

IN THE CIRCUIT COURT HELD AT YENDI ON TUESDAY 6<sup>TH</sup> JUNE 2023,  
BEFORE HIS HONOUR ANTHONY ADUKU-AIDOO ESQ, CIRCUIT COURT  
JUDGE.

COURT CASE      No. CT/02/2023

REPUBLIC

VRS

KWAME NTANYI

J U D G E M E N T

Introduction

The accused person was charged with one count of      defilement of a female under sixteen years, contrary to section 101(2) of the Criminal and Other Offences Act, Act 29, 1960 (as amended). The accused person pleaded not guilty to the charge and so, this case proceeded to trial and this is the judgement of this trial court.

Facts of case

The facts of the case as presented by prosecution to this court are that the complainant, is a native and resident farmer at Buya village near Kpandai. Victim is eight (8) years of age and daughter of complainant. Accused person is a native of Kpassa but a resident farmer at Buya village. On 19<sup>th</sup> November, 2022 at about 1.00pm victim visited the residence of accused person in the company of her friend, Mahama Najat, daughter of accused person and a witness in the case. As the two were playing in the said house, the accused person came out and sent Mahama Najat to buy him a drink from the Buya market after which accused person lured the victim into his room. He laid her on a mat and unlawfully had sexual intercourse with the victim who bled afterwards. Accused person who realised blood deposits on his penis reached for a bucket of water and directed the victim to wash his penis into the bucket of water which she did. Whiles the victim was washing the penis of the accused person,

victim's friend, Mahama Najat, appeared at the scene and witnessed the act. The accused person instructed Mahama Najat to pour the water away. Najat, took the victim who was crying away from the scene and consoled her and later took her home. However, she failed to disclose the occurrence to her parents for fear of being punished. Victim's mother, Abdul Salima who detected that victim could not walk freely, bathed victim with warm water and washed her clothing. On 20<sup>th</sup> November, 2022, at about 6.00am victim appeared very feverish and she was confronted by her mother before narrating her ordeal. The complainant who was then at the farm was accordingly informed. And subsequently, a complainant was lodged at the police at Kpandai and a police medical report form was issued for a medical examination of the victim. The accused person was subsequently arrested. After investigations, the accused person is charged with the stated offence and arraigned before this court for trial.

### **Burden of Proof**

Section 11(2) of the Evidence Act, NRCD 323, 1975, and as posited in the Supreme Court case of Fuseini v. Rep. (J4/32/2014) [2018] GHASC 28 (09 May, 2018), that the prosecution bears the burden of proving the guilt of the accused beyond reasonable doubt. And in accordance with the current practice directive, after the prosecution has done full disclosure and served the witness statements on the accused, it called five witnesses in its bid to prove the guilt of the accused to discharge its burden of proof.

### **The Prosecution's Case**

PW1, Alhassan Abdul, the complainant, was the first to testify. His testimony was that on 19<sup>th</sup> November, 2022, at about 5.30pm he returned from the farm with his wife and noticed that his daughter, the victim in this case, who is just eight (8) years of age, was finding it difficult to walk. His daughter was confronted several times but she kept saying that she was alright. On the following day, at about 6.00am whilst the witness was at the farm he received a call from his wife, PW2 to the effect that their daughter has said that on 19<sup>th</sup> November, 2022, at about 1.00pm she visited the residence of the

accused person in the company of her friend, Najat, to play but the accused person lured her into his room and had sex with her. The witness then took the victim to the police at Kpandai and lodged a report with them. With that the witness ended his testimony.

PW2, Abdul Salima, the wife of the complainant was next to testify. Her testimony was that on 19<sup>th</sup> November, 2022 at about 5.30pm when she returned from the farm with her husband, she noticed that her eight-year-old daughter, the victim, was finding it difficult to walk properly. The witness asked the victim severally what was wrong with her but she answered that she was fine. On the following day, at about 6.00am while the witness was preparing the victim for school, she was feeling very feverish. So, the witness confronted the victim again and she said that on the 19<sup>th</sup> November, 2022 at about 1.00pm she visited the residence of the accused person in the company of her friend Najat Mahama to play. Upon their arrival at the house, the accused person lured her into his room and had sex with her. With that, the witness ended his testimony.

