

IN THE CIRCUIT COURT HELD AT BIBIANI ON MONDAY THE 10TH DAY OF OCTOBER, 2022 BEFORE H/H JOSHUA CALEB ABAIDOO ESQ, THE CIRCUIT COURT JUDGE

CASE NO. BN/CT/43/22

THE REPUBLIC

VRS

KWASI SOMIAH

ACCUSED PERSON

PRESENT

D/C/INSP. FRED AMOH FOR THE PROSECUTION.

JUDGMENT

The accused person Kwasi Somiah was charged with and stood trial for the offence of Defilement contrary to section 101 of the Criminal Offences Act 1960, Act 29.

The particulars of offence were as follows;

KWASI SOMIAH, AGED 27 YEARS; FARMER: you on the 11th day of March, 2022, at Sefwi Subri in the Western North Circuit and within the Jurisdiction of this court, did have carnal knowledge of Florence Mintah aged 13 years.

The accused person pleaded “not guilty” to the charge made against him.

The prosecution then assumed the burden to prove the charges levelled against the accused person beyond reasonable doubt in accordance with Section 13 (1) of Evidence Act, 1975 NRCD 323.

The brief facts of the case are that the complainant one Ernest Mintah is the father of the survivor (victim) Florence Mintah aged 13 years. The accused person Kwasi Somiah is a farmer. All the parties live at Sefwi Subri, a suburb of Bibiani. On 11th March, 2022 at about 9:00 pm the complainant left the victim and her younger brother by name Kwadwo with one Akua Etse to go and buy food for the victim and her younger brother. On his return at about 10.00 pm he could not trace the children. He was later informed during his search for the children that the accused person had taken them to his house. The accused fed the children in his house and laid a mat on the floor in his room for Kwadwo to sleep on while he slept on his bed with Florence. In the course of the night the accused person had sexual intercourse with Florence aged 13 years.

The complainant learnt about the incident in the afternoon of the next day. He interviewed the victim and she confirmed the incident.

PW1 Florence Mintah chose to give an oral unsworn statement at the trial. She told the court that on that fateful day his father came for her and her younger brother from her grandmother's house and left them with a lady who sells drinks to go and buy food for them. The accused person came for them to go with them to look for their father. They did not find him so the accused person took them to his house and gave them fufu and palm soup. After that he asked Kwadwo to sleep on a mat on the floor and asked her PW1 to sleep on a mattress which was also on the floor. She stated that the accused person removed her pants and had sex with her. The next morning the accused person gave the victim PW1 GHC 2.00 and GHC 1.00 to Kwadwo. The accused person then told the victim PW1 that he will beat her if she told anyone about it. She further stated that she later called her brother to come but her brother insulted her saying that the accused person had had sex with her. He brother informed her father about it and the father confronted PW1 so she told her father the truth that the accused person had sex with her.

The evidences of the other prosecution witnesses are as stated in the unsworn statement of PW2 Isaac Mintah a.k.a. Kwadwo and the witness statements of PW3 Ernest Mintah, PW4 D/Inspector Abena Serwaa Busia and PW5 Dr. Ernest Atta Mante of the Bibiani Government Hospital.

The accused person in his evidence told the court that on the night of the incident at about 9.30 pm he met the children on the way and asked them where they were going at that time of the night. They answered that they were looking for their father who had gone to buy food for them. The accused offered to give the children food in his house and took them home and gave them food to eat.

He told the court that he was a bit drunk because of the funeral activities of his paternal aunt so while the children were eating he fell asleep on his mattress. He stated that while asleep he opened his eyes to see that the victim was sitting on him and had inserted his penis in her vagina. It was about 4:30 am so he lifted the victim off him and sent the children to their home.

I now proceed to deal the offence of Defilement.

Section 101 of the Criminal Offences Act, 1960 Act 29 states that;

“(1) For the purposes of this Act, defilement is the natural or unnatural carnal knowledge of a child under sixteen years of age.

(2) A person who naturally or unnaturally carnally knows a child under sixteen years of age with or without the consent, commits a criminal offence and is liable on summary conviction to a term of imprisonment not less than seven years and not more than 25 years.”

The prosecution in the instant case is therefore required to prove the following two essential ingredients beyond reasonable doubt;

- (i) That the child who is the victim of the criminal offence was less than sixteen years of age at the time the offence was committed.

(ii) That the accused person has naturally or unnaturally carnally known the child.

The prosecution is required to prove the age of the child unless the accused person admits the age of the child. In the instant case the age of the victim PW1 Florence Mintah was not contested by the accused person. Her age is therefore deemed to have been admitted by the accused person.

The accused person did not ask any relevant questions during the cross examination of PW2 Isaac Kwadwo Mintah.

As regards the 2nd ingredient of whether or not the accused person has naturally or unnaturally carnally known the child, the evidence of the PW1 points to one and only one person i.e. the accused person as the person who had sexual intercourse with her. During the cross examination of PW1 she confirmed that the accused asked her to sleep on the mattress, he made her remove her pants and he inserted his penis into her vagina. The accused did not ask PW1 any further questions. The accused person also declined the invitation to cross examine the rest of the prosecution witnesses.

The court is of the view that at age 13 years a girl is mature enough to identify a person who makes sexual contact with her especially where they live in the same community and know each other. PW1's evidence is corroborated by PW2. PW2 stated that there is no electric power in the accused person's room so the accused was using a torch light. He turned it off after which he had sexual intercourse with PW1. He told the court that he saw everything that happened and that after the incident he got up and went out to urinate after which he held PW1 and asked her to go along with him to their own house but she refused. He confirmed that the next morning while the accused person was taking them to their father he gave him (PW2) GHC 1.00 and GHC 2.00 to PW1.

During the cross examination of the accused person by the prosecution the following transpired;

Q: I am putting it to you that when you saw PW1 and PW2 vulnerable as they were on that day you took advantage of their situation and lured them into your closet and had sexual intercourse with PW1.

A: That is correct.

Q: I am also putting it to you that when you alleged in your evidence that it was the victim who put your penis in her vagina is not true.

A: What you are saying is true.

From all the evidence before the court it is clear that the accused person is not denying that he had sexual intercourse with the victim-survivor PW1. What he seeks to do from his evidence is to shift responsibility for the person who initiated the sexual intercourse from himself to the victim-survivor. However from all the evidence he is the one who initiated the act and by law consent is not a defence in the offence of defilement.

I therefore find the accused person guilty as charged and convict him accordingly.

SENTENCE

The accused is sentence to 10 years in prison with hard labour for the offence committed.

In coming to this decision the court took into consideration the high prevalence of the offence of defilement within the jurisdiction of the court, the age difference between the accused and the survivor, the fact that the accused is a married man with a 2 year old child who is expected to be protective of children rather than taking advantage of their vulnerability.

The court also took into consideration the plea in mitigation of counsel Adu-Gyamfi Tawiah as an officer of the court as well as the fact that the accused is a first time offender. This sentence is also to serve as a deterrent to like minded persons.

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H/H JOSHUA C. ABAIDOO
(CIRCUIT COURT JUDGE)