

GHANA / JUDGMENT

REPUBLIC VRS. COBBINAH (CC/71/24)

[2025] GHACC 21 (11 February 2025)

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COURT

Circuit Court

CASE / FILE NUMBER

CC/71/24

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IN THE CIRCUIT COURT “A”, TEMA, HELD ON TUESDAY, THE 11TH
DAY OF FEBRUARY 2025, BEFORE HER LADYSHIP JUSTICE AGNES
OPOKU-BARNIEH, SITTING AS ADDITIONAL CIRCUIT COURT JUDGE
SUIT NO: CC/71/24
THE REPUBLIC

VRS:

EMMANUEL ANNAN COBBINAH
ACCUSED PERSON PRESENT
DSP STELLA NASUMONG FOR PROSECUTION PRESENT
NO LEGAL REPRESENTATION
FACTS

JUDGMENT

The charge against the accused person is one that shakes the very foundation of morality- a father accused of violating the sacred trust between parent and child, an unthinkable act of incest contrary to Section 105(2) of the Criminal Offences Act, 1960(Act 29). The prosecution, carrying the solemn burden of proof, wove its case upon a troubling narrative: a child of thirteen years, awoken not by memory but by mystery, finding herself with signs of an act unseen and later with the weight of an unexpected pregnancy. The prosecution alleges that the victim, Dorcas Annan Cobbinah, is the biological daughter of the accused person, aged 43 years and the two live together at Kpone. The prosecution further alleges that on 28th April, 2024 at about 11:00 am, the accused person took the victim who was complaining of stomach pains to Kpone Polyclinic for treatment. The doctor who was on duty asked the accused person to run some laboratory tests for the child, which confirmed that the victim was pregnant. Immediately, the accused person requested the doctor to terminate the pregnancy. The doctor became suspicious and called the Kpone Police for the arrest of the accused. The case was then referred to the Tema Regional Domestic Violence and Victim Support Unit. The victim was interviewed, and she told

the police that she had never had sexual intercourse with any other man apart from her father. The victim further stated that anytime she woke up, she found some whitish discharge and spotting in her pants and vagina but thought it was candidiasis. The accused person, in the throes of a moment unexplained, admitted before the police and contained in his investigation caution statement that he had sexual intercourse with the victim on several occasions. After investigation, the accused person was charged with the offence and put before this honourable court. THE PLEA With clarity of mind and firmness of voice, the self-represented accused person pleaded not guilty to the charge after it had been read and explained to him in Fante language. Thus, the burden of proof was cast upon the prosecution, tasked with the sacred duty to establish beyond reasonable doubt the guilt of the man who now stood in the dock. The case proceeded to trial and the prosecution called three witnesses and tendered in evidence the following documentary evidence; Exhibit "A": Police Medical Report Form Exhibit "B": Investigation Caution Statement of the accused person Exhibit "C": Video recording on a pen drive Exhibit "D": Photographs of the accused person and his daughter at the alleged scene of crime. Exhibit "E": Charge Statement of the accused person. BURDEN OF PROOF The bedrock of our criminal jurisprudence is that the burden of proof in a criminal matter rests entirely upon the prosecution to prove its case beyond reasonable doubt. The prosecution must produce sufficient evidence to meet the requirements of Sections 11(2) and 13(2) of the Evidence Act, NRCD 323, 1975, which respectively provide that:- 11(2) "In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, required the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt". 13(1) "In any civil or criminal action, the burden of persuasion as to the commission by the party of a crime which is directly in issue requires proof beyond reasonable doubt as to guilt". In the case of *Woolmington v DPP* [1935] 262, 25 CR APP. R 72. HL per Lord Viscount Sankey stated in this locus classicus that:- "Throughout the web of English Criminal Law one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt 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". Also, in the case of *Gligah & Attiso v. The Republic* [2010] SCGLR 870, the Supreme Court, in its holding 1 held as follows; "Under article 19 (2) (c) of the 1992 constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person was arraigned before any court in any criminal trial, it was the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond reasonable doubt. The burden of proof was therefore on the prosecution and it was only after a prima facie case had been established by the prosecution that the accused person would be called upon to give his side of the story." When the accused person is called upon to give his side of the story, there is no obligation on the accused person to prove his innocence. All that is required of the accused person is to raise a reasonable doubt in the prosecution's case. Section 13(2) of NRCD 323 states that: "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 or which is essential to guilt requires only that the accused raised a reasonable doubt as to guilt". Thus, in accordance with the principles

