IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON FRIDAY THE 21ST DAY OF JULY, 2023 BEFORE HER HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE

CASE NO. D6/14/2023

THE REPUBLIC

VRS.

WILLIAM SEGBAWO

ACCUSED PERSON PRESENT

PROSECUTION: PW INSPR. MABEL ORLEANS-LINDSAY PRESENT

COUNSEL: NO LEGAL REPRESENTATION

JUDGMENT

The Accused Person is charged with one count of Defilement of a child under sixteen years contrary to section 101(2) and one count of Incest contrary to section 105(1) of the Criminal Offences Act, 1960 (Act 29).

The facts as presented by prosecution are that the Accused is the father of complainant Happy Segbawo and Victoria Segbawo and lives with them at Nyabeman. Prosecution says that in February, 2023, the Accused had sex with the victim, Victoria, aged 9 years old and warned her not to tell anyone or he will beat her. According to prosecution, Accused continued to have sex with victim on more than three occasions and on 14th April, 2023, the complainant woke up around 6:00am and saw Accused lying on top of victim and having sex with her. On the same day, complainant went to the police station to lodge a complainant and a police medical form was issued to the Department of Social Welfare for the victim to be sent to the hospital. The Accused person was arrested and based upon these facts he was arraigned before this court.

By a Ruling dated 6th July, 2023, the Accused Person was called upon to open his defence to the charges. Accused testified on oath on 14th July, 2023. His brief testimony before the court was that the charges levelled against him are untrue.

Having denied the offence, this court must determine whether this explanation of Accused is reasonably true. See **MAHAMADU LAGOS v. COMMISSIONER OF POLICE [1961] 1 GLR 181**.

The direct evidence of PW1 and PW2 are of the essence. PW1, the seventeen-year-old daughter of Accused testified that on the day in question, she woke up and saw the Accused having sex with PW2, so she reported the matter to the police for assistance. The nine-year-old victim, PW2 who is also the daughter of Accused testified that sometime ago she was asleep when the Accused removed her clothes and had sex with her. According to her after the first incident of the sexual intercourse Accused had sex with her on three other occasions. She stated that she felt pains when the Accused had sex with her and after he was done, he warned her not to tell anyone if not he will beat her. Aside the direct evidence of PW2 which is corroborated by PW1's direct evidence, there is also before this court *Exhibit F* which is the medical report indicating that the hymen of PW2 cannot be visualized.

As already indicated in the Ruling of the court, the evidence of PW2 was unsworn. It is trite that unsworn evidence of a minor needs corroboration. In **SEY v. COMMISSIONER OF POLICE [1963] 1 GLR 19** the court stated as follows:

"Accepting that the magistrate meant P.W.4, was a child of tender years, his unsworn evidence needed to be corroborated."

Also, in the case of **REPUBLIC V. YEBOAH [1968] GLR 248** it was held as follows:

"That the evidence of the victim on oath in law needed no corroboration but it was a prudent rule of practice to look for corroboration from some extraneous evidence

which confirmed her evidence in some material particular implicating the accused. Apart from the fact that the evidence of a victim in a sexual offence must be corroborated there was the added factor that the victim was a young person of only nine years and the evidence of a young person must as a rule of prudence be well corroborated before being acted upon by the court. There was ample circumstantial evidence corroborating the testimony of the victim that the accused ravished her. In all the circumstances of the case, even if there was no corroboration at all of the evidence of the victim, which implicated the accused in some material particular, the court was sufficiently warned of the danger of acting on the uncorroborated evidence of a victim in a sexual offence, who was a young person and was satisfied that the victim was a witness of truth."

The evidence of PW1 is therefore crucial. Her evidence before the court which was sworn is that sometime in February, 2023 at about 4:30am, she saw her father, the Accused person having sex with PW2. Again, on 13th April, 2023 at about 6:00am, she woke up and again saw the Accused having sex with PW2. Also, being mindful of the warning in **YEBOAH VRS THE REPUBLIC** (supra), this court has satisfied itself that PW1 is a witness of truth who understood the requirement to be truthful to the court.

Also on count two, this court found by its Ruling that the age of the Accused Person as provided in the Particulars of Offence and the Cautioned Statements that is, Exhibits D and D1 is forty-three (43) years. This was never disputed by the Accused during the trial. I am therefore satisfied that the age of the Accused has been established and he is aged more than 16 years. This satisfies the first ingredient that needs to be proven on the charge of incest. Again, from the evidence, it is not in dispute that Accused is the biological father of PW2. As already indicated in the analysis of Count 1, PW2 is a credible witness, and her evidence which has been corroborated by PW1 links the Accused to the charges levelled.

In the case of **LUTTERDOT V. C.O.P (1963) 2 GLR 430**, it was held as follows:

"In all criminal cases where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:
(a) if the explanation of the defence is acceptable, then the accused should be acquitted;
(b) if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;
(c) if quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict."

In the Ruling dated 7th July, 2023, after analysing the ingredients of the offence in the light of evidence adduced by prosecution, it was found that the ingredients which needed to be established in respect of the two counts had been proven, therefore a prima facie case had been made against the Accused. As already indicated, the defence raised by the Accused Person is a total denial of the offence charged. There is direct evidence before this court which is both reliable and credible implicating the Accused Person.
Weighing the denial of the Accused against the evidence of prosecution's witnesses, the evidence of Prosecution is preferred. Short of believing the Accused, I am unable to find from the evidence before me that he has put up a defence which may be acceptable or reasonably probable.
I find that the evidence of Accused did not succeed in raising any doubt the benefit of which should be given to him. I find that the evidence of Accused

has failed to in any way whittle down the evidence adduced by Prosecution before this court. In the circumstance, I find the Accused guilty on counts 1 and 2 and he is hereby convicted.

H/H ENID MARFUL-SAU

CIRCUIT JUDGE

AMASAMAN