PW3, Abdul Sharifa, the victim, aged eight years was next to be called for her testimony. Being a minor, the court room was completely evacuated of all other court users except the staff, the accused person, prosecution and the family of the victim. Her testimony was that, on 19<sup>th</sup> November, 2022, at about 1.00pm she visited the house of accused person in the company of her friend, Mahama Najat who is the daughter of the accused person. On reaching the house of the accused person, the accused person sent her friend to the Buya market to buy him a drink. After her friend had left for the market, according to the witness, the accused person lured her into his room and laid her on a mat. The accused person removed her underwear and had sex with her. After the sex the victim saw blood deposits on the penis of the accused person. The accused person then fetched water into a rubber bucket and asked the victim to wash his penis which she did. The accused person afterwards warned the victim not to disclose the incident to anyone. Few minutes later, her friend Najat, returned from

the market and the accused person instructed Najat, his daughter, to pour the water in the bucket away which she did.

The witness then went back home and her mother detected that she was walking with some difficulty. The mother asked her but she failed to disclose what had happened to the mother. The mother bathed the victim with warm water and laid her to rest. On the following day, 20<sup>th</sup> November, 2022, at about 6.00am the witness started feeling feverish and she was again confronted by her mother. She then narrated to her about the ordeal she had suffered at the house of the accused person the day before. Her father was informed and a complaint was made at the Kpandai Police station to that effect. With that she ended her testimony.

PW4, Mahama Najat, a daughter of the accused person, a young girl of about the same age as the victim, PW3, and a friend to the victim was next to testify. She testified that on the 19<sup>th</sup> November, 2022, at about 1.00pm, the victim and herself visited her house to eat. After eating, her father, the accused person, sent her to the Buya market to buy him a drink. On her return to the house, she saw the victim standing in front of accused person and washing the penis of the accused person with water into a rubber bucket. She then handed over the drink to her father who then asked her to pour the water in the bucket away which she did. The witness then took her friend, the victim, to the back of their house and asked her what had happened but the victim could not respond and started crying. The witness then sent her friend to her house but failed to tell her mother anything for fear of being punished.

PW5, the investigator, No. 54909 Gen/L/Cpl. Tetteh Felix Anthony was the next and the last witness the prosecution called in aid of its case. He testified that on 20<sup>th</sup> November, 2022, at about 4.45pm a case of defilement of a female under 16 years was reported at the police station and it was referred to him for investigations. He issued a police medical form to the victim to be examined at a hospital which she did and returned it duly signed. The room of the accused was visited for further evidence and

the witness tendered the statutory statements and other exhibits that came to him in his investigations. With that the prosecution closed its case.

*Whether or not the prosecution has established a prima facie case*

At the end of the case for the Prosecution, in accordance with section 173 of the Criminal Procedure Act, Act 30, (1960), it is incumbent on this court to find out whether, upon the evidence adduced by the prosecution against the accused, a prima facie case has been established to warrant the accused to proffer an answer.

On record, at the close of the case of the prosecution, there is evidence that the victim, being a young female under the age of sixteen has been sexually assaulted allegedly by the accused person. This clearly is a prima facie case against the accused person. The accused, was therefore offered the opportunity to state his side of the case in defence.

*The case for the Accused*

In entering his defence, the accused person went into the witness box and gave evidence himself. The evidence of the accused was that, he was resting after his return from the farm when his wife called him to inform him that the complainant was coming to his house with a cutlass so he should run. He then told his wife that he would not run because he had not committed any crime.

It appears, the accused person was reacting to the attack the complainant perpetrated on him when he was informed, the following day, that the accused had defiled his daughter. On the offence of defilement of the victim he simply told this court that it never happened even though the victim visited his house on the day in question. He never told this court his side of the story at his house on the day. That was the testimony of the accused person.

The accused person intimated to this court that he had no witness. And so, the accused person ended his case in his defence. This court had no option other than to close his case in defence and adjourn for judgement.

### The guilt of the Accused

The accused is charged with one count of defilement of a female under sixteen years of age, contrary to section 101(2) of the Criminal and other Offences Act, Act 29, 1960, as amended. To this charge he pleaded not guilty, hence this trial.

Section 101(2) of the Criminal and other offences Act, 1960, Act 29, as amended states:

#### **Section 101—Defilement of Child Under 16 Years of Age.**

(1) For purposes of this Act defilement is the natural or unnatural carnal knowledge of any child under sixteen years of age.

(2) 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.

In the case of Asante Vrs, the Republic (137 of 2013) 2017 GHASC 3 (26 January 2017) the Supreme Court identified the elements of the offence of defilement under section 101(2) supra to be proven. The court said:

“In this wise it is relevant to state the ingredients of the offence of defilement which are as follows:

- (i) That the victim is under the age of 16 years (as provided for in Act 554).
- (ii) Someone had sexual intercourse with her; and
- (iii) That person is the accused.

In the instant case the, particulars of offence against the accused person is as follows:

### PARTICULARS OF OFFENCE

“Kwame Ntanyi, aged 32 years, Farmer, that on the 19<sup>th</sup> day of November, 2022, at Buya village near Kpandai, in the Northern Region

and within the jurisdiction of this court, you did unlawfully carnally know Abdul Sharifa a female age 8 years.”

