IN THE CIRCUIT COURT HELD AT MPRAESO ON WEDNESDAY 26TH DAY OF APRIL 2023 BEFORE HIS HONOUR STEPHEN KUMI, ESQ CIRCUIT JUDGE.

CASE NO: B6 /5/2022.

THE REPUBLIC

V

RAYMOND OFOSU.

J U D G M E N T:

The Accused person herein is a teacher by profession. He has been charged before the court on one (1) count of ***defilement*** contrary to section 101 (2) of the Criminal Offences Act, 1960, Act 29, as per the statement of offence on the charge sheet filed in the registry of this court. Meanwhile, the particulars of offence state as follows;

> ***"RAYMOND OFOSU; TEACHER AGED 37 : During the month of July, 2021, in the Eastern Circuit and within the jurisdiction of this court, you did unlawfully carnally know Gladys Akoto Agyepong a female aged 13 years".***

On the basis of the above particulars of offence, the Accused was arrested, charged with and put before this court to answer to the above-mentioned charge. The Accused, after the charge had been read out and explained to him, pleaded not guilty to the stated one count of defilement.

The net effect was that the Accused had joined issue with the prosecution on the allegation against him. The prosecution as a result assumed the onus to proving the guilt of the Accused beyond reasonable doubt. This accords with the fundamental rule in all criminal prosecution which is stated under **Article 19 (2) (c)** of the **1992 Constitution** as follows:

> ***"(2) A person charged with criminal offence shall***
>
> ***(c) be presumed innocent until he is proved or has pleaded guilty".***

EVIDENCE/CASE OF THE PROSECUTION.

At the ensuing trial, the prosecution called a total of three (3) witnesses in their attempt to discharging the Constitutional and statutory burden of proving the guilt of the Accused beyond reasonable doubt.

The first prosecution witness was Agyapong Prince. He identified himself as the father to the alleged victim. He gave the age of the victim at the time of his testimony as 13 years and a class five (5) pupil. According to him, the alleged victim used to live with him at Mpraeso until she moved to Nkawkaw to live with her grandparents.

He testified that at on 3rd day of November, 2021, a grandparent of the victim called to inform him that the victim had gone to school and later returned home sick or ill. According to PW1, he proceeded to Nkawkaw and managed to interview his daughter about her situation, to which she replied or disclosed to him that the Accused had had a sexual intercourse with her some months back which had resulted in a pregnancy.

The second witness called by the prosecution was the alleged victim in the case, Gladys Akoto Agyepong. She testified that she used to live with the PW1 until she moved to Nkawkaw to live with her grandparents in July, 2021. She stated that she used to go to the house of the Accused to assist his family do some chores.

According to her, some months ago before she gave her statement, she went to the house of the Accused as usual and entered the room of the Accused to pick some sachet water from the refrigerator of the Accused. She added that as soon as she had entered the room, the Accused person who had a towel around his body pushed her to the bed and eventually had sexual intercourse with her.

She went home but could not disclose her ordeal to her parents. She recalled that on 3rd November, 2021, she went to school and vomited, which caused her to rush home. At home, a test conducted on her by one her sister's via a pregnancy test kit proved she was pregnant. After his father was called and informed about the situation, he came down to Nkawkaw and ultimately disclosed what had happened to him. Her father then went to the police station to lodge a complaint against the accused person.

The police investigator in this case was the third and last called by the prosecution. He was No. 47801 Detective Corporal Henry Yeboah, of the Nkawkaw Divisional Domestic Violence and Victim Support Unit (DOVVSU).

In terms of his evidence, the PW3 testified that on the 3rd of November, 2021, a case of defilement was referred to him for investigations. After taking statements from the PW1 and PW2, he next issued a police medical form for the victim to attend hospital for medical examination and report back for further action.

Subsequently, he went to arrest the accused, and obtained a cautioned statement from him. He also visited the scene of crime with the Accused and the victim in the company of the Complainant. After his investigations, he was given instructions to charge and put the Accused before this court.

In addition, the police investigator also tendered the following exhibits into evidence as part of his testimony: Cautioned and charge statements of the accused as Exhibits A and B respectively; while a copy of the NHIS card of the victim showing her date of birth was Exhibit C. Lastly, the endorsed medical form issued in respect of the alleged victim was Exhibit D.

