

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
HELD IN CAPE COAST ON 9TH NOVEMBER, 2022
BEFORE HIS LORDSHIP JUSTICE EMMANUEL ATSU LODOH**

BI/12/2021

REPUBLIC

VS

RAZAK SULEMAN

JUDGMENT

The above named accused person was arraigned before this court on indictment charged with one count of each of the following offences:

1. Rape contrary to section 97 of the Criminal Offences Act, 1960 (Act 29);
2. Threat of Death contrary to section 75 of Act 29; and
3. Treat of Harm contrary to section 74 of Act 29

The accused pleaded not guilty to all these offences on 15th March, 2022. As required by law the Court, and following the “not guilty” plea, the court accordingly invited the prosecution to put before the court evidence to establish the guilt of the accused person in respect of the three counts. Indeed the record will show that this case went through full trial. At the end of the trial the court duly ordered both lawyers to

prepare to address the members of the jury. It was during the intervening period, prior to the lawyers addressing the jurors, that the accused person through his lawyer informed the court he wanted to change his plea.

The court following this new intimation enquired from the accused if this was his pleasure having being advised about the consequences of his change of plea by his lawyer. The accused person maintained his position on the matter. He was accordingly invited to retake his plea and the accused person pleaded guilty to all three counts.

The court following the plea of guilty by the accused person, convicted him on his own plea in respect of the three counts and after hearing his lawyer and the State Attorney on Sentences, adjourned the matter for consideration of an appropriate sentence to impose.

Facts

Before I proceed to discuss the basis for imposing what in my considered view an appropriate sentence in line with the law, it is important to state that the legal effect of a guilty plea vis a vis the facts of a case presented by the prosecution at the beginning of trial is that same constitutes an admission by the accused of the facts presented to the court. That being the case it is imperative that the one of the considerations for sentencing is that the court must situate its decision within the circumstances of the case. That being said, I find it important to reproduce *in extenso* the facts in this case.

According to the prosecution the survivor **“in this case is 18 years old and she lives with her mother at Dunkwa Kadadwen at Dunkwa-on-Offin. The Accused Razak Suleman states he is a taxi driver and is resident at Dunkwa Zongo, dunkwa –on-Offin. On 23rd December, 2018 at about 10.00pm, victim was on her way from home to buy food when a young man called her. Victim responded that she had**

been sent and was in a hurry and went on to where she was going to buy the food. As soon as she got to where she wants to buy the food, the man who called her on her way immediately came there with another man on a motorcycle.

Victim bought her food but on leaving the food vendor's place, she was accosted by the two men on the motorcycle who took offence that when she was called earlier by one of them, she refused to come. Victim moved on but they followed her with the motorcycle and brandished a knife and a small axe at her. The Accused and his accomplice by the threat of causing harm to victim made her get onto the motorcycle sandwiched between the Accused and his accomplice. They rode to Zongo at Dunkwa and took victim to a room where they asked victim to hold on to a staff which was wrapped in black and red cloth. When she refused they threatened her with the knife.

Victim held the staff and they then asked her to arouse herself to the point of sexual desire. Upon victim refusing to do that they again threatened her with the knife and told her that if she made any noise they would kill her and abscond.

Accused and his accomplice moved victim to another room whilst they were holding the knife and axe. Accused and his accomplice raised a cloth which was covering a doll and asked victim to look at the doll's face. Victim told them she was afraid. Accused's accomplice then left the room leaving Accused and victim. Accused told victim he wanted to have sex with which she declined. Accused tried to force victim to have sex with her.

Accused's accomplice came to the room again and said that it was late so they should accompany her home. Victim responded that she could go herself. Accused brandished the knife again and they took victim to the motorcycle. They took her to an isolated area where they told victim she could make all the noise she wanted to make.

Accused's accomplice then held the knife and Accused took victim's dress off and had sexual intercourse with victim without her consent. After that the Accused asked his accomplice to also have sex with victim which he did. The next day victim went to the police station to report what accused and his accomplice had done to her and she was given a medical form to attend hospital for examination. Victim returned the medical form to the police endorsed.

