

IN THE CIRCUIT COURT "A", TEMA, HELD ON THURSDAY, THE 13TH
DAY OF APRIL, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE

SUIT NO: D8/07/22

THE REPUBLIC

VRS:

ADDY DANIEL

ACCUSED PERSON

PRESENT

C/INSP. AKPEERE FOR PROSECUTION

PRESENT

SAMPSON CHAETAA LARYEA, ESQ. FOR THE ACCUSED PERSON
PRESENT

RULING ON SUBMISSION NO CASE

FACTS:

The accused person was arraigned before this court on a charge of defilement contrary to **Section 101(2)** of the Criminal Offences Act, (1960) Act 29.

The brief facts alleged by the prosecution are that the complainant, Nana Amoateng, is a factory hand and the landlord of the mother of the alleged victim. According to the prosecution, the alleged victim, Erica Xlornyeku is aged 10 years and a class 3 pupil and the accused person is a trader and a tenant of the complainant. The prosecution alleges that the victim's mother works at Cape Coast and left the victim and her brother in the care of complainant's mother. The prosecution further alleges that, the complainant detected changes in the victim's walking and on 13th October, 2021 at about

12:00 midnight, complainant returned from work and his mother, one Beatrice Peprah informed him that she examined the victim's anus and saw changes with an offensive discharge. The said Beatrice Peprah further informed the complainant that when she interviewed the victim, she narrated her ordeal to them that on 29th September, 2021 at about 9:00pm, the accused person lured her into the bathroom and had sexual intercourse with her through the anus and stated further that the accused person had anal sex with her on several occasions. The prosecution stated that on 14th October, 2021, a report was made at the Domestic Violence and Victim Support Unit (DOVVSU) Ashaiman and a Police Medical Report Form was issued to complainant to take victim to the hospital which was returned duly endorsed by a medical officer. Subsequently, the accused person was arrested, cautioned and after investigations, he was charged with the offence and arraigned before this Honourable court.

THE PLEA

The accused person pleaded not guilty to the charge after it had been read and explained to him in the Twi Language. The accused person having pleaded not guilty to the charge puts the entire facts of the prosecution in issue and thereafter the prosecution assumed the onerous burden to prove the guilt of the accused person beyond reasonable doubt.

The case proceeded to trial and to prove its case, the prosecution called three (3) witnesses and tendered in evidence **Exhibit "A"**, the birth certificate of the alleged victim, **Exhibit "B"** Series-Photographs, **Exhibit "C"**-Caution statement of the accused person, **Exhibit "D"**- Charge statement of the accused person. At the close of the case of the prosecution, Learned Counsel

for the accused person submitted that there is no case made out sufficiently to warrant calling upon the accused person to open his defence and filed a written submission of no case on 25th April, 2023.

THE LAW GOVERNING SUBMISSION OF NO CASE

It is trite learning that in criminal cases, the accused person has no obligation to prove his innocence and that the onus is on his accusers to prove his guilt beyond reasonable doubt through cogent and admissible evidence. Therefore, the accused person is required to state his side of the story when at the close of the case for the prosecution, the court determines that a prima facie case is sufficiently made out requiring him to open his defence. Where there is no case sufficiently made out, the law permits an accused person to submit that there is no case for him to answer. This principle of law is given statutory backing under **Section 173** of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), which states that:

"Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."

The principles governing a submission that there is no case to answer as gleaned from decided cases were restated by the Supreme Court in the case of **Michael Asamoah & Another v The Republic**, Suit No. J3/4/2017, dated 20th July, 2017, the Supreme Court, per Adinyira JSC (as she then was), at page 5 as follows:

"The underlying factor behind the principle of submission of no case is that an accused should be relieved of defending himself where there is no evidence upon which he may be convicted. The grounds upon which a trial court may uphold a submission

of no case as enunciated in many landmark cases whether under summary trial or trial on indictment may be restated as follows:

- a. There has been no evidence to prove an essential element in the crime;*
- b. The evidence adduced by the prosecution has been so discredited as a result of cross-examination; or*
- c. The evidence was so manifestly unreliable that no reasonable tribunal could safely convict on it;*
- d. The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, and one with innocence”.*

In the case of **Tsatsu Tsikata v. The Republic [2003-2004] 1 SCGLR, 1068**, the Supreme Court stated that the standard of proof at this stage is a prima facie case in contradistinction to beyond reasonable doubt since the defence has not had the full opportunity of punching holes in the case of the prosecution. The term “*prima facie*” evidence has been held to mean evidence which on the face of it or on the first appearance could lead to conviction if the accused person fails to give reasonable explanation to rebut it. Meaning, the prosecution should at this stage lead evidence to establish the essential ingredients of the offence charged such as would lead to conviction if the accused person fails to open his defence to offer explanation to raise doubts in the case of the prosecution. See the case of **Kwabena Amaning Alias Tagor and Anor. v. The Republic (200) 23 MRLG 78**.

