

IN THE CIRCUIT COURT "A", TEMA, HELD ON TUESDAY, THE 27TH DAY
OF JUNE, 2023, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,
CIRCUIT COURT JUDGE

SUIT NO: D10/14/21

THE REPUBLIC

VRS:

JOHNNY ARTHUR

ACCUSED PERSON

PRESENT

C/INSP. SUSANA AKPEERE FOR PROSECUTION PRESENT

ROGER KWAME ARYEH, ESQ. WITH EUGNENIA SOMAH BRUCKWU,
ESQ. AND PEACE CHUKWUKELU, ESQ. FOR THE ACCUSED PERSON

PRESENT

JUDGMENT

FACTS:

The accused person was arraigned before this court on 27th November, 2020 on a charge of defilement contrary to **Section 101(2)** of Act 29.

The brief facts presented by the prosecution are that the complainant, Diana Sewornu, is a teacher and the mother of the 12-year-old alleged victim, Nathaniella Mawuena Sewornu whilst the accused person, Johnny Arthur, aged 30, is a teacher and they all live at Community 10, Tema. The prosecution alleges that the alleged victim is a Junior High School Form 1 pupil at Oakwood Community School located at Community 10, Tema where the accused person teaches English Language. It is the case of the prosecution that in March 2020, the accused person proposed love to the alleged victim which she accepted and they

exchanged phone numbers. On 23rd March, 2020, the alleged victim was at home when the accused person called her on phone to come to the school. The prosecution alleges that the victim was reluctant but the accused person persisted until she obliged. It is further alleged that when she got to the school, the accused person lured her into his room and forcibly had sexual intercourse with her without her consent. Thereafter, the accused person then asked her to go home and warned her not to disclose the incident to anyone and continued to be in close contact with her.

Furthermore, on 19th April, 2020, the accused person called the alleged victim again on phone to come to the school where he forcibly had sexual intercourse with her. In October 2020, the victim attended a training on Adolescent Reproductive Health with Compassion International and during the program, she confided in a friend at the program, who in turn informed one Vincent Adjei, the Coordinator of the program. The coordinator then took the alleged victim to her mother and disclosed the matter to her. A formal complaint was lodged at the Tema Regional Domestic Violence and Victim Support Unit (DOVSSU), where a police medical form was issued to the complainant to send victim to the hospital for examination and treatment. Based on the formal complaint, the accused person was arrested and after investigations charged with the offence and put before this honorable court.

THE PLEA

The accused person who was represented by Counsel pleaded not guilty to the charge after it had been read and explained to him in the English language.

Thereafter, the prosecution assumed the onerous burden to prove the guilt of the accused person beyond reasonable doubt.

BURDEN OF PROOF

Article 19 clause 2(c) of the 1992 Constitution provides that a person charged with a criminal offence shall be presumed innocent until the charge is proven, or that the person has pleaded guilty to the charge. See **Sections 11, 13, and 15** of the Evidence Act, 1975, (N.R.C.D. 323). P.K. Twumasi in his book titled Criminal Law in Ghana stated at page 120 that:

“The presumption of innocence was the bedrock of the liberty of the individual within the framework of criminal process. If there is one time-honoured principle in the criminal jurisprudence of the common law jurisdiction, it is that the accused must be presumed innocent until his guilt has been unconditionally proved.”

In the case of **Banousin v. The Republic** [2015-2016] 2 SCGLR 1232 at page 1241, the Supreme Court held that:

“The burden the prosecution has to prove is the accused person’s guilt, and this is beyond reasonable doubt. This is the highest burden the law can impose; and it is in contra distinction to the burden a plaintiff has in a civil case, which is proof on a preponderance of probability of the evidence. What “beyond reasonable doubt” means is that, the prosecution must overcome all reasonable inferences favouring the innocence of the accused. Discharging this burden is a serious business and should not be taken lightly. The doubts that must be resolved in favour of the accused must be based on the evidence; in other words, the prosecution should not be called upon to disprove all imaginary explanations that established the innocence of the accused person.”

Thus, the burden is on the prosecution to prove the essential ingredients of the charge of defilement against the accused person beyond reasonable doubt. When the accused person is called upon to open his defence, all that is required of him is to raise a reasonable doubt in the case of the prosecution. The standard of proof for the defence of the accused person is on a preponderance of probabilities only, which is a lighter burden than what the law imposes on the prosecution. See the case of **Osae v. The Republic** [1980] GLR, 446.