CASE OF THE ACCUSED/DEFENCE:

With the close of case of the prosecution, the court- pursuant to its bounden duty under section **174** of the **Criminal Procedure Act, 1960, Act 30-** determined that the case of the prosecution had succeeded to raise or establish a *prima facie* against the accused person to warrant answer or explanation from him to avoid a ruling of the court against him on the charge against him.

Based on that, the accused was asked to open his defence pursuant to section **174 of Act 30/1960** (supra). In the case of ***Gligah & Atiso v The Republic (2010) SCGLR 870 @879, the*** Supreme Court of Ghana held, inter alia, as follows:

> ***"In other words whenever an accused person is arraigned before any court in any criminal trial, it is the duty of the prosecution to prove the essential ingredients of the offence charged the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused is called upon to give his side of the story".***

The Accused admitted knowing the alleged victim after she moved to Nkawkaw from Mpraeso and came to their house to assist her grandparents in the house chores when he was not around sometimes.

According to accused, he would sometimes send the victim on errands and that anyone he had sent the victim to buy something for him, he made sure he stood behind his doorstep to collect the items from her; saying the alleged victim has never entered his room contrary to her assertion.

He suggested that he could not have had any sexual intercourse with the victim as in the same month of July, 2021, there was a funeral ceremony for his late uncle by name Opanyin Anokwaa, during which his family members were at the house and even had to share his room with a brother of his called Frempong Benjamin. According to him, his family members only left the house after three weeks for their respective destinations.

Accused next told the court about how in the evening of September, 2021, while he was on his way for a church service and upon reaching an uncompleted building, near the victim's house, he saw the victim in the company of some boys.

He also added that somewhere in August, 2021, the grandmother of the victim came to their house and complained to his grandmother that the victim had fallen seriously ill and that from her checks the victim had been sleeping outside when the victim visited her father at Kwahu Mpraeso.

It is his further evidence that the victim never came to his room to take water for drinking from his refrigerator. He added that the victim only came to Nkawkaw in July, 2021, to live with her grandparents but as at that time she had not met the victim. It is his defence that he never had any sexual intercourse with the victim.

The Accused called two witnesses to testify in support of his defence. They were his mother and grandmother respectively. The DW1 was Doris Ofosu. She filed a 20 paragraphed witness statement, whose essential parts are follows:

First, is that it is never true that the victim went to the room of the Accused to take or drink water to have given the chance to the Accused to have had sexual intercourse with her. According to her, the victim always took water from a fridge in her room.

Second, is that the victim is always seen with some boys at some washing bay at the area and knew of instances in which the grandfather of the victim called Ohemeng Boateng had complained to her to suggest that the victim sometimes spent the nights outside her grandparent's home.

Third, is that according to the DW1 during the month of July, 2021, there was a funeral ceremony for one Opanyin Gustav Yaw Owusu, her father's nephew, which was held at the house in question which was attended by some family members during which the Accused shared the room with his younger brother called Frempong Benjamin; and thus the Accused could not have had the alleged sexual intercourse in that room contrary to the claim of the victim.

Fourth, is that according to the DW1 the pregnancy of the victim was 18 weeks 5 days as at 3rd November, 2021. It is her testimony that per her calculation, the sexual intercourse could have taken place in June, which would raise doubt that the Accused had sexual intercourse with the victim in July, 2021. She added that the whole charge or allegation against the conspiracy is a fabrication, especially after the Accused prevented the victim and her grandmother from coming to their house.

The DW2 for the Accused was his grandmother; Gladys Ofosu. She lives in the house in question together with some family members. She also told the court that the Accused is innocent and could not have committed the offence; saying the allegation is a fabrication by the victim and her grandmother. She sought to support her assertions as follows:

First is that according to her, the victim used to take or drink water from her own side of the house, especially when it was time for the victim to have her meal. She added that the victim never entered the room of the Accused, and that even on occasions that the Accused had sent her on errands, the Accused stood at the doorsteps and received the items.

