

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON MONDAY, THE 6TH
DAY OF NOVEMBER, 2023 BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO: D10/36/22

THE REPUBLIC

VRS:

SAMUEL AGBOFA

ACCUSED PERSON

PRESENT

C/INSP. SUSANA AKPEERE FOR PROSECUTION

PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS:

The accused person was charged and arraigned before this court on 14th June, 2022 on a charge of defilement contrary to **Section 101(2)** of the Criminal Offences Act, 1960 (Act 29).

The brief facts presented by the prosecution are that the complainant is the grandmother of the alleged victim, Querida Pokuaah Baah aged fourteen (14) years and they both live at Christian Village, a suburb of Ashaiman. The accused person aged 45 years at the time is a farmer and a co-tenant of the complainant. The prosecution alleges that on 2nd June, 2022 at about 3:30pm, the alleged victim returned from school to the house and went to the accused person’s room to play with him. It is further alleged that the accused person then took advantage of the absence of the occupants in the house and had sexual intercourse with her. A witness who heard the incident informed the complainant and a complaint was lodged at the Domestic Violence and Victim Support Unit (DOVVSU),

Ashaiman on 6th June, 2022. Subsequent to the police report, a police medical report form was issued to the complainant to send the alleged victim to the hospital and after examination and treatment, the form was duly endorsed. The accused person was arrested and during interrogation and in his caution statement, he admitted the offence. After investigations, he was charged with the offence and arraigned before the court.

THE PLEA

The self-represented accused person pleaded not guilty to the charge after it had been read and explained to him in the Ewe language. The accused person having pleaded not guilty to the charge put the facts of the prosecution in issue and thereafter the prosecution assumed the burden to prove the guilt of the accused person beyond reasonable court.

BURDEN OF PROOF

Article 19 (2)(c) of the 1992 Constitution provides that a person charged with a criminal offence shall be presumed innocent until the charge is proven, or that the person has pleaded guilty to the charge. See **Sections 11, 13, and 15** of the Evidence Act, 1975, (N.R.C.D. 323). P.K. Twumasi in his book titled Criminal Law in Ghana stated at page 120 that:

“The presumption of innocence was the bedrock of the liberty of the individual within the framework of criminal process. If there is one time-honoured principle in the criminal jurisprudence of the common law jurisdiction, it is that the accused must be presumed innocent until his guilt has been unconditionally proved.”

In the case of **Asante (No.1) v. The Republic (No.1)** [2017-2020] I SCGLR 132 at 143 per Pwamang JSC held that:

“Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it was the accused person who committed it.”

In the case of **Kugblenu vrs. The Republic** [1969] CC 160 CA per Ollenu JA stated the law as follows:

“It is trite law that the onus upon the prosecution is to prove their case beyond all reasonable doubt. This applies to all material issues and matters, which form the pivot of the case of the prosecution or the pillar or foundation of the case upon which the case rests. If the prosecution leads evidence which creates uncertainty, they have failed and the accused should be acquitted”.

Thus, the burden is on the prosecution to prove the essential ingredients of the charge of defilement against the accused person beyond reasonable doubt. When the accused person is called upon to open his defence, all that is required of him is to raise a reasonable doubt in the case of the prosecution. The standard of proof for the defence of the accused person is on a preponderance of probabilities only, which is a lighter burden than what the law imposes on the prosecution. See the case of **Osae v. The Republic** [1980] GLR, 446.

ANALYSIS

Here, the accused person is charged with defilement contrary to **section 101(2)** of Act 29. **Section 101(2)** of Act 29, states as follows;

“A person who naturally or unnaturally carnally knows a child under sixteen years of age, whether with or without the consent of the child, 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.”

Defilement is defined under **section 101(1)** of Act 29 as *“the natural or unnatural carnal knowledge of a child under sixteen years of age.”*

In the case of **Asante (No.1) v. The Republic (No.1)** [2017-2020] I SCGLR 132, the Supreme Court, per Pwamang JSC, at page 143, identified the following ingredients of the charge of defilement which the prosecution must prove to secure conviction;

1. That the victim is under the age of sixteen;
2. Someone had sexual intercourse with her; and
3. That person is the accused;

Further to that, under **Section 14 of Act 29**, a child under 16 years of age lacks the capacity to consent to sex. Thus, any consent to natural or unnatural carnal knowledge is void and such a defence shall not avail an accused person on a charge of defilement.

