

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON THURSDAY, THE 5TH DAY OF JANUARY 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM PHILOMENA SACKEY AND VIDA DANQUAH AS PANEL MEMBERS

SUIT NO. R16/04/23

THE REPUBLIC

VS

CALEB DENNIS

Juvenile present with Mother.

Complainant absent but represented by Abdul Razak

Chief Havor for the Republic present.

Emmanuel Opoku Somuah Esq. for the Juvenile absent.

RULING ON SUBMISSION OF NO CASE

FACTS

The Juvenile herein was charged with the Offence of Defilement of Female under 16 years of Age: Contrary to Section 101 (2) of the Criminal Offences Act, 1960 (Act 29). The facts of the matter as incorporated from the Charge Sheet are that the complainant lives with her family at Tse Addo and is a mother to the victim who is Six (6) years old. The Juvenile is 16 years old and a school dropout but works as a gateman and guardsman for the Complainant. On the 22nd of July 2022 at about 3.00pm, complainant observed that her daughter was nowhere to be found and when she combed the house, she found her at the Boys' quarters with the Juvenile. The victim had her palms on her vagina and when the complainant questioned the victim, she confessed that the Juvenile

had intercourse with her and that has been the third time after he had previously fingered her twice at different dates. Juvenile, being alarmed managed to escape into hiding but upon a complaint lodged by the Complainant at the Cantonments Police Station (DOVVSU Office), the Juvenile was tracked at his hideout at Teshie Rasta and arrested. The victim was sent to the Police Hospital where she was examined, treated and a Medical Report was endorsed by a Medical Officer. In his Investigation Caution Statement to the Police, the Juvenile admitted having had sexual intercourse with the Victim and was later charged with the offence and arraigned before the court.

The Plea

On the 28th day of July 2022, the Juvenile pleaded not guilty to the offence after same was read and explained to him in the English Language. The Prosecution assumed the burden to prove the guilt of the Juvenile beyond reasonable doubt. To prove their case, the Prosecution called Five (5) Witnesses and tendered in the following as Exhibits;

- Exhibit "A"**- Statement of the Complainant to the Police;
- Exhibit "B"**- Statement of the victim to the Police;
- Exhibit "D"**- Juvenile's Cautioned Statement;
- Exhibit "E"**- Juvenile's Charge Statement;
- Exhibit "F"**- General Medical Form from the Ghana Police Service;
- Exhibit "G"**- Birth Certificate of Victim;

At the close of the case for the Prosecution, Learned Counsel for the Juvenile submitted that no case has been sufficiently made out against the Juvenile to require him to open his defence and filed a written submission of no case on 4th of January, 2023.

Analysis

Section 173 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) provides that *"Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."* In the case of **Apaloo vs The Republic (1975) 1 GLR 156-192 C.A**, the learned **Azu Crabbe C.J** held that the Court laid down the circumstances under which a submission of no case may properly be made and upheld in the following terms; *"There has recently sprung up the practice by some counsel to make a submission of no case to answer in the teeth of direct cogent evidence implicating the accused in the crime charged. This invariably delays the dispatch of work in the criminal Courts, and this Court now considers it necessary to re-state the tests for making a submission of no case. The circumstances in which a submission of no case may successfully be made are: (a) when there has been no evidence to prove an essential element in the crime charged; and (b) when the evidence adduced by the Prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it:"*

Regarding the standard of proof at this stage, the Supreme Court in the case of **Tsatsu Tsikata vs The Republic [2003-2004] 1 SCGLR, 1068**, stated that the standard of proof at this stage is a prima facie case and not beyond reasonable doubt since the Court has not had the opportunity to hear the defence. The Court further held in its holding 5 that: *"On a submission of no case, the Judge's function was essentially to determine whether there was a genuine case for trial, i.e. whether there were any genuine factual issues that could properly be resolved only by a finder of fact because they might reasonably be resolved in favour of either party. The enquiry has to focus on the threshold question whether the evidence presented a disagreement to require for a full trial, or whether it was one-sided that one party must prevail as a matter of law. Therefore, where reasonable minds could differ as to the import of the evidence presented in a motion for submission of no case, that motion*

should not be upheld. If, on the other hand, there could be but one and only one reasonable conclusion favouring the moving party, even assuming the truth of all that the Prosecution had to say, the Judge must grant the motion..."

