

IN THE GENDER-BASED VIOLENCE CIRCUIT COURT AT SEKONDI –W/R, HELD  
ON TUESDAY, 1<sup>ST</sup> NOVEMBER 2022 BEFORE H/H NAA AMERLEY AKOWUAH  
(MRS.)

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C6/12/2021

THE REP.

vrs

TONY KWESI KOUFFE

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ACCUSED: PRESENT

PROS.: CH/I. VERONICA TIBSON

C/ACC.: KOBINA EBO DONKOR, Esq.

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**JUDGMENT**

The Domestic Violence and Victims Support Unit (DOVVSU) of the Takoradi Central Police charged the accused person with two counts of indecent assault contrary to s. 103 of the Criminal & Other Offences Act, 1960 (Act 29) which provides that:

*“(1) Whoever indecently assaults any person shall be guilty of a misdemeanour and shall be liable on conviction to a term of imprisonment of not less than six months.*

*(2) A person commits the offence of indecent assault if, without the consent of the other person he forcibly makes any sexual bodily contact with that other person; or sexually violates the body of that other person in any manner not amounting to carnal knowledge or unnatural carnal knowledge”.*

From the cases of *R v Mason (1968) 53 Cr. App Rep 12*, *DPP v Rogers [1953]2 ALL ER 644* and *Alawusa v Odusote (1941) 7WACA. 140*, Prosecution needed to prove the ingredients of physical touch, which touch must have been made in a sexual manner (not a mere physical touch without more) and may have been made in a public or private place.

The alleged acts of indecent assault were said to have occurred sometime in October 2020 at Agric, a suburb of Takoradi when the accused person inserted his fingers into the vaginas of 2 sisters namely, Agnes Mintah Tandoh (then 7 years) and Gladys Mintah Tandoh (then 3 years).

During the said period, as an antecedent to the event of committing the offences, accused person was alleged to have sent the Agnes, the older child on an errand to buy him 'kenkey'. When she returned, he asked her to put the food in his room and while inside, accused person entered and asked her to open her legs. She refused and left the room. Days later, accused person called Agnes, made her sit on his laps and inserted his finger into her vagina. He then warned her not to tell anyone of what he had done. On the other hand, then 3-year-old Gladys had been complaining of severe vaginal pain to her mother for some time and in the evening of 1/11/2020, she told her mother that accused person had been inserting his finger into her vagina. Upon being told, the father of the two sisters confronted his wife, mother of the children to verify what he had heard. It was during this confrontation that the older daughter, Agnes also disclosed that accused person had been inserting his fingers into her vagina, just as he had been to her sister. A report to the police, medical examinations, etc., led to the instant trial of accused person.

Prosecution called 6 witnesses; alleged victims Gladys Mintah Tandoh & Agnes Mintah Tandoh (PW1 &PW2), father of Gladys and Agnes and also complainant, Bernard Mintah Tandoh, (PW3), mother of Gladys and Agnes, Sandra Pii (PW4), the investigator in charge Det/Cpl. Kingsley Osei (PW5) and Dr. Dan Anane Frimpong (PW6).

In her testimony, PW1 clearly identified accused person as the one who inserted his finger into her vagina, the place where it took place, i.e., where accused person lives at Maame Adjoa Kum's place of residence and the time of day being in the evening. However, PW1 could not tell the Court how old she was, the name of her school, although she described where it was located, and the class in which she was. I take judicial notice of the fact that an

average 4-year-old is unlikely to know the facts which PW1 could not testify to or recall and therefore find that it PW1 not knowing these cannot be used as a yardstick to judge her credibility as set out in s. 80 of the Evidence Decree, 1975 (NRCD 323).

Cross examination centered on PW1 allegedly eating so much toffee that she developed pain in her vagina, an assertion she admitted to as having been warned by her mother to desist from. However, she repeated that it was accused person who inserted his finger into her vagina and this she was told by Agnes, her older sister.

To avoid the loss of a part of or danger of misinterpretation through paraphrasing, I shall reproduce verbatim the testimony of PW2.

