

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON TUESDAY, THE 9<sup>TH</sup> DAY  
OF JANUARY, 2024, BEFORE HER HONOUR AGNES OPOKU-BARNIEH,  
CIRCUIT COURT JUDGE**

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**SUIT NO: D10/22/23**

**THE REPUBLIC**

**VRS:**

**JACOB AYISAH**

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**ACCUSED PERSON**

**PRESENT**

**INSP. EMMANUEL ASANTE FOR PROSECUTION**

**PRESENT**

**NO LEGAL REPRESENTATION**

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**JUDGMENT**

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**FACTS:**

The accused person was charged and arraigned before this Court on 28<sup>th</sup> February, 2023 on a charge of defilement contrary to **Section 101(2)** of the Criminal Offences Act, 1960 (Act 29).

The brief facts narrated by the prosecution are that the complainant, Edward Adonor, aged 49, is a Steel Bender and lives with his daughter, Dorothy Adonor, the alleged victim in this case aged 14 years old at the time of the alleged incident. The accused person aged 42 years, is a friend of the complainant and both the complainant and the accused person reside in the same vicinity at Mateheko, a suburb of Afienya. The prosecution alleges that on 25<sup>th</sup> January 2023, the complainant reported at the Police Station that the accused person had sexual intercourse with the victim on 26<sup>th</sup> December 2022, leading to an infection and as a result, the victim was admitted at the Tema General Hospital. A Police Medical Form was issued to the complainant on behalf of the victim which he later returned duly endorsed by Dr. Prince Oppong Kyekyeku, indicating among other things that the victim's hymen had been broken.



Subsequently, the accused person was arrested. According to the prosecution, investigations disclosed that on 26<sup>th</sup> December 2022, the victim left home to go and watch a football match at Mateheko Community Center. Whilst at the park, the accused person met her at the park and sent her to buy bread and a drink for him. When the victim brought the drink, the accused person lured her to his house, drugged her and forcibly had sexual intercourse with her. The prosecution alleges that three days after the alleged sexual intercourse, the accused person saw the victim and threatened to kill her if she disclosed the alleged defilement to anyone. The victim subsequently informed her father leading to the arrest of the accused person. After investigations, the accused was charged with the offence and arraigned before this Honourable 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 Ga Adangbe 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 doubt.

### **BURDEN OF PROOF**

Under **Article 19(2)(c)** of the 1992 Constitution, a person charged with a criminal offence is presumed innocent until proven guilty or has pleaded guilty. Meaning, anytime a person is charged with a criminal offence, it is generally the duty of the prosecution to prove the guilt of the accused person beyond a reasonable doubt. In the case of **Commissioner of Police v. Isaac Antwi** [1961] GLR 408 at page 412

*“The fundamental principles underlying the rule of law that the burden of proof remains throughout on the prosecution and that the evidential burden rests on the accused where at the end of the case of the prosecution an explanation is required of him, are illustrated by a series of cases. Burden of proof in this context 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 sense it always rests on the prosecution to prove the guilt of the accused beyond reasonable doubt; but the burden of proof of introducing evidence rests on the prosecution in the first instance but may subsequently shift to the defence, especially where the subject-matter is peculiarly within the accused's knowledge and the circumstances are such as to call for some explanation... The law is well settled that there is no burden on the accused. If there is any burden at all on the accused, it is not to prove anything, but to raise a reasonable doubt. If the accused can raise only such a reasonable doubt he must be acquitted"*

Also, in the case of **Public Prosecutor v. Yuvayaj** (1960) AC 913 at 921, the court held that:

*"Generally speaking, no onus lies upon a defendant in criminal proceedings to prove or disprove any fact; it is sufficient for his acquittal if any of the acts which if they existed, would constitute the offence with which he is charged are not proved"*

Therefore, the prosecution has a statutory duty to prove the essential ingredients of the offence charged against the accused person beyond reasonable doubt and when the accused person is called upon to open his defence, he is only required to raise a reasonable doubt in the case of the prosecution.

## **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.”*

The essential ingredient of the offence as gleaned from the statutory provision which the prosecution must prove to secure conviction as stated in the case of **Yeboah v. The Republic** [1968] GLR 248 at page 252, are as follows:

- (1) That the victim is a child under 16 years of age.
- (2) That someone has had sexual intercourse with the child; and
- (3) That person is the accused.

