

IN THE CIRCUIT COURT WEIJA-ACCRA BEFORE HIS HONOUR JAMES  
KOJO BOTAH SITTING ON TUESDAY THE 22<sup>ND</sup> DAY OF AUGUST, 2023

---

---

SUIT NO. C6/08/2023

THE REPUBLIC

VRS:

EVANS MENSAH ----- ACCUSED PERSON

---

---

ACCUSED – PRESENT

SUPT. GARIBA BASOMI FOR PROSECUTION – PRESENT

ACCUSED UNREPRESENTED BY COUNSEL

---

---

### JUDGMENT

On the 2<sup>nd</sup> of February 2023 the accused person herein was arraigned before this Court charged with one Count of defilement of child under sixteen (16) years contrary to section 101 (2) of the Criminal and Other Offences Act 1960 (Act 29). He pleaded not guilty to the charge. The Court considered the accused a flight risk and denied him bail.

CASE OF PROSECUTION

The prosecution called three (3) Witness in proof of its case against the accused; namely PW1 Emmanuella Nhyira Nyamekye Asante, the Victim; PW2 Rosemary Tracy Molder; and PW3 D/PW/CPL. Bernice Owusua, the investigator.

PW1, Emmanuella Nhyira Nyamekye Asante, the victim of the alleged defilement testified that she is aged Eleven (11) years and is a class 4 pupil of Anyaa M.A. Primary School. PW1 told the Court that on 24<sup>th</sup> January 2023 at about 12:00pm in the course of the second break of the school, she went to the accused person's barbering shop in the company of her friend Vasty Agyeiwaa aged 13 to collect money from the accused to buy Kenkey.

According to PW1, they met the accused alone in the barbering shop. The accused sent Vasty Agyeiwaa to buy blade for him. When Vasty Agyeiwaa went out of the shop, the accused according to PW1 gave her Alata Soap and water to massage his penis. PW1 said she massaged the accused person's penis and a whitish fluid came out and then the accused used his singlet PW1 drunk up the water used by PW1 to massage his penis and then warned PW1 not to tell anyone about to clean up the discharge. The accused according to what had transpired in his shop or else she will die.

PW1 told the Court that Vasty Agyeiwaa returned with the blade and the accused after giving her GH¢1.00 and PW1 GH¢2.00 asked them to go back to school. PW1 said she narrated to Vasty Agyeiwaa what the accused made her to do in his shop and Vasty replied that she saw what happened.

PW1 further testified that on 25<sup>th</sup> January, 2023, she informed her friend Christabel and Gifty about what happened in the accused person's shop. According to PW1, accompanied by her friends Vasty, Christabel, Justina and Gifty she went to the accused person's shop to collect money from him. However, the accused chased

them away with a cutlass into the school's premises. PW1 told the Court that after closing from school around 1:00pm she and Vasty decided to go to the accused person's shop to beg him for coming to his shop. The accused granted them entrance into the shop and then pointed out to them a Bible and five (5) sachets of pure water on his table. The accused according to PW1 said that he has been asked by God to kill her and her friends hence the five (5) sachets of pure water on his table. According to PW1, the accused assured them that he will no longer kill them and that they could drink the pure water if they wanted to. PW1 said Vasty and herself took one each of the pure water sachet and drunk. PW1 said she felt sleepy whilst in the shop and then slept in the three-in-one sofa in the shop. The accused then told Vasty to go out. According to PW1, whilst she was sleeping in the sofa, the accused approached her and forcibly started removing her underwear and threatened to kill her if she should shout. According to PW1, the accused opened his trousers and brought out his penis, raised her uniform and inserted his penis into her vagina and had sex with her. PW1 said after the accused withdrew his penis from her vagina she saw a whitish substance coming out of his penis which the accused cleaned up with his singlet. PW1 told the Court that the accused closed up his zip, told her to wear her underwear and asked her to call Vasty into the shop. When Vasty came into the shop, the accused asked PW1 to leave the shop but she insisted to stay. PW1 said she saw the accused fondle Vasty's breasts, pulled her underwear and then inserted his fingers into Vasty's Vagina.

