

**IN THE GENDER-BASED VIOLENCE CIRCUIT COURT  
AT SEKONDI –W/R, HELD ON MONDAY, 28<sup>TH</sup> NOVEMBER 2022  
BEFORE H/H NAA AMERLEY AKOWUAH (MRS.)**

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C6/16/21

**THE REP.**

**Vrs**

**EMMANUEL SOWAH**

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ACC. PERSON: PRESENT & PRO SE

PROS.: C.I. VERONICA TIBSON

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**JUDGMENT**

Accused person was charged with two counts of defilement and abduction of a female under 18 years contrary to sections 101 & 91 of the Criminal (And Other Offences) Act, 1960 (Act 29). Upon arraignment, accused person pleaded 'Not Guilty' setting into motion a trial to determine his guilt or otherwise as provided for in s. 172 of the Criminal & Other Offences (Procedure) Act, 1960 (Act 30).

**SUMMARY OF FACTS**

Complainant is the father of Elizabeth Grace De-Graft Inkum (hereinafter referred to as 'Elizabeth'). The family of five live together at Kojokrom, as does accused person within the same suburb. At midnight of 24/12/2020, complainant returned from work and realized his 15-year-old daughter, alleged victim in this case, was not at home. He woke his sleeping wife up and queried her as to the absence of their daughter. She explained that she suspected Elizabeth to be at a social event in the Kojokrom Township. Complainant followed up to the event, searched and waited the whole night but did not see Elizabeth. Complainant did not see Grace even the following day. From queries within the vicinity, complainant was informed that accused person was earlier seen with Elizabeth. He went to accused person's house and through a peep in the window, because the door was locked, he saw his daughter

lying down alone on accused person's bed. He waited till accused person returned at about 3:00am and when he opened his door, had him arrested and arraigned on the charges of defilement and abduction.

## DEFILEMENT

The essential elements to prove in a charge of defilement according to s. 101 (1&2) of Act 29 are natural or unnatural carnal knowledge, of a child aged below 16 years, with or without his/her consent and that the said carnal knowledge of the victim was perpetrated by the accused person, and no other male. See the *locus classicus Robert Gyamfi @ Appiah v The Rep. [2019] DLCA 6331, delivered on 27/02/2019.*

## CARNAL KNOWLEDGE

To prove carnal knowledge, Prosecution called the girl at the center of the case, Elizabeth otherwise known as 'Ogrey' as PW1. She testified that on 24/12/2020 whilst at an annual social programme held at Kojokrom which she attended with her two friends, she met accused person and both enjoyed the event together. Prior to the 24<sup>th</sup> December day, she knew accused person because he patronized her mother's rice and stew food business with his friends. On some occasions when he came to buy food, he told Elizabeth that 'should he get her, he would not spare her at all'. At the end of the evening, accused person invited her for a drink at a nearby Drinking Spot. He bought her a bottle of Coca Cola which she drank. Shortly after, she lost consciousness and woke up in accused person's room. Elizabeth also told the Court that accused person kept her in his room for a week and forcibly had sexual intercourse with her on two occasions within that period. Within the one week, accused person often locked her in his room when he went out to work. On 3/1/2021, at about 3:00am accused returned from town and wanted to have sexual intercourse with Elizabeth, she refused and it was during the struggle to ward him off that her father entered accused person's room with a policeman and arrested him to the Kojokrom Police Station. She

tendered into evidence her initial statement given at the police station on 07/01/2021 which was admitted and marked as Exh. A.

To further corroborate the story of PW1, her father Seth De-Graft Inkum (PW2) testified that when he returned home on 24/12/2020 and could not find his daughter, he spent 6 days looking for her. He put out word in the neighborhood and that led him to accused person's house. Even though he saw his daughter lying on accused person's bed, he did not witness intimacy or sexual intercourse between the two such as to confirm carnal knowledge. He tendered his initial statement dated 7/01/2021, admitted as Exh. B.

