

IN THE CIRCUIT COURT MPRAESO, EASTERN REGION, BEFORE HER HONOUR
MRS ADWOA AKYAAMAA OFOSU, CIRCUIT COURT JUDGE ON TUESDAY THE
21ST OF MARCH, 2024

B6/17/2023

THE REPUBLIC

V

MOHAMMED ALI

.....

.....

TIME: 12:19

ACCUSED: PRESENT

CHIEF INSPECTOR BEATRICE LARBI FOR PROSECUTION PRESENT

SELF- REPRESENTED

JUDGMENT

The accused person, said to be a driver's mate was arraigned before this court on the 7th of November, 2022 on a charge of *defilement* contrary to section 101(2) of the **Criminal Offences Act 1960 (Act 29)**. When the charge was read to him, he pleaded not guilty thus putting the facts on which the charge is based in dispute. The prosecution therefore

assumed the burden of proving the guilt of the accused in terms of the requirement of the law.

The following are the facts presented by the prosecution in support of the charge:

The complainant Angela Kpeli is a trader and stays at Nkawkaw Zongo and also the auntie to the victim Adusu shallon aged 14, a form one student. The accused Mohammed Ali @ B'Bolo aged 24 is a driver's mate staying in the same area with the complainant. On the 2nd of November, 2022 at about 9:30pm, the victim decided to go to Nkawkaw Akuajoo in search for a paper carton for school. On reaching a section of the Zongo community, the accused lured her into an abandoned building and had unprotected sexual intercourse with her on a bare cemented floor and after the act, the victim bled profusely from her vagina. The accused then fetched water from a metal tank and gave same to the victim to clean her vagina and thereafter, the victim wore her pant and returned home. The complainant suspected foul play after noticing blood stains in the victim's pant and interrogated her. The victim then disclosed her ordeal to the complainant. A report was made to the police and the victim was accompanied to the hospital for treatment and endorsement. The accused was later arrested after being pointed out by the victim. In the accused person's statement to the police, he denied the offence, however after investigations, he was charged with the offence as stated in the charge sheet and arraigned before this honourable 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 is presumed innocent until he is proven guilty or has pleaded guilty. In **Asante (No 1) v The Republic (No.1) [2017]-2020] 1 SCGLR 132 at 143**, Pwamang JSC held that:

"Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden

to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it was the accused person who committed it. Apart from specific cases of strict liability offences, the general rule is that throughout a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to his commission of the offence and his complicity in it except where he relies on a statutory or special defence"

The term "reasonable doubt" as 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"

Pursuant to discharging its burden, the prosecution led evidence through four witnesses being PW1, King Lordneck, PW2 Adusu Shallon the victim PW3 the investigator who all relied on their respective witness statements filed on the 5th of January, 2023. PW4 Dr Douglas Annan Adjei testified orally. PW3 as well, relied on his supplementary witness statement filed on 11th October, 2023.

PW1 told the court that he is 35 years old and stays at Nkawkaw Mamaso and that the victim Shallon Adusu is his niece who lives with her parents at Nkawkaw Zongo junction. On the 2nd of November, 2022 at about 8:00pm, the victim left home unceremoniously and failed to return. Later in the evening around 10:00 pm same day,

the victim returned home and her auntie by name Selina Gbemu inspected her underwear and detected blood stains in it.

The victim further disclosed to him and others that, it was the accused who forcibly had unprotected sexual intercourse with her. He then led the victim to the police station Nkawkaw and lodged a case leading to the arrest of the accused.

PW2 told the court that he is a form one Junior High school student living with her parents at Nkawkaw Zongo. That on the 2nd of November, 2022 at about 10:00pm, she went out from home in search for paper carton at Nkawkaw Akuajoo. On reaching a section of Nkawkaw Zongo junction, the accused called her and she went. The accused engaged her in a conversation and in the course of it asked her whether she will attend school the next day and she said yes. He then told her not to go to school the next day and that he will speak to her head master who taught him in school.

PW2 further testified that the accused told her he will do family planning for her. He then pulled her into a dark place in the same area. She screamed for help but nobody came to her rescue and the accused threatened that he will harm her if she does not shut up. Thereafter the accused laid her on a cemented floor in a supine position, forcibly removed her pant and had unprotected sexual intercourse with her. After the act she bled profusely from her vagina and the accused fetched water from a metal tank and gave same to her to clean her vagina which she did. The accused again picked a certain white lacoste T shirt hanged on a rope and gave it to her to wipe the water on her body after which she wore her pant. The accused offered her GH¢10.00 which she rejected and left. Later when she got home her parents detected the blood stains and she narrated her ordeal to them. She was then sent to the police station and a complaint was lodged.