The circumstances under which a submission of no case can be properly made and upheld are discussed seriatim, in the light of the ingredients of the charge against the accused person and the evidence led by the prosecution in support of the charge to determine if there is a genuine for a full trial.

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 it is no defence for an accused person to contend that the child consented.

Firstly, **the prosecution must prove that the victim is a person below the age of 16 years.** Throughout the trial, the age of the alleged victim as a person below the age of 16 years was not seriously controverted. The age of the child is corroborated by the birth certificate of the child admitted and marked as **Exhibit “A”** which shows that the alleged victim was born on 6th July 2011. Meaning, at the time of the alleged incident on 29th September 2021, she was

aged 10 years old. Thus, the prosecution established the age of the alleged victim as a person below the statutory age of 16 years.

Secondly, the prosecution must prove that someone had unnatural carnal knowledge of the female below 16 years.

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 instant case, the accused person is alleged to have had unnatural carnal knowledge of the alleged victim by having sexual intercourse with her through the anus. **Section 104 (2)** of Act 29, defines unnatural carnal knowledge as sexual intercourse in an unnatural manner or with an animal. Sir Dennis Adjei in his book **Contemporary Criminal Law in Ghana** 2nd edition at page 241, states that though having sexual intercourse in an unnatural manner has not been defined in the Ghanaian context, having sexual intercourse through the anus should constitute sexual intercourse with another person in an unnatural manner and also submits that sexual intercourse through the nose and ears should also constitute unnatural manner.

The first prosecution witness, Erica Xlornyeku, the victim, testified that her mother works in Cape Coast and left her in the care of their landlady and her son, PW2. According to her testimony, on 29th September, 2021 at about 9pm, whilst entering her room to go and sleep, the accused person who was going

to take his bath invited her into the bathroom, ordered her to bend down and remove her pant which she did. He then removed his penis and inserted it into her anus and had sexual intercourse with her. PW1 testified further that she felt pains and wanted to shout but the accused person covered her mouth with his hand. When he finally released her to go, he asked her not to tell anyone. Later, the landlady Beatrice Peprah and PW2 noticed changes in her walking due to the pain and out of fear, she told them that she fell. Also, due to the fear, she did not disclose the incident to anyone until her grandmother noticed and examined her anus and upon interrogation, she told her what the accused person had done to her.

The first prosecution witness under cross-examination by counsel for the accused person, the following ensued;

Q: You have admitted in this court that you have been abused severally by one Togo.

A: Yes, my lord. That issue is at the police station.

Q: You have also admitted that that issue took place when you were sent to go and sell.

A: Yes, my lord.

Q: How did your mother get to know of the abuses by Togo?

A: I told the landlord.

Q: So, Madam Beatrice is aware you are abused.

A: Yes, my lord.

Q: And Nana Amoateng is also aware of the abuse.

A: Yes, my lord.

Q: Has the abuse by Togo been reported to the police?

A: Yes, my lord.

Q: When was it reported to the police?

A: *I do not remember the date.*

Q: *It was reported after this case has been brought to court. Is that the case?*

A: *It is not correct.*

Q: *Do you remember when the Addy case was reported to the police?*

A: *No, my lord. I cannot remember.*

Q: *But you are able to tell the Togo case was reported before today's case.*

A: *Yes, my lord.*

The second prosecution witness, the complainant, Nana Amoateng, testified that the accused person and PW1's mother are tenants in their house and PW1's mother relocated to Cape Coast, leaving PW1 in their care. PW2 testified further that a week before this case was reported, he detected changes in PW1's walking and upon interrogation, she informed him that it was a result of a fall. One day, when he returned from work, his mother, Beatrice Peprah informed him that she examined PW1 and found out that someone had had sex with her through the anus. According to him, when confronted, PW1 narrated her ordeal that the accused person lured her into their bathroom and had sex with her through her anus. Based on that, he called PW1's mother to inform her. Thereafter, he reported the case to the police and sent the victim to the hospital for examination and treatment and returned the medical report to the investigator. PW2 under intense cross-examination by Counsel for the accused person admitted that the victim had been severally sexually abused by one Togo but he failed to disclose this fact to the medical officer who examined the alleged victim when she sent her to the hospital.

The third prosecution witness (PW3), D/PW/Sgt Alice Nokobi Tetteh, the investigator, also testified that on 14th October, 2021, PW2 came to the Domestic Violence and Victim Support Unit to report a case of an alleged defilement of PW1 against the accused person. She testified that she obtained statements from the witnesses. PW3 further testified that upon the arrest of the accused person, they visited the scene of the alleged crime at *House No. A/516 A, Free Town Ashaiman* where they both reside, and PW1 pointed to a bathroom which is located in house as the place the accused person had sex with her. PW1 also narrated her ordeal in the presence of the accused person and others. She took photographs of the scene for evidential purposes which were tendered in evidence and marked as **Exhibit "B" Series**. She also tendered in evidence the investigation and charge statements of the accused person admitted and marked as **Exhibits "C" and "D"** respectively. During the cross-examination, the defence tendered through PW1 the witness statement of the grandmother of the alleged victim who allegedly examined her anus as **Exhibit "1"** when the prosecution failed to call her as a witness to corroborate the account of the alleged victim. PW3 under cross-examination by Counsel for the accused person, the following exchanges took place;

Q: In her statement of 28th October 2021, Mad. Sewornu stated that the victim has previously been severally assaulted by another person. Is that correct?