*"I know the Accused person. He is called Mr. Tony. He asked me to go and buy 'kenkey' and sugar for him. I wanted to put them on the wall but he said I should take them to his room. He asked me if I wanted to have a child and I said no. He again asked if I wanted sex and I said **no**. Then he said he wanted to put his finger in my vagina (witness points to her vagina) and I said no then he pulled me back to his room when I was leaving his room. Then he put his fingers in my vagina. There was a burning sensation in my vagina. The next time, we were playing at Auntie Adjoa Kum's place and he called me to come but I refused. He pulled me, took me to his room and inserted his fingers into me. When he was done, he asked me to go.*

*"... I went to sister Auntie Adjoa Kum. I told my parents of what Uncle Tony did. When Uncle Tony called me, I and Sister Auntie Adjoa Kum's children were then playing. It is quite a distance from where we were playing to Uncle Tony's house. When he sent me to buy the kenkey, it was in the afternoon. When he sent me, sister Auntie Adjoa Kum was then cooking outside. He inserted his fingers inside me 2 times in his room and 4 times outside where the blocks are packed. He did it 4 times in the afternoon. At where the blocks are; he puts me on his laps, moved /shifted my pants to one side and inserted his fingers into my*

*vagina. Those times, I was wearing a long straight dress. On one of the occasions we were playing on the verandah of sister Auntie Adjoa Kum who was cooking food. When she took it off from the fire, Uncle Tony came and put his stew on the fire. After sometime, he lifted it and put it on the floor. He asked me to go and buy him salt so he could put some in the stew. I went and bought it and he asked me to send the stew to his room. I took the stew inside and, on my way out, he held my hand and asked if I wanted a baby. I said no. He asked if I wanted to have sex. I said no. Then he forcibly inserted his fingers into my vagina. I have said all that I know"*

Under cross examination, PW2 explained that accused person inserted his fingers into her 2 times in the afternoons and four times while outside, including on his verandah and on some cement blocks packed outside the house.

It is my finding that PW2's answers under cross examination had some inconsistencies, such as that she was standing, and then saying she was sitting when accused person inserted his fingers into her while both were on his verandah. In another set of questions, PW2 answered that the judge's table was taller than the wall on accused person's verandah but shown Exh. 1 series, 3 pictures of the same wall she spoke of, PW2 admitted that indeed the wall was taller than the judge's table which Counsel used as a comparative point. I must say that despite the confusion in heights, a common phenomenon in children, the witness maintained that she climbed unto the wall by herself and not with accused person's help. What is the overall effect of these inconsistencies? In ***Kusi & Kusi v Bonsu [2010] SCGLR. 60@80***, the Supreme Court speaking through Wood CJ noted that;

*"In the real world, evidence led at any trial which turned principally on issues of fact, and involving a fair number of witnesses, would not be entirely free of inconsistencies, conflicts or contradictions and the like. In evaluating evidence led at a trial, the presence of such matters per se, should not justify a wholesale rejection of the evidence to which they might relate. Thus in any given case, minor, immaterial, insignificant, or non-critical inconsistencies must not*

*be dwelt upon to deny justice to a party who had substantially discharged his or her burden of persuasion"*

Considering the age of PW2, her initial statement given to the police on 5/11/2020 later filed as Additional Disclosures, and the number of times accused person was alleged to have committed the offence, I find that these inconsistencies are expected, immaterial and do not detract from her credibility when tested against s. 80 of NRCD 323. Significantly, she repeated and emphasized the material facts of her testimony. For the sake of argument should these inconsistencies be resolved in accused person's favour, it would not take away from the firm conviction of PW2 that indeed accused person inserted his fingers into her vagina on several occasions. On the authority of *Ntim v Essien [2001-2002] SCGLR 451* which discussed the credibility & weight to be attached to a witness' testimony as codified in s. 80 (2) of NRCD 323, as a trial judge with the unique function of observing a witness, I found PW2 calm and composed. Her recall of material facts vis-à-vis the offences in question was almost accurate and telling of her credibility, dispelling the valiant attempts by Counsel to discredit her as an untruthful witness and one who had been coached by her parents to tell a nonexistent story. Indeed, I dare say that even Counsel was impressed with the accuracy of the answers that the witness gave, particularly on the number of times that accused person inserted his fingers into her vagina, where and what time of day of each incident.

