

**IN THE JUVENILE COURT SITTING AT NALERIGU ON THURSDAY THE 3<sup>RD</sup> OF**  
**NOVEMBER 2022**

**CORAM**

H/W SIMON KOFI BEDIAKO - CHAIRMAN

IBRAHIM BUKARI - PANEL MEMBER

FATI OSMAN – PANEL MEMBER

**SUIT NO. NR/NG/DC/B/14/23**

**THE REPUBLIC**

**VRS**

**FATAWU SAEEBU**

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**JUDGEMENT**

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**INTRODUCTION**

On the 13<sup>th</sup> day of September 2022, Fatawu Saeebu was arraigned before the Court charged with the offence of **Rape; contrary to section 97 of the Criminal Offences Act, 1960 (Act 29)**. According to the particulars of the offence, as stated on the charge sheet and the brief facts of the case as attached to the charge sheet, Fatawu Saeebu is sixteen (16) years old. **Section 1(1) of the Juvenile Justice Act, 2003 (Act 653)** defines a Juvenile as a person under eighteen years who is in conflict with the law. By this definition, Fatawu Saeebu is a Juvenile.

**Section 49(3) of the Courts Act, 1993 (459)** provides that *“A Juvenile Court has power to hear and determine any matter civil or criminal that involves a person under the age of eighteen and shall for that purpose have and exercise all the powers of a District Court.”*

**Section 49(2) of the Courts Act, 1993 (459)** also states that *“A Juvenile Court shall be composed of the Magistrate of the District Court as the presiding person and two other persons one of whom shall be a Social Welfare Officer and the other, a person of not less than 25 years both of whom shall be appointed by the Chief Justice on the recommendation of the Director of Social Welfare.”*

Considering the above position of the law, this Court is therefore seized with the jurisdiction to try this case and it is properly constituted.

## **PLEA OF THE ACCUSED**

The charge against the Juvenile as stated in the charge sheet was read to the understanding of the Juvenile in the Mampruli language after which the Juvenile pleaded **Not Guilty** to the charge.

## **THE CASE OF PROSECUTION**

Below are the brief facts of the case as presented by the prosecution in support of the charge. The victim, in this case, is a 16-year-old form 2 student at Zobzia Junior High School, Gambaga whilst suspect Fatawu Saeebu is a 16-year-old farmer residing at Gambaga. The victim resides in Zimasa a sub-village of Gambaga with her parents. On 6<sup>th</sup> September 2022 while the victim closed from school carrying corn flour which she picked from Gambaga to be sent home, suspect Fatawu Saeebu attacked her around the New Gambaga College of Education site, poured the corn flour and dragged her through the bushes into an uncompleted building and forcefully had sexual intercourse with her through the vagina. Case was later reported at the Gambaga Police Station. The victim's school uniform, under-pant, pants, and veil were retained. Police Medical Form in duplicate was issued to victim Sakina Yakubu together with an investigator to attend Baptist Medical Centre, Nalerigu. The victim was carefully examined on arrival and her Police Medical Form duly endorsed by Dr Isabell indicated that, on examination, reactionary marks were seen on the victim's neck. Her perineum had multiple fresh abrasions around the vagina orifice with clear

discharge. The vaginal orifice could permit two examining fingers. No blood was noted. HIV and pregnancy tested negatively. The suspect was arrested and, in his statement, admitted the offence. On 07/09/2022, the scene of the crime was visited where prints of struggle, corn flour and cement block which the victim alleged the suspect attempted to use on her were seen. A statement was obtained from the victim. Meanwhile, the suspect was detained in police custody and arraigned before this honourable court.

The prosecution called Sakina Yakubu (**hereafter "PW1"**), the victim of the alleged crime as its first witness. PW1 testified that she is 16 years old, a native of Zimasa and a student of Zobzia Junior High School, Gambaga. According to PW1, on the 6<sup>th</sup> of September 2022, the Juvenile forcefully had sex with her without her consent. PW1 testified that the incident occurred when she was on her way to Zimasa from school. She added that she was carrying corn flour which she had picked up to send home. PW1 stated that when she got to Perez Chapel near Norrip, Gambaga, she noticed the Juvenile following her. She avers that halfway to Zimasa from Gambaga, the Juvenile grabbed her by the neck and asked her if she knows the unidentified persons who kills children in the town. According to PW1 the Juvenile poured down the corn flour which she was carrying, covered her mouth with his hand and dragged her into an uncompleted building. PW1 testified further that the Juvenile threatened to stab her with a knife and he also picked up a cement block which was lying in the uncompleted building and threatened to use the same on her if she shouts for help. According to PW1 the Juvenile proceeded to forcefully have sex with her without her consent and ran away after doing so. PW1 stated that she subsequently identified the Juvenile to the police, and he was arrested.

The prosecution called the police investigator by name No. 10918 Constable Nelson Florence (**PW2**) as its second witness. PW2 tendered in evidence the following exhibits:

- Exhibit A Series – Photographs of the crime scene and the clothes of the victim.
- Exhibit B – Medical Report of the victim.

