

IN THE CIRCUIT COURT HELD AT GOASO IN THE AHAFO REGION ON
FRIDAY THE 22ND DAY OF DECEMBER 2023 BEFORE HIS HONOUR
CHARLES KWASI ACHEAMPONG ESQ. CIRCUIT COURT JUDGE

BR/SY/CT/67/2024

THE REPUBLIC

VRS.

FRANK KWABENA

JUDGMENT

The accused person has been charged with the offence of defilement contrary to section 101(2) of Act 29/1960 which stipulates as follows;

A person who naturally or unnaturally carnally knows a child under sixteen years of age, whether with or without the consent of the child commits a criminal offence and shall be liable on summary conviction to a term of imprisonment of not less than seven years and not more than twenty-five years”

The facts leading to the present charge are that on the 14th of July 2023, the complainant sent her grandchild on an errand within the vicinity. As she was returning, she encountered the accused person who beckoned her to come to which but she refused. Prosecution alleges that, it was at that moment that the accused person threatened to inflict cutlass wounds on the victim if she failed to comply. He immediately attacked her and forcefully carried her into his

wooden kitchen structure where he had sexual intercourse with the complainant's grandchild, herein after called the victim. After the incident the victim left for her house upon being released by the accused person. Complainant upon seeing the condition of the victim knew something was wrong and questioned the victim who narrated her ordeal to her grandmother. The accused was subsequently arrested, charged with the above stated offence and arraigned before the Court.

The elements of the offence of defilement which require proof are;

- a. That the victim is a child under sixteen years of age.
- b. Someone had sexual intercourse with the victim; and
- c. It was accused who had sexual intercourse with the victim.

Each of these elements ought to be established beyond reasonable doubt failure of which the case of prosecution must fail. This is because, Prosecution can only secure a conviction only after establishing all the elements of the offence in compliance with the standard set out in Section 11(2) of the Evidence Act 1975 (NRCD 323) which provides;

“In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.”

This burden of proof is so fundamental and well-trodden in a myriad of cases and I shall not seek to re-invent the wheel but just to mention the following

cases where this basic rule was further enunciated. In the Commissioner of Police v. Isaac Antwi [1961]

GLR 408 the Court held that;

“The fundamental principles underlying the rule of law that the burden of proof remains throughout on the prosecution... it always rests on the prosecution to prove the guilt of the accused beyond reasonable doubt.”

Also, Lord Sankey in Woolmington vrs. DPP [1935] AC 462 had earlier stated that, "**... it is the duty of the prosecution to prove the prisoner's guilt...**

Consequently, the first issue to be determined is whether or not the victim is under sixteen years of age and in this regard the victim, Alijatu Dauda (Pw2) testified to the effect that she was 13 years of age when the incident occurred. This assertion was not disputed by accused person and same was earlier corroborated by the testimony of the Investigator in the person of D/L/Cpl. Lydia Benye (Pw1) who tendered the Weighing Card of the victim which was marked as Exhibit D1. According to Exhibit D1, Alijatu Dauda (Pw2) was born on the 25th of May 2009 which by computation meant that she was 13 years 10 months old at the time of the incident. Accused person did not proffer any evidence to suggest that the victim was not the age she claimed to be neither did he establish that the age of the victim was at least 16 years old. This Court accordingly finds that Alijatu Dauda (Pw2) was 13 years 10 months at the time of the incident.

The next issue is to ascertain whether or not someone had sexual intercourse with the victim.

In the case of Robert Gyamfi (alias Appiah) Vrs. The Republic (2019) JELR 65737 the Court of Appeal observed that, “sexual intercourse (carnal is copula) means that the man should have used his penis to penetrate the woman’s vagina and not by any other means such as the fingers, tongue or stick” and this penetration must not necessarily be something grand but the least degree of penetration of the penis into the vagina is sufficient proof beyond reasonable doubt that there was a sexual intercourse.

In the instant suit, Prosecution the medical report of the victim which was marked as Exhibit C which indicated that penetration into the vagina was successful and that there was ejaculation. The medical report further indicated that there were “mucosal abrasions/lacerations (vagina/perneum) with minimal bleeding”. In simple terms Exhibit C confirmed that the penetration was executed by nothing other than the penis of the assailant given the fact that there was ejaculation. It is a known fact that it is only the sexual organs of humans that can ejaculate and, in this case, the sexual organ referred to is the penis. Exhibit C further indicates that the penetration was forcefully done as the act was coerced, it is thus no wonder that there were lacerations, within the vagina walls. For a vivid picture of what the Doctor stated, the Court shall quote same verbatim;

“Perineal examination however revealed minor/mucosal abrasions/lacerations at the lateral vaginal walls and introitus, „freshly“ broken hymen and a whitish vaginal discharge resembling seminal fluid. No foreign bodies or hemorrhage was noted”

These descriptions were referable to no other than the victim and same was admitted into evidence without objection by the accused person. This Court therefore has no difficulty in holding that someone had sexual intercourse with the victim.