enshrined in Article 19(2)(c) of the 1992 Constitution and the Evidence Act, 1975 (NRCD 323), the prosecution must carry this burden from the first word of the accusation to the final decree of judgment. Until the scales tip under the undeniable force of proof, the accused person remains in the eyes of the law, an innocent soul.

ANALYSIS

Here, the accused person is charged with incest, contrary to Section 105(1) of Act 29, which provides as follows: “A male of not less than sixteen years of age who has carnal knowledge of a female whom he knows is his grand-daughter, daughter, sister, mother or grandmother commits a criminal offence and is liable on summary conviction to a term of imprisonment of not less than three years and not more than twenty-five years.” The essential ingredients of the offence which the prosecution must prove to secure conviction as identified by Justice Sir Dennis Dominic Adjei, in his book, *Contemporary Criminal Law in Ghana* @ page 221 are as follows:

1. That the person charged is a male aged sixteen years or above;
2. That the male had carnal knowledge with a female;
3. The female is either his granddaughter, daughter, sister including his half-sister, mother or grandmother;
4. That at the time of the commission, he knew that the female was his granddaughter, daughter, sister, mother or grandmother. Therefore, the prosecution bears the onerous burden to prove the essential ingredient of the offence beyond reasonable doubt. All that is required of an accused person when called upon to open his defence is to raise a reasonable doubt in the case of the prosecution and the burden on the accused person is on a balance of probabilities only. Here, the fact that the accused person is a male aged sixteen years and above is not in issue. In the particulars of the offence and the brief facts of the prosecution, the prosecution gave the age of the accused person at the time of the alleged incident as 43 years. It is also not in issue that the alleged victim is the biological daughter of the accused person, and he has been living with her since his wife left their matrimonial home with the other children. To succeed on a charge of incest, the prosecution must further prove that the accused person, knowing fully well that the victim is his biological daughter, had sexual intercourse with her. This is a hotly contested issue. Whereas the prosecution maintains that the accused person had sexual intercourse with his biological daughter, the accused person vehemently denies the allegation hence, the plea of not guilty. 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 brush work, penetration would be deemed to