For prosecution to secure a conviction against the accused person herein, for the charge of defilement of a female under sixteen years of age, it has to lead evidence to prove that, Abdul Sharifa, the victim is under sixteen years of age, the victim has had sexual intercourse involving penetration of her vagina and the accused person was the person who had sexual intercourse with the victim on the stated day of 19<sup>th</sup> November, 2022.

Firstly, the prosecution led evidence to prove the age of the victim, PW3, Abdul Sharifa. Both PW1 and PW2, as parents of the victim, in their respective testimonies before this court testified that their daughter Abdul Sharifa is only eight years old. PW3, Abdul Sharifa, the victim herself in her testimony also stated her age as eight. To further corroborate the age of the victim, prosecution tendered Exhibit E, a photocopy of a National Health Insurance Scheme Membership identity card, to support its case on the issue of the age of the victim. The date of birth on the said card is 26<sup>th</sup> October, 2014 (26/10/2014), which date indicates that the bearer is about eight (8) years of age at the time of the instant alleged defilement case before his court. However, the card bears the name of **ABURU SHERIFATU**, which name is different from the name of the victim in this case. Abdul Sharifa is clearly different from ABURU SHERIFATU unless the variance could be attributed to typographical error. Unfortunately, the picture that the card bears which is supposed to be used to help identify the bearer of the card is so blurred that it serves no purpose at all in this regard.

**Section 9 of the Evidence Act NRCD 323, 1975**, allows a court to take judicial notice of a notorious fact that is beyond reasonable dispute. **Section 9 (2)** supra states:

**Section 9—Judicial Notice.**

(1) ...

(2) Judicial notice can be taken only of facts which are either:

(a) so generally known within the territorial jurisdiction of the court, or

(b) so capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, that the fact is not subject to reasonable dispute.

PW3, Abdul Sharifa, the victim appeared before this court as a witness. This court had the opportunity to assess her in respect of her age and as a parent I cannot but take a judicial notice that the victim is definitely below the age of ten. This is enough corroboration of the victim's age, if one could entertain some doubts in respect of Exhibit E as a corroboration of the age of the victim. Consequently, I find as a fact that the victim is aged below ten years and certainly, she is a female below sixteen years of age.

The second issue is whether or not there is a penetration into the vagina of the victim or someone has had sexual intercourse with the victim. I must state that there is no evidence on record indicating that the prosecution called a witness who testified that he or she saw the accused person having sex with the victim in his room. This situation is not uncommon in such sexual offense cases as noted in the court in the case of REPUBLIC v. YEBOAH [1968] GLR 248-256.

As earlier on noted, the victim is a child of eight years of age and because of her tender age she could not appreciate and take the oath. She testified only on a promise that she was going to be truthful in all that she would say. She gave her testimony and she was duly cross-examined by the accused person. In her testimony she testified that on the said day, 19<sup>th</sup> November, 2022, the accused person, after he had sent away his own daughter, PW4 on an errand, he lured her into his room and had sex with her. To corroborate this fact, the prosecution tendered Exhibit A, the police medical report on the victim. In the said report, the medical officer noted that the hymen of the victim had been broken, consistent with the fact that someone had sexually defiled the victim as she testified to. With such corroboration, I find as a fact, that there was a sexual intercourse on the victim which involved penetration of the victim's vagina resulting in the breaking of her hymen.



This leads me to the third issue of whether or not, the said sexual assault on the victim was done by the accused person herein charged. On this issue the victim herself, PW3, gave evidence

PW3 testified that on the 19<sup>th</sup> November, 2022, at about 1.00pm she went to the house of the accused person in the company of PW4, Mahama Najat, also of similar age as the victim. Upon reaching the house of the accused, the accused person sent PW4, his daughter to the Buya Market to buy him a drink leaving the victim, PW3, alone behind. According to the victim, the accused person then lured her into his room, laid her on a mat and had sex with her, after which she was made to wash off the blood stains on the accused person's penis. The accused person then cross-examined the victim on her testimony.

For the full effect of it I hereby reproduce the cross-examination the accused person had with the victim, below:

Q. All that I have to say is that it is not true that I defiled you even though you came to my house.

A. The accused person had sex with me.

Q. I put it to you that you came to my house with your friend but I did not defile you.

A. We came to your house and you sent your daughter to go and buy alcohol for you. There after you told me that I should enter your room but I did not. My brother called Sumaila told me he was thirsty and told me to fetch water to drink. When I got up to fetch water for him you came out of your room and held my hand and sent me inside your room and had sex with me.