Again, 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 is not open to an accused person on a charge of defilement. See Section 14 of the Criminal Offences Act, 1960 (Act 29).

On the first ingredient of the charge, **the prosecution must prove that the victim is a child below the age of sixteen years at the time of the alleged incident. Section 19** of the Juvenile Justice Act, 2003, (Act 653), which deals with presumption and the determination of age, provides as follows;

*“(1) Where a person, **whether charged with an offence or not, is brought before a Court** otherwise than for the purpose of giving evidence and it appears to the Court that the person is a juvenile, the Court shall make inquiry as to the age of that person.*

*(2) In the absence of a birth certificate or a baptismal certificate, a certificate signed by a medical officer as to the age of a person below eighteen years of age is evidence of that age before a Court without proof of signature unless the Court directs otherwise.”*

Also, **Section 122(1) and (2)** of the Children’s Act, 1998 (Act 560) on the determination of the age of a child respectively provides as follows;



*“(1) In the absence of a birth certificate or a baptismal certificate, a certificate signed by a medical officer as to the age of a child below eighteen years of age shall be evidence of that age before a family tribunal without proof of signature unless the Court directs otherwise.”*

*“(3) A statutory declaration issued and certified by the High Court or a person authorised by law to authenticate the document as to the age of a child on an application by a parent or guardian of the child, is evidence of the age of that child.”*

In the case of **Kwesi Donkor v. The Republic** [Suit No.42/2017) delivered on 10<sup>th</sup> May, 2019, the Ho High Court presided over by Eric Baah stated as follows:

*“The legal proposition of establishing the age of a prosecutrix beyond reasonable doubt does not presuppose proof only by documents such as birth or baptismal certificates. The age of a prosecutrix in a rape or defilement case can be established by (oral) testimony, by documents in the form of birth certificate, baptismal certificate, weighing card, school records or by medical examination (ossification). None of the above methods is foolproof. For instance, documents that Mr. Tameklo laid so much emphasis on are created with information from somebody. Oral testimony may not be accurate, and scientific tests including wrist MRI test or dental scans may not accurately capture the age of the subject.”*

To prove that the victim was below the statutory age of sixteen years, the prosecution tendered in evidence the birth certificate of the child showing that she was born on 24<sup>th</sup> March 2008. Thus, at the time of the alleged incident on 26<sup>th</sup> December 2022, the victim was aged 14 years. During the trial, the accused person did not raise issues about the age of the victim as a person below the age of 16 years at the time of the alleged incident. I therefore hold that the prosecution proved the age of the victim beyond reasonable doubt.



Secondly, **the prosecution must prove that someone had natural or unnatural carnal knowledge of the child below 16 years.** 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 English case of **R v. Hughes** (1841) 9 C & P at 752, it was held that for purposes of proof of penetration, it is sufficient if the prosecution lead evidence to show that any part of the virile organ of the accused was within the labia of the pendulum of the female, and however slight this may be, it is sufficient to establish penetration.

To prove that someone had carnal knowledge of the victim, the first prosecution witness, the complainant testified that the victim in this case was his daughter aged 14 years at the time of the alleged incident. On the 26<sup>th</sup> day of January 2023, his daughter complained of headache and abdominal pains and was sent to Perfect Hands Hospital, located at Sebrepor. After three (3) days, she was referred to the Tema General Hospital. When the doctor questioned her, she told the doctor that in December 2022, the accused person who is a family friend gave her an amount of Ten Ghana Cedis (GH¢10.00) to buy drink and bread for him and to send it to his house. The first prosecution witness further testified that as soon as the victim entered the room, she sat on a mattress in the accused person’s room and later when she got up to leave, the accused person held her hands, wiped her face with a handkerchief and thereafter, she felt unconscious. The prosecution further alleges that when the victim later regained consciousness, she noticed that the accused person had left the room and then realised that the shorts she was wearing was on the bed and she was naked with only her top on. She also realised that she was bleeding with blood on the accused person's bedspread. The victim also informed him that the accused person warned her not to disclose it to anyone or else he would kill her. Based on this information, on the 25<sup>th</sup> day of January 2023 about 9:40 am, he went to the Afiencya Domestic Violence and Victim Support Unit to lodge a complaint. He was issued with a Police Medical Report



Form on behalf of the victim to be endorsed by the Medical Doctor which he returned duly endorsed by a Medical Officer.

