IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA – GHANA, AD. 2017

CORAM: ANIN YEBOAH, JSC [PRESIDING]

BAFFOE BONNIE, JSC.

GBADEGBE, JSC.

APPAU, JSC.

PWAMANG, JSC.

CRIMINAL APPEAL

NO. J3/7/2013

26TH JANUARY, 2017

ERIC ASANTE **APPELLANT**

VRS

THE REPUBLIC **RESPONDENT**

JUDGMENT

PWAMANG, JSC.

On 5th September, 2005 the Appellant was convicted by the High Court, Tamale of Defilement contrary to Section 101 (2) of the Criminal Offences Act, 1960 (Act 29) as Amended by the Criminal Offences (Amendment) Act, 1998, Act 554 and sentenced to 15 years with Hard Labour. He was aggrieved by the judgment so he appealed against his conviction and sentence but the Court of Appeal by a unanimous decision dated 6th April, 2006 dismissed the appeal. On 17th July, 2012 this court granted leave to appellant to appeal against the judgment of the Court of Appeal and he filed the pursuant Notice of Appeal on 25th July, 2012.

The case against appellant was that on or about 12th November, 2003, while teaching Agricultural Science at Nyohini Presbyterian Junior Secondary School (JSS) at Tamale, he carnally knew a pupil of the school aged 14 years. At that time the victim was living with her auntie and her auntie's husband at Nyohini, a suburb of Tamale. The victim's biological mother lived in the same area. The auntie and her husband were also elementary school teachers at Nyohini but not in the same school as the appellant and the victim. According the husband of the victim's auntie, who is the complainant in the case, on 12th November, 2003 the victim complained to him of pains in her body and head so he asked her to attend hospital the next day. Then the next day, that is 13th November 2003, he the complainant returned from school and met the victim alone in the house writing a love letter addressed to one Mr. Eric so he seized it and read. In the letter the victim stated that

she met the Mr. Eric the previous day and gave him what he wanted. She thanked him for the money he gave her. She expressed her love for him and explained that she could not visit him that day as planned because she was unwell.

The complainant brought the contents of the letter to the attention of his wife and the victim's mother and together they questioned the victim as to who the Mr. Eric was and what she had doing with him. She told them Mr. Eric was a teacher in her school and her boyfriend so they demanded that she took them to him. She led them to the house where the Appellant was staying which is also at Nyohini. They met with the appellant in his room and accused him of having sexual relations with their daughter but he denied it completely wherefore they exchanged words with him and left. On 14th November, 2003 complainant made a report of defilement against the appellant to the Women and Juvenile Unit (WAJU) of Tamale Police and they issued a medical form to the victim to attend Tamale Teaching Hospital for examination. At the hospital the medical officer who attended to the victim interviewed her and she stated that the appellant was her boyfriend with whom she had sexual intercourse on several occasions, the last being on 12th November, 2003. It would appear that the doctor suspected pregnancy so he made her to do a scan and it came out that she was 23 weeks pregnant at the time. She attributed the pregnancy to the Appellant.

Appellant was therefore arrested by the police, charged with defilement and prosecuted by the Attorney General's Office at Tamale. It was a summary trial in which the prosecution called five witnesses including the investigator and the Appellant testified on oath without calling any witness. He maintained his innocence through out but finally he was convicted. In this final appeal the appellant has stated six Grounds of Appeal and they are as follows;

i. The Court of Appeal erred by confirming the Judgment of the Trial Court in spite of the fact that the Judgment is against the overwhelming evidence on the record.

ii. The Court of Appeal erred in law by accepting and confirming the finding of the Trial Court that the pregnancy of the Complaint was caused by the Appellant without any DNA Test or any other scientific proof.

iii. The Court of Appeal erred when it accepted the evidence of the Trial Judge on his *(sic)* visit to the locus contrary to the Rules of Court.

iv. The Court of Appeal again erred when it confirmed learned trial judge's error in law when he stated that the age of the alleged victim had been proved beyond reasonable doubt when no documentary evidence was led to prove the age of the victim who was a mother at the time of the trial.

v. The Court of Appeal again erred when it confirmed the learned trial judge error when he admitted into evidence alleged letter written by the victim as that letter was not sent to the forensic laboratory to determine its partner since there was evidence that there were two teachers having Eric as their first names.

vi. That learned trial judge erred in law when he sustained an objection on the Cross-Examination of PW2 on his credibility.