ANALYSIS

Here, the accused person is charged with defilement contrary to **section 101(2)** of Act 29. **Section 101(2)** of Act 29, states 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 is liable on summary conviction to a term of imprisonment of not less than seven years and not more than twenty-five years.”

Defilement is defined under **section 101(1)** of Act 29 as *“the natural or unnatural carnal knowledge of a child under sixteen years of age.”*

In the case of **Asante (No.1) v. The Republic (No.1)** [2017-2020] I SCGLR 132, the Supreme Court, per Pwamang JSC, at page 143, identified the following ingredients of the charge of defilement which the prosecution must prove to secure conviction;

1. That the victim is under the age of sixteen;
2. Someone had sexual intercourse with her; and
3. That person is the accused;

Further to that, under **section 14 of Act 29**, a child under 16 years of age lacks the capacity to consent to sex. Thus, any consent to natural or unnatural carnal knowledge is void and such a defence is not open to an accused person on a charge of defilement.

On the first ingredient of the offence, **the prosecution must prove that the victim is under age sixteen**. The first and second prosecution witnesses gave the age of the alleged victim as 13 years at the time of testifying in court. The prosecution also tendered in evidence **Exhibit "B"**, the birth certificate of the alleged victim showing that she was born on 12th December, 2007 meaning that at the time of the alleged incident on 19th April, 2020, she was twelve years old. Throughout the trial, the age of the victim as a person below 16 years was not challenged. I therefore find that the prosecution succeeded in proving the age of the alleged victim as a person below the age of 16 years beyond reasonable doubt.

Additionally, **the prosecution must prove that someone carnally knew the victim**. Section 99 of Act 29 states that:

"Where on a trial of a person for a criminal offence punishable under this Act, it is necessary to prove carnal knowledge or unnatural carnal knowledge, the carnal or unnatural carnal knowledge is complete on proof of the least degree of penetration."

In the case of **Gligah & Attiso v. The Republic** [2010] SCGLR 870, SC@ page 879, *Dotse JSC* defined carnal knowledge as:

"the penetration of a woman's vagina by a man's penis. It does not really matter how deep or however little the penis went into the vagina. So long as there was some

penetration beyond what is known as brush work, penetration would be deemed to have occurred and carnal knowledge taken to have been completed.”

To prove that the accused person had sexual intercourse with the alleged victim, the first prosecution witness, Diana Sewornu, the mother of the alleged victim testified that the accused person is the class teacher of the child and through that he established a relationship with the child. According to her testimony, the accused person sometimes calls her on phone to discuss the victim’s performance in school with her. PW1 further testified that during the lockdown period, she called to check up on the accused person and during their conversation, he bemoaned the challenges he was facing and told her he was in the school where he resides. As a colleague teacher, she decided to give the accused person food anytime she cooks and when the food is ready, she sends her niece called Paulina to give the food to the accused person on two occasions, the victim accompanied her niece to give food to the accused person and has not sent the victim alone to the house of the accused person.

The first prosecution witness further testified that on 5th November, 2020, she had a call from one Vincent Adjei of Full Gospel Child Development Centre that he wanted to discuss an issue with her and on 11th November, 2020, she met Mr. Vincent Adjei who disclosed that the accused person has had sexual intercourse with the victim on two occasions. Upon hearing this, she confronted the victim who confirmed that the accused person had sex with her on 3rd March, 2020 and on 19th April, 2020 but she was afraid to inform her so when she attended the camp meeting and based on the lessons learnt she revealed her ordeal in the hands of the accused person to the coordinator. Based on that, she went with the coordinator and the victim to the Tema Regional Domestic Violence and Victim

Support Unit (DOVVSU) and reported the case against the accused person. She was then issued with a police medical form to send the victim to the hospital for examination and treatment and she returned the medical form to the investigator.

The second prosecution witness (PW2), the victim, testified that she attends Oakwood School where the accused person is her English Teacher. According to her testimony, on the 8th February, 2020, she went for Saturday classes and after the class, the accused person proposed love to her but she refused. She further testified that the accused person persisted in professing his love for her and assured her that he would wait for her to come of age since she is a child. Subsequently, on Valentine's Day in the year 2020, the accused gave her a Valentine toffee which she took home and showed to her mother but her mother did not suspect anything. Again, she testified that her mother has given her a phone which she used to call the accused person once and thereafter the accused person was calling her on that phone number.