PW3, the investigator testified that he is stationed at the Divisional DOVSSU Nkawkaw and that on the 3rd of November at about 8:30 am, while in the office as an investigator on

duty, he received an extract of occurrence dated same day together with the accused indicating that on the 2nd of November, at about 10:00 pm the said accused lured the victim to an abandoned building around Nkawkaw Zongo and had unprotected sexual intercourse with her on a bare cemented floor after which she bled profusely from her vagina. He obtained statements from the complainant and the victim and accompanied the victim to the holy family hospital Nkawkaw for treatment. The endorsed police medical form suggested that there was foul play. He then took cautioned statement from the accused who vehemently denied the offence.

PW3 further testified that in the course of the investigations, he found out that on the 2nd of November, 2022 at about 10:00 pm, while the victim was on her way to search for paper carton for school, the accused was standing in a dark area between two buildings at Nkawkaw Zongo and called the victim. The victim went and the accused engaged her in a conversation and further lured her into an abandoned building in the same area and had unprotected sexual intercourse with her on a bare cemented floor. After the act, the victim bled profusely from her vagina and the accused fetched water from a metal tank and gave to her to clean her vagina. Thereafter the accused picked a white lacoste T shirt from a drying line and gave it to the victim to wipe the water on her body. After investigations, he paraded the parties before the Divisional Crime office and she directed him to charge the accused with the instant offence. PW3 tendered the endorsed police medical form as Exhibit A, investigation cautioned statement of the accused as Exhibit B, photographs of the crime scene indicating exhibits mentioned by the victim Exhibit C series and the charge statement of the accused as Exhibit D.

PW4, was led in evidence by the prosecutor and in his terse evidence in chief, he told the court that he was the one who authored Exhibit A. Based on this, he was cross examined by the accused and the court. He told the court during cross examination that on vaginal examination of PW2, the victim, there was a normal vulva and vagina. There were no

lacerations etc. However, the hymen was not intact and the laboratory tests that were done were normal and that with respect to objective evidence they were able to garner during their examination, they realised that the incident happened two days before she came for examination so by then she had bathed, showered and changed clothes. He added under cross examination that the hymen not being there also shows that she had sexual intercourse with someone.

THE DEFENCE

The accused testified in his defence and also called a witness DW1 being his mother. The accused denied the charge and testified that it is not true that he had sexual intercourse with PW2. According to him, he went to charge his phone in a friend called Kofi's room around 7:00am on Monday and he went to offload goods from a truck. On his return at about 9:00pm to take his phone, he saw PW2 in the room with Kofi kissing her and caressing her breasts so he asked PW2 what she was doing in the room. As he was going, PW2 followed him and begged him not to tell her auntie about what he saw otherwise she will throw her out so he advised her that she is too young to do that and that she might get pregnant so she should not do that again.

The accused continued that on Tuesday morning, PW2 and Kofi came to his house to plead with him that he should not tell anybody what he saw so his mother asked him what the matter was and he lied to her that it was about work because he didn't want his mother to know what had happened. His mother warned him to be wary of friends. He added that he went to offload the rest of the goods and came at midnight. When he came home he did not even bath and he slept so as he was sleeping, his mother came to knock

at his door that some people were looking for him. He asked why and his mother told him they said he had raped somebody. The people who came were wielding knives and other implements so his mother was afraid and they all came to the police station and he was locked up.

DW1, Felicia Dogbe, mother of the accused testified that one morning she woke up and was about to go to work but her clothes were dirty so she decided to wash them. As she was washing, PW2 came with one gentleman and called the accused so she asked the accused why the girl was calling him and he said she should leave her. According to DW1, all she heard was that PW2 was pleading with the accused and said "B, Bolo I beg you". She added that she asked the accused why PW2 was begging him and he said he will not tell me so she left for work.

Around midnight on that day, she was asleep and heard some boys knocking hard at the door so she stood at the gate and asked them what they wanted and they said they were looking for the accused so she told them the accused was not well. They told her they did some work with the accused and they were bringing his money so he knocked at the accused person's door and he came out. As soon as he came out, they attacked him and wanted to hit him with a stick so she intervened and asked the accused what he had done and he said he had done nothing. She then advised that since the accused said he had done nothing, they should go to the police station. She took the accused to the police station.