After filing the appeal in this court the Appellant applied for an order directed at the victim to present the child delivered of the disputed pregnancy for DNA testing together with the appellant. This was to ascertain if the Appellant could be the father of the child. The application was not opposed by the Attorney-General and was granted by the court on 22nd July 2014. The appellant faced challenges in enforcing the order against the victim so further orders had to be made by the court on 12th November, 2014 and 11th February 2015. Even then it was not until learned counsel for the appellant, Kwame Boni Esq, proceeded against the victim and her parents for contempt of the Supreme Court that the child was made available for the DNA test. The test was finally conducted on 7th July, 2015 at the Forensic Science Laboratory of the Criminal Investigation Department of the Ghana Police Service in Accra and a report dated 29th July, 2015 was issued. On 28th July, 2016 the court, pursuant to **R 76 of Supreme Court Rule, 1996 (C.I.16)**,

granted leave for the DNA Report to be tendered as new evidence. DSP/Mr. Edward Kofi Abban, a forensic analyst with the Ghana Police Forensic Science Laboratory, testified as a court witness. The evidence thus adduced forms part of the record for the determination of this appeal.

Before delving into the merits of the appeal, we wish to draw the attention of counsel to the requirements of the rules of the court pertaining to the drafting of grounds of appeal in criminal appeals, particularly the general ground which is commonly referred to as the omnibus ground. They are contained in R. 33 of (C.I. 16) which states as follows:

"*33. (1) The notice of criminal appeal or notice of an application for leave to appeal shall set out concisely and under distinct heads numbered seriatim the grounds upon which the appellant intends to rely at t the hearing of the appeal without any argument or narrative.*

(2) No ground of appeal which is vague or general in terms or discloses no reasonable ground of appeal shall be permitted except the general ground that the judgment is unreasonable or cannot be supported, having regard to the evidence.

It is Regulation 33(2) of C.I.16 that should guide the drafting of the general ground of appeal in criminal matters and not Regulation 6 (5) of C.I. 16 which relates to civil appeals and talks of "the judgment is against the weight of the evidence". In criminal appeals that ground is drafted as "the judgment is unreasonable or cannot

be supported having regard to the evidence". The distinction is legally significant in that it determines how the appellate court proceeds in assessing the evidence. **See Nyame v Republic [1971] 140.**

Nevertheless, in order to do substantial justice in the case we shall amend ground (i) to read; the judgment cannot be supported having regard to the evidence. In this wise it is relevant to state the ingredients of the offence of defilement which are as follows:

(i) That the victim is under the age of 16 years (as provided for in Act 554).
(ii) Someone had sexual intercourse with her; and
(iii) That person is the accused.

See the case of **Republic V Yeboah [1968] GLR 248.**

It is also useful to remind ourselves of some fundamental legal principles pertaining to criminal trials in Ghana. **Article 19(2)(c) of the 1992 Constitution** provides that;

> "A person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty."

Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would belief beyond a reasonable doubt

that the offence has been committed and that it is the accused who committed it. Apart from specific cases of strict liability offences, the general rule is that through out a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to the commission of the offence and his complicity in it except where he relies on a statutory or special defence. See **Sections 11(2) 13(1), 15(1) of the Evidence Act, 1975 (NRCD 323)** and **COP v Antwi [1961] GLR 408.**

However, beyond reasonable doubt does not mean beyond a shadow of doubt. The guilt of an accused person is sufficiently proved if the tribunal of fact is convinced that he committed the offence though there remains a lingering possibility that he is not guilty. See **Oteng v The State [1966] GLR 352.**

We wish to also say a few words about the DNA evidence that has been adduced in this case which appears to be a new area of scientific evidence as far as our country's criminal justice system is concerned. **Section 121 of the Criminal Procedure Code 1960 (Act 30)** provides that in any criminal proceedings a scientific report may be used as evidence of the facts contained in it. A scientific report is prima facie evidence of the matters contained in

it and not conclusive evidence so the law requires that where the accuracy of a scientific report is disputed in proceedings then the person who undertook the investigation or examination and produced the report should testify and subject himself to cross examination. See **Nyameneba & Ors v The State [1965] GLR 723.**

DNA is derived from the chemical substance Deoxyribonucleic Acid that is used to encode the genetic information in living organisms. The usual objective of forensic DNA analysis is to detect variations in the genetic material that differentiate one individual from another. Its accuracy is rated very high and it is considered reliable. See **Modern Scientific Evidence; *The Law and Science of Expert Testimony,* by David I. Faigman et, 2012-2013 Edition Vol 4 page 117** and the case of **Lemour v The State of Florida 802 So. 2d 402 (2001)**.