The first prosecution witness under cross-examination by the accused person on whether the victim bled the first time he allegedly had sexual intercourse with her testified that the victim informed him that for the first time, the accused person attempted to have sexual intercourse with her but could not penetrate because her siblings were approaching which made the accused person stop. Also, on whether the victim allegedly hit her head against a bed, PW1 testified that according to the victim, the accused person forced her and she hit her head against a wood and as far as he was concerned, the accused person lives in a wooden structure and not a concrete building.

The second prosecution witness, the victim testified that on the 26<sup>th</sup> day of December 2022, at about 3:00 pm, she went to Mataheko Community Park to watch a football match. Whilst there, she saw the accused person who is a family friend and he gave her an amount of Ten Ghana Cedis (GH¢10.00) to go and buy him bread and a drink after which he said he should bring it to his house. After buying the said items, he sent them to his house and knocked on the door. The accused person opened the door and dragged her inside by her hands and she sat on a sofa in his room. When she got up to open the door and leave, he held her hands and pulled her onto his bed which was lying on the floor. He then removed a handkerchief from his pocket, and covered her nose with it after which she fell unconscious. She later regained consciousness but saw that the accused person had gone out and then realised that the shorts she was wearing was on the bed and she was naked with only her top on. She also realised that there was blood on her thighs and the bed of the accused person.

The second prosecution witness further testified that she took a tissue from a table in his room, wiped the blood and went home afterwards. Three days after the occurrence, she met the accused person who threatened her not to disclose her ordeal to anyone but she informed the accused person that she would inform her father about what he did to



her. As a result, the accused person threatened her again that he would kill her if she disclosed it to her father. The victim further testified that that was not the first time the accused person had had sexual intercourse with her. According to her testimony, somewhere in the year 2020, the accused person was staying with them because her father had given him a place to stay in their house. One day, when her father had travelled and she was left behind with her twin brother Dominic Larweh Adornor, the accused person sent her brother to go and buy him food. When her brother left to buy the food, the accused person asked her to remove her pants which she refused. He then removed her pants himself, laid on her and had sexual intercourse with her. The accused person only stopped when he heard the footsteps of her twin brother. After that, the accused person gave her an amount of Five Ghana (GHC5.00) to buy a drink for herself.

The medical officer who examined the victim, Dr. Prince Oppong Kyekyeku who currently works at the Ridge Hospital but previously at the Tema General Hospital also testified and identified the medical report admitted and marked as **Exhibit “A”**. He testified that he examined the victim in the case and found that the hymen was broken but aside from that, the perineum looked healthy and there was no sign of perennial breach. According to him, the victim reported a month after the alleged incident and according to the history that the victim gave to him, she had some breaches but at the time she presented at the hospital, there were no signs of perennial breaches which, according to him, is to be expected since the injuries would have healed within one month that he saw the victim.

Under cross-examination by the accused person, PW3 testified that according to the history given to him at the hospital, the victim had been ill before they visited the Tema General Hospital and she was not acutely ill at the time she visited the hospital. The child however looked depressed and complained of pain in the neck that she attributed to her hitting her head on the edge of the accused person’s bed. Again, PW3 further testified under cross-examination by the accused person that he could not answer



whether the victim was someone who had sexual intercourse regularly since an indicator for sexual intercourse is when the hymen was broken as he saw in this case and that other physical activities can also cause the hymen to be broken. PW3 further testified that even in elderly women, during sexual intercourse, they sometimes bleed so it is possible that the victim, during the first sexual encounter, would not bleed but subsequently will bleed.

The fourth prosecution witness, *No. 6999 PW/CPL. Ruth Adoboe*, the investigator in the case stationed at Afienya Police Station testified that on the 25<sup>th</sup> day of January, 2023 at about 9:00 am, the complainant came to the Unit and reported that his 14-year-old daughter, had been defiled by the accused person on the 26<sup>th</sup> day of December, 2022. The complainant informed the Police that the victim felt sick as a result of the defilement and had been admitted at Tema General Hospital. The case was referred to her for investigations and during investigations, she obtained a statement from the complainant and issued him with Police Medical Report Form on behalf of the victim. On the same day, she visited the victim at the Tema General Hospital where she was admitted and receiving treatment and obtained the victim's statement in the presence of her father, the complainant. After that, the complainant led her to the accused person's workplace where he was arrested and detained. She tendered in evidence the investigation caution statement of the accused person admitted and marked as **Exhibit “D”**.

