

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON  
FRIDAY THE 21<sup>ST</sup> DAY OF OCTOBER, 2022 BEFORE HER HONOUR  
ENID MARFUL-SAU, CIRCUIT COURT JUDGE

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CASE NO. D6/04/2021

THE REPUBLIC

VRS.

YAW GAVI

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*ACCUSED PERSON PRESENT*

*PROSECUTION: C/INSP. SALIFU NASHIRU PRESENT*

*COUNSEL: F.A. ACQUAYE ESQ. FOR ACCUSED PERSON PRESENT*

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### JUDGMENT

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The Accused Person is charged with one count of Defilement of female under sixteen years contrary to section 101(2) and one count of Incest contrary to section 105 both of the Criminal Offences Act, 1960 (Act 29).

The facts as presented by prosecution are that victim, Matilda Gavi, 15 years is the daughter of the Accused who was brought from the Volta Region to live with him since she was 5 years old. According to prosecution, in 2019, victim was woken up in the middle of the night and found the Accused person having sex with her. Prosecution says that out of pain, she pleaded with the Accused to stop but he stated that he will not until he had completed the act. After this, Accused warned victim not to inform anyone. Prosecution says that since this day, the Accused repeatedly had sexual intercourse with the victim. According to Prosecution, the Accused Person's wife informed victim

that that she suspected the victim was pregnant and so she informed the Accused who asked her to ignore her stepmother. Prosecution says that on 14<sup>th</sup> October, 2020 when the victim went to school, the headmistress detected changes and together with the girl child coordinator they sent the victim to the Amasaman Municipal Hospital where a scan revealed that she was then 25 weeks and 6 days pregnant. Victim mentioned the Accused person as the one who has been having sex with her. The headmistress therefore made a report to the Police and the Accused was arrested and arraigned before this court.

Prosecution called two witnesses in support of its case. PW1 was the Investigator L/Cpl Dorcas Nimoh and PW2 was the victim, Matilda Gavi.

By a Ruling dated 31<sup>st</sup> March, 2022, the Accused was called upon to open his defence to the charges. The Accused testified on oath on 23<sup>rd</sup> August, 2022. His evidence before the court was succinct. He stated that the charges against him are not true. Throughout cross examination, he denied the charges levelled against him. Therefore, the case of the Accused is one of denial.

Having denied the offence, this court must determine whether this explanation of Accused is reasonably true. See **MAHAMADU LAGOS v. COMMISSIONER OF POLICE [1961] 1 GLR 181.**

The direct evidence of PW2 is of the essence. Her testimony is that her father brought her to Accra to live with him in the same room since she was seven years old and in 2019, he started having sex with her for a continuous period till 12<sup>th</sup> October, 2020. She stated that one night in the year 2019, she was asleep in the same room as her father, the Accused when she realised that a penis had been inserted in her vagina. She testified that when she opened her eyes she saw the Accused and she informed him that she was feeling pains but he continued to have sex with her after which she bled. The Accused then

informed her not to tell anyone. She stated that Accused had sex with her repeatedly on a daily basis and at times at three day intervals and this continued for a year. She testified that her stepmother come to live with her and the Accused during the lockdown and detected that she was pregnant so she informed the Accused but he told her to forget about her stepmother and that it was not true that she was pregnant. She stated that the stepmother left the house on 4<sup>th</sup> October, 2020 as she was a JHS student and school was reopening. She added that on 12<sup>th</sup> October, 2020, Accused took advantage of the absence of his wife and had sex with her one last time after which he asked whether she was indeed pregnant and indicated that he will send her to the hospital on 16<sup>th</sup> October, 2020 for a check up.

The evidence of PW2 shows that she was a victim of a sexual encounter which resulted in pregnancy by the Accused. However, the Accused totally denies the offences. As already indicated in the Ruling dated 31<sup>st</sup> March, 2022, I find the witnesses of Prosecution credible and at the close of the case of the Accused, I consider that his denial of his involvement in the offences have not succeeded in raising any doubt in the mind of the court in accepting the evidence of the prosecution.

Weighing the denial of the Accused against the evidence of prosecution's witnesses, the evidence of Prosecution is preferred. Short of believing the Accused, I am unable to find from the evidence before me that he has put up a defence which may be acceptable or reasonably probable.

I find that the evidence of Accused did not succeed in raising any doubt the benefit of which should be given to Accused. I find that the evidence of

Accused has failed to in any way whittle down the evidence adduced by Prosecution before this court. In the circumstance, I find the Accused guilty on counts 1 and 2 and he is hereby convicted.

**SGD**

**H/H ENID MARFUL-SAU**

**CIRCUIT JUDGE**

**AMASAMAN**