Though in our country DNA paternity testing is mostly used in family suits, it may play an important role in criminal cases such as rape and defilement where the victim also claims that the accused is the father of a child born out of the unlawful sexual intercourse as we have in this case. Where the DNA test confirms the accused as the father of the child, that would constitute strong evidence of sexual intercourse between the accused and the victim. If the DNA test excludes the accused as father of the child, that would mean that the accused did not engage in the sexual intercourse resulting in the pregnancy. However, in a case of multiple unlawful sexual intercourse at different times, if there is compelling evidence

linking the accused to some other intercourse not connected with the pregnancy, then he would have to answer to that.

It is with these principles in mind that we consider this appeal and examine the evidence to determine whether the conviction of the appellant is supported thereby. We intend to proceed in the order in which we have set out the ingredients of the offence of defilement. In Ground IV in the Notice of Appeal the Appellant had attacked the finding of the court below that the prosecution had sufficiently proved that the victim was aged below 16 years. However he abandoned that ground in arguing the appeal in his statement of case so we accordingly strike it off. The effect is that the finding of the court below stands meaning the first ingredient of the offence of defilement was sufficiently proved by the evidence led.

The remaining two ingredients of the offence of defilement namely; the act of sexual intercourse and the involvement of the appellant are covered by Ground I of the appeal and we shall consider them in that order. It is helpful to reproduce the particulars of the charge that was preferred against the appellant.

"PARTICULARS OF CHARGE

Eric Asante, 26 years, Teacher, on or about 12 day of November, 2003 at Tamale in the Northern Region of the Republic of Ghana and within the jurisdiction of this court did have carnal knowledge of one….., a girl of fourteen years of age."

Of all the witnesses called by the prosecution none of them saw the act of sexual intercourse, and this is normal since the act is usually done in secret. That notwithstanding, this is what the trial court stated in its judgment as proof of the occurrence of sexual intercourse:

> "With regard to proof of the second element that the victim has been carnally known, the evidence on this point is so overwhelming. Apart from the victim's own testimony, the medical report on her showing that she was twenty-three weeks pregnant and that the pregnancy was intra uterine leaves this fact beyond any doubt. The medical doctor, PW4 in an answer to a question as to whether he examined the vagina of the victim to find out if there was any penetration answered that it was unnecessary since the intra uterine pregnancy meant that there was penetration."

The Court of Appeal also held as follows:

> "The particulars of offence satisfied the requirement under the new law by merely stating that sex had taken place "on or about the 12th of November 2003". The girl's testimony and letter confirmed that sex with the said Eric had taken place, a couple of days before she was confronted by her guardians. The fact of the girl's pregnancy confirms that sexual acts had taken place and that fact by itself beyond reasonable doubt discharged the burden of proof required from the prosecution."

It is therefore not disputed that apart from the victim saying that she had sexual intercourse on the specific day of 12 November, 2003, that is two days before she was seen by the doctor, the Medical Officer did not examine her to ascertain whether it was true. The fact of the pregnancy confirmed that there was sexual intercourse with the victim about twenty three weeks prior to the case being reported but whether there was sexual intercourse on 12th November, 2003 is a different matter. The distinction is very significant in the peculiar circumstances of this case as will be seen later in this judgment. It seems to us that the presence of the pregnancy misled the prosecution to assume too many things. The appellant had vehemently denied having any sexual intercourse with the victim on the 12th November, 2003 or 23 weeks back. In the absence of medical evidence the decision on whether the prosecution proved beyond reasonable doubt that sexual intercourse took place on or about 12th November, 2003 ought to rest on the availability of corroborative evidence and the credibility of the victim which issues we shall address.

