

IN THE CIRCUIT COURT HELD AT TECHIMAN ON TUESDAY 16TH JANUARY, 2024
BEFORE H/H SAMUEL DJANIE KOTEY ESQ. SITTING AS A CIRCUIT COURT JUDGE

CC: 48/2022

THE REPUBLIC

VRS

INUSAH SHERRIF

JUDGMENT

The accused person has been charged with the offence of defilement of a female aged thirteen (13) years contrary to section 101(2) of the Criminal and Other offences Act, 1960 (Act 29). The accused person pleaded not guilty to the charge when the charges were read and interpreted to him in the language of his choice. However, according to the alleged facts of the case presented by the prosecution before the court, the accused person as well as the alleged survivor and her mother all live in the same vicinity. The accused is said to have lured the alleged survivor into his room when the latter was sent on an errand by her grandmother. Whiles in the room, accused person is alleged to have had sexual intercourse with the alleged survivor on a student mattress lying on the floor in the said room. Accused person is then alleged to have warned the alleged survivor not to disclose the ordeal to anyone. The prosecution further stated that the complainant spotted the alleged survivor coming out of the room of the accused person and when she interrogated her daughter, she informed her of what the accused had done to her. A complaint was then made to the police which resulted in the arrest and charge of the accused with the offence before the court. The plea of the accused the charge meant that the prosecution is

invited to present its case against the accused for same to be assessed by the court. The evidence that the prosecution presents must rise above reasonable doubts that may be linger on the court's mind after considering the evidence of the prosecution and that of the accused together. Section 13 of the Evidence Act, 1975 (NRCD 323) provides that the burden of persuasion as to the commission of a crime by a party requires proof beyond reasonable doubt.

The ingredient of the offence

As earlier stated in this judgment, defilement is an offence created under section of Act 29. It has been defined as having carnal knowledge; whether natural or unnatural of any child under sixteen years of age whether or not with the consent of the said child.

In **GLIGAH V ATISO [2010] SCGLR 870** carnal knowledge was defined as the penetration of the female vagina by a man's penis regardless of how deep or little the penis goes inside the vagina. The ingredients of the offence therefore are:

That the accused had natural or unnatural carnal knowledge of the alleged survivor; and

That the alleged survivor is less than sixteen years old.

Evidence adduced by the prosecution

I will start with the second ingredient of the offence which requires the prosecution to prove that the alleged survivor was less than sixteen years old at the time of the alleged offence. On that ingredient of the age of the alleged survivor, the prosecution offered incontrovertible evidence of the age of the alleged survivor as below sixteen years at the time of the alleged offence. The prosecution tendered the birth certificate of the alleged survivor in evidence as exhibit C to prove that she was born on 15th December, 2009. That meant that at the time of the alleged offence against the state by the accused person, the alleged survivor was only 13 years. The accused was not able to raise doubt to the

evidence presented by the prosecution on the age of the alleged survivor. The court finds from the evidence adduced at the close of the case that the prosecution has been able to prove that the alleged survivor was less than sixteen years old at the time the offence was allegedly committed.

On the ingredient of carnal knowledge of the alleged survivor by the accused person, the prosecution invited the alleged survivor who testified as the first prosecution witness. The second prosecution witness was also the mother of the alleged survivor. The medical officer who examined the alleged survivor also was in court to testify as the third prosecution witness with the investigator testifying as the last witness for the prosecution.

On the accusation that the accused had sexual intercourse with the alleged survivor, the latter testified that the accused person called to ask her if she had a phone one two different occasions on her way from school. She told the court that the third time she encountered the accused person was when she was on her way to buy medicine for her grandmother. According to her testimony, the accused person met her on the way and forcibly took her to his room and inserted his fingers inside her vagina and placed his penis between her breasts until he ejaculated. The alleged survivor further testified that on 6th of January, 2023, the accused person again forcibly took her to his room and this time round, he inserted his penis inside her vagina and after the act warned her not disclose it to any other person. \

The accounts of the mother of the alleged survivor was hearsay. I will not repeat them here given that the person from whom she obtained the account testified in the case. Suffice to say that she testified that she was on admission at the hospital at the time the alleged incident occurred.

The medical officer who examined the alleged survivor tendered his examination report he authored in evidence as exhibit A. In the said medical report, medical officer reports that upon examination of the alleged survivor's vagina, it was found that the hymen had been torn but there were no abrasions or lacerations in the vaginal walls. During his testimony in court, the medical officer testified that it could not be established as a matter of fact that the absence of the hymen was secondary to carnal knowledge. The following encounter was recorded under cross examination of the said medical officer by the accused person:

Q. When you conducted your medication examination on the alleged victim, did you discover that on the 6th of January, 2023 someone has had sexual intercourse with the alleged victim?

A. No my lord.

Q. Did your investigation reveal whether the victim has been carnally known by any man.

A. No my lord. What we discovered was that the hymen was torn. We could not specifically establish that it was with penal penetration or not. We however establish that there has been an invasion of the vagina leading to the breaking of the hymen.

The testimony of the investigator was to a large extent about the statement of the accused which he volunteered at the police on his arrest. However, under cross examination, the following ensued:

Q. Do you remember that in your presence the alleged victim admitted that she has been sexually assaulted by his teacher before?

