

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON TUESDAY, THE 23RD
DAY OF JANUARY, 2024, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO: D10/31/21

THE REPUBLIC

VRS:

PIUS MCMOLAND BESSAH

ACCUSED PERSON	PRESENT
D.S.P. STELLA NASUMONG FOR PROSECUTION	PRESENT
PRINCE KWEKU HODO, ESQ. FOR THE ACCUSED PERSON	ABSENT

JUDGMENT

FACTS:

The accused person was charged and arraigned before this Court on 30th March 2021 on two counts of defilement of a child contrary to **Section 101(2)** of the Criminal Offences Act 1960(Act 29). The accused person is alleged to have had carnal knowledge of one Princess Adjeikai Okai, a child aged 10 years at the time of the alleged incident in February 2021 and March 2021 respectively.

The brief facts presented by the prosecution are that the complainant, Diana Atsuwei, Adjeitey is a trader and lives at Teshie and is an aunt to the victim, Princess Adjeikai Okai age 10 years, and a class 5 pupil. The prosecution alleges that the victim lives with her parents in New York, a suburb of Ashaiman and that the accused person, aged 32 is a teacher at the victim's school and lives in New York/Ashaiman. According to the prosecution, in February 2021, the accused person lured the victim to his room under the pretext of teaching her ICT and forcibly had sexual intercourse with her. After the act, the victim went home without informing her parents.

Additionally, the prosecution claims that on 3rd March 2021 at about 3:00 pm, the accused person again lured the victim to his new place of abode in the same vicinity in New York under the pretext of teaching her and had sexual intercourse with her. A few days after the alleged sexual encounter, the victim narrated her ordeal to one Ampofo Twumasi Gyasi, a teacher in her school who in turn informed the head teacher of the school. Consequently, on 19th March 2021, the victim's parents and the complainant were invited to the school and the incident was brought to their attention. The same day, the complainant lodged a report at the Zenu Atadeka Police Station and the case was later transferred to the Domestic Violence and Victim Support Unit (DOVVSU), Ashaiman. A Police Medical report form was issued to the complainant to take the victim to hospital which was returned dully endorsed. After that, the accused person was arrested and in his cautioned statement, denied the offence. After investigation, the accused person was charged and put before this honourable court.

BURDEN OF PROOF

Under **Article 19(2)(c)** of the 1992 Constitution, a person charged with a criminal offence is presumed innocent until he is proven guilty or has pleaded guilty. It is trite learning that in criminal cases, the burden is on the prosecution to prove the guilt of the accused person beyond reasonable doubt. This legal burden is codified in **Sections 11, 13, and 15** of the Evidence Act, 1975, (N.R.C.D. 323). In the case of **Banousin v. The Republic** [2015-2016] 2 SCGLR 1232 at page 1241, the Supreme Court held that:

“The burden the prosecution has to prove is the accused person’s guilt, and this is beyond reasonable doubt. This is the highest burden the law can impose; and it is in contra distinction to the burden a plaintiff has in a civil case, which is proof on a preponderance of probability of the evidence. What “beyond reasonable doubt” means is that, the prosecution must overcome all reasonable inferences favouring the innocence of the accused. Discharging this burden is a serious business and should not be taken lightly. The doubts that must be resolved in favour of the accused must be

based on the evidence; in other words, the prosecution should not be called upon to disprove all imaginary explanations that established the innocence of the accused person.”

Thus, the burden is on the prosecution to prove the essential ingredients of the charge of defilement against the accused persons beyond reasonable doubt. When the accused person is called 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 a 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 this, under **Section 14 of Act 29**, a child under 16 years of age lacks the capacity to consent to sex. Thus, it is not a defence for a person charged with defilement to contend that the child consented to sexual intercourse since consent is immaterial in proving a charge of defilement.