The third element of defilement is that it ought to be proved that it was the appellant and no other person who had sexual intercourse with the victim. Here too, it is only the testimony of the victim that the prosecution proffered as proof that appellant had sexual intercourse with the victim. None of the witnesses saw the victim enter appellant's room on 12/11/2003 or on any other day for that matter but the trial court and the court below considered the pregnancy as proof that the Appellant had sexual intercourse with

the victim. However, the new evidence given by the forensic analyst is that the DNA tests he conducted showed that the appellant is excluded from being a father of the child born of the pregnancy in question. He tendered the DNA report as Exhibit 'SCA'. His evidence was not challenged and so we accept it as the truth. That means that the Appellant was not the person who had the sexual intercourse with the victim resulting in the pregnancy. Nonetheless, K. Asiama Sampong, learned Chief State Attorney, in his statement of case on behalf of the respondent submitted as follows in respect of the DNA evidence;

> "The DNA results shows that the appellant is excluded as the biological father of the child,..... but that has nothing to do with the crime of defilement against the appellant. From the record of proceedings, evidence showed clearly that the appellant had amorous relationship with the victim who was at that time fourteen (14) years. Upon these findings the trial court convicted him and sentenced him to 15 years IHL imprisonment and not on the issue of pregnancy."

While we agree with the learned Chief State Attorney that in the particular circumstances of this case appellant is not entitled to an acquittal on the sole ground that the DNA evidence excludes him as the father of the child, it cannot be said that the pregnancy and the child had nothing to do with the conviction. As pointed out above, the trial court and the Court of Appeal in their judgments considered the pregnancy as corroboration of the victim's testimony

of sexual intercourse with the Appellant. The import of the DNA evidence is that the victim was not truthful when she testified on oath that it was appellant who had sexual intercourse with her leading to the pregnancy and that has legal implications including her credibility as a witness. Yet respondent may be right since the actual charge that was preferred against the appellant was in respect of sexual intercourse that allegedly occurred on or about 12/11/2003. Therefore the pregnancy aside, the question remains whether the conviction can be supported by other corroborative evidence on the record or otherwise.

It is pertinent at this stage to discuss corroboration in relation to proof in criminal trials in general and sexual offences in particular. We shall thereafter examine the evidence to see if, in the absence of the pregnancy, the testimony of the victim was corroborated in the legal sense. There has never been a general rule in this country that a court in a criminal trial cannot convict an accused person on only the testimony of one witness if that witness is found to be credible and the evidence of the accused does not raise a reasonable doubt as to his guilt. See **Republic v Asafu-Adjei (No2) 1968 GLR 567 CA**. However, before NRCD 323 came into force in 1979, the English rules of evidence which were applicable in Ghana required that in trials for sexual offences the judge must direct himself and the jury that corroboration of the victim's evidence was eminently desirable in order to convict an accused person. See the case of **Reekie v The Queen (1952) 14 WACA 501**. Rationale for this rule was given in the English case of **R. v Henry and Manning (1969)**

53 Crim App Rep 150 where Salmon L.J said as follows at page 153 of the Report:

"What the judge has to do is to use clear and simple language that will without any doubt convey to the jury that in cases of alleged sexual offences it is really dangerous to convict on the evidence of the woman or girl alone. This is dangerous because human experience has shown that in these courts girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not enumerate, and sometimes for no reason at all."

If the caution on the need for corroboration was not noted by the judge or properly given to the jury in the judges summing up, a conviction could be set aside on an appeal on that ground. However, it must quickly be added that failure to direct a jury on the need for corroboration was not a fatal error that automatically resulted in a conviction being overturned on appeal. In **Reekie v The Queen (supra)** , a sexual offence case, Foster-Sutton P, relying on section 4(1) of the West African Court of Appeal (Criminal Cases) Ordinance (Cap 265) and the English Criminal Appeal Act, 1907, at page 502-503 of the Report adopted the following statement of the law in the case of Rex v Cohen and Bateman, 2 Cr. App. R., 197 by Channel J at page 207; " Taking section 4 with its proviso, the effect is that if there is a wrong decision on any question of law the appellant has the right to have his appeal allowed, unless the case

can be brought within the proviso. In that case the Crown has to show that on the right direction, the jury must have come to the same conclusion."

This clarification is necessary because at times the impression is created that NRCD 323 significantly changed the law in respect of warning about the need for corroboration in trials of sexual offences as if the law before the coming into force of NRCD 323 made the warning a rule of thumb breach of which naturally resulted in a conviction being overturned on appeal. Section **7 (3) of NRCD 323** provides as follows:

> "Unless otherwise provided by this or any other enactment, corroboration of admitted evidence is not necessary to sustain any finding of fact or any verdict."

Then at Section 7 (5) it is provided as follows:

> "Nothing in this section shall preclude the court or any party from commenting on the danger of acting on uncorroborated evidence or commenting on the weight and credibility of admitted evidence or preclude the tribunal of fact from considering the weight and credibility of admitted evidence."