A. Yes my lord.

Q. When you came into my room, did you find anything in the room that confirmed that I had had sex with the alleged victim?

A. *No my lord. The incident happened days before it was reported, so any evidence in the room of accused person may have been tampered with.*

In the evidence of the accused person, he did not commit the offence he has been charged with. He admitted to talking with the alleged survivor and enquiring about whether she had a mobile phone. He testified that he advised the survivor to take her studies seriously. He said subsequently, the alleged survivor came to hide from her mother on his veranda one time. According to the evidence of the accused person on this one occasion, he friend Ali was even present. He said that whiles his friend Ali advised him to allow the alleged survivor to remain on his veranda, he sent her away almost immediately.

Analysis of the evidence on carnal knowledge

The evidence adduced by the prosecution when considered together with that presented by the accused person, leads the court to the conclusion that the allegation of carnal knowledge against the accused person has not been made out by the prosecution beyond reasonable doubt. There are varied inconsistencies between the testimony of the alleged survivor and that of the medical officer. This means that the testimony of the alleged victim stands uncorroborated quite contrary to what the court had held in the case of *REPUBLIC V YEBOAH* [1968] GLR 248. The court in that case held that *"The evidence of the victim on oath in law needed no corroboration but it was prudent rule of practice to look for corroboration from some extraneous evidence which confirmed her evidence in some material particular implicating the accused."*

The alleged survivor told the court that the accused had inserted his fingers into her vagina the first time and only about three days before being taken to the hospital, had inserted his penis inside her vagina. If indeed the accused person did insert his fingers and subsequently his penis inside her vagina, the medical report would at least noted

that there were abrasions or lacerations inside the vaginal walls of the alleged survivor. The medical report authored by the third witness for the prosecution indicated the hymen was not intact, there was no indication that it was due to any carnal knowledge whether or not natural. The presence of abrasions or lacerations in the walls of the vagina would have supported the claim that the absence of the hymen might have been due to some carnal knowledge activity which was immediately before the medical examination or at least some few days before the medical examination. I am not saying that the absence of the hymen is not due to carnal knowledge. Rather, what I am saying is that whatever carnal knowledge activity may have caused the hymen to tear, it does not appear from the evidence that it was some activity as recent as three days to the medical examination that resulted in the report. The carnal knowledge that the accused person has been accused of is said to have happened three days to the medical examination. If that sexual activity actually did take place, then evidence of it would have been seen in the medical report and that would have supported the conclusion that it was the cause of the absence of the hymen. The evidence from the prosecution that the accused had carnal knowledge of the alleged survivor is inconclusive. There is doubt in the mind of the court regarding the accusation that the accused had carnal knowledge of the alleged survivor.

From the evidence led in this case before me, I am unable to find evidence that the accused person had defiled the alleged survivor beyond reasonable doubts. There is doubts that the accused had carnal knowledge of the alleged survivor. That doubt was as a result of the absence of evidence that connected the absence of the hymen to any carnal knowledge alleged to have been had by the accused of the alleged survivor. As earlier said in this judgment, if there was any such carnal knowledge at least as claimed by the alleged survivor three days to the hospital visitation that produced exhibit A, then there would have been evidence of that. There was no such evidence thereby raising doubts in the mind of the court that the accused did have carnal knowledge of the alleged survivor.

From what happened in court, I surmise that the accused has intended a certain amorous relationship with the alleged survivor which has become known to the mother of the alleged survivor. The mother of the alleged survivor may have warned the accused severally to avoid engaging her daughter but he has been adamant about it. She must have found her daughter in a very compromising situation with the accused which might have heightened her fears that something may have happened so she did what every mother would naturally do: lodge a criminal complaint, take the daughter to the hospital for medical examination. When the examination report showed that the hymen was not intact, the conclusion she and the police came to is that the accused had carnally known the alleged survivor. Then there was the evidence that the alleged survivor was able to point out the exact position of the bed on which she was allegedly carnally known to the police and all that. If that was what happened, indeed, then that is not surprising because as I said, the accused had been courting that idea of having a sexual relationship with the alleged survivor. That may have led to him inviting the alleged survivor into his room once or twice. That may have been the reason the alleged survivor was able to give a description of the room of the accused to the police. Another reason the alleged survivor may have also been able to give a vivid description of the room of the accused may also have been that she had visited the room before. It is possible that the accused may have carnally known the alleged survivor on that occasion she was invited into the room of the accused person and that may have been the cause of the torn hymen. But that may have been a long time before the alleged survivor was taken to the hospital. All these that I am talking about are mere conjectures that I am raising without any evidential support. They may be the case or they may not be the case. The evidence did not provide any help with that. The court also cannot convict a person based on conjecture. The court convicts based on conclusive evidence establishing guilt. Unfortunately in this case, there was no such conclusive evidence from which guilt of the accused could be found. If there is no evidence from the guilt of the accused can be established, the accused must be acquitted.

The result is that the case of the prosecution fails. I hereby acquit the accused of the offence charged and discharge him unconditionally.

SGD

HH SAMUEL D. KOTEY