Accused on 25th December, 2018 went to the house of victim to apologise for what he did. The police were tipped-off and Accused was arrested. The police was able to retrieve the doll and a stick wrapped with a red cloth from the scene of the crime.

Accused in his statement to the police admitted having had sexual intercourse with victim without consent, and asked that he be forgiven, adding that, that will not happen again”.

Sentencing

Pursuant to section 293 of Act 30, the court received evidence to inform itself as to the proper sentence to pass. Learned counsel for the accused at the sentencing hearing invoked section 301 of the Criminal and other offences (Procedure) Act, 1960 (Act 30) and prayed the court to apply this provisions by exercising its discretion in directing that the sentence to be imposed on the convict should run concurrently with a sentence imposed by the court in respect of a previous conviction. The predicate question though is whether section 301 of Act 30 is available for application in the instant matter.

Section 301 of Act 30 provides as follows:

301. Where a person after conviction for a criminal offence is convicted of a different criminal offence, before sentence is passed on that person under the first conviction or before the expiration of that sentence, a sentence which is passed on that person under the subsequent conviction, shall be executed after the expiration of the first sentence, unless the Court directs that it shall be executed concurrently with the first sentence or a part of it.

My understanding of the above section is that same provides that four conditions should exist before this provision may be invoked. The said conditions in my considered view are:

1. The person must have been convicted for an earlier criminal offence.
2. The person must have been convicted of a second, but different offence.
3. Sentence upon the first conviction would not have been passed or would have been passed but have not expired.
4. The sentence in respect of the subsequent conviction shall be executed after the expiration of the first sentence unless the court directs that it shall be executed concurrently with the first sentence or a part of it.

Explaining section 301 of Act 30, Justice Dennis Dominic Adjei in his book "Criminal Procedure and Practice in Ghana", 2nd edition and published in 2019 stated at page 401 as follows:

"A person after conviction of a criminal offence and before sentence is passed, is convicted of a different criminal offence, shall be sentenced separately for both offences. The second sentence shall be served after the person has served the first conviction unless the court directs that it shall be served concurrently. Concurrent sentence is passed where an accused is convicted of two distinct offences. The sentences imposed on the accused in both convictions shall be fully served, that is the convict after having served the first sentence imposed for the first conviction shall serve the sentence imposed on him or her for the

subsequent conviction. The important thing to take into consideration is that a court when imposing a consecutive sentence shall ensure that the aggregate of all the sentences to be served does not exceed the sentencing jurisdiction of the court or the term of sentence authorised by statute”.

The record will show that the accused person was convicted before this court on 19th July, 2022 on one count of the following offences

1. Conspiracy to commit Rape contrary to sections 23 (1) and 97 of Act 29; and
2. Unnatural Carnal Knowledge contrary to section 104 (1) of Act 29.

He was subsequently sentenced to seven (7) years imprisonment with hard labour in respect of each count. The record will further show that apart from the offence of Rape which appears in both indictments, the rest of the offences are separate and distinct. Accordingly, I am of the considered view that section 301 of Act 30, can only apply in respect of the offences of Threat of Death and Threat of Harm in the instant matter and not the offence of Rape which to my mind is kindred offence and therefore qualifies to be classified as a similar offence, albeit inchoate.

Sentence

On the 19th Jul, 2022 when I passed a sentence on the accused, I had the opportunity to set out my considerations for imposing a seven (7) year sentence on the accused in respect of all the counts. In that case I considered the convict's young age, the fact that he was a first offender, and the fact that the convict said he was on medication for a communicable disease. He also said he had four kids who are with his aged mother. I also said that is remorseful of his conduct. In the instant case almost a similar submission was made by counsel for the accused person.

In this case however, apart from upholding some of these mitigating factors, I find from the record and in respect of the circumstances of this case, certain factors which

will necessary impact on my sentence because these circumstances distinguishes this case from that case.

