IN THE CIRCUIT COURT OF GHANA HELD AT CAPE COAST, CENTRAL REGION ON FRIDAY 7TH DAY OF FEBRUARY, 2023 BEFORE H/H DORINDA SMITH ARTHUR (MRS.), CIRCUIT COURT JUDGE.

SUIT NO. 56/2021

THE REPUBLIC

VRS

JOHN KWAME ANNAN

JUDGMENT

The Accused person was arraigned before this Court on May 5, 2021 for the offence of Defilement Contrary to **Section 101(2) of The Criminal and Other Offences Act, 1960 Act 29.**

The accused person pleaded not guilty to the charge preferred against him for which reason the prosecution assumed the burden of proof and must prove the charge against the accused person beyond reasonable doubt in accordance with;

Section 11(2) of the Evidence Act 1975 NRCD 323 states;

"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 will find the existence of the facts beyond reasonable doubt."

Further, **Section 13(1) of NRCD 323** provides that the standard of proof is nothing less than proof beyond reasonable doubt no matter the offence charged.

See the case of **Ampabeng Vrs Republic [1977] 2 GLR 171 CA**

Under the **Evidence Act, 1975 (NRCD 323)** the burden of proof has two elements – namely, the burden of persuasion and the burden of producing evidence. The two are not the same. The burden of persuasion as provided in Section10 of the Act involves the establishment of a requisite degree of belief concerning a fact in the mind of the court; or the party raises a reasonable doubt concerning the existence or non-existence of a fact, or that the party establishes the existence or non-existence of a fact. This burden is on both the prosecution and the defence.

In determining what is proof beyond reasonable doubt, our courts generally rely on the definition of Lord Denning in **MILLER VRS MINISTER OF PENSIONS [1947] AII E.R. 372 AT 374**. In short the evidence that the prosecution adduced in proof of the charges must preclude every reasonable hypothesis except those which tend to support the charges. Conversely, the accused persons only need to adduce evidence which raises reasonable doubt as to their guilt.

The prosecution in order to discharge the burden placed upon them called three witnesses and tendered in evidence five exhibits.

THE PROSECUTION CASE

The summary of prosecution case is that PW1 is Elizabeth Acquah and the wife of accused person. She testified that somewhere in 2019, accused brought the survivor now deceased aged fourteen from Nkawkaw and introduced her as the daughter. She said on 01/01/2020 they went to Asare Kweku village to farm with the survivor. on arrival at the farm cottage, accused told her to wait in the cottage so that he goes with the survivor to the farm to get some cocoyam to enable her prepare food for them to eat before they start the actual farm work. Accused left with the survivor and not quite long, she heard someone screaming and shouting for help and when she rushed to the scene, she saw the survivor naked on the floor in a pool of blood with multiples cutlass wound on her body. She enquired from the survivor and the survivor stated it was accused who inflicted cutlass wounds on her after having sexual intercourse with her. That after the first intercourse with her, accused wanted another one but she refused and he inflicted cutlass wounds on her. According to PW1, she saw blood all over the face of accused but he refused and denied so she shouted and screamed for help and people came to the scene. They arrested accused and later police came to the scene. She said it was accused who killed the survivor after having sexual intercourse with her.

PW2 is D/Sgt Felix Oduro Boateng and he testified that he was at the charge office with his colleagues when they received a distress call from someone at Afedzi village to the effect that someone has killed his daughter. They quickly informed the District Commander and proceeded to the village. On reaching there, he assumed the role of the investigator. They met the head of the community who was having in the custody the accused person and he handed him over to them. Accused led police to a cocoa farm about 500 to 700 meters away from accused cottage. On reaching where the body was, police met the deceased body lying in prone position naked. Upon inspection, police

detected that the deceased was having cuts on her body and face and she was naked. They enquired from accused who replied that he had sexual intercourse with the deceased before something told him to kill her which he did with a cutlass. They turned her body and saw whitish fluid from her vagina which attested to the accused claimed of having sexual intercourse with her before killing her. PW2 stated further that accused admitted to having sexual intercourse with the survivor at different times aside that day. They deposited the bodu of the survivor at Twifo Praso Government Hospital Morgue.

PW3 is D/Insp Benjamin Segbenu stationed at District CID, Twifo Praso. He corroborated the evidence of PW2 and tendered in evidence photographs of the scene with the deceased survivor, photograph of accused person with blood on his face, investigation caution and charge statements of accused.

