

GHANA / JUDGMENT

Republic Vrs Anane [2023]

GHACC 231 (14 March 2023)

COURT
ghaccDECIDED
14 March 2023

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE CIRCUIT COURT OF GHANA HELD AT CAPE COAST, CENTRAL REGION ON FRIDAY 14TH DAY OF MARCH, 2023 BEFORE H/H DORINDA SMITH ARTHUR (MRS.), CIRCUIT COURT JUDGE.

SUIT NO. 208/2022 THE REPUBLIC VRS IKE OBENG ANANE ALIAS ESAANASA

JUDGMENT

The Accused person was arraigned before this Court on March 16, 2022 for the offence of Defilement Contrary to Section 101(1) of The Criminal and Other Offences Act, 1960 Act 29. The accused person pleaded not guilty to the charge preferred against him for which reason the prosecution assumed the burden of proof and must prove the charge against the accused person beyond reasonable doubt in accordance with; Section 11(2) of the Evidence Act 1975 NRCD 323 states; "In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind will find the existence of the facts beyond reasonable doubt." Further, Section 13(1) of NRCD 323 provides that the standard of proof is nothing less than proof beyond reasonable doubt no matter the offence charged. See the case of Ampabeng Vrs Republic [1977] 2 GLR 171 CA Page 1 of 9 The prosecution in order to discharge the burden placed upon them called one witness and tendered four exhibits in evidence. THE PROSECUTION CASE The summary of prosecution case is that a case of an alleged defilement involving accused was referred to the investigator the only witness for prosecution (PW1). According to PW1, the survivor with father, the complainant, made a report to the police on 08/03/2022 at about 12 noon. She obtained statements from the complainant and the survivor and took investigation caution statement from accused. She issued medical report form to the complainant to send the survivor to any government hospital for treatment but they did not return the medical form to her. She visited the scene at Assin Adubiase in the accused person's room and the survivor showed police where she and accused person had been having sexual intercourse on accused person's bed. She continued that on inspection she found nothing connecting the crime to the scene. She obtained child health record from the complainant and later charged the accused person. According to PW1, her investigation disclosed that the survivor

was defiled by accused based on her age, her statement and the fact that accused admitted having sexual intercourse with the survivor. She stated that accused person impregnated the survivor and attempting to abort the pregnancy by giving her adutwumwaa bitters. She tendered in evidence the investigation caution and charge statements, and child health record.

Prosecution filed three witness statements for the survivor and complainant but both did not execute theirs and they did not come to come to testify. EVALUATION OF EVIDENCE AND APPLICATION OF LAW Page 2 of 9 At the close of case of prosecution, the court suo moto enters submission of no case per Section 173 of Act 30/60. This is because prosecution's case has failed to prove the salient ingredients of the offence of defilement that accused had carnal knowledge of the survivor, and that the survivor is below the age of sixteen years. The case of prosecution is circumstantially so weak and based on hearsay that it cannot be relied on to ground a prima facie case against accused person sufficiently to require him to make a defence. The submission of no case is entered and accused person is acquitted and discharged. These are my reasons: The offence of defilement is defined under Section 101(2) of Act 29, (1960) which states: "Whoever naturally or unnaturally carnally knows any child under sixteen years of age, whether with or without his or her consent commits an offence and shall be liable on summary conviction to imprisonment for a term of not less than seven years and not more than twenty-five years." Consequently, the essential ingredients of the offense is;

1. That someone has had natural or unnatural carnal knowledge of the survivor
2. That someone is the accused person.
3. That the survivor is under sixteen years of age To satisfy the court with a conviction the prosecution must prove the aforementioned ingredients beyond reasonable doubt. See REPUBLIC V YEBOAH [1968] GLR 248-256 at Page 251. In order to ground a conviction, a burden is cast upon the prosecution to prove each and every one of the above three ingredients beyond a reasonable doubt that accused Page 3 of 9 person had natural or unnatural carnal knowledge of the survivor and that the survivor is under sixteen years. I will deal with all the ingredients together to determine whether there was any carnal or unnatural carnal knowledge of the survivor who is under sixteen years and if there was whether it was the accused person who had natural carnal knowledge of the survivor. From the evidence of prosecution witness the kind of carnal knowledge complaint of is natural carnal knowledge. Prosecution called one witness to testify but filed two other witness statements which were not endorsed. Both the survivor and complainant did not appear in court to testify. The first ingredient is for prosecution to produce evidence that accused person had natural carnal knowledge of the survivor. From the brief fact, the survivor is a niece to the complainant. That accused person proposed love to the survivor, she accepted the proposal and they have been having sexual intercourse together then the survivor became pregnant. That it was out of this that the complainant became aware of their relationship. Aside the brief fact, PW1, did not mention in her evidence why the accused person has been charged with defilement. She was not present when the alleged sexual intercourse took place. The survivor did not appear in court to testify and there is no

