

**IN THE CIRCUIT COURT HELD AT JASIKAN ON WEDNESDAY THE 16<sup>TH</sup>  
DAY OF MAY 2023 BEFORE HIS HONOUR JUDGE ALFRED KWABENA ASIEDU  
ESQ.**

SUIT NO. D6/1/2022

THE REPUBLIC

VRS.

LODONU KWASI

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**JUDGEMENT**

The accused person is charged, with defiling a female child under sixteen 16 years of age Contrary to section 101(2) of the Criminal and Other Offences Act, 1960, Act 29. PARTICULARS of the offence are that Lodonu Kwasi, aged 31, Farmer, for that you, somewhere in May 2020 at Nkwanta in the Oti region and within the jurisdiction of this court, forcibly had sexual intercourse with Evergeline Adadzi a female child aged 9.

BRIEF FACTS. The brief facts of the case are that complainant Charity Nseiwoono is personnel of Ghana Fire Service, Hohoe and the victim is a 9\_years old pupil of Pusupu D.A Primary school whilst the accused person is farmer aged 31 also a resident of Pusupu. Somewhere in May 2020 in the evening the victim and her two friends were playing when the accused person called them to buy him food. When they entered his room to collect the money, he quickly locked the door behind and had sexual intercourse with the victim and thereafter gave them GHS5.00 each and opened the door for them to go. On the May 19, 2020 the victim fell sick and finding it difficult to walk and when questioned by the parents she mentioned the accused

person as the one who had sexual intercourse with her. Complaint was lodged at the Brewaniase Police station and the victim was issued with a Police medical form to attend hospital for examination and treatment which she did and returned the form. The accused person was later arrested and in his cautioned statement denied the offence and after investigation he was charged with the offence to appear before the honourable court.

#### THE CASE OF PROSECUTION.

The prosecution called in all Four(4) witnesses in support of her case namely, the victim mother Charity Nseiwoono as (PW1), The investigator D. Inspector David Dzotepe as (PW2), The victim Evergeline Adazi as (PW3), and Georgina Amankwa aka Asata Efua as the fourth prosecution witness (PW4).

The testimony of PW1 was that victim is her daughter living at Hohoe as a staff of Ghana Fire Service. That she had a call in May 2020 from her sister that something is happening to her daughter so she should come and question her daughter. That she came down to Pusupu and during her interrogation with the daughter the daughter told her that the accused Lodonu Kwasi popularly called Papa Adzido had had sexual intercourse with her a week earlier. That she reported the matter to the Police at Brewaniase and she was issued with medical form to send the victim to hospital for medical attention and an extract form to be given to DOVVSU Nkwanta. That she sent the child to the hospital with financial assistance from the accused and his family. The evidence of PW1 stood mostly unchallenged by the accused person. The evidence of PW2, the investigator was that on the October 8, 2022 a case of defilement extracted from Brewaniase together with a fully endorsed Police medical report form by the physician Assistance of the Municipal Hospital, Nkwanta was referred to him at Nkwanta District DOVVSU. That he took statement from the complainant, the victim and two other persons. That he visited the crime scene with the victim, father of the victim and the accused person. That enquiries he made at the scene indicated that the relatives of the accused were buying medicines for the victim at the time when the