Additionally, the fourth prosecution witness testified that the victim was later discharged from the hospital and in the company of the complainant returned the Police Medical Report form duly endorsed by the medical officer. According to her, the medical report indicated among other things that, the vagina of the victim looked healthy but the hymen was broken with no sign of bruises. She visited the scene of the alleged crime and took photographs of the scene, admitted and marked as **Exhibit “C”** series. The third prosecution witness further testified that investigations revealed that the victim fell sick on the 20<sup>th</sup> day of January 2023 and was rushed to Perfect Hands



Clinic, Sebrepor where she was on admission for three (3) days and later referred to the Tema General Hospital for further treatment.

The fourth prosecution witness again testified that her investigation revealed that the victim went to Mataheko Community Park to watch a football match where she met the accused person who is a family friend and he gave her Ten Ghana Cedis (GH¢10.00) to buy him a drink and bread. After buying the said items, she sent them to the accused person's house and knocked at his door. He opened the door and dragged her inside by her hands. There was a sofa in the accused person's room which the victim sat on. When the victim was about to leave the accused person's room, he held her hands and pulled her onto his mattress which was lying on the floor. The accused person then removed a handkerchief from his pocket and covered the victim's nose causing her to become unconscious.

The victim later regained consciousness but saw that the accused person had gone out and then realised that the shorts she was wearing was on the mattress and she was half naked. The victim also realised that there was blood on her thighs and the same on the accused person's bedspread. She then took a tissue from a table in his room, wiped the blood and went home. Three days after the occurrence, the victim met the accused person who threatened her not to disclose her ordeal to anyone. The victim then confided in the complainant that she had been defiled by the accused person. Based on that, the accused person was charged with the offence of defilement and arraigned before the court.

The testimony of the victim and the evidence of the medical doctor show that the victim was not a virgin at the time of the medical examination and that someone had had sexual intercourse with the victim. Thus, I find that someone had sexual intercourse with the victim.



Finally, to secure a conviction, **the prosecution must prove that it was the accused person and no other person who had sexual intercourse with the victim.** This is the most contentious issue. Whereas the prosecution maintains that it was the accused person who had sexual intercourse with the victim, the accused person vehemently denies same. The victim was insistent that it was the accused person who had sexual intercourse with her and that, that was not the first time the accused person was having sexual intercourse with her. She maintains that in the year 2020, the accused person attempted to have sexual intercourse with her but was not successful.

The accused person in his investigation caution statement **Exhibit “D”**, stated that he did not have anything to say to the charge levelled against him. In his Charge statement, he further denied having sexual intercourse with the victim. The accused person in his defence testified that on 11<sup>th</sup> November 2022, he was at work when he had a call that his mother had passed on. He went to the house and called the complainant to inform him that he had lost his mother and would be travelling to Odumase Krobo. On his return, he informed him that the funeral had been scheduled for 17<sup>th</sup> December 2022 and the complainant told him to remind him when the time was due. As a result, on 14<sup>th</sup> December 2022, he reminded the complainant about the funeral date and he told him to take the lead and that he would come later but the complainant failed to turn up at the funeral. After the burial and thanksgiving service, he returned home on 24<sup>th</sup> December 2022 to continue his work. When he returned, he went to the complainant to inform him that he had returned from the funeral but when he went, the complainant looked annoyed. The complainant invited his sister to be part of the meeting they were about to have. When his sister came, the complainant stated that he wanted the victim out of his house since she does not respect him and goes out and comes back home as and when she pleases. They pleaded with the complainant and he allowed the victim to stay.

The accused person continued to say that on 25<sup>th</sup> December 2022, which according to him, was a Sunday, he went to church and came back to his kiosk and after changing



his dress, he went out because the place was too hot since he did not have a fan in his room. The following day, which happened to be on 26<sup>th</sup> December 2022, and a holiday, he left his room around 11 am to his friend's house to work there due to the heat in his room and in the evening, he went out to buy food but his money was not enough.