Firstly, I recognise in this case the harrowing emotional trauma the convict was put the victim through, particularly the use of what to all intent and purposes was a spiritual doll in challenging the resolve of the victim, the fact that the victim was gang raped and the physical threats to her person. I also recognise that the criminal act was deliberate, well-orchestrated and executed by the accused and his accomplice. I also find the accused as a danger to the society because it is apparent per his record that he is a serial offender and therefore society ought to be protected from him until he has hopefully reformed.

The punishment to be imposed on the convict is also intended to discourage potential serial rapists within the jurisdiction and the serve notice to all like-minded persons that the courts will not tolerate such violent crimes against young woman. In the case of **Kwashie v The Republic [1971] 1 GLR 488** it was reported in holding 2 as follows:

“Since the offence was of a very grave nature, the sentence must not only have been punitive but it must also have been a deterrent or exemplary in order to mark the disapproval of society of such conduct by police officers. When a court decides to impose a deterrent sentence the value of the subject-matter of the charge and the good record of the accused become irrelevant”

I find from my readings that sexual offences are escalating in the Central region. Indeed **Graphic online** in its online publication dated 2nd April 2017 reported as follows:

“The Domestic Violence and Victims Support Unit (DOVVSU) of the Ghana Police Service in the Central Region last year, recorded 273 defilement cases as

against 191 in 2015. The figure represented an increase of 42.9 per cent while rape cases also increased from thirty-eight in 2015 to fifty-six in 2016.

Deputy Commissioner of Police (DCOP) David Nenyi Ampiah-Bennin, the Regional Police Commander, made this known at their 2017 West African Security Service Association (WASSA) on Friday.”

(<https://www.graphic.com.gh/news/general-news/cases-of-defilement-rape-increase-in-central-region.html>)

Again, I am not persuaded by the guilty plea of the accused person because same was belated and did not benefit the justice system in any way since same was not made timeously. Indeed I am of the considered view that if the convict honestly believed he was guilty of offence and therefore remorseful, then why did he take the court through the drudgery of a full trial. I therefore find that his late change of plea is not an indication that he is remorseful, I rather find same as an attempt to exploit the rules of court for his benefit.

Conclusion

Section 97 of Act 29 provides the sentencing regime to be imposed by the court. It provides that the minimum sentence upon a conviction of Rape shall be five years and the maximum twenty-five years. Section 75 of Act 29 classifies Threat of Death as a 2nd degree felony and Threat of Harm is described as a misdemeanour under section 74 of Act 29. Section 296 (2) and (4) of Act 30 provides that:

296. (2) Where a criminal offence which is not an offence mentioned in subsection (5), is declared by an enactment to be a second degree felony and the punishment for that offence is not specified, a person convicted of that offence is liable to a term of imprisonment not exceeding ten years.

- (4) Where a criminal offence which is not an offence mentioned in subsection (5), is declared by an enactment to be a misdemeanour and the punishment for that offence is not specified, a person convicted of that offence is liable to a term of imprisonment not exceeding three years.

From the above limitations in sentencing imposed by law, and having taking into consideration the time spent in lawful custody, the convict is hereby sentenced as follows:

1. In respect of Rape contrary to section 97 of the Criminal Offences Act, 1960 (Act 29) the convict is hereby sentenced to Eleven (11) years imprisonment with hard labour
2. In respect of Threat of Death contrary to section 75 of Act 29; the convict is hereby sentenced to 5 years imprisonment with hard labour.
3. In respect of Treat of Harm contrary to section 74 of Act 29, the convict is hereby sentenced to two (2) years imprisonment with hard labour.

I further direct that the sentence in respect of counts 2 and 3 shall run concurrently and also concurrently with the first conviction dated 19th July, 2022 with case number BI/4/2016. For the avoidance of doubt the sentence of eleven (11) years imposed in respect of the Rape Charge shall consecutively with the first conviction stated supra (that is after the expiration of the first conviction). The convict is further informed that he is at liberty to appeal against the conviction and sentence.

(SGD)

EMMANUEL ATSU LODOH J.

HIGH COURT JUDGE

Lawyers

1. Monica Geraldo De Lima, Assistant State Attorney, for the prosecution
2. Felix Awuah Esq, for the accused present.