PW1 said it was her friend Christabel who informed her mother and teacher about what the accused did to her. PW1's mother lodged a complaint at the Police Station.

PW2 testified that on 26/1/2023 she overheard PW1 and her friends talking and the friends were urging PW1 to inform her mother about the incident. PW2 said upon

enquiries, she was told that the accused has had sexual intercourse with PW1 in his barbering shop. Upon further enquiries from Pw1 herself, PW2 was told that the accused kissed her and inserted his finger into PW1's vagina. PW2 said she reported the matter to the Sowutuom Police.

PW3 investigated the case and obtained an investigation cautioned statement and a charged statement from the accused. PW3 also took Police Statements from PW1 and PW2. Attached to PW3's witness statement is an endorsed Police medical report form by a doctor in respect of Victim PW1.

Also attached to PW3's witness statement is a photograph of a dirty singlet allegedly retrieved from the accused person and sent to the Police Forensic Science Laboratory for analysis. Further attached to PW3's witness statement is the forensic report on the alleged sperms stained dirty singlet of accused.

### **THE CASE OF ACCUSED**

The accused is a barber by occupation. He told the Court that he knows the complainant and the victim since they all stay in the same area. Accused said he has been barbering the victim's hair as well as all the children in the house.

The accused testified that on 24/1/23 the victim and her friend Vasty Agyiewaa came to his barbering shop and told him that they were hungry and needed money to buy kenkey. Accused said the victim asked for GH¢5.00 but he gave her GH¢3.00.

Accused further testified that on 25/1/23 the victim came back to his barbering shop with four other girls and one of the girls demanded money from him. Accused said he told them he did not have money to give them and he chased them with a cane and they left to school. According to accused, the victim and Vasty Agyeiwaa returned to his shop 45 minutes later, and then she told him that

she has offended him and pleaded for forgiveness. Accused said he asked the victim what she has done to him, and the Victim told him that because they wanted money from him, they planned to say that he has slept with her and has also inserted his fingers into Vasty Agyeiwaa's vagina. Accused said the victim further told him that they hatched their plan so as to put him in fear to give them money, otherwise they will report him to the Police. The victim according to accused also pleaded with him not to inform her mother less she beats her.

Accused said the victim offered to buy him Poker drink and to marry him, but he told the victim and her friend Vasty that they were bad girls and that they should leave his shop and never come there again. So they left.

The accused informed the Court that on 26/1/23 two police officers in the company of PW2 came to his shop and invited him to the Police Station where a statement was obtained from him and then he was remanded into Police Custody. According to accused, on 31/1/23 he appeared before the Police Commander. The Victim, the Complainant and others were present. The commander told accused that medical report showed that someone has had sex with the victim. Accused said he told the Commander he did not have sex with the Victim. The commander according to accused, asked the victim who had sex with her and the victim said she has a boyfriend who is 14 years old and that they have had sex on two occasions. Accused said the victim withdrew her accusations against him in the presence of the Police commander and the Victim's mother. Vasty who was also present at the commander's office confirmed that the accused did nothing to the victim and that they framed up the accused of having sex with the victim because they needed money from him. Accused told the Court that the Victim's mother told the victim and Vasty that they were bad girls and that they had falsely accused him. They were later asked to leave the commander's office. Accused said as they

were leaving, PW2 the Complainant knocked the victim's and Vasty's heads with her hand and questioned them whether that was what she told them to tell the commander.

Accused told the Court that he was sent to the charge office where he met the 14-year-old boy the victim said is her boyfriend. The accused was detained and the boy was made to sit behind the Counter until 5:00pm. Accused said he was later charged with the offence.

### **ISSUE FOR DETERMINATION**

The issue for determination is whether or not on 25/1/2023 the accused defiled PW1 Emmanuella Nhyira Nyamekye Asante aged less than 16 years.