In the same case of **Kwabena Amaning Alias Tagor and Anor. vs The Republic** (200) 23 MRLG 78, the Court held that: "*prima facie evidence is evidence, which on its face or first appearance, without more, could lead to conviction if the accused fails to give reasonable explanation to rebut it. It is evidence that the Prosecution is obliged to lead if it hopes to secure conviction of the person charged. At this stage, the trial Court is not supposed to make findings of facts since the other side has not yet spoken to determine who is being factual. What the trial Court has to find out at this stage that the Prosecution has closed its case is whether or not the evidence led has established all the ingredients of the offence charged for which the accused person could be convicted if he failed to offer an explanation to raise doubts in the said evidence*". It is trite learning that under Article 19(2) (c) of the 1992 Constitution, every one charged with a criminal offence is presumed innocent until the contrary is proved. In other words, whenever an accused person was arraigned before any Court in any criminal trial, it is the duty of the Prosecution to prove the essential ingredients of the offence charged against the accused person, in this case, the Juvenile beyond any reasonable doubt. The Juvenile herein is alleged to have defiled the victim contrary to **Section 101 (2)** of the Criminal Offences Act, 1960 (Act 29). **Section 101(2) of Act 29** provides that "*... a person who naturally or unnaturally carnally knows a child under Sixteen (16) years of age, whether with or without the consent of the child, commits a criminal offence...*"; Defilement is defined in **section 101(1)** of Act 29 as: "*... defilement is the natural or unnatural carnal knowledge of a child under Sixteen (16) years of age. Therefore, to succeed on a charge of defilement, the Prosecution must prove the following essential elements.*

- i. That the victim is less than Sixteen (16) years old;

- ii. That the Juvenile naturally or unnaturally had carnal knowledge of the victim;
- iii. That the Juvenile had carnal knowledge of the victim with or without her consent.

The Prosecution's Case

The first Prosecution Witness (PW1) was the Complainant, Mr. Abdul Razak, who testified that he knows the Juvenile and the victim, who both stay with the victim's parents at Tse Addo. He testified further that on the 21st July 2022 at about 3pm, his brother called and informed him that a disturbing incident had occurred as his daughter had been defiled. He stated that his brother pleaded with him to take the lead whilst he followed suit due to the nature of his work. Upon arrival, he noticed that the victim was in tears and then took the victim La Tse Addo Police Station and reported the incident to the Police. He stated further that he was given a medical form to send the victim to the hospital and same was endorsed by the Doctor. He was then advised to take the matter to the Domestic Violence and Victims Support Unit (DOVVSU) where he gave his Statement to the Police.

PW2 is the Victim's mother, Amina Abubakar who lives at Tse Addo together with the victim and the Juvenile. She testified that on the 21st of July 2022, she was with the victim in the bedroom and slept off but when she woke up, she did not see the victim. She stated that she then went out to ask the victim's brothers who were watching cartoons and they all said they could not find her. They all started looking for her and when she went to the kitchen, she saw the Juvenile emerging from the boys' quarters to the hall and shortly after, the victim followed. She testified further that she observed that the victim was holding her private parts and requested to use the washroom. She then followed the victim to the washroom and asked her what the Juvenile did to her

but the victim started crying and told her that the Juvenile asked her to go to the boys' quarters and to wait for him. She testified further that the victim informed her that the Juvenile asked her to lay down whilst they were at the boys' quarters and inserted his penis into her vagina forcefully. She then immediately called her husband who called his brother to take them to the Police Station and they were given a medical form to take to the Police Hospital.

PW3, is the Victim, Rafatu Ibrahim who testified that she is Six (6) years old and lives with her parents at Tse Addo. She is a class one pupil at Brain Hill School at East Legon and knows the Juvenile. She stated that she was in the hall with her brother's playing when the Juvenile entered and asked her to go to the security guard room of which she did that and the Juvenile also followed her to the security guard room. She testified further that the Juvenile put a blanket on the floor and asked her to lie on it, he then removed her pant, removed his pant and put his penis inside her vagina. She testified again that when the Juvenile heard her mother calling her, he told her to come out so she wore her pant, came out and her mother asked her where she had been. She told her mother what the Juvenile did to her of which her mother then took her to the Juvenile's mother and told her what the Juvenile had done to her. She concluded by stating that her mother took her to the Police Station where she gave her Statement and later to the hospital.

PW4, is the Investigation Officer, No. 6825 PW/CPL. Francisca Tham is stationed at Cantonments Divisional DOVVSU, Accra and was in charge of the instant case. She testified that on the 23rd of July 2022, she was on duty when PW3 came with PW2 to report a case of defilement against the Juvenile and same was referred to her for investigation. She stated further that a Police Medical Form was issued to PW3 who sent the victim to the hospital for examination and treatment which was endorsed by a Medical Officer from the

Police Hospital, Accra. She testified again that on the 24th of July 2022, PW3, assisted by Two (2) other family members arrested and brought the Juvenile to the Station where he was rearrested, interrogated, Investigation Caution Statement obtained from him and then detained. She then obtained witness statements from PW3 and the victim. On the 25th of July 2022, she visited the crime scene and upon inspection, the Juvenile admitted to having sexual intercourse at the boys' quarters. She concluded by stating that after putting the case docket together with all parties before the DOVVSU Coordinator, the Juvenile was charged with the offence.