On 22<sup>nd</sup> January, he travelled to his hometown and returned the same day and was told that three boys had come looking for him in his absence. Since he only had one friend in the vicinity, he was surprised and waited to see if the three boys would come back but they did not. He decided to take a walk and whilst returning home, he met the complainant and his two sons who subjected him to beatings and he told them to send him to the police station. Some onlookers came to his rescue and he left for the police station to lodge a complaint. He was issued with a police medical form to go to the hospital and he returned the medical form to the police. He was asked to go home and that the perpetrators would be arrested. Later, he was standing in front of his house when he was arrested and sent to the Afienya Police Station on a charge of defilement. According to the accused person, at the police station, he was informed that he sent a certain girl on an errand and when she returned, he had sexual intercourse with her which he vehemently denied. He then gave his statement to the police and during the investigation, he was sent to the alleged crime scene and photographs taken.

The accused person under cross-examination by the prosecution denied the offence and denied visiting the said park to watch football. The accused person was emphatic that he did not have sexual intercourse with the victim. The accused person in his defence called one Grace Mahama who testified that she is a food vendor and that on 25<sup>th</sup> December 2022, she woke up late in the morning whilst going about her usual duties, the accused person passed by and greeted her. She was in the house the whole day but did not notice when the accused person returned home.

Under cross-examination by the prosecution, DW1 testified as follows;



*Q: You said you were in the house on the 25<sup>th</sup> of December, 2022 the whole day. Is that correct?*

*A: Yes My Lord.*

*Q: I am putting it to you that the incident we are talking of did occur on 26<sup>th</sup> December 2022 but not 25<sup>th</sup> December.*

*A: My Lord I do not know anything in respect of this case. On 25<sup>th</sup> December 2022, when the accused person greeted me and passed by I did not see him again.*

*Q: So I am putting it to you that whatever happened between the accused person and the victim in his room, you are not in a position to tell the court.*

*A: Yes My Lord.*

From the evidence led by the prosecution witness and the defence put up by the accused person on the identity of the person who allegedly had sexual intercourse with the victim, the prosecution maintains that the incident is alleged to have occurred on 26<sup>th</sup> December 2022. On the date the incident is alleged to have happened, the following ensued under cross-examination of the victim by the accused person;

*Q: You allege that I sexually assaulted you in December 2022. Can you tell the court the exact day this incident happened?*

*A: It was on Sunday 26<sup>th</sup> December 2022.*

*Q: I am putting it to you that you are not truthful. 26<sup>th</sup> December, 2022 was a Monday and a holiday and not a Sunday as you want the court to believe.*

*A: My Lord, the accused person had sex with me on Sunday but on not Monday and that day I went to the park to watch a football match after church and I met the accused person...*

The investigator also, under cross-examination by the accused person answered as follows;



*Q: Which day was 26<sup>th</sup> December 2022?*

*A: My Lord, I cannot recall.*

*Q: I am putting it to you that 26<sup>th</sup> December 2022 was a Monday and it was a holiday.*

*A: I said earlier, I cannot recollect.*

The accused person in cross-examining the prosecution witnesses was insistent that the date the incident is alleged to have occurred was a Monday and not a Sunday as the victim would want the court to believe and that it was a holiday. Indeed, as the accused person rightly points out, 25<sup>th</sup> December 2022 was a Sunday and the following day which was a Monday was boxing day which the court can take judicial notice of that it was indeed a statutory holiday as consistently maintained by the accused person. This casts doubt on the credibility of the story of prosecution witnesses particularly the alleged victim that 26<sup>th</sup> January 2022 was a Sunday and that she went to the park after church service.

Again, the victim in her statement to the police and in her evidence-in-chief before the court did not state that when the accused person allegedly pulled her into the room, she hit her head on a bedstead or a wooden structure but in the medical report, at the hospital, the victim informed the medical doctor which is recorded in **Exhibit “A”** that the victim hit her head and neck on the bed when the accused person dragged her to his bed which made her feel dizzy. The history in the report states that the victim has since been reporting neck pain and lower abdominal pain for which she was sent to the hospital where she confessed what happened. This account by the victim to the medical officer strains credulity since the evidence on record shows that the accused person’s mattress is placed on the floor in the room without a bedstead.