On the first ingredient of the offence charged, **the prosecution must prove that the victim is a child below the age of 16 years.** The age of the victim as a person below the age of 16 years is not seriously controverted. The victim gave her age as eleven (11) years at the time of the alleged incident. From the birth certificate of the child admitted and marked as **Exhibit “A”**, she was born on 5th April 2010 and as such, at the time of the alleged incidents in February 2021 and 3rd March 2021, the victim was aged 10 years. Thus, the prosecution succeeded in establishing the age of the victim as a child below the statutory age of sixteen (16) years at the time of the alleged incident beyond reasonable doubt.

Secondly, **the prosecution must prove that each of the accused persons charged in this case and no one had sexual intercourse with the victim.** 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 brushwork, penetration would be deemed to have occurred and carnal knowledge taken to have been completed.”

To prove that someone had carnal knowledge of the victim, the prosecution called four witnesses and tendered in evidence **Exhibits “A” to “D”**.

The first prosecution witness (PW1), Princess Adjekai, the victim testified that she is 11 years old and a pupil of Ridoana Comprehensive School located at Atadeka, Ashaiman and in class five (5). She states that she knows the accused person who is the Physical Education (P.E.) Teacher in her school. She testified that in March 2021, after they had closed from school, she was going home with her schoolmate by the name Emmanuella when the accused person called her. When her friend followed her towards the accused person, he indicated that he was calling her alone, so her friend left because her house was far away. She then walked to where the accused person was and he informed her that he was teaching a girl in the school computer lessons so she should join her for him to teach them together. She followed him to his house at Atadeka Lorry Station. When they got to his house, the accused person opened his door and asked her to sit in the hall which she did and he went into the bedroom, changed into shorts and a top and called her to come to the bedroom and she entered. The accused person then removed her school uniform and her pants and he also removed his clothes and asked her to lie on the bed, he inserted his penis into her vagina and had sexual intercourse with her. After the act, the accused person asked her to dress up and go and sit in the hall. When she went back to the hall, she met a girl from her school but in class six called Believe. The accused person came out and taught computer lessons together. After the lessons, he gave them homework and he left with Believe after the lesson.

The first prosecution witness further testified that in the second incident, the accused person told her that he had moved from his old place to a new place in New York. When they closed from school, she and one Ruth, also a pupil in the school followed the accused person to his house. The accused person gave something to Ruth to hold for him and when they got to his house, he took the items from Ruth and asked her to leave. He then asked her to follow him into his room and that was when he again had

sexual intercourse with her. According to her, she did not tell anybody about it when she got home but later informed one of her teachers by the name of Sir Ampofo. He told her to tell her parents and not to talk to the accused person again. She states that she does not know how the issue got to the school authorities and her mother was informed about it until her mother confronted her with the issue and she told her about her ordeal. Based on that, her aunt went with her to the police station and reported the matter to the police and she gave her statement.

The second prosecution witness, Diana Atswei Adjeitey testified that the victim is her niece and that on 10th March 2021, she had a call from her sister-in-law who was crying on the phone and when she inquired from her what the problem was, she told her she had been called from her daughter's school that a teacher in the school had “raped” her so she should come to the school the next day. According to the second prosecution witness, she was busy when she got the information so she told her she would come the next day for them to go to the school. The next day, she went with two other family members to the victim’s school but the victim’s mother could not go with them since she was indisposed. At the school, they had a meeting with the headmaster who asked them about their opinion on the issue and said in his opinion, they should not report the matter to the police and that he would fine the accused person some money for them. She asked the headmaster if he had questioned the accused person over the issue and he said yes and that was why he said he would fine him for them. Immediately after they came out of the school, she went with the victim to the Zenu Atadeka Police Station to report the case. She was issued with a police medical form to send the victim to the hospital for examination and treatment and an extract of occurrence transferring the case to Ashaiman DOVVSU. She returned the endorsed medical form from the hospital and the extract to the DOVVSU Unit at Ashaiman. She was then asked to produce the victim's record of birth which she complied.