### **PURDEN OF PROOF**

In Criminal Trials, the burden of proof is generally on the prosecution to prove the guilt of the accused beyond reasonable doubt. In the case of **Commissioner of Police. v. Isaac Antwi** [1961] GLR 408-412, Korsah C.J. explained the burden of proof placed on the prosecution as follows:

*"The burden of proof is used in two senses. It may mean the burden of establishing a case or it may mean the burden of introducing evidence. In the first place it always rest on the prosecution to prove the guilt of the accused beyond reasonable doubt."*

Also in the English case of **Woolmington v. The Director of Public Prosecutions** [ 1935] AC 462, Lord Sackey stated as follows:

*"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 and no attempts to whittle it down can be entertained."*

Section 13(1) of the Evidence Act, 1972 (NRCD 323) also has this to say:

*“In any criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt.”*

Per the law the standard of proof required of the prosecution in Criminal trials is proof beyond reasonable doubt. Any failure on the part of the prosecution to discharge this burden should lead to the discharge of the accused. See the case of Donkor v The State [1964] GLR 598 S.C.

Section 102 (2) of Act 29 under which the accused has been charged provides as follows:

*“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.”*

The basic ingredients of the offence of defilement under the section are twofold, namely:

- (1) That the child who is the victim of the offence is less than sixteen (16) years of age; and
- (2) That the accused has naturally or unnaturally carnally known the child. In other words, that the accused has had sexual intercourse with the child.

The prosecution is required to prove that the child who is the victim of the Criminal Offence is less than sixteen years of age. Where the prosecution fails to prove that the victim of the offence was below sixteen years at the time of commission of the offence, a case of defilement is likely to fail. Per Section 19(2) of the Juvenile Justice Act, 2003 (Act 653) the age of a person under eighteen years is determined by a birth certificate or a baptismal certificate or a certificate signed by a medical doctor attesting that the person is under 18 years of age. The

prosecution produced no documentary evidence in proof of the age of PW1 the victim of the alleged offence of defilement, except to state on the charge sheet and in paragraph 1 of PW1's Witness Statement that she is aged 11 years. I saw PW1 as she testified before me. In my estimation she is below 16 years of age. I will therefore presume that PW1 the victim is 11 years of age as the prosecution has indicated to the Court.

The second essential ingredient of the offence the prosecution is required to prove is that the accused has had sexual intercourse with the victim. The case of the prosecution will collapse where the prosecution fails to establish this essential ingredient of the offence.

The prosecution's evidence adduced through its primary witness, PW1 the victim is that on 25/1/23, PW1 and her primary school friend Vasty Agyeiwaa went to the accused person's barbering shop after closing from school at around 1:00pm purposely to apologize to the accused for previously coming to his shop. According to PW1, the accused gave her and Vasty a sachet of pure water to drink. After drinking the water, PW1 said she felt sleepy and then laid down on the accused person's long sofa in the barbering shop and slept. The accused then asked Vasty to leave the shop. According to PW1's evidence on record, whilst she was sleeping on the long sofa the accused approached her, forcibly started removing her underwear whilst threatening to kill her if she should shout. The accused proceeded to unzip his trousers, brought out his penis, raised up PW1's uniform, inserted his penis into her vagina and had sexual intercourse with her. PW1 continued to say in her witness statement that after the accused pulled out of her vagina, she saw him discharge semen which the accused used his singlet to clean the semen up. After zipping up, the accused according to PW1 told her to put on her underwear and then called Vasty into the shop.



The following exchanges between the accused and the victim PW1 while under cross examination is worthy of note:

Q. You said I gave you water to drink in my shop and after drinking you slept?

A. It's true.

Q. When you came to the shop you said you wanted to rest in my shop because your mother is not at home. Not so?

A. Its not so.

Q. You said when you slept I removed your underwear and I slept with you

A. Yes, you removed my pant and then told me that if I shout you will kill me.

Q. You came to the shop with Vasty Agyeiwaa. Where was she by then?

A. You asked Vasty Agyeiwaa to go out of the shop.

Q. So I was sleeping with you in the shop and yet you did not shout for anybody to hear you.

A. You locked up the door and said if I should shout you will kill me.

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

A. You did threaten to kill me if I shout.

Q. I never slept with you as you've alleging.

A. You slept with me.

Under Cross-examination by prosecution, the accused answered as follows:

Q. On the day of the incident you gave the victim something to drink. Not so?

A. No. I did not sleep with her.

Q. I put it to you that you gave victim something that made her unconscious

A. That's not true. The place is a barbering shop.

Q. When she became unconscious you then had sexual intercourse with her.

A. I gave her nothing.

Q. I put it to you that you had carnal knowledge of the victim and you discharged into your singlet.

A. That's not true.

It is imperative to comment on the prosecution's evidence at this stage before I proceed any further with the Judgment. The impression I have from the evidence is that the accused laced the water he gave to the victim and Vasty with something that made her unconscious thereby enabling the accused to carnally know her. If indeed the Victim was in deep sleep or in a state of unconsciousness as a result of the effect of something that the accused put into the water that she drunk in the barbering shop, how did she see the accused approaching her in the long sofa, removing her underwear and then penetrating her with his sexual organ? How did the victim also see the accused discharging out of her vagina and then catching the semen in his singlet if indeed the victim was unconscious? Vasty Agyeiwaa also drunk the same sachet water. Is the Court to believe that her water was not laced with any substance and therefore when, per the evidence, the accused asked her to leave the shop whilst the victim remained, she did not fall asleep or become unconscious outside the shop?

Section 7(1) of the Evidence Act, 1975 (NRCD 323) defines corroboration as follows:

*“Corroboration consists of evidence from which a reasonable inference can be drawn which confirms in some material particular the evidence to be corroborated and connects the relevant person with the crime, claim or defence.”*

Simply put corroboration is the confirmation of evidence that has been given at the trial. As a general rule corroboration is not necessary unless made a requirement by a statute. A Court can act or convict solely on the evidence of one witness provided the witness is credible. See the case of **Commissioner of Police v. Asafu-Adjaye** (No. 2) [1968] GLR 567 CA. Where, however the circumstances of any particular case are such that corroboration is essential for the Court to give credence to it, the Court will be entitled to comment on the absence or insufficiency of corroboration and proceed to disbelieve it or give it the reduced credence which the Court considers that it deserves. See page 174 paragraph 370 of **Practice and Procedure in the Trial Courts and Tribunals of Ghana** (2<sup>nd</sup> Edition) by S.A. Brobbey JSC. Archbold, 36<sup>th</sup> Edition, paragraph 2888 also held the view that in sexual offences corroboration of the evidence of the female is not in law essential, it is nevertheless desirable in practice and a Court is expected to look for such corroboration and to warn itself or the jury of the danger of acting on the uncorroborated evidence of the female alleged to have been carnally known by the accused. Justice S.A. Brobbey says in his look, just mentioned, at page 174, paragraph 371 that evidence amounting to corroboration may take the form of a plurality of witnesses or the tendering of some document or matter.

In the instant case of defilement, where the prosecution’s star witness is PW1, the Victim, and where it is the word of the victim against the denial of the crime by the accused, corroboration of PW1’s evidence by a witness or two is very essential in my view. The importance of corroboration may be seen in the following

exchanges between the Victim and the accused as the victim was under cross examination:

Q. Vasty Agyeiwaa told the commander that I did not do anything to you. Is it not the case?

A. She did not say so. Vasty told my auntie that you held her breasts and then put your finger in her vagina and then threatened to kill her and her family members if she tells anyone

Q. Vasty Agyeiwaa's mother said I did not do anything to you and yet you accused me. Not so?

A. You're not speaking the truth. Vasty told her mother that you put your finger in her vagina. Her mother took her to the washroom and when she was going to urinate she complained of pains in her private part.

Q. Why are you lying to the Court that I slept with you?

A. You slept with me.

Q. So why did you not inform your mother that I slept with you but rather came and asked me for GH¢100.00.

A. You threatened me that if I tell my mother I will die.

Q. But you informed the NPP Women's Organizer. Not so? (Here the reference is to PW2)

A. My mother was not around. So after closing from school I went to her and informed her.

Per my evaluation of the evidence on record, Vasty Agyeiwaa is a closed primary school friend of the Victim. The Victim and Vasty are very familiar with the

accused and his barbering shop. On the day of the alleged defilement of the Victim, Vasty went to the accused person's barbering shop with the victim. They both drunk the sachet water the accused allegedly offered the two friends. The evidence on record go on to say that whilst Vasty was made to leave and stay outside the shop, the accused defiled the victim in his shop whilst she was asleep or in a state of unconsciousness. Later on Vasty was recalled into the shop and the accused fondled her breasts and inserted his finger into her vagina.