Additionally, PW2 testified that on the 19th March, 2020, the accused person called her on phone to come and visit him but because her mother was at home, she could not go and on 23rd March, 2020 the accused person called again to invite her to visit him which she declined but the accused person did not relent in his request and thinking that he wanted her to copy notes for him, she went to the school to enquire from him the reason for his request for her to come to the school. The accused person asked her to come to his room, which she obliged and the accused person told her he was going to *'break her'*. Sensing danger, she tried to run but the accused person held her, locked the door, forced her to remove her clothes, took off his clothes, forced her onto the bed and inserted his

penis into her vagina. When the accused person could not penetrate her vagina, and she started screaming due to the pains, he held her mouth to prevent her from screaming, went to the kitchen for oil, applied it on his penis, held her onto the bed and inserted his penis into her vagina. After the sexual intercourse, the accused person went out to buy a contraceptive and when he returned, gave her two tablets to take ostensibly to prevent pregnancy and asked her to go home and not to disclose it to anyone. The following day the accused person called her to apologise and promised not to repeat that since he had sinned against God and also asked her not to tell anyone about it. Again, on the 19th April, 2020 at about 1: 30pm, the accused person called her on phone again to come but due to fear of the accused person repeating the act, she declined but the accused person pleaded with her to come for him to see her since he was due to travel. She obliged and went to meet him and he had sexual intercourse with her again but this time, when he inserted his penis into her vagina and was about to ejaculate, he removed his penis and discharged the semen outside of her vagina.

PW2 further testified that due to fear, she did not disclose the incident to anyone until on 5th October, 2020, when she attended a Camp meeting organized by the Full Gospel Child Development Centre and during one of the sessions on Adolescent Reproductive Health where they taught them about sex education and abstinence, she confided in the coordinator of the program, Mr. Vincent Adjei and told him how the accused had sexual intercourse with her. The coordinator in turn told PW1 and when questioned, she confirmed to PW1 that the accused person has had sexual intercourse with her twice. Consequently, PW1 and the coordinator took her to the Regional DOVVSU, Tema and reported the case to the police. PW1 was issued with a medical form to send her to the

hospital for examination and treatment which PW1 did and returned the forms to the police.

Additionally, the third prosecution witness (PW3), Detective Sergeant Monica S. Wiredu stationed at the Regional DOVVSU, Tema, testified that on 12th November, 2020, she was on duty when a case of defilement was reported against the accused person which was referred to her for investigations. She obtained witness statement from PW1, PW2, one Paulina Agbodeka and the coordinator of Compassion International, Vincent Adjei and police medical form was issued to PW1 to send PW2 to Tema General Hospital for medical examination. PW2 was sent to the Tema General Hospital and was examined and treated. She tendered the medical report admitted and marked as **Exhibit 'A'** and the birth certificate of PW2 as **Exhibit "B"**. On the 25th November, 2020, the accused person was arrested and he submitted his investigation caution statement which was admitted and marked as **'Exhibit C'**. Again, she testified that in the course of investigations, she visited the scene of the alleged crime at Oakwood Community School hostel at Community 10, Tema together with PW1 and PW2 and she discovered that the accused person was the House Master of the school and lives in one of the rooms in the hostel. She also saw a bed, a wardrobe, television set and table in the room of the accused person. PW2 then pointed to the bed in accused person's room as the bed the accused person lured her on and had sexual intercourse with her. After gathering the above information, the accused person was formally charged with the offence and she tendered in evidence the investigation charge statement admitted and marked as **Exhibit "D"**. From the medical report tendered by her, the form was issued by the police on 12th November, 2020 and filled by the medical officer on 18th November, 2020 at 2:00pm and the report states that:

“on examination, there were no external body injuries directly related to the incidences. On vaginal examination, no bleeding or discharge was seen. There were multiple tears/breach in the hymen with the scar tissues formed at their bases. The HIV and pregnancy tests were all negative. The history and examination findings confirm Defilement”

The accused person in his investigation caution statement, **Exhibit “C”** denied having sexual intercourse with the victim and maintained that PW2 was involved in a similar case with a former I.C.T teacher of the school. The accused further stated that the alleged victim rather proposed love to him and pestered him for a relationship which he refused and reported her to PW1 on one occasion when she visited him alone. The accused person also raised a defence of alibi in **Exhibit “C”** that during the lockdown period, he was with some family members and filed a notice of a plea of alibi on 23rd September, 2021 and gave the particulars of his alibi which the prosecution investigated and tendered the report through the accused person as **Exhibit “E”**.