She recalled that in September, 2021, there a misunderstanding ensued between the Accused and the grandmother of the victim, which caused them not to be on good terms. She explained that due to the said misunderstanding, the Accused asked or prevented the victim and her sister from coming to the house and that nothing happened until 3rd November, 2021, when the Accused was arrested by the police.

Furthermore, the DW2 told the court that the charge or allegation against the Accused is a "conspiracy" because the grandmother of the victim, Ama Pinamang, had in December 2012, threatened to deal with the Accused over their differences.

EVALUATION OF THE EVIDENCE AND APPLICATION OF THE LAW.

On the basis of the whole of the evidence before the court at the end of the trial, and including the defence or explanations raised by the Accused herein, it is my considered opinion that the only issue raised for determination by the court is ***whether or not the prosecution succeeded to prove beyond reasonable doubt that the Accused, Raymond Ofosu, defiled the victim, Gladys Akoto Agyepong?***

Before I continue further, I think it is necessary and instructive to state at this juncture that the position of the law- both under the Common Law and the **1992 Constitution**- is that the prosecution assumes the onus of proof to prove or establish the guilt of an accused beyond reasonable doubt. ***See Article 19 (2) (c) of the 1992 Constitution (supra).***

Meanwhile, statutorily, under section **15** of the **Evidence Act, 1975, NRCD 323,** the law is that;

> *"**Unless it is shifted, the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue".***

As a corollary to the above section 15 of the NRCD 323, it is also provided under ***section 13 (1) of the NRCD 323*** that;

> ***"Section 13 - Proof Of Crime***
>
> ***(1) In any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt".***

Similarly, in the popular English criminal case of **Woolmington v DPP [1935] AC 462, Lord Sankey** (as he then was) stated or delivered of himself as follows in these timeless words:

> *"**Throughout the web of the English criminal law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt subject to ….the defence of insanity and subject also to any statutory exception…… No matter what the charge or where the trial the principle that the prosecution must prove the guilt of the prisoner is part of the Common Law of England and no attempt to whittle it down can be entertained".***

The prosecution in this case was therefore required to prove with credible and quality evidence and beyond reasonable doubt that the accused herein defiled the victim, on the alleged date, place and time at Nkawkaw.

In spite of this onerous burden of proof on the prosecution, the law is that the accused or defence, in a criminal trial does not generally assume any burden of proof. In the same **Woolmington v DPP** case (supra), **Lord Sankey** (as he then was) very well summarized the extent of the onus of proof on the accused or defence as follows:

> ***"….whiles the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence"*** See also the case of **Commissioner of Police v Antwi [1961] GLR 408, SC**, where it was held inter alia that an accused person is not required to prove anything, save to and at best to merely raise a reasonable doubt as to his guilt.

In expressing his opinion on the foregoing discussion on the various burdens of proof that prosecution and accused assume in the course of criminal proceedings/trials as is the case in the instant case, the erudite Dotse JSC, in the case of ***Richard Banousin v. The Republic; No. J3/2/2014, dated 18th March 2014, S.C. (Unreported)***- which involved a criminal appeal on a charge of defilement- in his inimitably lucid fashion, held as follows, which I find applicable to the instate case ***mutatis mutandis;***

> ***"It is the duty of the prosecution to prove the guilt of the accused beyond reasonable doubt in all criminal cases.***
>
> ***A corollary to the above rule is based on the fact that an accused is presumed innocent until he is proven guilty in a court of law. This the prosecution can only do if they proffer enough evidence to convince the Judge or jury that the accused is guilty of the ingredients of the offence charged. The Prosecution has the burden to provide evidence to satisfy all the elements of the offence charged – in this case rape. The burden the prosecution has to prove is the accused person's guilt, and this is proof beyond a 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 the evidence.***
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> ***What "beyond a reasonable doubt" means is that, the prosecution must overcome all reasonable inferences favouring 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. The rule beyond a reasonable doubt, can thus be formulated thus:-

"An accused person in a criminal trial or action, is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt, he is entitled to a verdict of not guilty."