PW4, is the Medical Doctor, Dr. Kuntu Blankson, who testified that he works at the Police Hospital and on the 23rd of July, 2022, the victim was brought to the hospital with complaint of having been sexually assaulted. The victim was examined, treated and a report on her treatment was attached.

Thus, per the evidence led by the Prosecution and the testimonies of all the Prosecution witnesses, PW3 was defiled. The Prosecution then insists that it was the Juvenile who had intercourse with PW3 at the boys' quarters on the 21st of July 2022, thereby defiling PW3.

Submission of no Case filed by Counsel for the Juvenile

Learned Counsel for the Juvenile strenuously contends in the face of the evidence led by the Prosecution in his written submission of no case that the Prosecution has failed to lead sufficient evidence proving the guilt of the Juvenile. He argues that the ingredients of the offence of defilement are that the victim is under the age of 16 years, someone had sexual intercourse with her; and that person is the Juvenile. He insists that these constitute the threshold that the evidence led by the Prosecution ought to surmount in order to satisfy the Court that a sufficient case has been made requiring the Juvenile to be called

upon to respond. Learned Counsel argued further that it is evident that the Prosecution itself is unsure as to whether there the victim was in fact defiled and drew the court's attention to the fact that in the words of the Investigator, *'something may have happened between the victim and the Juvenile but they cannot say with certainty whether that something constituted defilement'*.

Counsel again contends that the medical evidence failed to prove as a fact that there was any penetration by the Juvenile as it placed the cause of the displacement of the victim's hymen beyond the time of commission of the crime. He contends further that this fact coupled with the possibility of the hymen being caused by other factors within the Seventy-Two (72) hours makes it impossible to say for a fact that there was any penetration by the juvenile. Counsel further argues that the Prosecution's case is not also aided in anyway by Exhibits 'D' and 'E' which they claim to be confessions given by the Juvenile. He argues strongly that the law is that 'a Confession Statement made by a defendant before his trial, i.e. other than the evidence he gives at his trial, can only be admitted against him if it is proved to have been made freely and voluntarily in the sense that it was not obtained from him either by fear or prejudice or hope or advantage exercised or held out by a person in authority. Therefore the onus lies upon the Prosecution where they intend to use such a confession as part of their case, *"to prove affirmatively to the satisfaction of the Judge who tries the case that the admissions were not induced by any promise of favor or advantage or by the use of fear or threats or pressure by a person in authority."* Counsel concluded by stating emphatically that the alleged Confession Statements have no probative value as its voluntariness were strenuously challenged by the defence and the Prosecution has not offered any evidence proving that.

The Court applauds learned Counsel for the Juvenile for his brilliant submissions but is of the opinion that the arguments of learned Counsel for the Juvenile is defeated by the following that ensued during cross examination of PW3, who is the victim, as quoted from the record of proceedings;

Q: *On the 22nd July 2022, something happened in your house?*

A: *Yes.*

Q: *So you understand that what is written on this paper is what happened?*

A: *Yes.*

Q: *Do you remember who prepared the document for you?*

A: *Yes.*

Q: *Before she prepared this, did she let you tell her what happened on that day?*

A: *Yes*

Q: *Can you tell this court what you told her?*

A: *I told her that when I got downstairs, Juvenile said I should go to the back and **he put his 'vagina' into my vagina'**. When mummy was calling me, he said I should go back inside...'*

PW3 is just a Six (6) year old girl, and her best description of what happened on the day as by saying the following; '*...he put his vagina into my vagina...*'. It appears her explanation of what happened was largely based on what she probably heard the grown-ups say when the incident happened as she referred to what was inserted into her vagina as 'vagina'. To determine whether she understood what was happened or happening, the court asked her some questions and the following transpired;

Q: *Which part of your vagina did he put his vagina?*

A: *(Victim points at her vagina.)*

Q? *Was that the first time he did that?*

A: *No*

Q: *When he put his vagina in your vagina were you lying down?*

A: *Yes*

Q: *Has any boy done that to you before?*

A: *No*

Q: *Who removed your pant?*

A: *Points to Juvenile*

It is important to establish at this point that the victim by pointing at the Juvenile, was able to identify the Juvenile as being the one responsible for 'putting his vagina into her vagina'. Additionally, in order to establish whether PW3 knew what she was describing as a 'vagina', the following ensued when the court questioned PW3;

