the prosecution established that someone had sexual intercourse with PW1 through the anus. Under intense cross-examination by Counsel for the

accused person, the seven (7) year old was unshaken in his testimony that the accused person who is his class teacher, inserted his penis into his anus. He further testified under cross-examination that when he was sent to the hospital, the doctor examined his anus and prescribed medication for him. According to him, when the accused person inserted his penis into his anus, he felt pains but as at the time he was testifying the pain had subsided. The medical report, **Exhibit "A"**, also firmly corroborates the account of PW2 that there is trauma in the anal region. I there find that someone had anal sex with PW1.

Lastly, **the prosecution must prove that it was the accused person and no other person who had anal sex with PW1.** In sexual offence cases, proof of the identity of the person charged as the one and only person who had sexual intercourse with the alleged victim cannot be gainsaid. In the instant case, PW1, the 7-year-old positively identified the accused person as the one who had sex with him through the anus. The accused person is not a stranger to PW1 since he is the class teacher of the victim. Again, under intense cross-examination, PW1 maintained consistently that it was the accused person and no other person who had anal sex with him. PW2 also, maintained that the accused person is the only person PW1 mentioned as having inserted his penis into his anus at the time the issue was fresh and has consistently maintained this stance. Also, he maintained under cross-examination that the accused person confessed that he had sex through the anus.

The investigator, PW4 also testified that the accused person during investigation confessed to the commission of the crime and in support, he tendered in evidence **Exhibit "B"** without objection, the investigation caution

statement of the accused person. In the case of **Billa Moshie v. The Republic** [1977] 2 GLR, 418, CA, in its holding 2 stated:

"A conviction could quite properly be based entirely on the evidence of a confession by a prisoner, and such evidence was sufficient as long as the trial judge inquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness"

In the case at bar, the accused person in his investigation caution statement admitted and marked as **Exhibit "B"** stated that what the victim stated was true and that he removed his trousers and made him to sit on his lap. According to his account in his investigation caution statement, there were about fifteen (15) students around his table whilst painting on a cardboard. For some time, he carried him and made him to sit on his laps and help him with the ideas to make the painting. When he carried him to sit on his laps some of the kids left his table to go and play football and at that moment, he felt some *"emotional desires"* which made him to remove his trousers and he made him to sit on his penis and then the child told him that he wants to go and instantly he allowed the child to go and continued with his painting. This statement was repeated in the charge statement of the accused person also admitted and marked as **Exhibit "D"** without objection. In the case of **Ekow Russel v. The Republic** [2017-2020] 1 SCGLR at 469, the court held in its holding 6 that:

"it was correct to state that the admission of a statement by a court did not necessarily mean that the statement was of evidential value so as to automatically result in conviction. A statement that was admitted into evidence must be weighed to determine whether it was valuable enough to sustain the conviction sought."

In that instant case, the confession of the accused person contained in **Exhibit "B"** relied on in **Exhibit "D"** was not impeached at the time the evidence was being offered. Indeed, the accused person under cross-examination by the prosecution admitted that he gave the statement in **Exhibit "B"** without challenge. The accused person, contrary to the confession contained in **Exhibits "B" and "D"**, vehemently denied having anal sex with the alleged victim in his evidence in-chief. In his defence, he testified that he is an SHS graduate and that prior to the alleged incident, he was a teacher at Prime Systems School, Old Ningo assigned to teach pupils of Primary 2, which has children between the ages of 6 years to 12 years. According to the accused person, the school runs a bus service with two buses that picks children to and from their various homes. During the picking of children after close of school, the routine of the school is for all students who are not able to get a seat on the two (2) buses to group themselves in his class, to await the return of the buses to be sent home.

Additionally, the accused person testified in his defence that on the day of the alleged incident, whilst the children were waiting in his class for the bus, he decided to engage them in painting and to take ideas from them since the teachers were asked to encourage the students in painting. Thereafter, he began painting on a cardboard and the students surrounded his table to observe his painting. While painting and engaging the children in the class, he carried PW1 on his left lap and one Eno on his other lap whilst the other students were also around at the table. The accused person states categorically that he never removed his trousers. Also, some students who had surrounded his table to observe me painting left the table to play football in the classroom. When the bus arrived to send the second batch of student's home, he immediately released all the students including PW1 to join the bus.

Furthermore, the accused person testified that the next day which was a Saturday, the headmaster and the school's accountant came to his house to inform him about the alleged defilement and in the presence of his family members, he denied. The accountant also asked him not to report to the school the following week until the matter is settled. Subsequently, the following Monday, the parents of PW1 and the police came to his house to arrest him and upon his arrest, he gave his statement to the police.

The testimony of the accused person on oath is contradictory to his testimony contained in his investigation caution statement and charge statements. It is trite learning that a person whose testimony on oath is inconsistent with a prior written statement is not worthy of belief. In the case of **Yaro & Anor v. The Republic** [1979] GLR 10-22, the court held in its holding 2 that:

"A previous statement made by a witness to the police which was in distinct conflict with his evidence on oath was always admissible to discredit or contradict him and it would be presumed that the evidence on oath was false unless he gave a satisfactory explanation of the prior inconsistent statement. A witness could not avoid the effect of a prior inconsistent statement by the simple expedient of denial. Where the witness did not distinctly admit that he had made such a statement, proof could be given, as in the instant case, that he had in fact made it."

Undoubtedly, the testimony of the accused person on oath conflicts with is prior statement contained in his investigation caution statement and charge statement. The accused person who failed to object to the admissibility of his confession that when PW1 sat on his lap, he felt a strong urge which made him have anal sex with him failed to offer satisfactory explanation to his

inconsistent statement. The probative value of the testimony on oath is therefore negligible. The star prosecution witness, the seven (7) years old child has been consistent throughout from the day of the alleged incident and the report to the police and maintained throughout the trial that the accused person inserted his penis into his anus. The witness was also able to withstand rigorous cross-examination and was emphatic that it was the accused person and no other person who inserted his penis into his anus. The defence failed to water down the cogent and admissible led by the prosecution witnesses in support of the charge to raise a reasonable doubt in the case of the prosecution.

On the totality of the evidence led by the prosecution and the defence put up by the accused person, I hold that the prosecution proved their case beyond reasonable doubt that it was the accused person and no other person who inserted his penis into the anus of PW1. I therefore pronounce the accused person guilty of the charge and I convict him accordingly.

Sentencing

In sentencing the convict, the court takes into consideration his plea in mitigation put forth by Counsel for the convict, the fact that he is a first-time offender, the youthful age of the accused person (23 years) relative to the age of the victim at the time of the incident (6years). The court also takes into consideration the pain and trauma the convict subjected the victim to and the fact that the convict was the class teacher of PW1 who was under a duty to protect the child. I therefore sentence the convict to serve a term of imprisonment of Sixteen (16) years in hard labour.

Ancillary Order

Professional Counselling recommended for the child victim.

H/H AGNES OPOKU-BARNIEH

(CIRCUIT COURT JUDGE)