See article 19 (2) (c) of the Constitution, 1992

See cases like the following:

1. Frimpong @ Iboman v. Republic [2012] 1 SCGLR 297

2. Gligah&Anr. v. The Republic [2010] SCGLR 870

3. Amartey v. The State [1964] GLR 256 S.C

4. Darko v. The Republic [1968] GLR 203, especially holding 2

This presumption therefore places upon the prosecution the burden of proving accused/appellant guilty beyond a reasonable doubt. Reasonable doubt is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence, is open to some possible or imaginary doubt".

The prosecution therefore, without doubt, assumed that onerous duty or onus to satisfy the court conclusively on the guilt of the Accused beyond reasonable doubt. It is non-negotiable. Before I go on to address the main issue in this judgment, it is important to undertake a short discussion on the nature of the offence in this case: Which is about the nature, form and hue of the offence of defilement under the Ghanaian law.

This is to enable the court appreciate and determine if the evidence of the prosecution or even on the whole of the evidence, proved the charge of defilement against the accused as it is also the position of the law that:

".....the prosecution has a duty to prove the essential of ingredients of the offence with which the appellant and the others have been charged beyond reasonable doubt". See that case of Frempong alias Iboman v The Republic [2012] 1 SCGLR 297, per Dotse JSC.

By way of a useful reminder, the Accused is before the court on one count of defilement contrary to section 101 (1) of Act 29/1960 (supra). That statutory provision reads as follows:

"Defilement of child under sixteen years of age:

Section 101 (1): For the purposes of this Act, defilement is the natural or unnatural carnal knowledge of a child under sixteen years of age.

(2): A person who naturally or unnaturally carnally knows a child under sixteen years of age, whether with or without the consent, 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".

So that in the case of ***Eric Asante v The Republic, Unreported, Civil Appeal No. J3/7/2013, delivered on 26th January, 2017, the Supreme Court of Ghana, per Pwamang JSC, held as follows to state the ingredients of the offence of defilement:***

1. ***That the victim is under the age of sixteen years (as provided for in Act 554).***
2. ***That someone had sexual intercourse with her.***
3. ***That person is the Accused.***

Obviously on the strength of the above statutory provision on defilement, in the popular case of ***Republic v Yeboah [1968] GLR 248,*** in which the accused defiled a nine year old girl who failed to make a report of the incident, it was held that even if that fact indicated that she was a consenting victim, her consent was of no consequence.

Armed with the above authorities on what constitutes the prevailing law and thought on defilement in Ghana, I would now proceed and apply the above authorities to the facts of the instant case and indeed the very evidence before me, and determine to what extent that the prosecution have succeeded to prove their case against the Accused on the one count of defilement beyond reasonable doubt.

In resolving the sole question or issue in the judgment, I have decided to do so by determining each of the three (3) ingredients of the offence of defilement as laid out and in the order or sequence given by Pwamang JSC in the Eric Asante case (supra).

The first ingredient is the age of the victim. I must state without any tinge of equivocation that the prosecution's hallowed duty or onus of proving beyond reasonable doubt the guilt of the Accused on the charge of defilement included, involved and extended to also conclusively proving and establishing that the victim, at the time of the impugned sexual conduct with the Accused was less than sixteen (16) years. It is non-negotiable.

In the case of ***Republic v Halm and Ayeh-Kumi, Court of Appeal (Full Bench), Digested in (1969) CC 155, the Full Bench of the Court of Appeal held that in determining whether an offence under any enactment has been proved, a court must look at the essential ingredients of the offence as contained in the enactment which creates and defines the offence and not the charge as set out in the charge sheet by the prosecution.***

In applying the above principle or authority to the issue on the defilement charge against the Accused, as the enactment makes it an element or ingredient to the charge of defilement for the prosecution to prove that a defiled victim is or was less than 16 years at the time of the alleged sex, then the prosecution would fail to obtain conviction against the Accused in the instant case on the charge if and when the evidence does not conclusively prove- with credible evidence- the age of the victim.