If indeed the evidence against the accused is to be believed, why did the prosecution not call Vasty Agyeiwaa to come and testify to what the accused did to her and by extension corroborate to a certain degree PW1, the Victim's evidence. If indeed Vasty told her mother that the accused violated her in her private part with his finger such that she suffered pains whilst urinating, why again did the persecution not call Vasty to testify to that effect or call Vasty's mother to come and confirm the testimony of her daughter? Again even though the victim claimed she did not inform her mother about the alleged defilement of her by the accused the evidence of the Victim's mother is crucial to establish whether when the victim came home she observed any abnormalities in the victim like bleeding from her private part or inability to walk straight. Sight must also not be lost of the fact that the victim's mother was present at the commander's office at the Police station. Why would the victim's mother walk away from the trial instead of coming to testify to seek Justice for her 11-year-old defiled daughter? There appear to be many questions than answers in the trial. At paragraph 9 of PW3, the investigators witness statement she stated that she took a witness statement from Vasty Agyeiwaa. I believe PW3 also obtained Police Statement from testified Agyeiwaa. Again, why did Vasty Agyeiwaa never featured as a witness for the purpose of corroborating the Victim's evidence and why the Police statement of Vasty

Agyeiwaa was not attached to PW3's Witness Statement are questions whose answers are known only to the prosecution.

As already indicated, documentary evidence constitutes a form of corroborating the evidence of a witness. In his book Contemporary Criminal Law in Ghana (2017) page 214 the learned author and jurist Dennis Dominic Adjei J.A. write as follows:

*"Medical evidence may be needed in a defilement case, particularly where the accused is denying having defiled the child. Where there is time lapsed in reporting the offence to the Police, it became more crucial to get medical evidence as part of evidence to be adduced. Time lapse in reporting defilement to the Police alone will not make the charge bad and evidence must be adduced to make the case with necessary certainty. In some cases, the victims will not inform their parents out of fear and it may take some time before it is detected by their parents. Under such circumstances, credible medical evidence would be needed to meet the standard burden of proof in criminal matters."*

On the matter of medical evidence, it is important to pay attention to the cross-examination of the investigator PW3 by the accused:

Q. On what basis are you saying that I had sex with the Victim?

A. We issued Police medical form to the victim to go to the hospital. The doctor examined her and said that her hymen was broken.

Q. You said when you took the victim to the hospital she was bleeding due to the sex I had with her. Do you have any evidence to show that the victim was bleeding?

A. The doctor established that the Victim's hymen was broken. At your shop we found your dirty singlet pointed to us by the Victim in which you used to clean

yourself after the act. Forensic examination established that your semen was on the singlet.

Q. I was in police custody for 15 days before you bought the singlet to show me. Where did you get it from?

A. We went to your shop on 28/1/23. It was on the same day that victim pointed it out to us. It was shown to you and you denied it.

The witness statement of PW1 the victim is attached with a Police medical form purportedly endorsed by a medical officer from a Government Hospital labelled as Exhibit "A". The endorsed Police medical form i.e. Exhibit "A" does not contain the name of the medical doctor who examined the victim or the name of the particular Government Hospital where the victim was examined. Even though signed, there is no official stamp on Exhibit "A." Perhaps these may be mere omissions, but on a criminal charge of defilement involving the accused in which upon conviction he could suffer imprisonment from between 7 to 25 years, these details are important in ensuring that the medical evidence the prosecution is relying on is watertight and credible. Besides the medical doctor who endorsed Exhibit "A" with his report after examining the victim should have appeared at the trial and testify for the prosecution, so that the accused will have the opportunity to cross-examine him on his evidence. He never showed up at the trial. The endorsed medical form makes it evident that the medical doctor briefly interrogated the victim to ascertain what was wrong or happened to her, as is normally done with medical practice at the hospital. The doctor recorded on the medical form that a man by name Rasta (i.e. the accused herein) fingered the victim's vagina on 24/1/23 and 25/1/23 and then threatened to kill the victim or told her she will die if she told anyone about the incident. If indeed the victim told this to the doctor in his consulting room, it contradicts the victim's Evidence-In-

Chief that the accused had sexual intercourse with her on 25/1/23 in his barbering shop.