The final piece of evidence to support carnal knowledge was the medical report authored on 04/01/2021 and marked Exh. C which found that Elizabeth had no lacerations or physical bruises in or around her vagina but had a broken hymen and suffered from a Urinary Tract Infection (UTI) and hepatitis B infection, a common Sexually Transmitted Infection (STI). Dr. Dan Anane Frimpong of the Essikado Government Hospital testified as PW4. He confirmed that he authored Exh. C after he ordered laboratory testing when Elizabeth complained of painful and frequent urination. He reiterated that the laboratory testing diagnosed her as having UTI and Hepatitis B. The conclusions in Exh. C are apparent evidence of Elizabeth being sexually active, probably before the alleged incident of sexual intercourse with accused person, and being a willing sexual partner due to the absence of lacerations or bruises which indicated the absence of forceful penetration. I do not believe the story of accused person drugging her and carrying her home from the rally. She willingly went to accused person's house and stayed with him and the testimonies of DW1 and DW2 confirmed this. However, Elizabeth's consent to have sexual intercourse does not detract from the fact of its occurrence and under s. 101(2) of Act 29, is invalid even when given so long as it is from a child under 16 years. I find that she concocted the drugging story to save face with her parents. Despite the damning findings above, I find that the ingredient of carnal knowledge has been established beyond reasonable doubt.

## AGE OF VICTIM

Sections 122(1) & 19(2) of the Children's Act, 1998 (Act 560) and the Juvenile Justice Act, 2003 (Act 653) provide that *'in the absence of a birth certificate or a baptismal certificate, a certificate signed by a medical officer as to the age of a child below eighteen years of age shall be evidence of that age before a Family Tribunal without proof of signature unless the court directs otherwise'*.

As at April 2021 when PW1 took the oath and testified, she told the Court that she was 15 years old. PW2 confirmed that his daughter Elizabeth was indeed 15 years and born on 14/11/2007. Exh D was a photocopied NHIS card of a very young Elizabeth indicating date of birth as 14/11/2007. To put the matter out of contention, Prosecution tendered Exh. H, a medical report from the Effia Nkwanta Regional Hospital dated 6/08/2021 estimating the age of Elizabeth to be between 13-15 years. This assessment was based on 'the stage of root development of the erupted mandibular second molars' as well as the 'un-erupted mandibular third molars' which were developing within their follicles. Dr. Joseph Adjin Otoo, the dental surgeon who examined Elizabeth and authored Exh. H testified as PW5.

Per the required burdens of proof and persuasion as expatiated in *Continental Plastics Ltd. v IMC Industries (2009) SCGLR.298@306-307*, I find that Elizabeth is below 16 years of age, in satisfaction of the final ingredient set out in s. 101 of Act 29.

## IDENTIFICATION OF ACCUSED PERSON AS PERPETRATOR

According to Elizabeth and her father (PW1 & PW2), it was accused person, and no other male, who had sexual intercourse with Elizabeth and as was stated in *Adu Boahene v The Rep. [1972] 1GLR 70*, *'where the identity of an accused person is in issue, there can be no better proof of his identity than the evidence of a witness who swears to have seen the accused committing the offence charged'*.

With no eyewitness to the sexual intercourse save Elizabeth and the other person, her testimony that it was accused person, and no other male who had sexual intercourse with her, is enough evidence to identify him. In the **Gyamfi @Appiah** case (supra) the Court of Appeal held that *"The court could act on uncorroborated evidence of a single witness since judicial decisions depended upon intelligence and credibility and not on the multiplicity of witnesses produced at the trial"*. See also page 288 of P.K. Twumasi's book **"Criminal Law in Ghana"**. In addition to Elizabeth's testimony in the instant case, PW1 her father, corroborated her testimony in identifying accused person as her sexual partner and in fact testified to seeing her lying on accused person's bed when he peeped through his window.

## DEFENCE

Accused person admitted knowing Elizabeth as PW2's daughter, meeting her on the Sunday morning at Auntie Araba Pito's Spot after the Christians had finished setting off firecrackers to usher in the New Year, buying her food at her request and taking her to his house to eat it. It was when Elizabeth was eating the food that her father barged into his house, slapped him and accused him of allowing his daughter to run away. Accused person said Elizabeth run away when she saw her father come in and slap him. In the scuffle, PW2 called two other males who helped him arrest accused person and took him to the Kojokrom police station where the policeman gave him three days to produce Elizabeth because her father reported that he had allowed his daughter to escape. After three days, when he could not find Elizabeth, he was arrested at dawn by PW2 and some police officers and although Elizabeth came to the station, the police detained him because they said he had had sexual intercourse with her. Accused person denied having kept Elizabeth in his house and having sex with her. Indeed, he said it was after she had finished the meal of kenkey and chicken and washed her hands that her father came in looking for her.

Under XX accused person denied attending the rally Elizabeth said she attended with two of her friends on 24/12/2020. In fact, that he was at his master's house on the said date and

never met her. It was only the day after the firecrackers incident that he met her at Auntie Araba Pito's house.