In his book, ***"Contemporary Criminal Law in Ghana",*** the learned author and Justice of Appeal, Sir Dennis Dominic Adjei, at page 213, wrote the following on the requirement by the prosecution to prove the age of the victim in a defilement charge beyond reasonable doubt:

> ***".. the prosecution is required to prove that the child who is the victim of the criminal offence is less than sixteen of age. A case of defilement will fail where the prosecution fails to prove beyond reasonable doubt that the child who is the victim of the offence was under sixteen years at the time the offence was committed…***
>
> ***In a case where the accused admits that he/ or she naturally or unnaturally knew the child and the child consented, the prosecution may nevertheless prove the age of the child unless the accused person admits the age of the child…".***

Now, the victim is alleged to be less than sixteen years of age and ***a fortiori*** less than eighteen years of age. That being so, the victim being an infant or a child, ***section 19 (2) of the Juvenile Justice Act, 2003 (Act 653)*** states or provides some statutory documents as proof of the age of a child below eighteen years old in Ghana. That section reads as follows;

> ***" In the absence of a birth certificate, or a baptismal certificate, a certificate signed by a medical officer as to the age of a person below eighteen years of age shall be evidence of that age before …… without proof of signature unless the court directs otherwise".***

In proving the age of the victim, the biological father of the alleged victim gave her age as thirteen (13) years. The Accused did not cross-examine or challenge the PW1 on the age of the PW2.

The legal effect of failure to cross-examine a witness on material facts at a trial, as was held in the case of ***HAMMOND v. AMUAH and ANOR [1991] 1 GLR 89,*** is that when a party had given evidence of a material fact and was not cross-examined upon it, he needed not call further evidence of that fact.

For it is received learning that failure by the defence to cross-examine amounted to an admission by the defence. ***See also the case of Quagraine v Adams (1981) GLR 599, CA.***

In addition, as further proof of the age of the victim, the prosecution had tendered into evidence the victim's NHIS card which indicated that the victim's ***date of birth stated as 20th December, 2007,*** as

Exhibit C. The Exhibit C was admitted into evidence without any objection. The Accused was represented by Counsel at the trial.

I concede that the Exhibit C is one of the statutorily recognized documents or evidence of the age of a person below eighteen years of age in Ghana which the courts may exercise a discretion to accept, even if not specifically stated. ***See section 19 (2) of the Juvenile Justice Act, 2003z (Act 653);*** which states thus;

" In the absence of a birth certificate, or a baptismal certificate, a certificate signed by a medical officer as to the age of a person below eighteen years of age shall be evidence of that age before …… without proof of signature unless the court directs otherwise".

In making this finding, I find support from the case of ***Robert Gyamfi (alias Appiah) v The Republic, Criminal Appeal No. H2/02/19, delivered on 5th Feb, 2019, CA (Unreported),*** where ***Dzamefe JA,*** in dismissing the submission of the Counsel for the appellant that the prosecution at the trial court had not discharge the burden of proving the age of the victim by adducing and relying on a copy of the NHIS membership card of the victim in that case on the grounds that the NHIS membership card was not one of the statutorily stated kinds or specie of evidence of the age of a child below eighteen years old in Ghana, held as follows, which I also find applies with equal force to the instant case;

> ***"With all respect I beg to differ from this view of the learned counsel. The three certifications mentioned there are not the only means of identifying one's age in our jurisdiction. Yes, I know the statute is specific for children below eighteen years. Aside those certificates mentioned the National Health Insurance Card for now is one of the official documents for the identification and age of all Ghanaians, either young or old. The claim or school register is also one of such official records accepted as indicating the identity and age of school children.***
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> ***The National Health Insurance Card is an official document issued by a body established by an Act of Parliament, the National Health Insurance Act, 2003 (Act 650), an official body so established. There is a presumption in section 37(1) of the Evidence Act that official duty has been regularly performed and it is regular until any credible evidence to the contrary is given.***
>
> ***Going back to Section 19(2) of the Juvenile Justice Act, the very last line states "unless the court directs otherwise". Emphasis mine. I think that last line gives the court the discretion to accept another form of certification aside those three specifically mentioned. In the instant appeal the trial court decided to accept the National Health Insurance Card and was perfectly within its powers so to do. The court never flouted the statute"***

Before me, no other contrary evidence as to the age of the victim has been adduced by the Accused to controvert the evidence of the age of the victim on the Exhibit C or the age given by the father of the alleged victim in his own testimony. There is also no evidence to impugn or challenge the authenticity of the NHIS card and the information contained therein.