have occurred and carnal knowledge taken to have been completed.” The first prosecution witness (PW1), Dorcas Annan Cobbinah, testified that she was 13 years old and that she was living with both parents and four other siblings before her mother and other siblings left the house after a misunderstanding ensued between her mother and her father, the accused person herein. She has since been living with her father and sleeps on the same bed with him. She further testified that in the latter part of 2023, she noticed that when she slept on Friday nights, she could sleep till the afternoon of the next day before she woke up. Each time she woke up under such circumstances, she detected some liquid fluid and blood stains in her underwear and vaginal area, coupled with abdominal pains. She kept this to herself because she thought it was candidiasis. According to her testimony, in January 2024, she did not have her menstrual flow and her father asked her why she did not come for a sanitary pad as she usually does during her menstruation. She told her father that she did not have her period but rather she had been seeing a whitish discharge. When she failed to have her period in the subsequent months, she asked her father to send her to the hospital for treatment but he told her he had no money. On 28th April, 2024, she was not feeling well, so her father took her to Kpone Polyclinic for treatment where they conducted some tests on her and the doctor confirmed that she was pregnant. She was amazed upon hearing that because she had never had sexual intercourse. The issue of pregnancy remained a mystery to her until the investigator took her to their house and interrogated her father, who admitted that he was the one who had been having sexual intercourse with her. Under cross-examination by the accused person, the victim testified as follows; Q: When did you notice that I had sexual intercourse with you? A: My Lord, I did not see my father having sexual intercourse with me. When he was interrogated during the investigation by the police, he admitted having sexual intercourse with me. Q: When you were on admission at the Kpone hospital and I went to buy drugs for you, where were you? A: My Lord, I was on admission at the labour ward. Q: When I came there, did you see me? A: Yes My Lord. Q: Are you the one who reported me to the police or was it the medical doctor who examined you? A: My Lord, it was the medical doctor. Q: When your mother left you with me, did I ever have sexual intercourse with you? A: No My Lord. He confessed having sexual intercourse with me when the police investigator interrogated him. Q: How many times did you notice the whitish fluid and blood stains in in your panties when you wake up? A: Two times. Q: When you saw the whitish fluid and blood stain in your panties, who did you inform? A: I did not inform anybody. Q: Why did you not inform me about this? A: I thought I had candidiasis that is why I did not inform you. Q: How did you get to know that someone had had sexual intercourse with you? A: When I went to the hospital the doctor told me that I am, pregnant. Q: Are you sure I am the one who had sexual intercourse with you? A: I do not know. Q: I am putting it to you that I did not have sexual intercourse with you? A: My Lord, he had sexual intercourse with me because he confessed to the police. Q: I am putting it to you that because I wanted you to go back to school, that is why I confessed to the doctor that I had sexual intercourse with you for the doctor to assist. A: Yes My Lord. The second prosecution witness, Collins Agyei Agyemang, stated that he is a Physician Assistant at Kpone Polyclinic and that on 29th April, 2024, he was on duty at the health facility when the accused person brought his

thirteen (13) year old daughter with a complaint of nausea and vomiting. Upon listening to the history of the victim, he requested for several tests to be carried out on the victim, including a pregnancy test. The result of the pregnancy test came out positive. He put the outcome of the result before the victim, who was amazed at what he told her and denied ever having sexual intercourse since she was a virgin. He requested a pelvic ultrasound scan, which confirmed a single viable fetus of 17 weeks and 6 days old. But when this result was also shown to the victim, she insisted that she had never had sex before. He interrogated the victim's father, the accused person and he broke down and started apologising for having sexual intercourse with his daughter. He then admitted the victim to the maternity ward and caused the arrest of the accused person. The third prosecution witness, D/PWC Constable Comfort Adaglo stationed at the Tema Regional Domestic Violence and Victim Support Unit, testified that on 29th April, 2024, an extract was received from Kpone Police together with the accused person with a report that the accused person had been having sexual intercourse with the victim leading to pregnancy. She re-arrested the accused person and detained him for investigation. On 30th April, 2024, she went with the accused person and C/Inps. Godwin Anapey, who works at Kpone Police Station, to the Kpone Polyclinic on enquiries. At the Kpone Clinic, she interviewed the victim in the presence of a senior nurse by name Diana Agbovi, the Adolescent Health Development and Focal Person. She later visited the scene of the alleged crime with them. The victim led them to a gated house near the Kpone Traditional Council, and the accused person led them to his room. In the room, the victim pointed to a double mattress on the floor where she and her father slept. The accused person was questioned in the presence of the accompanying parties, the Adolescent Health Focal Person and one C/Insp. Anapey, whether he had sexual intercourse with his daughter, the victim. The accused person admitted in Twi that he had sex with the victim once in their former house but could not remember the date and that he was responsible for the victim's pregnancy. In support, she tendered in evidence a video recording of the confession of the accused person, admitted and marked as Exhibit "C". She tendered the investigation caution statement, the endorsed medical form and the charge statement of the accused person in evidence. The accused person in his investigation caution statement admitted and marked as Exhibit "B", stated that he had developed sexual affection towards his daughter and for four months before taking of the statement, he had sexual intercourse with her about twelve times and that at the hospital when the doctor confirmed that the victim was pregnant, he pleaded with the doctor to abort the pregnancy since the victim was a pupil. The accused person in his defence, vehemently denied having sexual intercourse with the victim and maintained that he only accepted responsibility for the pregnancy for the medical doctor to assist in terminating the pregnancy in order not to jeopardise the victim's education. The accused person under cross-examination by the prosecution testified that at the time the incident occurred, his rent was due and that he was not in the right frame of mind. Also, he vehemently denied having sexual intercourse with the victim and testified that when he went to the Police Station, the investigator told him that they would only work with the statement given by the doctor. The court ordered a DNA test to be conducted on the baby, given the testimony of the alleged victim that she did not see