On the first ingredient of the offence, **the prosecution must prove that the victim is under age sixteen.** To prove that the victim was aged below sixteen (16) years at the time of the alleged incident, the prosecution tendered in evidence **Exhibit “A”**, the birth certificate of the alleged victim which shows that she was born on 11th November, 2007. Meaning, at the time of the alleged incident on 2nd June, 2022, she was aged 14 years. Throughout the trial, the age of the victim as

a person below the age of 16 years was never challenged. Therefore, the prosecution proved the age of the victim as a child below the statutory age of sixteen years at the time of the alleged incident beyond reasonable doubt.

Secondly, **the prosecution must prove that someone had sexual intercourse with the child.** Section 99 of Act 29 states that *“where on a trial of a person for a criminal offence punishable under this Act, it is necessary to prove carnal knowledge or unnatural carnal knowledge, the carnal or unnatural carnal knowledge is complete on proof of the least degree of penetration.”* In the case of **Gligah & Attiso v. The Republic** [2010] SCGLR 870, SC@ page 879, Dotse JSC defined carnal knowledge as *“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 been completed.”*

To discharge their legal burden, the prosecution called the first prosecution, (PW1) Nora Adiki Agboblah, who testified that the alleged victim is her granddaughter, and they live together with the accused person in the same house. On 2nd June, 2022, at about 3:30pm, the victim returned from school whilst she was in the room, and then victim, after changing her clothes, left the room which she found unusual. She waited for a while but when the victim was not returning, she went in search of her. During the search, a tenant in the house informed her that the victim had not left the house, so she went back to the room and found her there. When she questioned her about where she had been, she did not disclose the specific room she entered and even after whipping her, she still did not reveal the room she went to. On 3rd June, 2022, the victim went to school with marks from the whipping, which caught the attention of some teachers who questioned

her. She then confided in the teacher and revealed that the accused had sexual intercourse with her.

PW1 further testified that she was invited by the Assistant Head Teacher of the school and on June 6, 2022 when she honoured the invitation and went to the school, the victim revealed to the teachers and herself that the accused had sexual intercourse with her on June 2, 2022. The victim also informed them that that was not the first time the accused had engaged in such behaviour. She then returned home and informed her son, Charles Buernortey Tetteh, about the incident. They proceeded to the Police Station and lodged a complaint and was given a medical form to take the victim to the hospital, which she did, and then returned the form along with the victim's birth certificate to the police station.

The second prosecution witness, (PW2) Querida Pokuaah Baah, a fifteen-year-old testified that on 2nd June, 2022, the victim returned from school around 3:30 pm. After changing her school attire, she went to the accused person's room and found him sleeping. She laid on the accused person and he asked her to remove her pants, to which she complied. The accused person had sexual intercourse with her, and afterward, she went back to her room. When her grandmother questioned her whereabouts, she failed to tell the truth and was whipped as a result. On June 6, 2022, her head teacher noticed marks on her body and questioned her and confided in him, and he informed her grandmother. Her grandmother reported the case to the police, leading to the arrest of the accused person. Thereafter, she was taken to the hospital for examination and treatment. She states that this is not the first time the accused person has had sexual intercourse with her, as it has happened four times.

Under cross-examination by the accused person, PW1 was insistent that the accused person had sexual intercourse with her after he had sent her to buy sprite for him and he started pulling her in the process to his corridor and when the accused person sent her to his corridor, she was lying and he slept with her after removing her clothes.

The third prosecution witness, Dr. Constant Mawuli Banini of the Ashaiman Polyclinic testified and tendered in evidence the medical report in respect of the alleged victim admitted and marked as **Exhibit “B”**. According to his testimony, on 7th June, 2022, he was on duty when the alleged victim was brought to him for examination. According to his testimony, on vaginal examination, the vulva and perineum were intact but at the time, the vagina introitus was widely opened and there was absence of hymen. The report in **Exhibit “B”** stated that *“the perineum is clean, both labia majora and labia minora are clean. No abrasion or reddening in the vulva seen. There was white vaginal fluid or discharge seen and the hymen was absent”*. According to him, his examination findings suggests defilement.

The fourth prosecution witness, D/Sgt. Louis A. Aboagye states that he is stationed at Ashaiman Divisional Domestic Violence and Victim Support Unit and that on 6th June, 2022, PW1, Charles Buernotey Tetteh, and the victim arrested and brought the accused person to the police station and reported that the accused person had sexual intercourse with PW2 on 2nd June 2022. The case was referred to him for investigation. The accused person was re-arrested and detained to assist in the investigation and he obtained statements from the witnesses and the accused person. He also requested PW1 to produce the victim's birth certificate, and a Police Medical Form was issued for the victim's examination

and treatment. He also tendered in evidence the investigation caution statement of the accused person admitted and marked as **Exhibit “C”**.

