

**IN THE CIRCUIT COURT WEIJA BEFORE HIS HONOUR JAMES KOJOH BOTAH
SITTING ON TUESDAY THE 5TH DAY OF SEPTEMBER, 2023**

SUIT NO. C6/26/2021

THE REPUBLIC

VRS

BRIGHT HORLALI AVORNYO

ACCUSED ABSENT

SUPT. GEORGE AMEGAH FOR PROSECUTION PRESENT

JUDGMENT

On 16th June, 2021 the accused person was arraigned before this court charged with the offence of Defilement of Child under sixteen (16) years of age Contrary to Section 101 of the Criminal and Other Offences Act, 1960 (Act 29). He pleaded not guilty to the offence charged and was remanded into police custody.

On 2nd July, 2021, the court admitted the accused to bail pending trial in the sum of GH¢40,000.00 with two (2) sureties who were to be public servants. On 2nd August, 2021, the court reviewed the bail conditions of the accused to a bail bond sum of GH¢40,000.00 with One (1) surety to be a Senior Public Servant.

The accused who was coming to court regularly absented court on 20th September, 2022 resulting in a Bench Warrant issued by the court for his arrest on 10th November, 2022. The prosecution were unsuccessful in executing the Bench Warrant against the accused.

On 21st June, 2023, the Court granted an application brought by the prosecution to try the accused in his absence.

To prove its case against the accused, prosecution called five (5) witnesses. PW1 Aku Dzivenu testified that the victim is her daughter. She is aged 8 years. PW1 informed the court that she noticed that the victim looked sick. When the victim removed her underwear, she further noticed that the underwear was wet. The victim's vagina was sore and she was discharging blood and brownish fluid. PW1 said she made an attempt to treat the victim with warm water. Upon advice from a female nurse, the victim was sent to the hospital where she was treated and discharged.

PW1 told the court that the victim's father after interrogating her revealed that the victim has been defiled by the accused popularly known as Carpenter. The victim according to PW1 confirmed the incident to her.

PW2, Mawunyo Abofra is the victim of the alleged act of defilement. She told the court that she is eight (8) years of age and lives with her mother at Aayololo, Bortianor. Victim told the court that she has been watching T.V with her siblings in the accused person's room. According to PW2, on a certain occasion after watching TV in the accused person's room with her siblings, they decided to leave. On her way out, the accused called her and told her to come and buy something for him. PW2 said whilst she waited in the accused person's room to be sent by him, the accused pulled her up and put her on his bed. The accused removed her underwear and put his penis into her vagina. PW2 said she felt severe pains, but the accused told her not to inform anybody or else he will beat her. PW2 told the court that she continued to feel pains in her vagina. Her mother, PW1, noticed some changes in her but she could not tell her the cause out of fear. As blood and fluid came out of her vagina, her parents sent her to the hospital. PW2 later narrated to her father what the accused did to her.

PW3, Charlotte Abena Dogbe is a sister to the victim. She testified that she was there when the accused called the victim into his room to go and buy something for him. After sometime the Victim came out of the accused person's room crying. PW3 asked victim what was wrong with her, but she said nothing. The victim later fell sick. PW4, Tetteh Abofro is the victim's father. He told the court that he heard from his ex-wife PW1, that the victim was ill and that blood was oozing out of her vagina. So he took the victim to the hospital. On their way to the hospital the victim confided in PW4 that the accused has had sexual intercourse with her in his room. PW4 said at the hospital, the doctor examined the victim and confirmed that someone has had sex with the victim hence the bleeding. Victim was treated. PW4 later reported the case to the police and was given a police medical form to be sent to the doctor for endorsement.

PW5 PW/D/CPL Pheobe Boakye investigated the case and obtained an investigation cautioned statement and a charged statement from the accused. These statements together with the endorsed police medical form and a radiology report have been attached to the Witness Statement of PW4.

As indicated from the on-set, the accused absconded whilst on bail pending trial. The trial was conducted in his absence in accordance with Article 19(3) (a) of the 1992 Constitution. The court has therefore not had the benefit of hearing his side of the story.

The singular issue for determination is whether or not the accused has had sexual intercourse with the victim who is a child aged less than sixteen (16) years of age.