Q: *Did you see his vagina?*

A: *yes*

Q: *Can you tell us how it looks like?*

A: *I don't know*

Q: *Has anybody removed your pant apart from him?*

A: *No*

Q: *Did he remove his pant before he removed your pant?*

A: *Yes*

Q: *Did you see his Vagina?*

A: *Yes*

Q: *How did it look like?*

A: *Victim struggles to describe*

Q: *Can you draw it?*

A: *Yes (Victim) draws the 'vagina' of the Juvenile.*

It must be emphasized that PW3 did draw what she described as the 'vagina' of the Juvenile and the said drawing was indeed a graphical image of the upper part of the male penis. The court further, off the record, but in open

court, asked PW3 to draw a car and a ball just to determine further if she knew what she was about and she did so perfectly. The drawing of a part of the male penis shows that PW3 indeed saw what was being inserted into her vagina and by pointing at the Juvenile as the one who did so establishes a prima facie case against the Juvenile.

Additionally, the following ensued during Counsel's cross examination of PW5, the Medical Doctor;

Q: *You have already told this court that you cannot say for a fact that a penis was inserted into the victim's vagina?*

A: *Yes*

Q: *You also have no way of confirming to court that the Juvenile inserted anything into the victim's vagina, not so?*

A: *My expert opinion is that something had been inserted but I cannot for a fact say what or who.*

The above statement made by the PW5 indeed corroborates what the victim told the court during cross-examination that the Juvenile inserted 'his vagina into her vagina'. The learned Justice Brobbey in his book Essential Law of Evidence, 2014 at page 84 defined 'corroboration as evidence that supports or strengthens evidence.'

Further to the above, PW5 is a Medical Doctor and therefore an Expert Witness as far as The Evidence Act, NRCD 323 is concerned, of which the Learned Justice Brobbey at page 334 of his book stated supra describes an *Expert Witness as a person skilled in the subject to which his testimony relates. Section 67 of the Evidence Act, NRCD 323* defines qualification for an expert as (1) *A person is qualified to testify as an expert if he satisfies the court that he is an expert on the subject to which is testimony relates by reason of his special skill, experience or training.* (2) *Evidence to prove expertise may, but need not, consist of the witness himself.* As such, portions of Exhibit 'F', which is the Medical

Report, as tendered in by PW5 reads as follows; *'...Pelvic Examination: Good perical hygiene with no obvious vaginal discharge nor bloody. Bruises noticed in the vestibule surrounding the introitus. Hymen torn at 7' and 12 o' clock. Hymen also reddened...'*. The expert opinion of PW5 to the effect that the hymen was torn and was also reddened also establishes the fact that the PW3 was indeed defiled. The court is however guided by the case of **Fenuku vs. John Teye** (2001-2002) SCGLR 985 held that *'the principle of law regarding expert evidence was that the Judge need not accept any of the evidence offered. The Judge was only to be assisted by such expert evidence to arrive at conclusion of his own after examining the whole of the evidence before him. The expert evidence was only a guide to arrive at the conclusions.'*

Learned Counsel for the Juvenile also raised issues concerning the voluntariness of the Juvenile's alleged Confession Statement which was admitted into evidence. The court is guided by the case of **G/L/CPL EKOW RUSSEL vs. THE REPUBLIC** [2016] DLSC 2800, where the learned Akamba JSC, held that *'... it is correct to state that the admissibility of a statement by a Court does not necessarily mean that the statement is of evidential value so as to automatically result in conviction. A statement that is admitted into evidence must be weighted to determine whether it is valuable enough to sustain the conviction sought...'* Per the evidence on record, the court is of the opinion the evidence of the Prosecution has gone beyond mere speculations and in the case of **Ekow Essuman vs The Republic**, [2016] DLHC 9242, the Court held that *"where the Court has ruled that there was a prima facie case made out and the accused person was to enter into his defence it does not mean that the accused was guilty. It simply means that the evidence on record as led by the Prosecution has gone beyond mere allegations or speculation that calls for some clarification or explanation, as it were, from the accused person. It is after the accused person has given his side of the story that the Court will be seised with jurisdiction to pronounce whether he is*

guilty or not. In other words, it is only at the stage where the accused has offered evidence in rebuttal of the Prosecution's case that the Court can make findings of facts".

DECISION

On the totality of the evidence led by the Prosecution, the Panel finds that a prima facie case of defilement is made out against the Juvenile to warrant calling upon him to open his defence so as to give his side of the story to raise a reasonable doubt in the case of the Prosecution. The submission of no case for the Juvenile to answer is accordingly dismissed. The Juvenile shall prepare to open his defence.

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H/H HALIMAH EL-ALAWA ABDUL-BAASIT.

PRESIDING JUDGE

I AGREE

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**MADAM PHILOMENA SACKKEY
DANQUAH
PANEL MEMBER**

I AGREE

.....

**MADAM VIDA
PANEL MEMBER**