- Exhibit C – Pregnancy and HIV test result of the victim.
- Exhibit D – Weighing card of the victim.
- Exhibit E – Investigation caution statement of the Juvenile.
- Exhibit F – Charged statement of the Juvenile

At the close of the prosecution's case, the court in accordance with **section 173 of the Criminal and Other Offence (Procedure) Act, 1960 (Act 30)** ruled that the prosecution had made a prima facie case against the Juvenile and the Juvenile was duly called upon to open his defence. See **Tsatsu Tsikata v The Republic [2003-2005] 2 GLR 294, SC.**

## CASE OF THE JUVENILE

The Juvenile, when he was called upon to open his defence stated briefly as follows; *"My name is Saeebu Fataw. I live in Gambaga and I am a farmer. When the victim (PW1) came to the police station, whatever the victim said at the police station is true. Whatever she said, I don't have anything to say, I am only asking that she forgives me. That is all I have to say."*

## DEFINITION AND ELEMENTS OF OFFENCE

**Section 98 of the Criminal Offences Act, 1960 (Act 29)** defines Rape as follows:

*"Rape is the carnal knowledge of a female of not less than sixteen years without her consent".*

**Section 46(8)(b) of the Juvenile Justice Act, 2003 (Act 653)** highlights the offence of Rape as a serious offence and according to **section 46(1)(d) of Act 653**, the period of detention of a Juvenile Offender who commits a serious offence shall not exceed three (3) years.

The key elements of the offence that the Juvenile has been charged with herein which must be proved beyond reasonable doubt by the prosecution are:

(a) That the Juvenile had carnal knowledge of a female of not less than sixteen years; and (b)

That the Juvenile did so without the consent of the female.

**BURDEN OF PROOF:**

**Article 19(1) and (2) (c) of the 1992 Constitution of the Republic of Ghana** stipulates that:

*19. Fair Trial*

“1. A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.

2. A person charged with a criminal offence shall

c. be presumed to be innocent until he is proved or has pleaded guilty;”

**Sections 11(1) (2) and (3), 13(1) and (2) and 15 (1) of the Evidence Act, 1975 (N.R.C.D. 323)** have well settled the evidential and the persuasive burden that the law casts on Prosecution in a criminal matter. It provides as follows:

*Burden of producing evidence*

11. (1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

(2) In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.

*Proof of a crime*

13. (1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.

- (2) *Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.*

#### *Burden of persuasion in particular cases*

##### *15. Unless it is shifted,*

- (a) *the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue;*

In the case of **Woolmington v DPP [1935] UKHL**, stating the judgement for a unanimous Court, Viscount Sankey made his famous “Golden Thread” speech that:

*“throughout the web of the English criminal law one golden thread is always to be seen, that is the duty of the prosecution to prove the prisoner’s guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exceptions...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 of England and no attempt to whittle it down can be entertained.”*

Lord Denning J (as he then was) in the case of **Miller v Minister of Pensions [1947]**

**2 All ER 372 at 373** in respect of proof beyond reasonable doubt stated that *“It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice”*.

He further stated in the same case that *“If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt’”*.

#### **ANALYSIS OF FACT & LAW:**

The prosecution as stated above in the case of the prosecution called PW1 who is the victim of the alleged rape to testify that, she was indeed carnally known by the Juvenile without her consent. Exhibit D establishes that PW1 is sixteen (16) years old. This fact was not challenged by the Juvenile. Exhibit B confirms that PW1 was carnally known as her perineum had multiple fresh abrasions around the vaginal orifice with clear discharge. Exhibit B also states that on examination of PW1, reactionary marks were seen around her neck. This corroborates the testimony of PW1 that the Juvenile grabbed her by her neck.

During the trial, the Juvenile failed to cross-examine any of the witnesses of the prosecution. In Exhibit E, which is the Investigation Caution statement of the Juvenile, the Juvenile stated that *"Yesterday 06/09/2022 at about 2:00pm, I was returning from my friend Rap K's house at Norrip near Zimasa when I met Sakina walking halfway alongside Zimasa road alone. I stopped and called at her and dragged her to an uncompleted college building where I forced myself on her and had sexual intercourse with her."* Also, in Exhibit F which is the Charged Statement of the Juvenile, the Juvenile stated that *"I Fatawu Saeebu was the one who raped victim Sakina Yakubu. I am guilty of the offence charged."*

The statements of the Juvenile in Exhibit E and F amount to a confession by the Juvenile that he had carnal knowledge of PW1 without her consent.

The above conclusion is buttressed by the statement made by the Juvenile when he was called upon to open his defence where he stated that all that the PW1 reported to the police is true and that he only asks for PW1 to forgive him.

## FINDING

Taking into consideration the entire evidence on record, the Prosecution has successfully proved beyond a reasonable doubt all the elements of the offence of **Rape; contrary to section 97 of the Criminal Offences Act, 1960 (Act 29)**.

The Juvenile is hereby found **GUILTY** of the offence of **Rape; contrary to section 97 of the Criminal Offences Act, 1960 (Act 29)** and is accordingly convicted of the same.

## **DISPOSITION/SENTENCE**

Considering the serious nature of the offence committed, the violent mode under which it was committed by the Juvenile, the recommendation stated in the social enquiry report, the plea for mitigation stated by the Juvenile, the mother of the Juvenile and the prosecution and the period the Juvenile has spent in detention, the Juvenile is hereby sentenced to be detained in a senior correctional centre for a period of two (2) years.

The Court further orders as follows:

1. That the Juvenile signs a bond to be of good behaviour after he has completed the term of his detention in the senior correctional centre not to repeat the offence of rape.
2. That the mother of the Juvenile, Tanko Rashida, pay compensation to the victim Sakina Yakubu to the tune of GHS 1,500 to cover medical expenses incurred by the victim and her parents resulting from the offence committed herein by the Juvenile.

**SGD**

**H/W SIMON KOFI BEDIAKO**

**MAGISTRATE (CHAIRMAN)**

**SGD**

**IBRAHIM BUKARI**

**PANEL MEMBER**

**SGD**

**FATI OSMAN**

**PANEL MEMBER**