Additionally, the accused person in his defence vehemently denied the allegation and testified that he was not physically present in Tema on the date and time of the alleged incident. According to him, he visits his family members at Amafrom, Dodowa almost every school break or vacation and in March 2020, schools were on lockdown due Covid-19 till 5th October and he took the opportunity to visit cousins called Afua and Maame at Dodowa. Thus, on the dates the incident is alleged to have taken place, i.e., 23rd March and 19th April, 2020, he was nowhere near the scene of the alleged crime.

The accused person further testified that the mother of the alleged victim is his good friend and she used to cook for him and sometimes delivered the food to him personally or through her sister Paulina and the alleged victim and that the victim has never visited his house alone to bring him food. According to him, he informed PW1 that he will be travelling but she called him on phone that she had sent food to his house without prior information and due to the fact that he had travelled to Dodowa, she gave the food to the security man. Additionally, due to his closeness with the mother, he monitored the victim in school and at times called PW1 on her phone number 02444770414 to report any misconduct on the part of PW2 in the school to her. On one occasion, he called PW1 to advise PW2 when she went to town without informing PW1. According to him, the relationship between them was cordial and he was in contact with PW1 and that he did not know that PW2 had a phone and denied calling her to copy notes for him. According to him, as a concerned teacher and due to his relationship with PW1, when an alleged indecent assault on PW2 by an ICT teacher of the school was brought to the attention of the school authorities, he called PW2 to advise her to focus on her studies and that his interactions with her has always been about her studies.

From the evidence led by the prosecution and the defence put up by the accused person, the evidence of the prosecution is mainly based on the account of PW2 and medical report, **Exhibit "B"** which states that there were multiple breaches or tear in the hymen with scar tissue formed at the bases. During the trial, Counsel for the accused person expressed his desire to cross-examine the medical doctor but the prosecution failed to call him as a witness with the excuse

that he had travelled outside the jurisdiction and unavailable to testify as a witness. Under **Section 121(1)** of the Criminal and Other Offences Procedure Act, 1960(Act 30), a report produced by a Government Medical Practitioner to the court is admissible to be used as evidence of the facts stated therein. However, **Section 121(6)** mandates the court, in the interest of justice to summon the medical practitioner who prepared the report to be examined as a witness. In the instant case, the prosecution having failed to produce the medical officer to be cross-examined on the report as to his findings has greatly reduced the probative value of the report. In the case of Daniel Kwabena (a.k.a **Kwabena Akyirem v. The Republic** [2019] DLHC 10096, the court held that even where a medical officer has presented a report establishing proof of carnal knowledge, it would not be conclusive of the charge since the prosecution must of necessity prove that the culprit of the carnal knowledge is no other person than the accused person and it is only when carnal knowledge is proved that it becomes necessary to find out who is responsible. In the instant case, assuming the truth of the contents of the medical report, all that it establishes is that the victim in this case is not a virgin.

The prosecution must prove further that it is the accused person before the court and no other person who had sexual intercourse with the victim. The prosecution witnesses maintain that it is the accused person and no other person who had sexual intercourse with the alleged victim. The medical report which is to provide confirmatory proof of the said allegation was prepared more than seven (7) months after the alleged incident. Thus, there is no scientific evidence linking the accused person to the alleged crime. The court also notes the cancellation and insertion of 23rd and 19th before March and April in the dates the incident is

alleged to have happened as captured in the medical report without any explanation for the insertions.

The need for some corroborative evidence linking the accused person as the one who had sexual intercourse with the victim and the need for the judge to be mindful of the danger of acting on such uncorroborated evidence cannot be gainsaid. The rationale for this rule was stated in the case of **R v. Henry & Manning** (1969) 53 Crim App Rep 150 cited with approval by the Supreme Court in the case of Asante case supra, Salmon LJ stated at page 153 as follows:

“What the judge has to do is to use clear and clear language that will without any doubt convey to the jury that in cases of alleged sexual offences, it is really dangerous to convict on the evidence of the woman or girl alone. This is dangerous because human experience has shown that in these courts girls and women do sometimes tell an entirely false story, which is very fabricated, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not enumerate, and sometimes for no reason at all”