PW2

Q. Do you remember at the time of incident I told you the survivor likes men.

A. No, that is wrong

Q. Which hospital proved that the semen in her vagina is mine.

A. I did not take the semen for analysis because she disclosed to PW1 and others before she died that you had sex with her. You also admitted that you had sex with her. You were nearly killed at the farm but for the swift intervention of some people.

THE DEFENCE

Accused gave a statement from the accused box and so he was not cross examined. He did not call a witness. He stated that on the day of incident he went to the bush with the survivor to water tomatoes. He said his wife (PW1) was also with them so he asked PW1 to wait for him at the cottage and he left with the survivor. He said later PW1 shouted for him but he did not mind her so he left. He continued that PW1 screamed for help that the survivor was dying. He poured water on her and carried her with the intention of taking her to the hospital but she was very heavy. He said people came and asked what happened and he told them that someone struck the survivor with a cutlass and they people called police for him. He followed the police to the police station and gave his statements. He said police took photographs of the scene, the survivor and him.

EVALUATION OF EVIDENCE AND APPLICATION OF LAW

The offence of defilement under **Section 101(2) of 1960, Act 29** states that;

"Whoever naturally or unnaturally carnally knows any child under sixteen years of age, whether with or without his or her consent commits an offence and shall be liable on summary conviction to imprisonment for a term of not less than seven years and not more than twenty-five years."

Consequently, the essential ingredients of the offense of defilement are;

1. That someone has had natural or unnatural carnal knowledge of the survivor
2. That someone is the accused person.
3. That the survivor is under sixteen years of age

See: **ERIC ASANTE V THE REPUBLIC [2017] 109 GMJ 1 SC**

To satisfy the court with a conviction the prosecution must prove the aforementioned three ingredients beyond reasonable doubt. The prosecution is required to prove that a crime has been committed but also must link the accused person to the commission of the crime especially where accused pleaded not guilty.

I will deal with all the issues together as they are intertwined but in sequence which is whether or not someone has had natural or unnatural carnal knowledge of the survivor and accused is the one who had carnal knowledge of the survivor and the survivor is under sixteen years of age.

The first issue is whether or not someone has had natural carnal knowledge of the survivor and same will be determined together with the second issue as to whether accused is the person who had carnal knowledge of the survivor.

PW1 testified and stated that somewhere in 2019, accused brought the survivor now deceased aged fourteen from Nkawkaw and introduced her as the daughter. She said on 01/01/2020 they went to Asare Kweku village to farm with the survivor. On arrival at the farm cottage, accused told her to wait in the cottage so that he goes with the survivor to the farm to get some cocoyam to enable her prepare food for them to eat before they start the actual farm work. Accused left with the survivor and not quite long, she heard someone screaming and shouting for help and when she rushed to the scene, she saw the survivor naked on the floor in a pool of blood with multiples cutlass wound on her body. She enquired from the survivor and the survivor stated it was accused who inflicted cutlass wounds on her after having sexual intercourse with her. That after the first intercourse with her, accused wanted another one but she refused and he inflicted cutlass wounds on her. According to PW1, she saw blood all over the

face of accused but he refused and denied so she shouted and screamed for help and people came to the scene. They arrested accused and later police came to the scene. She said it was accused who killed the survivor after having sexual intercourse with her.

From the evidence of PW1, it was accused person who defiled her and later inflicted fatal wounds on her.

sPW1 found the survivor naked and in a pool of blood. She was not naked when they left her for the farm. Then when she was examined, they found semen in her vagina which is exhibited in the photographs tendered in evidence.

In defilement cases, carnal knowledge of the survivor has to be proven and same can be ascertained if accused person used his penis to penetrate the vagina of the survivor. Thus the act of sexual intercourse is deemed complete upon proof of any, the slightest or least degree of penetration. This is the express provision of **Section 99 of Act 29, 1960** which states that:

> "Whenever, upon the trial of any person for an offence punishable under this code, it is necessary to prove carnal knowledge or unnatural carnal knowledge, the carnal knowledge or unnatural carnal knowledge shall be deemed complete upon proof of the least degree of penetration"

For the purposes of proving penetration decided cases finds it sufficient if there is evidence that any part of the virile organ of the accused was within the labia of the pendulum of the female, however slight this may be.

However, penetration is purely a question of fact and as most sexual offences are done in privacy or out of sight and hearing of third parties, eye-witnesses account to corroborate the act is very rare. The court therefore is making inference from circumstantial evidence and the DNA report relied on by prosecution.

