

IN THE CIRCUIT COURT HELD AT TARKWA IN THE WESTERN REGION ON THURSDAY, THE 20TH DAY OF APRIL, 2023 BEFORE HER HONOUR HATHIA AMA MANU, ESQ. CIRCUIT COURT JUDGE

COURT CASE NO. B6/19/22

THE REPUBLIC

VRS.

KOFI DANQUAH

JUDGMENT

Accused – Present.

Superintendent Juliana Dadzie for Prosecution.

The accused stands charged for defilement of an 8 year old girl. Prosecution asserts that the accused called the victim when she was going to visit a family member and lured her into his room where he had sexual intercourse with her.

As accused denied these charges the Court commenced the journey of ascertaining the truth by accessing prosecution's evidence against the background of section 11(2) of the Evidence Act.

Section 11(2) of the Evidence Act 1975 states that "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 prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond a reasonable doubt".

The standard of proof beyond reasonable doubt was explained by Lord Denning in the case of **Miller vrs. Pensions (1972) 2 All ER 372**. The learned judge explained "proof beyond reasonable doubt that does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice". In effect the Court expects prosecution to prove the essential ingredients of the

offence charged but that expectation cannot be likened to one of mathematical proof – where the formula and answer is strict and cannot be varied based on the evidence presented.

See the cases of:

Tetteh Vs. The Republic [2001 – 2002] SCGLR 854

Dexter Johnson Vrs. The Republic [2011] 2JCGLR 601.

Frimpong a.k.a Ibrahim vrs. Republic [2012] 1SCGLR @ 297.

Section 101(2) of Act 29 defines defilement as the natural or unnatural carnal knowledge of an individual below 16 years whether with or without their consent. To establish that the accused is guilty beyond reasonable doubt in this offence, it is essential to establish that the victim has been sexually known, the accused was the one who sexually knew the victim.

See **Republic vrs Yeboah [1968] GLR 48.**

Prosecution in all criminal trials is expected to call all relevant witnesses who will help resolve doubts that may arise in their bid to establish a case against the accused. Although failure to do same is fatal prosecution can be relieved of this requirement if they have reason to believe some of their witnesses will not speak the truth and for that reason decides not to call some of them.

See the cases of:

Annim vrs. Republic [1972] 1GLR 354 C.A.

Agyeman vrs. The State [1984] GLR.

As there was no witness to the crime, except for the testimony of the victim all the evidence presented were circumstantial in support of the happenings on that day. The victim in this case while giving evidence refused to look at the accused, she exhibited signs of one who was scared and redrawn and initially when asked if she knew accused shook her head. However as accused started cross-examination and put it to her that all she had said

was a lie, she came out of her shell and stated that the accused is not being truthful and that he called her into his room in her words "he did it". The victim further responded that he had sex with her. Apart from identifying this victim by his name she described his room to the investigative officer before the scene of the act was visited. According to the investigative officer the victim claimed that this is the second time accused had defiled her. The investigative officer gave evidence that she visited the scene of the crime with the divisional crime officer and that the victim's description of accused person's room was exactly as said.

Prosecution also called the complainant's mother to testify. Based on this witnesses' evidence, on the same day of the incident she observed a change in victim's behaviour and after persistent demands the victim told her of her ordeal. The complainant stated that she reported the matter to the police that same date and obtained a medical form to take victim to the hospital. This witnesses' evidence was unwilted as accused refused to question her despite the legal implication of failure to cross-examination having been explained to him by the Court through the interpreter.

Prosecution's final witness was the expert witness thus the doctor who examined the victim. In the attached report, the witness gave an observation that the hymen of the victim was stretched and that she had been sexually abused. Thus although the victim's mother reported fingering of the victim, his findings indicated that victim had been sexually known.