This implies that the good sense in the policy that it is dangerous to convict an accused person on uncorroborated evidence is given recognition in NRCD 323.

Corroboration is evidence which supports the testimony of a witness by confirming that the witness is telling the truth in some

material particular in his testimony thereby giving credibility to his story. Corroborative evidence must be independent of and from a source other than the witness whose testimony is sought to be corroborated.

Upon reading the judgment of the High Court we noticed that the judge, apparently in line with section 7 (5) of NRCD 323, warned himself about the need for corroborative evidence to support the testimony of the victim and he went through the proceedings in search of such corroboration. This is what the trial judge stated in that regard;

> "In this particular case circumstantial evidence abounds corroborating the prosecutrix story that it was the accused who debauched her. In the first place, I have found that the accused person is well known to the victim and that the relationship goes beyond the teacher-pupil relationship ..... the evidence of Pw3, the victim's mother shows that the accused person, on seeing the victim in their company from a distance unconsciously stood up and **called out the victim by her name**... Apart from the conduct of the accused person tending to show that he had some intimacy with the victim we have the letter which the victim wrote to Mr. Eric."

We have perused the record and read carefully the evidence of Pw3 but we are unable to find the matter that the trial judge referred to as indicating intimacy between the victim and the Appellant. This is the relevant part of the evidence of Pw3:

> "A few meters to the house I saw some men seated. As we got near one of them on seeing us got up and I suspected that that one would be the Eric. I did not know any of them. When we got there my sister demanded to know who was Eric Asante and Ruby pointed out the accused who was the one I saw get up. My sister told him we were there to see him and he suggested that we should sit there but we told him we wanted to meet him in his room."

It therefore appears to us that the finding of intimacy between the appellant and the victim signified by the appellant calling the victim by name as made by the trial judge is not borne out by the record. If the appellant truly had an unlawful relationship with the victim it is unlikely that he would offer to discuss the mission of her parents in the presence of others. As for the letter, Exhibit "A", written by and found with the victim and not the Appellant, its weight is the same as the testimony of the victim and since it is not evidence coming from some other source and independent of the victim it does not qualify as corroborative evidence. It is self serving and ought not to have been given much weight.

We like to point out that the fact that corroboration is generally not mandatory to secure conviction does not mean that where corroborative evidence could be obtained in a case, the prosecution can fail to lead such evidence and turn round to argue that corroboration has not been made a requirement by the statute creating the offence in question. A prosecution does so at its own

peril as that failure may raise a reasonable doubt in the mind of the court as to the guilt of an accused person. Furthermore, if the sole witness turns out not to be a credible witness, the prosecution's case will collapse. Corroborative evidence in a case of this nature where the victim did not resist sexual intercourse is to produce medical evidence of penetration including emission of semen into the victim's vagina. In this case the victim met the medical doctor within 48 hours of the alleged intercourse but no effort was made to examine her vagina for possible medical evidence of penetration. The evidence of the victim is that on the 12/11/2003 the appellant requested her to take books to his house after close of classes. It is inconceivable that no pupil in the class saw the victim take the books to the house of the teacher. The victim herself mentioned a friend whom she left her books with on the day she allegedly went to appellant's house for the first time and they had sexual intercourse. Why did the prosecution not produce this friend of the victim to confirm her story of visiting him in his house.

For instance, in the case of **Republic v Yeboah (supra)** that the prosecution referred to and the trial judge relied on, the prosecution called medical evidence to the effect that the accused person had chronic gonorrhea and the victim was infected by him. Two friends of the victim who walked with her to the residence of the accused person and saw her enter there testified for the prosecution and this made the accused person to admit that the victim entered his room. So despite the accused person's denial of having sexual intercourse with the victim, the court convicted him on the

corroborative evidence. Where a party in a trial refers to matters that are capable of independent proof in a positive manner and those matters are denied, the party does not establish the truth of those matters by stating them in the witness box and failing to proffer the other evidence which in the circumstances of the case should be available. Where the circumstances of the case are such that there can be no corroborative evidence, that will be a different matter but not in this case.