In the case at bar, the accused person from the day of his arrest raised a plea of a defence of alibi and accordingly filed a notice of alibi and the court ordered same to be investigated by the prosecution which report was tendered through the accused person as **Exhibit “E”**. It is trite learning that where an accused person puts forward an alibi, the burden of proof of guilt remains on the prosecution. See the case of **Bediako and Ors. v. The State** [1963]1 GLR 48. It has also been held that the credibility of an alibi is weakened when it is raised belatedly during the proceedings but enhanced if it is raised from the day of arrest and

throughout the proceedings. Thus, in the case of **Fokuo & Other v. The Republic** [1997-1998] 1 GLR 1, the court held that:

“Since by its very nature a defence of alibi was especially easy to fabricate, section 131 of the Criminal Procedure Code, 1960 (Act 30) required an accused person in a summary trial to give notice of a defence of alibi before the examination of the first prosecution witness. And although a failure or an omission to comply with that requirement might not necessarily excuse an alibi evidence, the court was perfectly justified in taking that into account when considering the credibility of the alibi evidence, since the credibility of an alibi was greatly enhanced or strengthened if it was set up at the moment the accusation was made, and if it was consistently maintained throughout the subsequent proceedings; but if it was raised belatedly during the trial, that was a potential circumstance to lessen the weight and force of the defence.”

The accused person consistently maintained in his investigation caution statement, notice of alibi, defence and throughout the trial that during the lockdown period, schools were not in session, a fact this court can take judicial notice of, and that he visited some relatives at Dodowa. According to him, on the said 23rd March and 19th April, 2020, he was at Amanfrom with his family and denied calling the alleged victim to have sexual intercourse with her on the said dates. According to him, he used to call PW1 on her phone number 0244677014 to discuss issues bordering on the conduct of PW2 in the school and even when he had to talk to PW2, it was always on the phone number of PW1. From the report of the alibi, one Afua Ofori Boakye, a cousin of the accused person informed the police that the accused person visits them from time to time and on 21st March, 2020, the accused person visited them and left on 25th March 2020. The accused person visited again on 17th April and left on 20th April, 2020.

According to the prosecution, another cousin of the accused person called Akua Ofori Boakye confirmed the dates mentioned by Afua Boakye as the exact dates the accused person visited them at Amanfrom. PW3, under cross-examination by counsel for the accused person, the following ensued;

Q: When you visited the locations of the accused person in his alibi you found them to be true.

A: My Lord, they confirmed to the date the accused person said he visited them.

In the case of **Fokuo & Other v. The Republic**, supra, the court held that for an alibi defence to be of some weight, it should cover and account for the whole period of the alleged incident as to make it impossible that the accused person committed the alleged act the subject matter of the charge during that period. In the instant case, in the particulars of offence, the prosecution alleged that the incident happened on 19th April, 2020 which per the findings of prosecution, the accused person was not within Tema.

The prosecution, despite the corroborative evidence on the alibi raised by the accused person maintains that he was within the jurisdiction per call records attached to **Exhibit "E"**, and that the accused person used his mobile phone number 0240262627 to communicate with PW2 on cell phone number 0594959300 on 23rd March, 2020 at 12:16pm, 1:05pm, and 3:34pm on 19th April, 2020 at 12:16pm all within Tema. The said call record is not certified by MTN and was not ordered by the court. Again, the said phone number is registered in the name of PW1 and the evidence on record shows that the accused person and PW1 are colleagues and have been calling each other. There is no evidence that it was

PW2 that the accused person communicated with and even if there was such a call, it is not enough to conclude that the accused person had sexual intercourse with the victim based on the call. Again, PW2 admitted under cross-examination by Counsel for the accused person that there was an issue of an alleged indecent assault on her by an I.C.T teacher in the school which was brought to the attention of the school authorities and the accused person advised her. Also, from the facts alleged by the prosecution, it has never been part of the case of the prosecution that the accused person, on the first occasion after allegedly having sexual intercourse with PW2, he gave her contraceptive to prevent pregnancy as maintained by PW2 in her evidence. The prosecution also claims that PW2 used to visit the accused person with one Paulina to give him food but this person was not called as a witness and the said Vincent Adjei that PW2 allegedly first revealed the incident to in November, 2020 was also not called as a witness. The only evidence is the oral testimony of PW2 alleging that the accused person has had sexual intercourse with her.

On the totality of the evidence led by the prosecution and the defence put up by the accused person, I find that the accused person successfully raised a reasonable doubt in the case of the prosecution that it was him, and no other person who had sexual intercourse with the alleged victim. I therefore pronounce the accused person not guilty of the charge and I accordingly acquit and discharge him of the charge.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**