Per Exhibit "A" the doctor after observing that the victim looks well, not ill-looking, not pale, not jaundiced, well hydrated and generally well looking concluded as follows after examining her Vagina.:

- (1) Minor abrasions seen at the vulva;
- (2) Offensive Vulva (Whitish to creamy discharge);
- (3) Pains at the genitalia and vulva associated with the vagina examinations;
- (4) No bleeding seen;
- (5) Broken hymen; and
- (6) No spermatozoa deposit from urine.

The doctor's final impression or conclusion after the vaginal examination of the victim was:

- (1) Alleged sexual defilement; and
- (2) Being managed for urinary tract infection not related to the incident.

From Exhibit "A", the medical evidence, the doctor was not one hundred percent certain that the victim aged 11years had been sexually defiled by the accused.

Even though the doctor noted that there was a broken hymen, he noted further that no bleeding was seen in the Victim's vagina and there was also no semen deposit from the urine of the victim. The doctor also observed minor abrasions at the victim's vulva which may be suggestive of the victim engaging in sexual intercourse. The doctor did not however say so with certainty. The victim's broken hymen is also suggestive of the victim having had penetrative sex. Again the doctor did not say that with certainty. I deduct from my study of Exhibit "A" that the victim had been carnally known and at the moment is no longer a virgin,



but as to whether or not it was the accused who sexually knew the victim and thus robbed her of her purity as a virgin has not been established with certainty.

The accused has sought to create doubt in the evidence of the prosecution by testifying that the victim admitted before the Police Commander that she has a boyfriend who is aged 14 years and that victim and the said boyfriend have had sexual intercourse on two occasions. The following transpired when the accused cross-examined PW3 the investigator:

Q. The victim told the Police that she has a boyfriend who is 14years. Is it not the case?

A. It is not true

Q. So why did you invite the 14-year-old boy twice to the Police Station?

A. You told us that the victim has a boyfriend so on instruction from the Commander, I invited the boy to the Police Station.

Q. The victim told the Commander that the 14years old boy slept with her. Not so?

A. The boy said so but the victim denied it.

The findings of the medical doctor in Exhibit "A" which is not conclusive about the guilt of the accused coupled with the evidence that the victim had a 14-year-old boyfriend creates further doubts in the prosecution's evidence in establishing the second element of the offence of defilement. Exhibit "D", the forensic report on the singlet allegedly belonging to the accused does not convincingly say that the human semen found on Exhibit "D" came from the accused. The DNA test did not categorically state that a sample of the accused person's actual semen was obtained from his testicles and analyzed together with the stains of semen on the

singlet to arrive at the conclusion that the semen on the singlet is indeed the accused person's semen.

Evaluating the evidence in totality, I draw the conclusion that the prosecution's evidence in support of the charge against the accused is riddled with innumerable doubts and thus has failed to meet the criminal standard of proof beyond reasonable.

In the case of **Republic v. Francis Ike Uganwune** [2013] 58 GMJ 162 at 182-183, Adjei J. A. held that the trial Court should examine the prosecution's case together with the defence of the accused and be satisfied with the guilt of the accused beyond reasonable doubt before it should convict, if not, it should acquit.

Per the evidence on record, I am not satisfied that the prosecution has succeeded in proving the guilt of the accused on a charge of defilement of the victim beyond reasonable doubt. Accordingly, I hereby acquit and discharge the accused of the offence charged.

(SGD)

**H/H JAMES KOJO BOTAH**  
**CIRCUIT COURT JUDGE**





















+