Secondly, I find that from Exhs. 1 series, the wall and residence of accused person was inside the inner perimeter of the compound that he shared with other occupiers. Just as PW2 told the Court, the footpath was a short distance from the main entrance of the shared premises. This meant that passersby could see persons standing in the verandah or sitting on the pile of blocks but will not be able to see an act of indecency as PW2 explained. In her own words, she answered to the following questions:

Q: *At what time of the day did he insert his finger into you while you sat on the wall in the verandah*

A: *It was afternoon*

Q: *If it was in the afternoon, then someone passing by would have seen you*

A: *No because my legs were inside the verandah. I was facing inside*

Q: *When he inserted his finger into your vagina on the verandah, did you scream or kept quiet*

A: *I screamed*

Q: *How many times did he do it on the verandah*

A: *3 times.....*

Q: *When Uncle Tony inserted his finger into you while sitting on the blocks did you scream or say anything*

A: *It was painful. I told him that it was painful and he said I should not say so*

Q: *Every time Uncle Tony put his finger in your vagina, did you tell your parents*

A: *Yes*

Q: *Have you been telling Auntie Adjoa Kum too*

A: *Yes*

Q: *Did your parents tell you to stop going to Uncle Tony's house*

A: *Yes, they did*

Q: *So Why did you continue going there*

A: *Because my mother will go selling*

The above interaction showed that the alleged scene of crime was not one that would ordinarily be conducive for the commission of a sexual offence, although in this instance the very nature of the offence and the manner in which it was allegedly carried out made it the perfect place. From PW2s testimony, it is deducible that because her entire clothes or even underwear did not need to be removed completely, it was unfortunately convenient to be assaulted in an open space while she was still fully clothed.

It was horrifying to find out under cross examination that while accused person allegedly inserted his fingers into PW2 while carrying her on his lap, passersby did not question or comment even though she cried out in pain. The horror of the story is further heightened because according to PW2, she told her parents and Auntie Adjoa Kum of what accused person had been doing to her but none of them confronted accused person until the latest incident. It is heartbreaking that Adjoa Kum knew of accused person's predatory behavior even towards her biological daughters and yet did not take action to stop his unacceptable behavior.

With PW3, the crux of his testimony was that it was his 3-year old Gladys who first told him that accused person had been inserting his finger into her vagina. Upon questioning, Agnes also confirmed that accused person had subjected her to similar sexual exploitation and that she had earlier informed her mother of what had happened. Secondly, he reiterated that his children, PW1 & PW2, were the first to inform him of accused person's actions, not his wife although she confirmed that the children had earlier told her of what accused person had been doing to them. After hearing the news, he quickly lodged a complaint with the police who gave him medical forms to take the children to the hospital. Thirdly, that it was his children who identified accused person to the police as the perpetrator and he was arrested. PW3's initial statement to the police was admitted and marked as Exh. A.

The weight of PW3's testimony is in corroborating the testimonies of PW1 & PW2 and its credibility and admissibility, on which this Court could rely on to make a determination, as a first-hand hearsay testimony under s. 118 OF NRCD 323

The cross examination of PW3 lingered on the possible vaginal infection of PW3's children because they used the same toilet with other members of the household as well as school children when they attended school. However, the witness explained that at home his nuclear family had their own bathroom which they did not share with other people. More questions were put to the witness on the manner in which the urine samples of PW1 & PW2 were taken at the clinic. Counsel posited that since the mother of the children collected the samples into a container without wearing medical gloves, the samples were very likely contaminated and could not be relied on. The witness answered that even though neither he nor his wife were in medical gloves at the time, they collected the urine samples directly from the vaginas of the children when they urinated, not from another container into the sample pots given them.

PW4 testified that it was true that Gladys had been experiencing abdominal pains but she dismissed same as the effects of sweets that she had been eating. She corroborated the testimonies of PW1 & PW2 that both of them told her of the abuse that accused person was inflicting on them. That she knew accused person because he lived in the same house as her older sister Deborah Antwi in whose care she often left her children when she needed to go hawking. Together with her sister, they went to accused person's house the next day but he was out. Later when he returned, he denied the offence saying that he only played with the children, nothing more. She tendered her initial statement, admitted and marked as Exh. B.

Cross examination established that PW4 indeed found out about the alleged incident in October 2020 while PW3, her husband found out on 1/11/2020, almost a month after she initially found out. Asked why she did not take any step to bring the information to the appropriate authorities, she said it was because her husband had travelled. Similar to PW3,



Counsel impressed on PW4 that not wearing gloves contaminated the urine samples, to which the witness disagreed. When it was put to her that the symptoms her children suffered from, i.e., vaginal pains was a disease and not because accused person had inserted his fingers into them, the witness again disagreed.