The above is all the questions that the accused person could ask the victim when given the opportunity to confront her on the evidence she had given this court. This court observed the demeanour of the accused person when he was offered the opportunity to confront the victim with any questions he could ask. He was simply empty and could not look straight at the victim.

This court has cautioned itself in respect of acting on such testimonies from a victim in a sexual offence case however credible it might seem, without corroboration as in the case of Republic v. Yeboah [1968] GLR 248 and Asante Vrs. The Republic supra. As a result, I turn to consider the testimony of PW4, who is also of the same or similar age as the victim and a daughter of the accused person. She equally promised to testify truthfully as she did not know what it was to testify on an oath. She testified that the accused person is her father. On the day in question, she arrived with the victim to their house and her father sent her to go to the Buya market to buy him a drink and so left the victim alone with her father. I once again reproduce the relevant parts of the cross-examination that ensued between the accused person and his daughter, PW4 for its effect.

Q. When you came was I still having sex with your friend, the victim.

A. When I came you had finished but the victim was washing your penis.

Q. I put it to you that it is not true.

A. That is true, you did it.

Q. When you returned with the drink, what was I doing in the room.

A. When I returned the victim was coming out of the room and her hand was wet with water so she used her dress to clean it. I asked the victim what happened and she started crying. I raised her dress up and I saw blood on her panties.

Q. You did not meet me having sex with the victim how come that the victim told you she was washing my penis.

A. When I returned from buying the drink I was behind the door and I heard the accused person was telling the victim to wash the accused person's penis. So, I suspected something. I stood for some time and knocked at the door. So, I heard him say "get up, get up, get up". The accused person then came out to open the door.

From the above testimonies, it could be deduced that upon the victim reaching the house of the accused person on the said day, with her friend, PW4, PW4 was sent away by her father on an errand. The victim was left alone at the mercy of the accused person. The victim was led into the room of the accused person. These pieces of facts have been corroborated by PW4 and she returned before the victim came out of the room of the accused person. These are credible facts that the accused person could not controvert. What happened behind the closed door in the accused person's room during the absence of PW4 is what remains to be ascertained. While the victim says that the accused person laid her on a mat and had sex with her, accused person says that all these happened but denies having sex with the victim. Unfortunately, the accused person himself has refused to tell this court anything that could explain the situation except to state that he did not have sex with the victim.

This is where Exhibit A, the police medical report on the victim, comes in here. On the said report, the victim was examined by a medical officer and he reported that the hymen of the victim was broken, consistent with a sexual defilement even though there was no evidence of bruises in the vagina of the victim. What this means to me is that the accused person forcibly entered the victim's vagina, tearing her hymen, and when he observed blood oozing out, he perhaps decided to have mercy on the poor little girl and discontinued. In the mind of this court, that explains the reason why there is absence of bruises in the victim's vagina itself but with the hymen broken. Perhaps the penetration of the accused person's penis into the vagina of the victim was minimal, but it was deep enough to have broken the hymen of the victim. The least penetration is enough for the victim to be carnally known as stated in the case of GLIGAH & ATISO v. THE REPUBLIC [2010] SCGLR 870, where the Supreme Court posited as follows:

“Carnal knowledge is 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 completed.”

Consequently, I find that the accused person herein, forcibly penetrated the vagina of the victim, thus resulting in a sexual defilement of the victim on the day in question. In sum, on the totality of the testimonies and evidence on record, prosecution has provided enough evidence to the satisfaction of this court that the victim, Abdul Sharifa, who was just eight years old at the time of the incident and was therefore a female of under sixteen years of age; had been sexually defiled by the penetration of a penis into her vagina and it was the accused person herein charged who penetrated the victim’s vagina with his penis. The offence has been proven beyond reasonable doubt. The accused is therefore found guilty of the offence charged and he is accordingly convicted of same.

#### **Mitigation Plea**

Prosecution pleads in mitigation that the accused person is a young offender who is not known. But his act of defiling such a young girl is likely to have an effect on the girl when she grows, while there are many women around who are struggling to have men. We pray that the accused person is punished severely to serve as a deterrent to others who intending doing same. The accused person also prays for forgiveness and prays that he would not do such a thing again when forgiven.

#### **Sentence**

Having heard from both the prosecution and the accused person on their respective mitigation pleas, it is the view of this court that defilement is on the rise and it is a crime that is silently destroying the future marriage life of the affected children who fall prey to such men as the accused person herein. Consequently, taking the youthful age of the accused person into consideration, I sentence the accused person to a prison term of ten (10) years with hard labour (IHL). This is the order of this court.

(SGD)

H/H ANTHONY ADUKU-AIDOO ESQ.

(CIRCUIT COURT JUDGE)