Papa Amo testified as DW1. He confirmed meeting accused person and Elizabeth at Auntie Arab Pito's place one Sunday morning. He said accused person introduced her as his niece but knowing who accused person was, he advised Elizabeth to leave but she refused, insisting she would stay and leave with accused person when he was ready. The two of them bought food and left.

Under XX DW1 explained that he did not know whether or not accused person took Elizabeth to his house because they lived at different places. However, he confirmed that he often worked with accused person and they stayed together for drinks a lot, sometimes late into the night.

Nana Bayin, accused person's master, was DW2. He testified that about two years ago Elizabeth came to Auntie Araba Pito's Spot and said accused person was her brother. Accused person bought kenkey and pork for the two of them and they left. He said he did not know where she and accused person went to after they left the Spot.

From the defence put up, there is no dispute that on the said date or thereabouts, accused person was with Elizabeth. None of the witnesses, be they prosecution witnesses or defence, gave evidence of accused person keeping Elizabeth against her will, either in public or in private. What is beyond doubt is that accused person was with Elizabeth sometime in December 2020. To fill up the vacuum of what happened after accused person and Elizabeth left Auntie Araba Pito's Spot, the testimony of PW1 herself was key. However, as earlier stated, I find the story of the rally and accused person deliberately intoxicating Elizabeth unsupported by any of the witnesses and I reject same, especially when DW1 & DW2 confirmed that they saw accused person with Elizabeth in December 2020 at the Drinking

Spot and she was not under accused person's influence, rather that she happily carried his bag and followed accused person from the Drinking Spot.

As a trial judge with the unique opportunity to observe her demeanour vis-à-vis credibility as set out in s. 80 of NRCD 323 and in the case of *Osei v Korang [2013] GMJ 1@25*, I noted that Elizabeth was mature for a 14-year-old. The evidence on record, especially Exh. C, as well as the inconsistencies in her answers, later proved under Cross Examination to be untruths, shows a sexually-experienced girl who probably has had multiple sexual partners prior to accused person. Unfortunately for accused person, it is not those other sexual partners who are on trial here but him. With the ingredients being proved, I find accused person guilty of the offence of defilement.

#### ABDUCTION

s. 92 (2) of Act 29 provides that;

*“a person is guilty of abduction of a child who with intent to deprive any person entitled to the possession or control of the child or with intent to cause the child to be carnally known or unnaturally carnally known by any person —*

*(i) unlawfully takes the child from the lawful possession, care or charge of any person; or*

*(ii) detains the child and prevents the child from returning to the lawful possessions care or charge of any person.*

It is a fact that 24/12/2020 was a Thursday while 3/1/2021 was a Sunday. From the testimony of PW1 under XX, she said accused person took her to his house on a Sunday. If the two met at the 24<sup>th</sup> night programme at Kojokrom, where was Elizabeth staying between Thursday, 24/12 and the first Sunday immediately after, i.e., 27/12/2020 or even 3/1/2021 when she claimed accused person took her to his house? That is anybody's guess. However, this casts doubts over the claim that she fainted after taking a bottle of coke, which interestingly, she

remembered accused person as the only one who took her to his house. Elizabeth further answered that while in accused person's room for one week, she did not attend to nature's call, a rather incredulous claim considering that she admitted eating rice a lot during the period. From the inconsistencies in the dates and the story of Elizabeth on how she ended up in accused person's room, I find that accused person did not take her to his room against her will. In fact, I make a firm finding of fact that Elizabeth went to accused person's home willingly and on her own volition the day she saw him at the Drinking Spot. There was no coercion, force or undue influence exerted to compel her into accused person's house that fateful day. Based on my earlier findings, I find that accused person raised reasonable doubt as to the charge of abduction, i.e., that he kept Elizabeth in his room for one week or even overnight the day he left the Drinking Spot with her. It is probable that Elizabeth was with another or other persons and the doubt this raises inures to accused person's benefit.

**CONVICTION & SENTENCE**

I find accused person guilty of Defilement contrary to s. 101 of Act 29.

Considering the full facts, the minimum sentence of 7 years in prison, IHL is appropriate.

**ACQUITTAL**

With the charge not proved, and reasonable doubt raised as to his innocence, I hereby acquit accused person of the offence of abduction contrary to s. 91 of Act 29.

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**H/H NAA AMERLEY AKOWUAH (MRS.)**