Thus, as the Exhibit C has a date of birth of 20th December, 2007, and when it is considered that the Accused and the victim had sex in or around July, 2021; as well as the unchallenged evidence of the PW1- then it means and I find that the victim was about thirteen (13) years seven (7) months when the Accused had the impugned sexual intercourse with the victim. I am satisfied to hold that the prosecution succeeded to prove beyond reasonable doubt that the alleged victim was less than sixteen years of age at the time. The first ingredient of the defilement charge is therefore proved or satisfied by the prosecution.

That takes me to the second and third elements or ingredients of the charge; which are whether or not that someone had sexual intercourse or carnal knowledge of the victim during period and place in question; and whether that person was the Accused; with or without the consent of the victim.

In other words, it is my considered opinion that the prosecution's evidence must next prove or establish the following two things, especially in the light of the challenge or denial raised by the Accused that he did not have any sexual intercourse with the victim: Which are whether or not someone had the alleged carnal knowledge with the victim and whether that someone was the Accused herein only.

Now, carnal knowledge is defined in the ***Blacks Law Dictionary, 9th Edition,*** at page 241 as ***"sexual intercourse, especially with an underage female".*** Meanwhile, unnatural carnal knowledge is defined as ***"sexual intercourse with a person in an unnatural manner, or with an animal". See section 104 (2) of Act 29/1960 (supra).***

Under our laws, per ***section 99 of Act 29/1960 (supra),*** in order to prove carnal knowledge or unnatural carnal knowledge, all that is required is proof of the least degree of penetration of the vagina of the victim by the Accused with his penis in terms of this case.

Our laws state that defilement can be by natural and unnatural carnal knowledge; all that is required to be proved is that the victim- whether a male or female- was less than sixteen years of age at the time of the alleged sexual intercourse.

Archibald on Criminal Pleading 30th Edition page 1124 at paragraph 2873, also provides some assistance when he states that sexual intercourse is complete when a male sexual organ penetrates a female sexual organ; and that the slightest penetration is enough. Our courts have, time and again, applied that principle with unanimous approval and remarkable consistency. See ***Robert Gyamfi (***

alias Appiah) v The Republic, Criminal Appeal No. H2/02/19, delivered on 5th Feb, 2019, CA (Unreported), per ***Dzamefe JA.***

Sexual intercourse means that the man should have used his penis to penetrate the woman's vagina- as well as the anus and not by any other means such as with the use of the fingers, tongue or stick. ***See the case of The State v. Gyimah [1963] 2 GLR 446.***

On the evidence in support of this ingredient, the prosecution relied heavily on the evidence of the PW2, Gladys Akoto Agyepong. The PW2 has told the court that the Accused had sexual intercourse with the victim in July, 2021. There is also the endorsed police medical form, that is Exhibit D.

On the Exhibit D, the medical officer who examined the victim essentially stated that a sexual intercourse had been committed on the PW2. Indeed, the medical officer wrote that the PW2 was about eighteen (18) weeks, 5 days pregnant. That report was dated 3rd November, 2021.

It is the natural and medical probability for a female such as the PW2 to get pregnant through sexual intercourse. No other credible evidence of any other contrary means by which the PW2 could have gotten pregnant has been adduced before the court.

Based on the evidence of the PW2 and the medical evidence by way of the Exhibit D, the court finds and holds that the prosecution succeeded to prove beyond reasonable doubt that someone had sexual intercourse with the PW2. The second element is thus proved and resolved in favour of the prosecution.

That takes me to the last element of the offence; which is whether or not the said person who had the impugned sexual intercourse with the PW2 was no other person in this world than the Accused person herein.

On this issue, the main piece of evidence that the prosecution relied on was the evidence on oath of the PW2, the alleged victim. She had testified essentially that in July, 2021, she entered the room of the Accused to drink water from his fridge; and that she met the Accused who had a towel around his body, who pushed her to the bed and ultimately had sexual intercourse with her.

She kept quiet about it, especially based on a threat by the Accused, which she did. It was not until 3rd November, 2021, when she suffered a miscarriage or fell sick at school and had to finally disclose her ordeal to her father, the PW1.