victim was unable to walk. That it was established that accused gave GHS100.00 to the aunt of the victim named Asata Efua to send the victim to the hospital when the condition of the victim was becoming critical. That he took a caution statement from the accused person and also took a Charge statement from the accused person. PW2 tendered into evidence the medical report, cautioned statement and Charge statement as Exhibits A, B and C respectively. Exhibit A has it that, "on examination acutely ill looking conscious young girl, unable to walk well, afebrile, not pale, anicteric, hydration: fair, cardiopulmonary stable. Has tender and reddened vulva with broken hymen. No bleeding noticed actively", among others. Again, the evidence of PW2 stood firm without any challenge from the accused person. The testimony of the victim PW3 was that somewhere on May 12, 2020 she was in the company of two of her friends and they were heading towards the road side to play. That the accused called them to come and collect money to buy food for him. That when they entered the room accused locked the door and forcibly had sex with them in turns and gave each of them fifty pesewas and thereafter opened the door for them to go and threatened to kill them if they dare inform anyone. That she later fell sick and was not able to walk well and her aunty questioned her on numerous occasions but she did not talk because of the threat accused used on them after defiling them. That later her mother came down from Hohoe to question her and she told her it was accused who defiled her and others. That her mother took her to the Police station at Brewaniase and then sent her to the hospital at Nkwanta. The evidence of PW3 also stood unchallenged in all material particulars. The PW4 madam Georgina Amankwa aka Asata Efua did not come across as a credible witness. She had earlier mounted the witness box and then denied her witness statement. An adjournment was taken to enable her file her statement again and the content of the second witness statement was materially different. At this stage appearing hostile to the victim for reasons best known to her. Her demeanour in the box was that of an embittered witness. I am therefore unable to place any weight to her testimony.

## THE CASE OF THE ACCUSED

The accused person on the other hand consistently denied the charge in both his Cautioned and charge statements and stated he does not know anything about the charge and that he does not know the complainant from anywhere but knows the victim very well. He sought to say during cross examination on the victim that it was his landlord who urged the victim to frame him up with the allegation. He however, offered no explanation as to why he suspected the landlord to have influenced the victim to, as he claims, frame him up. He called no witness into his defence.

## THE BURDEN AND STANDARD OF PROOF

Section 14 of the Evidence Act 1975 NRCD 323 places the burden of producing evidence in criminal cases on the prosecution. And the cases have held that there is no burden at all on the accused to prove his or her innocence. All that the accused needs do is to create doubt in the mind of the court as to facts of the prosecution when a prima facie case has been found against the accused person. The case **COP vs. Isaac Antwi (1961) GLR** where the Supreme Court held materially the same as above stated. The case of **Donkor Vs. The State (1964) GLR598 SC** held that in criminal trials the burden of proof in the sense of the burden of establishing the guilt of the accused is generally on the prosecution. The failure to discharge the burden should lead to the acquittal of the accused.

The cases of **Lutterodt v. Commissioner of Police (1963)1GLR.429, SC** holding 3, **Amartey v.The State (1964) GLR256@ 295 SC**, and **Darko v. The Republic (1968) GLR203** provide authoritative guide as to how criminal evidence should be evaluated by the trial court.

The Republic vs. Francis Ike Uyanwune (2013) 58 GMJ 162 @181to 182 Adjei JA stated thus 'The trial Court rightly discussed the burden of proof in criminal law in accordance with section 13(1) of the Evidence Act, NRCD 323 which provides as follows "in any civil or criminal action the burden of persuasion as to the commission

by a party of a crime which is directly in issue requires proof beyond reasonable doubt". At page 177 and 178 the respected justice stated "The appellant in his written submission stated that the trial High Court Judge did not properly discuss the standard burden of proof in criminal matters because the court shifted the burden of proof unto him to prove his innocence. The law is not what was actually stated by the appellant. The law is that the prosecution must prove all the ingredients of the offence charged in accordance with the standard burden of proof, that is to say the prosecution must establish a prima facie case and the burden of proof would be shifted to the accused person to open his defence in so doing he may run a risk of non-production of evidence and or non-persuasion to the required degree of belief else he may be convicted of the offence. The accused person must give evidence if prima facie is established else, he may be convicted and if he opens his defence the court is required to satisfy itself that the explanation of the accused is either acceptable or not. If it is acceptable the accused person should be acquitted and if it is not acceptable the court should probe further to see if it is reasonably probable. If it is reasonably probable the accused person should be acquitted but if it is not and the court is satisfied that in considering the entire evidence on record the accused person is guilty of the offence, the court must convict him"

And this court will accordingly be guided by these authorities in this judgement.