medical report to corroborate the evidence that there is a survivor who has been impregnated by accused person. It is noted that the child health record does not have basic information that is normally recorded by the health officers. The clinic registration number is blank indicating that the person who went to the hospital was not registered into the hospital books. The Page 4 of 9 birth registration number is blank, place of birth is blank, birth weight is blank, date the person was first seen in the hospital is blank among others. These missing information discredit the document as it is supposed to be a health record given to mothers when they go to the hospital to deliver a baby and the same document is subsequently used to record the baby's weight, record immunization and educate the mothers among others. The court is not satisfied that the document is genuine and hereby places no weight on it as it lacks evidential weight. Also, the sole witness could not corroborate the ingredient of "having natural carnal knowledge of the survivor." PW1 did not witness or could not provide any circumstantial evidence for the court to make reasonable inference from as she is the investigator and started the investigation after the alleged incident occurred. The survivor was not brought to court to testify and neither the complainant failing to call the survivor who is the alleged victim and a material witness is fatal to the case of the prosecution. See REX VRS GEORGE KUREE [1941] 7 WACA 175 and REGINA VRS ANSERE [1958] 3 WALR 385 distinguished in GLIGAH AND ATISO VRS THE REPUBLIC [2010] SCGLR 870. Moreover, both the survivor and complainant witness statements are not considered at all by the court since same were not endorsed. Even where the sexual victims testify, the court is advised to seek for corroborative evidence. See R V HENRY AND MANNING [1969] 53 CRIM APP REP 150 per Salmon J. The court held inter alia that "... it is really dangerous to convict on the evidence of a 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 Page 5 of 9 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." Even though this is an English case and is of persuasive influence only, it is of such great importance that the court cannot ignore that precedent for the weight it carries. Besides, prosecution did not establish through the evidence of the sole witness why the survivor or any key witnesses were unavailable to the court. This is crucial as prosecution has to prove the unavailability of witnesses in accordance with Section 116(e) of the Evidence Act supra. See THE REPUBLIC V HIGH COURT COMMERCIAL DIVISION) EX PARTE STEPEHNE KWABENA OPUNI CIVIL MOTION NO. JS/58/2021 28TH JULY, 2021. Therefore, it can safely be inferred that prosecution could not lead sufficient evidence to prove carnal knowledge of the survivor by the accused person as required of them because the adduced evidence is circumstantially so weak and based on hearsay that it cannot be relied on to ground a prima facie case against accused person. Prosecution evidence is insufficient. In the Supreme Court case of THE STATE VS. ALI KASSENA [1962] 1 GLR 144 at 149 pronounced on Section 173 of the Criminal Procedure Code, 1960 (Act 30) thus: "Section 173 is concerned with Summary trials where the judge decides both questions of law and fact. It is for the judge in a summary trial to weigh the evidence and then decide whether from the facts proved the guilt of the accused can be

inferred. Evidence is said to be sufficient when it is of such probative force as to convince and which if un-contradicted will justify a conviction. Page 6 of 9 In addition, the court could not make any safe inference from the facts as the evidence adduced were not objective and without much practical certainty. Hence, prosecution failed to take the case out of the realm of conjecture, speculation and suspicion because the evidence could not convince the court and as such incapable of sustaining a conviction. See CASEWELL V POWELL DUFFRYN ASSOCIATED COLLIERIES LTD. [1940] AC 152 P 169 particularly the opinion of Lord Wright. Consequently, prosecution could not establish any prima facie case against the accused person for the court to call him to open his defence. The evidence adduced by prosecution failed to proof all of the three ingredients of the offence of defilement. It is a principle of law that in order to justify a conviction, the evidence adduced against the accused should attain a degree of certainty. See MOSHIE V. THE REPUBLIC [1976] 2 GLR 310. Under Section 173 of Act 30, 1960 where “at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused sufficiently to require him to make a defence, the court shall, as to that particular charge acquit him.” Here, the court is to do a balancing act at the close of the case for the prosecution to ensure that prosecution has led evidence to support the essential ingredients of the offences charged. See TAGOR V THE REPUBLIC [2009] 23 MLRG 78 at 132 where the Court of Appeal held that: “the paramount consideration in deciding whether prima facie case has been made or not is; whether the prosecution has proved all the essential Page 7 of 9 ingredients or pre-requisites of the offence charged. No prima facie case is made where the prosecution was unable to prove all the essential ingredients. Even if one of the ingredients is not proved, the prosecution fails and no prima facie case is made.” Therefore, after the balancing act of the evidence adduced by prosecution, if the court cannot convict the accused person on the evidence so led without any reasonable explanation then submission of no case should be upheld. This is because the accused person cannot add up to the prosecution’s case where at the close of its case, the prosecution is unable to establish a prima facie case against the accused person. See MALI VRS. THE STATE (1965) GLR 710 – 715 ; STATE V. ANNAN (1965) GLR 600-612 and ASARE V. THE REPUBLIC (1978) GLR 193 – 199 Therefore, the burden of proof remains throughout the trial on the prosecution and the accused person is not required to prove anything. In PUBLIC PROSECUTOR V. YUVAVAG (1935) 25 CR. APP R 72 AT PAGE 95 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.” Consequently, the court is not permitted to call the accused person for further evidence before ruling on a submission of no case where prosecution has not proved the essential ingredients of the offence. Page 8 of 9 In sum, the case for the prosecution is considered as having collapsed. The court hereby enters submission of no case in accordance with Section 173 of Act 30 and accordingly, acquits and discharges the accused person on the offence of defilement. H/H DORINDA SMITH ARTHUR (MRS.) CIRCUIT COURT JUDGE ACCUSED PERSON PRESENT.

PROSECUTOR: C/INSP GILBERT ANYONGO PRESENT. Page 9 of 9

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ghalii.org/akn/gh/judgment/ghacc/2023/231/eng@2023-03-14/source.pdf>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/defilement-ghacc-2023--6a3ea5233b1caa9129818f31>

Prepared on 26 October 2026 · Esheria