The multi-billion-dollar question however is who had sexual intercourse with the victim? While Prosecution alleges that it was accused person who had sexual intercourse with the victim, the accused person contends otherwise. Hence it was incumbent upon Prosecution to establish its contention beyond reasonable doubt. Prosecution thus called the victim herself who testified to the effect that on the day of the incident while running an errand for her grandmother, she met accused person who lives in the same vicinity and that accused person was in front of his house slicing firewood with a cutlass. She alleged that accused person beckoned her to come which she ignored but that latter crossed her path and threatened to stab her. She alleged that accused grabbed her skirt and carried her in his arms into his kitchen where he had sex unprotected sex with her on the floor. In other words, Pw2 had identified her assailant to be no other than the accused person. The accused person did not challenge any of the facts given by Pw2 except to deny defiling her. Having assessed the testimony of Pw2, this Court found same quite believable given the level of detail and manner in which the incident occurred. Pw2 was very precise with regards to the day and date the incident occurred that one can hardly doubt that she actually experienced what she alleged. Pw2 narrated in vivid, clear and unequivocal terms how accused person accosted her, threatened to stab her and subsequently carried her into his wooden kitchen structure so he could have sex with her. As noted however, accused person did not deny these facts under cross examination. The law is that, if an accused does not challenge nor controvert the evidence proffered against him, it means that the testimony or the assertion is true or has been admitted by him. (See: Prah and Others v. The Republic [1976] 2 GLR 278, Republic vrs. Eshun (B18/02/2023) [2023] GHACC 192 (20 April 2023) and of Robert Gyamfi (alias Appiah) Vrs. The Republic (2019) JELR 65737). Consequently, this court finds that the person who had sex with the victim is none other than the accused

person. What further confirms the holding of the Court is accused persons conduct after the incident which connotes some form of guilty conscience. According to Fatima Yussif (Pw3) the grandmother of the victim, when the victim informed her about what the accused person had perpetrated, she went to confront him but when they got to the premises of accused person, he had locked himself in his room hence they had to force open the door and found him hiding in the room. These assertions were corroborated by one Aishatu Yussif (Pw4), the aunt of the victim and Kwabena Amoako (Pw5) but surprisingly, accused person did not challenge any other them with regards to same. He is therefore deemed to have admitted the truth of same. The question then is, if accused person had nothing to hide, why was he hiding in his room. Why did he lock himself in his room.

The only conclusion is that, accused person have committed the dastard act, felt convicted and ashamed of himself and sought to hide from the results of his actions. Unfortunately for him, the victim and her family were persistent and managed to force open the door and whisked him to the police station for justice to take its course.

In his defence, the accused person alleged that on the day of the incident, the her was cooking when the victim offered to assist him in preparing the food but he refused. The accused person alleged that, after the victim left, she however brought members of her family to his house alleging that he had defiled her when same was not true. The testimony of accused person was not borne out of the evidence on record. For the following reasons;

- a. By his own admission, the period within which the victim left his premises and the time she brought her family members to accost him was not long.
- b. Within this period the only man the victim met was accused person.
- c. An assessment of the vagina of the victim on the very day of the incident revealed freshly broken hymen with seminal fluid in the vagina.

It follows therefore that, the act could only have been perpetrated by none other than accused person. This Court accordingly finds as established beyond reasonable doubt the fact that accused person defiled the victim, Alijatu Dauda (Pw2). Accused person is accordingly found guilty and hereby convicted.

Despite the plea of accused person in mitigation and the fact that accused person is a first time offender, this Court takes judicial notice of the fact that cases of this nature are on the ascendancy and there is the need to curb same. A deterrent sentence is therefore apt in order to send shivers down the spine of would-be criminally minded persons. Moreover, the victim at the time of the offence was only 13 years 10 months old and the unwholesome conduct of accused would scar her throughout her life. Accused is therefore sentenced to serve a term of imprisonment of 14 years in hard labour.

SGD

H/H CHARLES KWASI ACHEAMPONG ESQ.

CIRCUIT COURT JUDGE – GOASO