According to DW1 at the police station, they manhandled the accused. She left and returned the following day to the MTTD in a disguised manner. She had a conversation with the accused and he told her that what the girl came to beg her about was the issue and that the truth will come out. While at the police station, the girl was brought from the hospital. The accused told her that he saw a certain boy having sex with PW2 and

now they want to turn the case against him. When the accused said that, the investigator interrogated PW2 and she said Kofi was her boyfriend and that he has been playing romance with her. Just at that time PW1 asked PW2 to keep quiet and that if she was asked a question she should not answer

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. It is alleged by the prosecution that the accused person had carnal knowledge of a female child aged eleven (11) years.

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 the prosecution disclosed the health insurance card of PW2 but failed to tender same in evidence. PW2 testified that she was 14 years and same was not challenged by the accused. During cross examination of PW3 however, the accused put to him that PW2’s boyfriend says that she is 16 years not 14 years but PW3 responded that per his investigation, at the time of the time of the incident PW2 was 14 years. Apart from this, there was no serious contention as to the age of PW2 and so from the direct evidence of PW2 as to her age and in the absence of any evidence to the contrary, I accept that at the time the alleged incident happened in November 2022, the victim, PW2 was 14 years old.

With regards to 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.”

Here the direct evidence of PW2 is that on the 2nd of November, 2022 at about 10pm, whilst on her way to look for paper carton, the accused called her, engaged her in a conversation and then lured her into a dark place in the area and forcibly had sexual intercourse with her. PW2 testified that after the sexual intercourse she bled profusely and the accused fetched water from a metal tank and gave it to her to wash her vagina and also gave her a white Lacoste T-Shirt which was hanging on a line at the premises to wipe the water on her body. The prosecution alleged that when PW2 got home, her auntie suspected foul play and therefore inspected PW2’s pants and detected blood stains. The prosecution tendered Exhibit C series which showed the alleged crime scene, the metal barrel from which the accused allegedly fetched the water and the white Lacoste T shirt which the accused allegedly gave to PW2 to wipe her body. It is noteworthy that the said auntie who allegedly saw the blood stained pant was never called as a witness but rather PW1 who was later informed about the incident. The prosecution however tendered the said pants allegedly stained with blood. Furthermore the prosecution tendered Exhibit A, a police medical form which contained the report of the medical exam conducted on PW2. The said medical doctor also came to testify as PW4. Per Exhibit A, which shows that the examination was conducted on the 3rd of November, 2022, vaginal examination showed normal vulva vagina, Hymen not intact, no obvious bleed or lacerations seen.

Furthermore, at page three of Exhibit A, question 11, which states, “was there penetration of the vagina”, the doctor checked the ‘attempted’ option as against the other options being ‘successful’, ‘ejaculation’, ‘yes’, ‘no’ and ‘unsure’. During cross examination of

PW4, He repeated these observations and added that no sign of sperm was detected. Asked whether the examination revealed whether it was the first time PW2 had had sex, his response was that the hymen not being intact shows that she had sexual intercourse with someone.

The accused person denied that he was the one who had sexual intercourse with PW2. In deed in Exhibit B, his cautioned statement, he denied the offence but did not deny that he came into contact with PW2 on the night of 2nd of November, 2022 and had a conversation with her. According to the accused, he told PW2 that he had heard rumours that one Kofi had sex with her and the victim replied that Kofi had sexual intercourse with her on two occasions. He then advised the victim to desist from that act and they departed. In his evidence in court, the accused person told a different story to the effect that on Monday, which my checks show was 1st November, 2022, he went to charge his phone in a friend called Kofi's room around 7:00am and he went to offload goods from a truck. On his return, he saw Sharon in the room with Kofi kissing her and caressing her breast. As he left the room and was going, PW2 followed him and pleaded with him not to tell her auntie about what he saw else she will throw her out. According to the accused on Tuesday morning, which was the 2nd of November, 2022, PW2 and the said Kofi came to his house to plead with him that he should not tell anybody what he saw. He told the court that his mother was there and asked him what the matter was and he lied to her. DW1, the mother of the accused indeed confirmed that she was there when PW2 came with a gentleman and she heard PW2 saying "B'bolo I beg you". He asked the accused why the girl was begging him but he said he will not tell her. The accused person's evidence in court was thus corroborated by DW1 in some material particular.

I observe that the statement the accused gave to the police is different from his evidence in court however, I do not find same to be contradictory. In **Buor v. The state [1965] GLR,**

1 SC, it was held that:

“if a witness has previously said or written something contrary to what he had testified at the trial his evidence should not be given much weight”. However in **Akowuah v Commissioner of Police [1963] 2 GLR 390** it was held that:

“where a previous statement to the police was at variance with the evidence in court such evidence should be negligible but whether any credence should be given to it to such evidence should be left with to the discretion of the trial court”.