PW5 spoke extensively on the pictures attached to his Witness Statement, pointing out that they were taken in accused person's room. Further, that it was PW1 & PW2 who pointed out the chair as the one in which accused person sat in and inserted his finger into their vaginas. He tendered the medical forms for Agnes Mintah & Gladys Mintah, admitted and marked as "Exhibits. C & D", the Investigation Caution Statement of Accused dated 14/11/2020, marked as "Exhibit E", 3 pictures of the alleged scene of crime, marked as "Exhibits. F, F1 & F2" and finally the Charge Statement of Accused person dated 16/11/2020 marked as "Exhibit G".

PW6 told the Court that upon presentation at the Essikado Government Hospital, he took a history of the complaint of *"pain in the private parts and painful urination"* by PW1 & PW2, who were accompanied by their parents. He said PW1 & PW2 told him that a certain man in their neighbourhood had been inserting his fingers into their vaginas. He confirmed authoring Exhibits C & D, tendered earlier by PW5. In respect of PW1 & PW2 respectively, he further testified as follows;

*"On examination, the child looked unwell, was warm to the touch and not jaundiced. Pelvic examination revealed an erythema of the anterior 2/3 of the labia minora and some vaginal discharge. No scars were seen. Laboratory investigation confirmed a Urinary Tract Infection (UTI). She was put on medications and discharged home for follow-up to the clinic." ... And Pelvic examination revealed erythema of the anterior part of the labia minora and pain on touch. Laboratory investigations revealed a Urinary Tract Infection. She was put on medication and discharged to be follow- up at the clinic*

On the face of it, the ingredients of indecent assault were present in the facts presented to this court. Inserting one's finger(s) into the vaginas of children or any other person involves physical touch to the children's person, which act is sexual in nature, particularly because it involves a sexual bodily organ, the vaginas which obviously was done for the sexual gratification of the offending person. Further, the places where the acts were alleged to have occurred, in accused person's room and in the open space of his compound by a footpath is immaterial because what is important is the nature of the touch, deemed to be sexual in nature. Reference *R. v Sargeant [1997] Crim. LR 50, CA* where the conviction of the accused who grabbed a male victim on a public road and forced him to masturbate was upheld by the appellate court. In this instance, very few acts could be more sexual than a person "fingering" another and I find that accused person's actions were very sexual and violated the bodies of PW1 & PW2. The testimonies of the witnesses were succinct and the documentary evidence presented supported the allegations of accused person inserting his fingers into PW1 & PW2 and an analysis of same will be otiose because they speak for themselves.

## DEFENCE

The accused person's defense was a denial of the charge and facts presented. He told the court that in the morning of the day of his arrest, a neighbor told him of the accusations by the mother of PW1 & PW2 and her sister Auntie Adjoa Kum that he had inserted his fingers into their daughters' vaginas. Immediately he denied the allegations and in fact, when Kizita (Auntie Adjoa's daughter) was questioned in his presence, she denied saying accused person had inserted his fingers into her. According to accused person, he believed the false allegations levelled against him were as a result of a missing puppy saga which Sandra Pii (PW4) was alleged to have stolen and taken to her house when she and her family moved away. Secondly, that it was his belief that because he owed PW4 for some cloths/materials that he bought from her and was yet to pay, she had decided to punish him. Despite for the

admonition in the cases of *Brempong II v The Rep.* [1997-98]1GLR 467 and *Rep. v Francis Ike Uyanwune* [2013] 58 GMJ. 162 to examine the defence of an accused person, I find that the defence put up in this instance could easily be dismissed since there is no discernible defence in law to discuss.

## DECISION

Accused person is hereby convicted of the 2 counts of indecent assault contrary to s. 103, Act 29.

## SENTENCE

In sentencing, I have considered the facts of the case and the *modus operandi* that the accused person employed in carrying out his offensive and criminal acts. He literally preyed on two very young children who trusted him as an adult. He took advantage of a mother's need to earn an income which compelled her to leave them in her sister's care, and unfortunately into his lair. His actions are reprehensible and a commensurate custodial sentence will serve justice to the victims and their parents, as well as a deterrent to other predatory older men.

Accordingly, accused is sentenced as follows:

Count 1 – 12 months in prison

Count 2 – 12 months in prison

Sentences to run consecutively.

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H/H NAA AMERLEY AKOWUAH (MRS.)