From her evidence-in-chief, the court is satisfied that she appeared to reasonably know what she was talking about. The victim has testified clearly that the Accused whom she had known for some time now at Nkawkaw as the one who had had the sexual intercourse with, resulting in in pregnancy.

In addition, from the facts and evidence, the Accused and the victim as well as the other witnesses have known each other for some reasonable time. There is no dispute that the victim and her grandmother would go to the house of the Accused and her family to assist in some household chores.

It is not as if it was only an in-dock identification of the Accused in the courtroom for the first time as was played out in the case of ***Karim v The Republic (2003-2004) SCGLR 812.*** It also shows and ***a fortiori*** I hold that the above situation did ensure that the victim would know and be certain about the identity of the Accused.

The law on the foregoing is that;

> ***"where the identity of an accused person is in issue, there can be no better proof of his identity than the evidence of a witness who swears to have seen the accused committing the offence charged". See the case of Adu Boahene v The Republic (1972) 1 GLR.***

In the case of **Dogbe v. The Republic [1975] 1 GLR 118; at holden I, the High Court, per Ata-Bedu J (as he then was) stated thus:**

> ***"In criminal trials, the identity of the accused as the person who committed the crime might be proved either by direct testimony or by circumstantial evidence of other relevant facts from which it might be inferred by the court. Thus opportunity on the part of the accused to do the act and his knowledge of circumstances enabling it to be done were admissible to prove identity."***

I must quickly indicate that despite the above findings and decision of this court, as required of me as the trial judge in criminal proceedings of this nature, I was required to give full consideration to a defence or explanations of an accused person- as held in the case of ***Attah v Commissioner of Police (1963) 2 GLR 460;*** as well as in the case of ***Hausa v The Republic (1981) GLR 840,*** where it was held that even where the trial court believes the prosecution witnesses and their case, it should still go ahead to consider whatever version of the case presented by the Accused at trial.

As has been said above, an accused in criminal proceedings assumes no burden to prove his innocence but it is enough and at best, he merely has to raise a defence or explanations that is reasonably probable or reasonably, to raise a reasonable doubt in the mind of the court as to his guilt.

The Accused in this case appeared to have raised some two main defences beyond merely denying the offence. The first is that there was a funeral ceremony of his late uncle during the month of July, 2021, which brought some family members to the house and that during that period- spanning some almost 3 weeks- he shared his room with a brother of his called Frempong Benjamin, and thus he could not have had the chance to have sexual intercourse with the victim.

On the evidence, the prosecution failed to seriously or reasonably challenge that. The mother of the Accused had also testified in support of that. That being the case, then it would have made the probability of the Accused having sexual intercourse with the PW2 during the daytime unlikely.

The second major defence was that he could not have had sexual intercourse with the PW2 and by extension be responsible for the said pregnancy if the sexual intercourse took place in July, 2021, and the victim was assessed to be eighteen (18) weeks, 5 days pregnant on 3rd November, 2021, when the medical officer examined and tested the victim.

It was his defence that the victim only came to Nkawkaw from Mpraeso in July, 2021, and at that time, he had not yet met her. The mother of the Accused as DW1 had also testified along the same lines as her son. Now, from the evidence, it is not in dispute that the victim was living with her father, the PW1, until she moved to live with her grandparents at Nkawkaw in July, 2021.

However, what is not clear is on which particular date that she moved to Nkawkaw. It is also not clear when the victim first went to the house of the Accused to assist her family do some chores. Yet still, the evidence is unsatisfactory in terms of when the Accused met the victim for the first time.

Even despite the above uncertainties in the timelines, there was another ambiguity or difficulty that had to do with the specific date that the Accused had the impugned sexual intercourse with the victim. This was very important, especially as it was the prosecution's case that the Accused was responsible for the pregnancy through that sexual intercourse.

Thus the specific date in July, 2021, when the alleged sexual intercourse took place became important for the purposes of calculations of the eighteen (18) weeks, five (5) days in order to fix the Accused to the crime with sole moral certainty. Now, it is important because July, 2021, had 31 days. A sexual event that happened on 1st of July, 2021, cannot give the same result as a sexual act that took place on 16th July, 2021, or 28th July, 2021, for example, for the purposes of the calculation of 18 weeks, 5 days on 3rd November, 2021, when the victim had the pregnancy test by the medical officer.