In the **Akowuah** case, a witness for the prosecution who had in his previous statement to the police written that he was not present when an amount of 200 pounds was paid to a District Commissioner, stated in his evidence in court that he was present. Nevertheless, the trial court found him to be worthy of credit and believed his evidence. On appeal, the finding of the trial judge who saw and examined the witness was not disturbed.

In the instant case therefore, I am inclined to give credence to the accused person’s evidence because I find that the statement the accused gave to the police per his cautioned statement Exhibit B was in respect of events that supposedly happened on the night of 2nd November, 2022 while his evidence in court related to events of 1st November, 2022 and the morning of 2nd November, 2022.

That said, it is worth noting that the accused is alleged to have had unprotected sex with PW2 on the 2nd of November, 2022. The particulars of offence thus read:

PARTICULARS OF OFFENCE

MOHAMMED ALI @B’BOLO, AGE: 24, DRIVER’S MATE: For that you on the 02/11/2022, at Nkawkaw Zongo, did have unprotected sexual intercourse with one Adusu Shallon a female of 14 years of age.

PW1, PW2 and PW3 all testified in no uncertain terms that the accused had sexual intercourse with PW2 on the night of 2nd November, 2022. However in Exhibit A, it is stated that the incident happened on the 1st of November, 2022. During cross examination of PW4, the following ensued:

Q: Was the victim the one who indicated to you that the incident happened two days before she came to the hospital or it was your own observation

A: She indicated that the incident happened two days earlier.

The evidence is that the incident was reported to the police on the 3rd of November, 2022 that is a day after the alleged incident and on the same day, that is 3rd November, 2022, PW2 was issued with a medical form, accompanied by PW3, the investigator and she attended the Holy Family Hospital where she was medically examined. So that if she attended hospital on the 3rd of November, 2022 and informed the Doctor that the incident happened two days earlier, it is my view that PW2 was clear in her mind that she did not have sexual intercourse the previous night which is 2nd November, 2022 but two days earlier which is the 1st of November, 2022. In the face of this evidence, can it be said that the accused person herein had sexual intercourse with PW2 on the 2nd of November, 2022?

In **Asante v. The Republic [2017] GHASC 3 (26th January 2017)**, the victim was about 23 weeks old pregnant but alleged that three days before the incident was reported she had sexual intercourse with the appellant. The appellant had been specifically charged with having sexual intercourse with the victim on 12th November, which was three days prior to when the case was reported. The medical doctor failed to examine the victim on the basis that the pregnancy was enough evidence that the victim had had sexual intercourse. The critical question was whether the accused person actually had sexual intercourse with the victim specifically on the 12th of November, regardless of the pregnancy. The

court observed that there was no corroborative evidence apart from the testimony of the victim which the court found not to be credible.

Similarly in this case, apart from PW2's testimony that the accused had sexual intercourse with her on the night of 2nd November, 2022, there is no corroborative evidence to support her claim especially as Exhibit A was inconclusive and did not offer the needed corroboration. Her statement to the medical officer on the 3rd of November 2022 to the effect that the incident occurred two days prior further shows that PW2 was not truthful to the court when she said that the accused had sexual intercourse with her on the 2nd of November, 2022.

Furthermore, from the testimony of PW2, I find it weird that the accused who is alleged to have randomly met PW2 at that odd hour somewhere in town without any prior knowledge of meeting her could immediately lure her to an alleged abandoned building where he could conveniently and readily get water for PW2 to wash herself after the act and a Lacoste T shirt to wipe herself.

In **Woolmington v. DPP [1935] UKHL 1** Lord Sankey stated that:

"No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.

Also in **Dexter Johnson v. The Republic [2011] 33 GMJ 68 SC**, it was held that

"The prosecution would have to discharge the burden by leading evidence satisfactorily to prove that the accused person committed the offences he has been charged with. Any doubt in the prosecution's case should inure to the benefit of the accused person

In the instant case, there is doubt in the case of the prosecution that the accused person

had sexual intercourse with PW2 on the 22nd of November, 2022 at about 9:30pm. It is therefore my opinion that the prosecution failed to prove the guilt of the accused person beyond reasonable doubt. In the circumstance, the accused is acquitted and discharged.

H/H ADWOA AKYAAMAA OFOSU (MRS)

CIRCUIT COURT JUDGE