The third prosecution witness, D/PW/SGT. Alice Nokobi-Tetteh stationed at DOVVSU/Ashaiman also testified that on 20th March 2021, an extract of occurrence

and an endorsed Police Medical Report form in respect of the victim were brought from Zenu Atadeka Police station dated 19th March 2021 for action. She took the statements of the witnesses and demanded the birth certificate of the child. She tendered in evidence the birth certificate of the child admitted and marked as **Exhibit “A”**, She also tendered in evidence the endorsed Police Medical Report form admitted and marked as **Exhibit “B”**. On 22nd March 2021, the accused person was arrested by Zenu Atadeka Police and she went for him and visited the scene of the alleged crime with the accused person, the victim and the complainant proceeded to the scene of the crime at the accused person’s current and former places of abode at New York a suburb of Ashaiman. At his current place of abode, the victim pointed to a three-in-one sofa chair where the accused person laid her and had sexual intercourse with her on 3rd March 2021. The victim and the accused person later took her to his former place of abode but the place had been allocated to another person and she did not get access to the room.

According to PW3, during investigations, the accused person denied having sexual intercourse with the victim. She extended her investigation to the victim's school, Ridonna School Complex located at Atadeka where the head teacher stated that one Sir Ampofo Twumasi Gyasi, a supposed witness in the case informed him about the incident and he also invited the victim's parents to the school to inform them. During investigations, the accused person submitted his handwritten investigation caution statement and same was admitted and marked as **Exhibit “C”**. After gathering the above evidence, the accused person was charged with the offence and brought before this Honourable Court. The charge statement of the accused person was admitted and marked as **Exhibit “D”**.

The fourth prosecution witness, the medical officer, Dr Clement Oppong of the Ashaiman Polyclinic testified that when the victim was presented to him at the hospital, and after taking the history, she examined the victim physically and there were no signs of any force used on her but on vaginal examination, he noticed that the hymenal region

was torn at both the 3 O'clock and 9 O'clock region and based on that, he drew an inference that there was penetrative sexual intercourse. The witness identified **Exhibit "B"**, the medical report as a document authored by him. In the said report, he states that the victim at the time of examination had no marks on her body depicting any form of violence against her. On vaginal examination, the hymen was broken at 3 o'clock and 9 o'clock points and the edges of the hymen were not fresh. He states further in the report his findings are consistent with possible penetrative sexual intercourse that might have taken place about two weeks before the date of examination on 20th March 2021. Under cross-examination by the prosecution, the following exchanges took place;

Q: You attended to the patient on 20th March 2021 at 11:20 hour, is that not the case?

A: Yes, My Lord.

Q: Doctor, before the patient came to you it had been over 2 weeks.

A: My Lord from the date he is giving, I think that is correct.

Q: If you had verified you would have realised that even the 3rd March date, the date they alleged the sexual assault took place is not definitive.

A: My Lord, I am not in the position to clarify that.

Q: So doctor you have indicated also that the hymen which was torn is not fresh. Are you in a position to throw more light on that?

A: My Lord, a torn hymen indicates that a sexual incident has taken place within 72 hours if sexual intercourse has taken place. My Lord, one week and beyond when the hymen is already healed, it will be difficult for any medical practitioner to say you had sex. The only differentiation I could make is whether the hymen is freshly torn or not freshly torn and once it is not fresh, I cannot tell whether it is one week or two weeks and I cannot put any timelines on when that assault might have taken place. I used consistent with 2 weeks because that is the date I had been given.

On the totality of the evidence led by the prosecution witnesses particularly the account of the second prosecution witness corroborated by the medical report, I find that someone had sexual intercourse with the victim within the intendment of **Section 99** of Act 29.

Lastly, **the prosecution ought to prove that it is 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 is the accused person and no other person who had sexual intercourse with the victim, the accused person from the day of his arrest and throughout the trial vehemently denied having sexual intercourse with the victim.

The accused person in his evidence-in-chief testified that he was a teacher at Ridoana Comprehensive School, Ashaiman resident at Ashaiman New York in the Greater Accra Region and presently a Graphic Designer. He testified that he knew the victim who was a student in the school that he was teaching and he got to know the complainant through this case. According to the accused person, somewhere in March 2021, he was called to the headmaster's office and informed that the victim had alleged that he had sexual intercourse with her. He told the headmaster that he had no idea about the allegation and the headmaster told him to go and that he would hear from him. The accused person states further that he did not hear from the headmaster or the school again but was arrested by the Ashaiman New York Police in March 2021.