According to PW1 she accused person, and survivor went to the farm together. It was accused person who left with the survivor to the farm leaving PW1 at the cottage which according to the evidence is not far from the farm. When the survivor screamed for help, PW1 went and according to her evidence, the survivor informed her that accused inflicted the fatal wounds on her after he had sexual intercourse with her and demanded for another round which she refused. Under cross examination, PW1 answered in question:

Q. What time did you see me having sex with her?

A. The child died in my hands (crying). She told me you had sex with her and wanted to have another round but she refused and you used cutlass to slash her face. You could not deny that and now you are asking me this question. She said so in your presence.

From the answer provided by PW1, the survivor informed her of what accused did to her in accused person's presence. She further stated that accused person did not deny it when the survivor informed her in his presence that he had sexual intercourse with her and slashed her with a cutlass when she refused to allow him have another round.
It is noted that the survivor was found naked, and when examined, they found semen in her vagina. She was not naked when she left with accused person. Also, she was with accused person alone in the farm and when PW1 rushed to her upon hearing her screams, she found blood on accused person's face and body too.

These entire circumstantial evidence link the accused to the offence as he is the only one with the survivor in the farm and he had blood on his face and body.
In **GLIGAH AND ATISO V. THE REPUBLIC [2010] SCGLR 870**, the Supreme Court held in holding (3) that where:

> *There were pieces of evidence which if put together made a very strong case against the accused person[s]. The same with circumstantial evidence. It was generally accepted that when direct evidence was unavailable, but there were bits and pieces of circumstantial evidence available, and when those were put together, they would make stronger, corroborative but more convincing evidence than direct evidence.*

From **Gligah,** the court can accept pieces of evidence or circumstantial evidence where direct evidence is not available. Here, circumstantial evidence is used to make the case stronger or to corroborate or give more convincing evidence. See **THE STATE VRS BROBBEY AND NIPAH [1962] 2 GLR 101** where the court held that circumstantial evidence must lead to one and only one irresistible inference that the appellant is guilty of the offence charged. See also **LOGAN V THE REPUBLIC [2007-2008] 1 SCGLR 76** where it was held that:

> "For circumstantial evidence to support a conviction it must be inconsistent with innocence of the accused. It must lead to irresistible conclusion not only that the crime had been committed, but it was in fact committed by the persons charged in order to arrive at a definite conclusion. Conviction based on circumstantial evidence which in not supported by facts is wrongful."

Here, the court can safely conclude that prosecution was able to lead sufficient evidence that the accused person had sexual intercourse with the survivor, and when she refused his sexual demand another time he used cutlass to wound her. Here, there is no dispute as to who the accused person is because he was with the survivor and according to PW1, accused person brought the survivor to live with them and said she is his daughter. They were living together until that incident.

The next ingredient is the determination of the age of the survivor.

The prosecution tendered in evidence the death certificate of the survivor which indicates that the survivor was 15 years at the time of her death which occurred on 1st January 2020. The death certificate was not discredited and thus, it is accepted that the survivor was below the age of sixteen years at the time of the alleged crime.

This means that the survivor was less than sixteen years when accused had sexual intercourse with her in the bush and after used a cutlass to slash her forehead and other parts of her body causing her to bleed to death.

It is noted that PW1 was informed by the survivor before she died that it was accused person who had sexual intercourse with her and cut her with a cutlass. The survivor was not in court to testify but the evidence of PW1 is accepted as first-hand hearsay because if the survivor was alive, she could have made such testimony which would have been admitted. See **Section 118 of the Evidence Act** which provides:

118. First-hand hearsay

(1) For the purposes of Section 117, evidence of a hearsay statement is admissible if

(*a*) the statement made by the declarant would be admissible had it been made while testifying in 6Uthe action and would not itself be hearsay evidence, and

(*b*) the declarant is

(i) unavailable as a witness, or

Then Section 116 (e)(iii) says:

e) unavailable as a witness means that the declarant is

(iii) dead or unable to attend or to testify at the trial because of a then existing physical or

mental condition; or

the combined effect of the two provisions above is that if a witness is unavailable because she is dead but before her death had disclosed to another witness a statement which if that statement was made by the unavailable witness, the court would have admitted same as relevant and credible, then that statement will be admitted and given the evidential weight as if it was the unavailable witness testifying.

It is noted that the survivor was in pain, suffering, and dying when she informed PW1 that it was accused who had sexual intercourse with her and because she refused to allow him have a second round, used the cutlass to slash her.

Therefore, the prosecution was able to sufficiently prove all the three ingredients of the offence of defilement beyond reasonable doubt. The court thus finds as a fact that the accused had sexual intercourse with the survivor who was under sixteen years of age and thus defiled her resulting in her death. See **THE REPUBLIC V GYAMFI (2007) 13 MLRG 192.**

Did accused person create doubts in prosecution's case?