For example, suppose the Accused had sexual intercourse with the PW2 on 1st July, 2021- which appears unlikely from the facts and evidence- the result is 17 weeks, 6 days on 3rd November, 2021. And even if it happened on 10 July, 2021, the pregnancy would have been 16 weeks, 4 days old on 3rd November, 2021. From my calculations, any sexual intercourse that could have resulted in a pregnancy which was 18 weeks, 5 days old on 3rd November, 2021, would have taken place on 25th June, 2021. A simple calculation from the calendar will show that.

Now, from the evidence, the PW2 only moved to Nkawkaw from Mpraeso in July, 2021. In other words, as at June, 2021, the PW2 was living in Mpraeso with the PW1, her father and had yet moved to Nkawkaw, and thus ruling out any possibility of meeting with the Accused.

The net effect of all the above is that as it has been the case of the prosecution that the Accused was the one who had the sexual intercourse with the PW2 in July, 2021, which led to a pregnancy that was 18 weeks, 5 days, as at 3rd November, 2021, then it becomes a improbable that the said pregnancy could have taken place anywhere in July, 2021, when the PW2 had not moved to Nkawkaw.

In the honest opinion of this court, the explanation or defence of the Accused and within the context of the whole of the evidence before the court has succeeded to raise a reasonable probability that the Accused could not have committed the offence.

In the end, there is a reasonable doubt in the mind of the court as to the guilt of the Accused on the sole count of defilement. For the job of a court or judge to make a finding and declaration that an accused person is guilty of an offence is a serious, onerous and solemn one. The mind of the court should be free from all reasonable doubts. If reasonable doubt exists, then an accused should be freed. See the case of ***State v Sowah and Essel (1961) GLR (Pt II) 743, SC.***

And proof beyond reasonable doubt has been defined in 1850 by Chief Justice Lemuel Shaw, one time Chief Justice of the Massachusetts Supreme Court of the United States as follows:

> ***'it is the condition of mind which exists when the jurors cannot say that they feel an abiding conviction, a moral certainty of the truth of the charge. For it is not sufficient for the prosecutor to establish a probability, even though a strong one according to the doctrine of chances. He must establish the fact to a moral certainty, a certainty that convinces the understanding, satisfies the reason and directs the judgment... "***

I find that there is the absence of moral certainty that the Accused is responsible for the pregnancy and by extension a reasonable doubt that he was the one who had the sexual intercourse with the PW2 in July, 2021. That reasonable doubt and lack of moral certainty ought to be resolved in favour of the Accused.

In his invaluable and authoritative book, "Trial Courts and Tribunals of Ghana", Second Edition, the erudite author and jurist Justice S. A. Brobbey, at page 153, wrote as follows to show what an accused person must do after the close of case of the prosecution, how a court should consider and evaluate the defence of the accused and the effect on the eventual decision of the court;

"After the case for the prosecution, if the accused is called upon to open his defence, the court may proceed with a consideration of the defence thus:

I. ***By accepting the accused's explanation. If the court accepts the explanation of the accused, he must be acquitted… The explanation should be such as will negative criminality.***

II. ***Where the court is in doubt, the accused must be acquitted… the doubt must be a reasonable one…. For as long as doubt exists in the mind of the court, the position of the trial court is not very different from that of the appellate court which, as described by Byrne J in R v Patel (1951) 2 All ER 29 at 31, CCA, has to make a choice between:***

"The Scylla of releasing to the world unpunished an obviously guilty man and the Charybdis of upholding the conviction of a possibly innocent one. In such a case, the court [should] lean to the more merciful course, since it is better to release the guilty than to run the risk of convicting the innocent".

In the premises, the court holds and rules that the prosecution failed to prove beyond reasonable doubt that the Accused on the date and place in question at Nkawkaw had sexual intercourse with the PW2. The effect is that the Accused person herein, Raymond Ofosu, is acquitted and discharged on the one count of defilement. He is not guilty.

SGD:

STEPHEN KUMI, ESQ

CIRCUIT JUDGE.

sk…