The burden of proof in criminal trials is generally on the prosecution. It is the law that the prosecution must prove its case against the accused beyond reasonable doubt if they are to succeed in obtaining a conviction against the accused. See Section 1(2) and 13 (1) of the **Evidence Act, 1972 (NRCD 323)**. See also *COP v ISAAC ANTWI* [1961] GLR 408 – 412 and *WOOLMINGTON v DPP* [1935] AC 462 per Lord Sackey.

Section 101 (2) of Act 29 provides:

“Whoever, naturally or unnaturally carnally knows any child under sixteen (16) 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.”

In his book **Contemporary Criminal Law in Ghana** (2017), Dennis Dominic Adjei JA wrote at pages 212 – 213 as follows:

“Defilement is the natural or unnatural carnal knowledge of a child under sixteen years of age with or without her consent. The prosecution is required to prove that the child who is the victim of the criminal offence is less than sixteen (16) years 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 (16) years at the time the offence was committed. After proving the age of the child another important element to prove is that a person has naturally or unnaturally carnally known the child. The prosecution will fail where it fails to prove beyond reasonable doubt that the person naturally or unnaturally carnally knew the child.”

In proof of the first element of the offence, to wit that the child who is the victim of the defilement is less than sixteen (16) years of age, the prosecution attached a radiology report to PW5’s Witness Statement. After analysing the left hand and wrist bones of the victim so as to determine her age, Dr. Francis Ofei, a Senior Specialist Radiologist of the Police Hospital, Accra concluded that the patient’s bone age is estimated to be between 5 years and 6 years. In ordinary meaning, the victim is aged between 5 to 6 years. Per the radiology report, the prosecution has succeeded in establishing scientifically that PW2 the victim of the alleged defilement is less than sixteen (16) years of age.

The next element for the prosecution to establish if it is to succeed in securing a conviction against the accused is that the accused has had sexual intercourse with the child, PW2. The victim, PW2 is the core witness for the prosecution. She testified how the accused under the pretext of sending her to buy something for him detained her in his room and had sexual intercourse with her. PW3, a sister to the victim witnessed the accused calling the victim into his room and also saw the victim crying as she came out of the accused person's room. PW1, the mother of the victim observed certain changes in the victim. She appeared sick, had a sore vagina and was discharging brownish fluid and blood from her vagina. As PW4 the victim's father was sending her to the hospital, the victim confided in PW4 that the accused has had sexual intercourse with her in his room. To crown it all, prosecution attached to PW5's Witness Statement the duly endorsed police medical form on the victim. Dr. Odoi of the Bortianor Polyclinic after examining the victim observed that she had, "an enlarged vulva and slightly tender ulcer seen around the labia majora." The doctor's final impression or conclusion was that the victim had been defiled.

In his investigation cautioned statement made to the police on 12th May, 2021, the accused who is aged 30 categorically denied having sex with the victim. If he had not absconded but had testified at the trial, I am sure his evidence would have been the same. At page 214 of his book which was earlier on mentioned in this judgment, Justice Dennis Dominic Adjei wrote that where the accused is denying having defiled the child, credible medical evidence is needed to meet the standard of proof in criminal matters. The prosecution has met this requirement through the endorsed medical form on the victim.

Upon evaluating the evidence as a whole. I have no doubt whatsoever that the Victim PW2 Mawunyo Abofra aged less than 16 years had been defiled by the accused. The fact that the accused after the court granted him bail on 2nd July, 2021 with reviewed bail conditions on 2nd August, 2021, and instead of availing himself to the court for his trial, he chose to jump his bail and go into hiding bears ample testimony of the guilt of the accused. If he were innocent of the offence as he portrayed in his cautioned statement he

would have stayed to put his defence before the court for consideration. On the face of the evidence before me, I find the accused guilty of the charge of defilement and hereby convict him in absentia.

BY COURT

Prosecution, do you have anything to say before the court imposes a sentence on the accused in his absence?

PROSECUTION

I pray for a deterrent sentence for the accused to deter him and others from committing similar offences.

BY COURT

To serve as a deterrent to the accused and others like him contemplating of committing a similar offence, I hereby sentence the accused in absentia to twenty (20) years imprisonment with hard labour. An order is hereby made for the prosecution to look for the accused wherever he may be alive to serve his prison sentence.

(SGD)

H/H JAMES KOJOH BOTAH

(CIRCUIT COURT JUDGE)