Additionally, PW4 testified that he then proceeded to the scene of the crime with PW1, the victim, and the accused person for further investigation. He was led to their place of abode and taken to the room where the alleged sexual intercourse occurred. The victim pointed to the floor as the location where the accused had sex with her. According to him, at the scene, he observed that both the accused person and the victim live in the same house. Again his investigations disclosed that on 2nd June, 2022, when the victim returned from school, she changed her clothes and went into the room where the accused was sleeping. She laid on the accused person, who then had sex with her with her. According to him, the accused person, upon interrogation admitted the offence and stated that he was sleeping when the victim came and laid on him. After gathering the necessary information, the accused person was formally charged with the offence of defilement and brought before the court. He tendered in evidence the charge statement obtained from the accused person, which was admitted and marked as **Exhibit “D”**. The oral testimony of the alleged victim corroborated by the medical evidence shows that she was not a virgin and the someone had sexual intercourse with the alleged victim.

Lastly, **the prosecution must prove that it was the accused person and no other person who had sexual intercourse with the victim.** The victim was emphatic and unshaken in her testimony before the court that it was the accused person and no other person who had sexual intercourse with her. The fourth prosecution witness also testified that the accused person during investigations admitted having sexual intercourse with the victim. The following exchanges

took place when the accused person cross-examined the fourth prosecution witness;

Q: I am putting it to you that I did not have sexual intercourse with the victim.

A: My Lord, he told me what he told me through an independent witness that he had sexual intercourse with the victim.

Q: I am putting it to you that I did not admit having sexual intercourse with the victim.

A: My Lord, I only wrote what the independent witness told me from him.

Q: I am finally putting it to you that, all that you told the court about the independent witness telling you that I admitted the offence is not true.

A: My Lord, I did not communicate with him. I only wrote what the independent witness told me.

The accused person in his investigation caution statement admitted and marked as **Exhibit “C”**, states that he is a farmer and a businessman and due to the nature of his work, he does not stay at one place. He further stated that he lives in the same house with the victim and her grandparents and that he does not know the name of the victim. According to him, the whole of the year 2022, he only returned to the said house at Christian Village on 2nd June, 2022 around 1:30pm. He was in the room at about 3:30pm when the victim entered and laid on him. He could not control himself and had sex with her once with a condom and that he has never proposed love to her and he did not give her money after the sexual act. On 6th June, 2022 he was in the room when the victim’s uncle brought police to arrest him for having sex with the victim.

The state of the law on conviction based on the evidence of a confession made by an accused person was stated by the Supreme Court in a Practice Note in the case of **State v Aholo** [1961] GLR 626 where Van Lare JSC (as he then was) cited with approval the case of R. v. Omokaro (1941) 7 W.A.C.A. 146, as follows:

“A conviction can quite properly be based entirely on the evidence of a confession by a prisoner, and such evidence is sufficient as long as the trial judge, as in this case, enquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness.”

The accused person in his testimony on oath before the court, contrary to his confession contained in his investigation caution statement, vehemently denied having sexual intercourse with the victim. According to him, he has been living in the said house since the year 1998 and has never sent any child on an errand nor even asked any child to buy sprite for him to defile her. According to him, he sleeps in a hall and on the porch and that where the prosecution witnesses are claiming he had sexual intercourse with the victim is a place that everyone passes to the hall and he could not have sexual intercourse without anyone noticing. He maintains that he knows the victim in the case but has never had sexual intercourse with her. The accused person under cross-examination by the prosecution, the following ensued;

Q: I am putting it to you that on the said date victim came to your room when you were lying down.

A: I did not ask the victim to come.

Q: I further put it to you that when victim came on her own, she laid on you, is that not so?

A: Yes, she laid on me and I sacked her.

Q: I am putting it to you that when victim came and laid on you, you could not control yourself and had sexual intercourse with her.

A: It is not true.

Q: You will agree with me that you gave a statement to the police when you were arrested, is that not so?

A: Yes, My Lord.

Q: I am putting it to you that in the said statement, you told the police that it was the victim who came and laid on you and you could not control yourself.

A: I did not ask the victim to come so I did not do anything with her.

Q: And you stated further that you only had sex with her once.

A: It is not true.

Q: You again stated that you had not proposed love to her and did not give her money after having sex with her.

A: Since I lived in that house, I have never given money to any woman in that house for me to give money to the victim.