The burden of introducing evidence was shifted to accused when he was called to open his defense or to raise a reasonable doubt and this is emphatically covered under **Section 17 of the Evidence Act NRCD 323**. See also **Commissioner of Police vrs Antwi (1961) GLR 408.**

Accused testified from the dock and he was not cross examined by prosecution as his evidence is not under oath.

The accused has a statutory right under **Section 174(1) of Act 29/60** reinforced by **Section 63 of NRCD 323** to make unsworn statement. But then his unsworn statement does not attract much weight. This is because accused person in his caution statement admitted to the offence of defilement and murder. He admitted that the survivor is fifteen years and added that *"when we arrived at the farm, I told the deceased that she should allow me to have sex with her. She refused but I convinced her to allow me to fuck her which she agreed. I had the first sex with her and demanded for another one. She told me that it was so painful and that she will not do it again. There I do not know what entered me and I took my cutlass to hit her on the forehead giving her deep cut which was oozing with blood. Followed by another one too at her back and neck. The deceased started screaming and my wife heard it and rushed to the scene and saw the deceased in pool of blood naked. I killed the deceased"*

The caution statement though unsworn, is a confession statement as it was given voluntarily before an independent witness in accordance with **Section 120 of the Evidence Act**.

The accused person did not object to this statement and he did not discredit the evidence of prosecution witnesses. The court therefore accepts this statement as a confession statement of the accused as it conforms to the requirement provided under Section 120 of 323.

In **TSATSU TSIKTA V. THE REPUBLIC [2003-2005] 1 GLR 296**, the court held that "the standard of proof of the prosecution must be attained at the close of its case in order to warrant an accused person to be called upon to make a defence was not proof beyond reasonable doubt because that was the ultimate burden that the prosecution assume in the

Here, the court is satisfied beyond reasonable doubt that accused person had sexual intercourse with the deceased survivor before killing her.

Even though accused person attempted to deny the offence during trial, his evidence is given no weight and it also contradicts his own caution and charged statements.

In the case of **BUOR V THE STATE (1965) GLR 1,SC** it was held that if a witness has previously said or written something contrary to what he testifies at the trial his evidence should not be given much weight.

The court therefore does not put much weight on the evidence of accused person and find his evidence not credible because he was not cross examined and he was not sworn in.

In **LUTERRODT V COMMISSIONER OF POLICE [1963] 2 GLR 429**, the court held that "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 shall proceed to examine the case for the defence in three stages:

1. If the explanation of the defence is acceptable, then the accused should be acquitted.

2. If the court should find itself unable to accept, or if it should consider the explanation to be not true, it should then proceed to consider whether the explanation is nevertheless reasonably probable, it is should find it to be, the court should acquit the defendant and

3. Finally quite apart from the defendant's explanation or the defence taken by itself, the court should consider the defence such as it is together with the whole case i.e prosecution and defence together, and be satisfied of the guilt of the

defendant beyond reasonable doubt before it should convict, if not it should acquit."

Here, the court the defence of accused cannot be accepted because he was the only one with the survivor in the farm, he had blood all over his face and body, and he had the cutlass which was used to slash the survivor to death. Besides, the survivor was not naked when they left PW1 but she was found naked with semen in her vagina. Also, accused person's explanation is not reasonably probable as he was with the survivor alone in the farm and he cannot explain why he had blood all over his face.

Hence, the accused person could not raise a doubt in his defence that he was not the one who defiled the survivor and that the survivor was not under sixteen years when he had sexual intercourse with her. Consequently, the accused person failed to raise a doubt in the evidence of the prosecution.

DISPOSITION

I therefore find the accused person guilty of the offence of defilement of a female fewer than sixteen years of age under **Sections 101(1) of Act 29** and convict him.

Pre sentencing hearing:

I have considered that accused person that he is a married man. He went to the farm with the wife and the survivor. He took advantage of the survivor who is considered his child in the bush. I have considered the trauma, immense pain and suffering the survivor went through at the hands of accused person before she died.

I hereby sentence accused person to Twenty (20) years IHL for the offence of defilement.

Accused is convicted and sentenced.

H/H DORINDA SMITH ARTHUR (MRS.)

CIRCUIT COURT JUDGE

ACCUSED PERSON PRESENT.

PROSECUTOR: C/INSP JOHN ASARE BEDIAKO PRESENT.

EUGENE LARBI APPIAH ESQ. FOR AP PRESENT