The accused person is charged with defiling a female child of Nine (9) years of age under section 101(2) of the Criminal and Other Offenses Act, 1960, Act 29. The ingredients of the offense disputed, since on the record there is no doubt about the age of the alleged victim, for which the prosecution is burdened to establish are:

1. That the alleged victim of the offense, in this case Evergelline Adazi, has been carnally known by someone.
2. That, that someone is the accused person, in this case Lodonu Kwasi aka Papa Adzido.

On whether or not the alleged victim had been so carnally known, it is the case of the prosecution that the victim has been carnally known according to their investigation. Prosecution relied on the allegation by the victim herself together with the medical report Exhibit A which states amongst others that the victim as a result of forceful sexual intercourse was "on examination acutely ill looking conscious young girl, unable to walk well, afebrile, not pale, anicteric, hydration: fair, cardiopulmonary stable. Has tender and reddened vulva with broken hymen. No bleeding noticed actively". Exhibit A, I hold is corroborative of the allegation by the victim that she has been known carnally and I find that fact satisfactorily established.

The next issue is who then carnally knew the victim as found. The case of the prosecution is that it was the accused person herein who sexually defiled the victim. In support of that fact is the testimony of the victim herself who narrated how the accused called her and her two other friends into his room under the pretext of sending them to buy food and in turns had sexual intercourse with each of them. That the accused threatened to kill them should she disclose the incidence to anyone. That the aunty with whom she lives questioned her on many times when she fell sick as a result of the sexual assault on her and could not walk properly, but for fear of the threat by the accused person she could not tell the aunty the truth till her own mother the PW1 came to question her. That was when she was able tell her that the accused popularly known as Papa Dzido had sexually known her. The prosecution case as put by the investigator is that when the condition of the victim was getting worse the accused person through his brother provided money for the child to be sent to the hospital. The financial support given by the accused towards the treatment of the child was denied by the accused. However same was corroborated by the mother of the victim who came to Pusupu from Hohoe and sent the child victim to the hospital. In his defence accused denied the allegation against him and offered to call his brother to attest to the fact that neither he nor any his family members did provide any financial support to the child as the prosecution alleged. However, after adjourning

the case to enable him call his brother into evidence he came to announce to the court that he was no longer calling any witness. It has been established that indeed the child has been defiled and the child insists it was the accused who she very well known as Papa Adzido who defiled her. There is a corroborated fact that the accused provided financial support towards the care of the victim at the hospital and it is the case of the prosecution that the accused did so because he very well know he has caused the victim into her condition by defiling her. As stated in the case of Republic v Nyuwume supra when prima facie has been found, the accused person must open his defence in so doing he may run a risk of non-production of evidence and or non-persuasion to the required degree of belief and he may be convicted of the offence. The accused person must give evidence if prima facie is established else, he may be convicted and if he opens his defence the court is required to satisfy itself that the explanation of the accused is either acceptable or not. In the case of ALI YUSIF ISSANO.2 V THE REPUBLIC 2002'2003 1SCGLR174 at 183 AKUFFO JSC as she then was stated ',,,,, thus although an accused person is not required to prove his innocence during the course of his trial, he may run the risk of non-production of evidence and or non-persuasion to the required degree of belief particularly when he is called upon to mount a defence'. Accused in our present case however, offered no explanation for his conduct particularly as found against him that he provided financial support towards the care of the victim when her condition was bad because it was his action on the child that resulted in the child being in need of the medical care to enable the court evaluate in comparison to the prosecution's case. His mere denial did not create any effective doubt on the case of the prosecution as found against him and he has run the risk of non-persuasion in this case.

From the above I hold that prosecution has established the guilt of the accused as charged on the offence of defiling a female child of age 9 which is far below the consensual sex age of 16 for which accused offered no effective defence, and accused person is accordingly convicted.

ALFRED KWABENA ASIEDU ESQ

(CIRCUIT JUDGE )