During investigations, he led the police investigator to his first house at Atadeka at Ashaiman in the company of the victim and her aunty but the house was locked. They proceeded to his second place of residence also at Atadeka specifically on the New York Road. The investigator told him that he took him to the two houses because the victim alleged that she visited him in both houses where the alleged sexual intercourse

took place. The investigator asked the victim in his presence and the victim's aunty if she was forced before the sexual intercourse took place, the victim said no and he also asked the victim to speak the truth but she started crying without saying anything and he was taken back to the police Station and charged with the offence and arraigned before the court. He states that he denied the charge since he has never touched the victim in any way and he also did not defile her as alleged. He therefore prays the Court to acquit and discharge him.

The accused person in his investigation caution statement again denied the offence and alleged that the allegation against him was orchestrated by another teacher who is alleged to be having sexual intercourse with the victim. He confirms that the victim once came to his house for classes with one of the students in his house and after the classes they all left. On the second occasion, he asked two students who stayed around his area to bring sobolo he bought from the school and they all came and left after he took the sobolo from them that was the second time the victim had visited his house. According to his statement to the police in his handwriting, he realised that the victim was getting close to him and he even called a male and a female teacher to inform them. According to him, he sees the case orchestrated by a male teacher in the school who usually moves with the victim and he suspects the teacher to have had sex with the child.

The accused person, under cross-examination by the prosecution again admitted that the first time, the victim came with a friend he was teaching ICT and joined the class and the second time, she followed her friends to bring him Sobolo. He maintained strenuously that on both occasions, the victim was with her friends and they all left together and as such, he could not have had sexual intercourse with her.

Under further cross-examination, the following ensued;

Q: I am again putting it to you that, you lured her to your house the second time and again had sexual intercourse with her in your sofa.

A: I never did that.

Q: I am again putting it to you that the victim confided in a teacher in the school and told him of the sexual encounter.

A: That same teacher is the one the lady always moves with and also if the teacher was the one she told, then I think he should have been brought here to say something about it but I never saw him.

It is instructive to note that the victim under cross-examination by Counsel for the accused person testified that the first time the accused person had sexual intercourse with her she bled and she told the investigator about it. This testimony of the victim strains credulity since she testified that when she came out of the bedroom of the accused person, there her friend was waiting in the hall of the accused person and he thought them together. The reasonable question to ask is what then happened to the bleeding that she was able to immediately join her friend right from the bedroom of the accused person to his living room to be taught ICT in her state of bleeding without her friend noticing. Also, this friend she alleged saw her come out of the bedroom of the accused person on her first alleged sexual encounter with him was not called as a witness. The accused person maintained that on the two occasions that the victim came to his house, she was in the company of her friends and she left with her friends. Indeed, the victim in her testimony admits that on all occasions she was with friends. The said teacher whom the investigator refers to as a witness for the prosecution whom the victim allegedly confided in was also not called as a witness. Again, under cross-examination by Counsel for the accused person she stated that she has had sex three times but her evidence in chief states that the accused person had sex with her on two occasions.

Indeed, the investigator under cross-examination by Counsel for the accused person stated that during investigations, he took statements from the said Sir Ampofo who first reported the case to the headmaster but the prosecution failed to disclose his statement to the police and also did not call him as a witness. The investigator further testified under cross-examination that according to the victim, on the two occasions that she went to the accused person's house, she was in the company of her friends but they left her with the accused person and all efforts made to get them to take their statements proved futile.

On the totality of the evidence, I find that the accused person succeeded in raising a reasonable doubt in the case of the prosecution and that the prosecution failed to prove that it was the accused person and no other person who had sexual intercourse with the victim. I therefore pronounce the accused person not guilty of the charge and I acquit and discharge him on two counts of defilement contrary to **Section 101(2)** of Act 29.

SGD.

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