Q: I further put it to you that a co-tenant suspected the act and informed PW1 who was busy looking for the victim.

A: I did not ask the victim to come to me.

Q: I again put it to you that when the victim was found and interrogated by PW1 she, stated that you were the one who had sexual intercourse with her in your room.

A: It is not true.

Q: And I am putting it to you that this victim is a 14 year old girl.

A: Yes, My Lord.

Q: And per her birth certificate filed before this court marked as Exhibit 'A', she was born on 11th November, 2007.

A: Yes, My Lord.

Q: I further put it to you that the victim has identified you and maintained her statement to the police and to the court that you are the one who had sexual intercourse with her on the said day.

A: It is not true.

In support of his defence, the accused person called one Augustine Dodzi Worna who described the accused person as his elder brother and according to his testimony, he was not present when the incident allegedly happened but he was called after. He testified that the place that the alleged defilement took place is a big hall that many of them stay and that in the morning they all go to their respective work places. They have been living there since the year 1998 and he has never seen the accused person with any woman at the place and there has never been any sexual intercourse with anybody that took place in the hall since they started sleeping there. According to him, on the day of the incident, he was not home but he was informed by the investigator on phone that the accused person had been arrested and brought to the station for defiling a fourteen year old girl and when he went to the police station and asked the accused person about it, he denied the charge. Under cross-examination by the prosecution, the defence witness admitted that on the day of the alleged incident, he was not at home and could therefore not testify to what transpired between the accused person and the alleged victim.

The evidence led by the accused person in his defence shows that indeed on the day of the alleged incident, the victim went to the room of the accused person and laid on him. The accused person under cross-examination by the prosecution was evasive when he stated that he did not ask the victim to enter in his room. The contention of the accused person that he does not live in the room alone and that on the day of the alleged incident, DW1 was in the house is watered down by the testimony of DW1 that he was not at home on the date of the alleged incident but the investigator rather called to inform him that the accused person had been arrested and was at the Police Station. The accused person, throughout the trial did not raise issues about the voluntariness of the statement given to the police and his own testimony shows that on the date of the alleged incident, the victim entered his room. The court therefore is not in doubt about the genuineness of the statement of the accused person that when the victim laid on him, he could not control himself and he had sexual intercourse with her. The position of the law is that a child below the statutory age of sixteen years cannot consent to sex and that even if it was the alleged victim who seduced the accused person into having sexual intercourse with her as he would want the court to believe, he was under a duty, as a full grown man and sound mind to have resisted the temptation from the child. The alleged victim was unshaken in her testimony before the court that it was the accused person and no other person who had sexual intercourse with her.

On the totality of the evidence led by the prosecution and the defence put up by the accused person, I hold that the prosecution proved their case beyond reasonable doubt that it was the accused person and no other person who had sexual intercourse with the victim. I therefore pronounce the accused person guilty of the charge and I accordingly convicted him on the charge of defilement contrary to **Section 101(2)** of Act 29.

SENTENCING

The factors a trial judge must consider in imposing the length of a sentence as stated in the case of **Kwashie v. The Republic** [1971] I GLR 488-496, are as follows: “(1) *the intrinsic seriousness of the offence; (2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime; (3) the premeditation with which the criminal plan was executed; (4) the prevalence of the crime within the particular locality where the offence took place, or in the country generally; (5) the sudden increase in the incidence of the particular crime; and (6) mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed.*”

In the case at bar, in sentencing the convict, the court takes into consideration both mitigating and aggravating factors. In mitigating the sentence of the convict, the court takes into consideration his plea in mitigation of the sentence and the fact that according to the prosecution, the convict is a first-time offender. The court also considers the fact that no physical injury or harm was inflicted on the victim.

The court also as aggravating factors considers the fact that defilement is a serious offence and the age difference between the convict and the victim which is that at the time of the incident, the convict was aged 45 years and the victim was aged 14 years. The court also considers the need to impose a deterrent preserve the chastity of young girls and to protect them from sexual predators especially in their homes, which is supposed to be a safe haven for them. During presentencing hearing, the grandmother of the child informed the court that the victim frequently complains of lower abdominal pains and offensive vaginal discharge as a result of the defilement. Although there is no medical report to that

effect, the court recognises the impact of early sex on the reproductive health of children and on their psychological well-being.

I therefore sentence the convict to serve a term of imprisonment of Seventeen (17) years in hard labour (I.H.L).

Ancillary Order

I hereby recommend physiological counselling for the child victim.

SGD.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**