

**IN THE CIRCUIT COURT HELD AT TARKWA IN THE WESTERN REGION ON
FRIDAY THE 18TH DAY OF MAY, 2023 BEFORE HER HONOUR HATHIA AMA
MANU, ESQ., CIRCUIT COURT JUDGE**

COURT CASE NO. B6/3/21

THE REPUBLIC

VRS.

ANTHONY AMON

JUDGMENT

Accused – Present.

Supt. Juliana Essel Dadzie for Prosecution.

Mark Bosea, Esq. for Accused.

The accused person stands charged with defilement contrary to section 101(1) (2) of the Criminal Offences Act 1960, Act 29. Prosecution's case is premised on the fact that the victim left the house on 3/7/2020 to visit her barber and came home around 2:00pm but her brother refused to let her into the house. She then went back to the barbering shop and stayed until 4:30pm when the owner of the shop asked the juvenile offender to take the victim home. Instead of taking the victim home, he reasoned with the victim to go home with him. He took the victim to Aiyinase and spent three days with her without her parents' knowledge. An official complaint was made to the police but on 5th July, 2020 at 7:30pm the juvenile offender gave the victim GHC15.00 to go home. When the victim arrived home she was questioned and she revealed where she was sent and that they had sex thrice. On 6th July, 2020 the victim was issued a medical report form for examination. Based on the report received it was detected that the hymen of the victim had been broken already. Upon further enquiry the victim mentioned the accused's name as the one who had sex with her in March, 2020.

As this charge is criminal in nature, prosecution is expected to prove each ingredient of the offence beyond a reasonable doubt as required by section 11(2) of the Evidence Act. Failure of prosecution to prove the ingredients of the offence by the legally set standard would lead to an acquittal.

Section 101(1) of the Criminal Offences Act provides that for purposes of this Act defilement is the natural or unnatural carnal knowledge of any child under sixteen years of age.

Thus it is incumbent upon prosecution to establish that the accused in this case indeed had natural or unnatural carnal knowledge of the victim. Prosecution's case is based on circumstantial evidence and as such in executing its evidential burden the Court expects same not to be fanciful suspicion. Again, prosecution as part of the ingredients of the offence must establish the age of the victim as being below 16 years.

For this circumstantial evidence against the accused to result in a conviction it must be led to the conclusion that not only has the crime in issue been committed but also that the accused must have committed same without the possibility of any other person being the possible culprit.

In the Supreme Court case of Domena Vrs. Commissioner of Police [1964] GLR 563 it was held that a Court ought not to convict on circumstantial evidence unless guilt is the only reasonable inference which can be drawn from such evidence.

Also see the cases of: Ametewee Vrs. The State 1964 GLR 551 and The State Vrs. Anani Fiadzo 1961 GLR 416 @ 418.

In a bid to satisfy the burden imposed by law, prosecution called the victim as it's first witness. The Court considered the witness statement, statement given at the police

station as well as the responses of the witness during cross-examination. In her witness statement she stated that the accused sometime in March took her to his house at Tamso Estate road and had sexual intercourse with her. Again during cross-examination the victim admitted that the unfortunate incident occurred only once. Prosecution's second witness was the victim's mother. She connected the incidence to a day that the accused took the victim outside the whole day. According to this prosecution's witness she questioned the victim but she did not give her any feedback that an incident such as defilement had occurred. Prosecution's next witness was the investigative officer. In the opinion of the Court considering the evidence given by previous witnesses against the accused, this was the witness who was expected to cross-examine all the tees and put in place all the dots. This witness however repeated how the case was assigned to her, how she took statement from victim, accused and then subsequently charged the accused.

This was the person who took the investigative cautioned statement and charged statement of the accused person, thus she was privy to what the accused alleged happen on the day that victim's mother suspect was the day of the incident, yet in her witness statement I find that she did not do any further probe to find out of all those activities indeed happened that day. According to the accused during cross-examination he had been given a contract by the school to paint the boards and that he went with the victim.

As an investigative officer it is not good enough to present the court with just the victim's claims, it is expected that the event time analyses of when the act occurred and facts that link the accused to the crime be present to the court. From the prosecution's witnesses it is clear that when the incident occurred the accused was the first and only suspect until the victim came back home and mentioned another person's name.

I have carefully studied the medical report of the doctor as well as his evidence before this court and find that same is conducive of the fact that the victim was sexually active and that she had not just been defiled. PW2 claimed that the doctor said the child had been defiled previously by an older person is not a determination found on record or in evidence. A sexually active person or a claim of the victim having been defiled before the report incident does not mean same was done by an adult other than the juvenile who admitted keeping the victim for days. The doctor's report did not tell the court how many fingers the victim vagina could contain, neither did he mention any fact from which one could conclude that an adult of a particular age, height or weight whose description gets the accused could have had sexual intercourse with the victim.

Even to debunk the accused person's claims, the investigator could have checked from the school if the accused had any project which he executed on the day in question, she could have even gone to ascertain if anyone was in/around the school and saw the accused and victim that day. Again as PW2 claims the victim spent the whole day at accused's house and was brought late, the investigative officer should have gone to the accused person's house and enquired if anyone had seen the victim come to stay in the accused's room for an unusual amount of time all in a bid to establish to this Court that there was an opportunity to defile her.

As it stands all that has been presented is a claim that in March 2020 accused went to the victim's house and even thereafter which he went with the victim to the school to work. According to the investigative officer the victim described the accused room to have a bed in the hall but when she checked the accused's room the bed was in the chamber instead. Short of this the prosecution's key witness being the investigative officer did not probe further on the claim against the accused.

Prosecution presented a one paged document to the Court as evidence of the victim age. Carefully accessing same nothing shows where the document was copied from. All that was said was it was the victim's birth chat, the question is was that adequate proof of the victim's age. The Court is of the view that there should have been other documents to support this document to make it more reliable.

The accused was directed to open his defence in the case and the accused did not deviate from the claims made right from the onset of the trial. In fact the accused person in his statement gave a breakdown of when he had encounters with the victim outside teaching her home and in school. Comparing same against the prosecution's evidence, the court is unburdened with these questions:

1. Did the alleged defilement by the accused occur in February 2020 or June 2020?
2. Did the school give the accused any contract which required making marker boards, if so what date was it?
3. On the said 14th February 2020 did anyone see accused in victim's house.
4. The said date was it a school day or a holidays?

The accused person's claims and statement were taking by the investigative officer in this case but other than gathering what victim and witness thus victim's mother said she failed and refused to do anything which links the accused to the offence alleged. A quick check of the date given by the accused should have led the investigator to do a more proactive work because the said date is a Friday which ordinarily will be a school day for the victim and the accused.

As the accused's defence has raised a lot more questions than answers I find the prosecution has failed woefully to establish a link between the accused and the victim's alleged earlier defilement. As all the evidence in respect of this case is circumstantial no adverse inference can be drawn by this court if prosecution's

evidence does not conclusively point to the accused. As the Latin Maxim states, “Actus non tacit reum nisi means sit rea meaning an act does not make a man guilty unless there be guilty intention”. In this case prosecution failed to prove that accused person’s intention (actus reus) was marred by guilt. The accused person is hereby acquitted and discharged.

(SGD.)

H/H. HATHIA AMA MANU, ESQ.

(CIRCUIT COURT JUDGE)