The accused put it to the expert witness that he did not agree with his findings to which the expert witness answered that same is his professional opinion and findings which is grounded medically. As outlined in the *10th Edition of Phipson on Evidence paragraph 1280 page 478*, "experts give evidence and do not decide the issue". Thus the findings of the medial officer is evidence that the victim had already been carnally known even before the reported incident. This fact correspond and support the victim's claim that she had

previously been defiled. The Court finds that this further enhances the credibility of the victim's evidence.

The investigative officer also tendered into evidence the investigative cautioned statement and charged statement of the accused. Studying same I observed that although accused in his cautioned statement admitted the victim was in his room and he defiled her in his charged statement he indicated that he lied in his cautioned statement. Both statements were given in the presence of the same independent witness and as the accused made different declarations, the Court finds it save to say that he made both declarations without influence of any kind from the police. The Court will therefore rely on between statements in this judgment.

In the case of **Ofori Vrs. The State [1963] 2GLR 452**, the Supreme Court held at page 455 that "the only direct evidence on record against the accused was the confession but he was held to have been rightly convicted on that confession". Thus a confession statement duly executed is sufficient to support a conviction in the absence of any other evidence. In the accused's cautioned statement, he claimed the victim came to his room to watch a movie and she lie down on the floor by him. The accused claims that it was then that he had sex with the victim. Although he claims he lied in his charged statements. He did not assert that he was compelled to give that statement neither does the Court find evidence to support same.

I have therefore considered that the facts in the cautioned statement again affirms that the victim was in the accused room on that day and indeed he had opportunity to sexually assault the victim. In the said statement, accused claims victim wanted to watch a movie and indeed in the evidence of the victim she left the house with the intention of going to watch television. If the accused did not see or have an encounter with the victim on that day it would have been impossible and too much of a confidence for the accused to mention same.

See the case of *Billa Moshie vrs. The Republic* 1977 2GLR 418.

An accused person presumption of innocence is enshrined in the *1992 Constitution Article* requires that an accused is presumed innocent until proven otherwise. The course of justice is best served if the 100 accused persons instead of one person getting wrongfully incarcerated. To this end against the evidence adduced by prosecution the accused was directed to open his defence in a bid for him to raise same doubt as to his guilt.

The accused in narrating his side of that day's happening stated that complainant questioned him about the defilement but he denied it and even when they interrogated it upon denied it. He claims that day he returned from his cocoa farm and his auntie asked that he accompanies her to a place where the person gave them a drink, although he acknowledges that he stays in the same compound with the victim.

During cross-examination the accused denied all the prosecution's questions. In fact he even denied that victim knows his room although he claims she is usually sent to buy from his compound.

He was also asked:

Q. But she took yourself and the investigator to the room and showed her the blanket you defiled her on?

A. Yes.

Q. What is on the ground?

A. It is a carpet.

Q. Look at the photograph attached to the investigator's witness statement is that not a blanket. (Exhibit).

A. No it is a doormat.

Q. Are you saying your doormat covers almost half of your room?

A. Yes.

Studying the mention Exhibit, the item laying on the ground is not a doormat because as the name suggest same would have been outside his door but not spread out inside his

room with another plain cloth/material spread on same. The evidence of the accused and his responses during cross-examination did nothing to create any doubt in the mind of the Court as to innocence. In line with the legal burden imposed on prosecution along with the evidence adduced I hereby find the accused guilty of the crime of defilement of an eight (8) year old girl. Accused is hereby convicted.

Accused, before I sentence you is there something you would like to tell the Court by way of mitigation?

Mitigation:

Accused: My Lord I have no one please help me.

By Court: Prosecution, any aggravating factors?

Prosecution: My Lady I leave it to your discretion.

By Court: Accused, how old are you?

Accused: 26 years.

By Court: Are you married?

Accused: No.

By Court: Do you have any children?

Accused: No.

BY COURT: Having consider the age of the accused and the fact that he is a first time offender as against the age of the victim, I hereby sentenced the accused to twenty (20) years imprisonment with hard labour.

(SGD.)

H/H. HATHIA AMA MANU, ESQ.

(CIRCUIT COURT JUDGE)