A: Yes, my lord. That is true.

Q: The victim also confirmed this during cross-examination. I suggest to you. However, prosecution did not tender any of these from the documents filed.

A: That is correct.

Q: Your outfit has from Thursday tried to arrest the said Togo.

A: I tried all possible best to get the said Togo arrested but I was told he has relocated.

Q: Can you indicate to this court which charge you were trying to arrest him for?

A: *My lord, defilement.*

Q: *Yet the accused person has availed himself throughout this case. Is that correct?*

A: *Yes, my lord.*

Q: *The accused has consistently been present in court. Is that correct?*

A: *Yes, my lord.*

Q: *The said Togo was being sought for in respect of defilement. Defilement of whom?*

A: *The victim in this case.*

Quite apart from the testimony of the prosecution witnesses that someone other than the accused person is wanted for allegedly defiling the child in this case, the prosecution also failed to call the medical officer who examined the alleged victim as a witness with the explanation that the medical officer had travelled outside the jurisdiction. In the course of the trial, the prosecution prayed the court for leave to recall the investigator to tender the medical report through her. However, when the court granted the prosecution leave to recall, the prosecution failed to recall and to tender the document through her and decided to close their case. Thus, there is no medical report in evidence to corroborate the account of the victim that someone had anal sex with her. The grandmother of the alleged victim who allegedly first examined her anus and vagina and saw a wide opening in the anal region and informed PW2 about it was also not called as a prosecution witness to be subjected to cross-examination. The mother of the alleged victim appeared in court to rely on her witness statement but when the case was adjourned for her to be cross-examined, she failed to appear and upon an application by the defence, her evidence was expunged.

In the instant case, the failure of the prosecution to tender the medical report in evidence means that there is no corroborative evidence of the account of the alleged victim that the accused person had anal sex with her in the bathroom and warned her not to disclose the incident to anyone. I am mindful that under the current state of our law of evidence, corroboration is not necessary and therefore, it is possible for the prosecution to prove its case with the evidence of a single witness provided the evidence is credible. See **section 7(3)** of the Evidence Act, 1975(NRCD 323), However, under **section 7(5)** of the Act, the court or a party may comment on the danger of acting on uncorroborated evidence. In the case of **Asante (No. 1) v The Republic (No. 1)** [2017-2020] I SCGLR 132, the Supreme Court held in its holding 2 that:

“Corroboration was evidence that supported the testimony of a witness by confirming that the witness was telling the truth in some particular in his testimony thereby giving credibility to his story, which evidence must be independent of and from a source other than the witness whose testimony was sought to be corroborated. A court in a criminal trial could convict an accused person on the testimony of only one witness where the testimony of that witness was found to be credible and the evidence of the accused person did not raise a reasonable doubt as to his guilt. However, even though by section 7(3) of NRCD, corroboration was not mandatory to secure conviction, that did not mean that where corroborative evidence could be obtained, the prosecution could fail to lead such evidence merely because corroboration had been made a requirement by statute creating the offence in question. Consequently, failure by the prosecution to lead corroborative evidence where such evidence exists might raise a reasonable doubt in the mind of the court as to the guilt of the accused person”.

The need for some corroborative evidence linking the accused person as the one who had sexual intercourse with the victim and the need for a 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 above, 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”

Thus, in the instance case, medical evidence is relevant in confirming the testimony of the alleged victim that indeed someone had anal sex with her. See the case of **Daniel Kwabena (a.k.a.) Kwabena Akyirem v. The Republic** [2019] DLHC 10096, cited by Counsel for the accused person. the court stated as follows:

“Indeed, I need to add that, without the requisite established proof of carnal knowledge, a charge or offence of rape and defilement shall have to fall flat. It shall then be needless and pointless for the court to proceed to find out who allegedly raped or defiled the victim... Besides, the facts as presented did not state or disclose that a medical officer in fact attended to and examined the child victim. Having failed to appear before any medical officer to undertake the requisite medical examination, there cannot therefore be any established proof of carnal knowledge.”

On the totality of the evidence led, I find that the prosecution failed to establish all the essential ingredients of the offence of defilement to warrant calling upon the accused person to open his defence. The evidence led is also so manifestly unreliable that no reasonable court can safely convict upon it. The submission of no case is accordingly upheld. The accused person is acquitted and discharged.

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