Additionally, the investigator in her statement stated that after the alleged sexual intercourse with the victim, she fell sick and on the 20<sup>th</sup> day of January, 2023, she was rushed to Perfect Hands Clinic, Sebrepur where she was on admission for three (3)



days and later referred to the Tema General Hospital for treatment. The investigator, under cross-examination by the accused person, the following ensued;

*Q: According to you, the child was sent to Perfect Hands Clinic and the doctor referred them to the Tema General Hospital.*

*A: I did not investigate a sickness case but rather a defilement case. I stated that in my witness statement.*

*Q: Did the doctor at Perfect Hands Hospital issue a referral letter for the victim to be sent to the Tema General Hospital?*

*A: Yes My Lord.*

*Q: I am putting you that when the doctor at the Tema General Hospital came to give evidence in court and I cross-examined him, he said the victim was brought straight from the house to the hospital but not on any referral.*

*A: As I stated earlier, I am not a medical officer. I do not know how they do their work.*

*Q: I am putting it to you that if the child was sent to Tema General Hospital without a referral note from Perfect Hand Clinic then it means you are not being truthful.*

*A: Everything I said to the court is the truth.*

The evidence of the investigator under cross-examination conflicts with that of the medical officer who also testified that his duty was to examine the patient at the time they reported to him at the hospital and according to the history, the victim had been ill before they came to the Tema General Hospital but at the time he saw the victim and examined her, the victim did not look acutely ill but she looked depressed and anxious and again she complained of pains in her neck which she attributed to the incident of her hitting her head on the edge of the accused person's bed. There is no medical report from the first hospital the victim allegedly visited and was on admission for three days before being allegedly referred to the Tema General Hospital as to the diagnosis made of the victim. PW3, when strenuously cross-examined by the accused person on whether he saw vaginal discharge during the examination stated that he did not recall seeing any vaginal discharge. However, in his medical report, he stated that



the victim was prescribed medication to clear infections without indicating the type of infections whether sexually transmitted or not.

To further create doubt in the case of the prosecution, the accused person in cross-examining the victim on an occasion when he had to plead on her behalf when her father sacked her from the house, the following ensued;

*Q: In December 2022, do you remember your father asked you to pack your things and leave the house?*

*A: Yes My Lord. I remember but my father made that statement because he got annoyed and told us that if we went out and came back late he would not tolerate that so if we continued like that he would have no other option than to send us packing.*

The above cross-examination conducted by the accused person shows that in the same month of December 2022 that the accused person is alleged to have had sexual intercourse with the victim, the victim was leaving home and returning late for which reason her father wanted to sack her from the house and that it took the intervention of her stepmother, some relatives and the accused person for her father to rescind his decision to sack her from the house. The victim who also claims that when she regained consciousness, she realised she was bleeding and half naked states that she used toilet paper to clean the blood and on her way home, discarded it. At the time, she had not been threatened by the accused person as she would want the court to believe since she testified that the accused person was not in the room when she regained consciousness. However, when she went home, she did not disclose the alleged drugging by the accused person and the fact of the alleged sexual intercourse until after more than one month when she allegedly fell seriously ill as a result of the sexual encounter with the accused person. The victim also mentioned her brother who was sent by the accused person and in his absence, the accused person attempted to have sexual intercourse with her on the first occasion but the said brother was not called as a witness. The investigations conducted into the case are incomplete and not water-tight since the



alleged incident was reported a month after and there is no corroborative evidence linking the accused person to the crime charged.

On the totality of the evidence led by the prosecution, the rigorous cross-examination conducted by the prosecution witnesses and the defence put up by the accused person, there is a lingering doubt in the mind of the court as to whether it was the accused person and no other person who had carnal knowledge of the victim. In the case of **Akilu V. The Republic** [2017-2018] I SCGLR 443 at page 451, the Supreme Court held that:

*“We want to lay emphasis on the principle in criminal trials that; all reasonable doubts that make the mind of the court uncertain about the guilt of the accused, are always resolved in favour of the accused. By reasonable doubt is not meant mere shadow of doubt. Where, from the totality of the evidence before a trial court, a soliloquy of: ‘should I convict; or ‘should I acquit’ takes control of the mind of the court, then a reasonable doubt has been raised about the guilt of the accused. The appropriate thing to do in such a situation is to acquit, as required by law.”*

On the totality of the evidence, I find that the accused person successfully raised a reasonable doubt in the case of the prosecution that he had sexual intercourse with the alleged victim. I therefore hold that the prosecution failed to prove their case beyond reasonable doubt. I accordingly pronounce the accused person not guilty of the charge and I acquit and discharge him on a charge of defilement.

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