But as we have stated above, in the absence of corroboration, if a court is convinced beyond reasonable doubt by the testimony of a sole witness, it may convict. In this case the trial judge in his judgment stated that even in the absence of the corroborative evidence he would find that it was the appellant who "ravished the victim having found that the prosecutrix is a witness of truth." An appellate court would ordinarily not interfere with a trial judges finding of credibility of witnesses based on demeanour since it would not have had the benefit of hearing and seeing them. However, in **Kyiafi v Wono [1967] GLR 463 at 467 C.A** the court per Ollennu J.A. said as follows:

"It must be observed that the questions of impressiveness or convincingness are products of credibility and veracity; a court becomes convinced or unconvinced, impressed or unimpressed with oral evidence according to the opinion it forms of the veracity of witnesses."

A court has to test its impression as to the veracity or truthfulness of oral testimony of a witness against the whole of the evidence of that witness and other evidence on record. See **Ackom v Republic [1975] GLR 419.** In the circumstances of this case where new evidence was admitted in the appeal, though we are exercising an appellate jurisdiction, we are required to determine the veracity of the victim's testimony against all the evidence before us. In view of the evidence before us the question we ask ourselves is; if the trial judge knew what we now know namely; that the testimony of the victim to the effect that it was appellant who impregnated her was deliberate falsehood, whether he would still describe her as a witness of truth? If she chose to lie on oath about the pregnancy what else did she lie about in her testimony?

In our judgment the DNA evidence does tremendous damage to the credibility of the victim and her disposition to speak the truth in this case is put in serious doubt. It does appear that the reason Salmon L. J proffered in **R v Henry and Manning (supra)** for the insistence on corroboration of a victim's testimony in sexual offences is unfortunately justified by this case. Why did the victim fabricate a false story and repeat it on oath that her pregnancy was caused by the Appellant? Did she really have any sexual intercourse at all on 12/11/2003? The totality of the evidence leaves a reasonable doubt in the mind of the court as to whether on or about 12/11/2003 the victim engaged in sexual intercourse at all and with the appellant in particular and we are bound by law to resolve that doubt in favour of the appellant. It is our considered opinion

that the conviction of the appellant cannot be supported by the totality of the evidence before us so the appeal must succeed.

Our advice is that where the liberty of the individual is concerned, prosecutors, defence counsel and judges should keep an open mind and strictly abide by the time-tested rule that the accused person is innocent until proven guilty beyond reasonable doubt. In this case the appellant maintained his innocence right from the first day he was accused in his room, to the police station and throughout the trial. There was a hint of doubt as to whether it was the Appellant who was responsible for the pregnancy when during the cross examination of the victim it was suggested to her that she had complained to a friend that her auntie's husband was sexually abusing her which she denied. When the auntie's husband was under cross examination the court upheld an objection against him being cross examined on that matter. Counsel for appellant at the trial stage failed to refer the court to the earlier questions put to the victim herself and also did not pursue that matter.

Having concluded that the conviction cannot be supported by the evidence we do not consider it necessary to determine the other grounds of appeal. We commend Kwame Boni Esq, lead counsel for the appellant in this court, for his resilience in pursuing justice for the Appellant. The appeal is allowed and the appellant is acquitted. Since he has finished serving his sentence of 15 years IHL, an order of discharge will be otiose. This is an example of the tragedies of the criminal justice system whereby persons who might not have

committed crimes get imprisoned or may even suffer the death penalty. Unfortunately this does not occur in Ghana alone. In 2004, the United States Congress passed the Innocence Protection Act as a part of the Justice for All Act, 2004, which allows a convicted person under a sentence of imprisonment or death who swears that he is actually innocent to apply for Post-Conviction DNA testing where it is relevant to his defence. Such testing is paid for by the Federal government and if an exculpatory report is issued the case of the convict would be reopened. Similar legislation in our dear nation will be of assistance in improving access to justice for innocent but indigent convicted persons.

In his statement of case appellant prayed the court pursuant to Article 14(7) of the 1992 Constitution to order compensation to be paid to him on account of his acquittal after he has finished serving his sentence. We are of the view that the Appellant should apply formally so that the court will have evidence to form the basis of any decision on the compensation prayed for.

(SGD) G. PWAMANG
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE - BONNIE
JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

(SGD) YAW APPAU
JUSTICE OF THE SUPREME COURT

COUNSEL

KWAME BONI WITH HIM FRANCIS-XAVIER KOJO SOSU ESQ FOR THE APPELLANT.

K. ASIAMAH SAMPPONG ESQ (CHIEF STATE ATTORNEY) FOR THE REPUBLIC.