her father having sexual intercourse with her and that it is based on the confession of her father. The DNA report filed in this court excludes the accused person as the father of the baby. This court then has to determine the effect of the confession made by the accused person in the light of the evidence of the victim that she did not see the accused person having sexual intercourse with her but always woke up with liquid substances in her vagina. The position of the law is that a court can convict based on the confession of an accused person, provided the confession was genuine and untainted. In the case of Billa Moshie

- v. The Republic [1977] 2 GLR, 418, CA, in its holding 2 stated: “A conviction could quite properly be based entirely on the evidence of a confession by a prisoner, and such evidence was sufficient as long as the trial judge inquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness” Also, in the case of Ekow Russel v. The Republic [2017-2020] 1 SCGLR at 469, the court held in its holding 6 that: “it was correct to state that the admission of a statement by a court did not necessarily mean that the statement was of evidential value so as to automatically result in conviction. A statement that was admitted into evidence must be weighed to determine whether it was valuable enough to sustain the conviction sought.” In the instant case, the prosecution must prove that the accused person had carnal knowledge of the victim. The victim stated that she never saw the accused person having sexual intercourse with her. Instead, she assumed he was responsible based on his confession. The accused person initially confessed to the crime during police interrogation. From the video taken at the alleged scene of the crime, the accused person was handcuffed and during the interrogation, the investigator asked him about the number of times he had sexual intercourse with the victim and he mentioned that it was only once when they were living in their previous house. Towards the end of the video, when asked again if he had sexual intercourse with the victim, the accused person equivocally stated that since he is the only person who lives with the victim in the room and she claims not to know the one who impregnated her, the only logical conclusion was that he was responsible for the pregnancy. Again, he further stated that at the hospital, he only accepted responsibility so that the doctor would assist in terminating the pregnancy to avoid disrupting the victim’s education. It is a trite law that confessions must be corroborated by independent evidence. If a confession is later retracted, the court must consider its reliability. The victim testified that she did not see her father having sexual intercourse with her. Her claim that she believed he did is based on the accused person’s confession to the police. But justice does not bend to whispered confessions alone. It seeks evidence, clear and undeniable for in its pursuit, no man shall be condemned upon mere uncertainty. This court, guided by the unwavering principles of fairness, turned to science and ordered a DNA test to determine the paternity of the child. In the case of Asante (No.1)
- v. The Republic (No. 1) [2017-2020] 1 SCGLR, 137, the SC on the issue of DNA results held per curiam that; “In the particular circumstances of this case [though] the 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...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 the appellant who had sexual intercourse with her leading to pregnancy and that has legal implications including her credibility as a witness." The Supreme Court further held at page 138 of the headnote that: ".... 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... 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 were compelling evidence linking the accused to some other sexual intercourse not connected with the pregnancy, then he would have to answer to that." In the instant case, the DNA test, a revelation of certainty in a sea of doubt, speaks louder than any confession and suspicion: the accused is not the father of the child. This makes the alleged confession given by the accused person doubtful. The victim's testimony that she was a virgin and could not have been pregnant therefore strains credulity. With that single stroke, the cornerstone of the prosecution's case crumbled into dust. This is critical because it contradicts the main assertion that the accused person impregnated his daughter. Since the prosecution's case largely relied on pregnancy as proof of carnal knowledge by the accused person, the DNA results cast serious doubt on their claim. There is no eyewitness testimony or forensic evidence that links the accused person directly to the alleged crime. The victim's testimony is inconclusive, as she never saw the accused person committing the act, and the physical evidence, i.e. whitish discharge and blood, does not specifically prove the accused person's involvement. On the totality of the evidence led and the defence put up by the accused person, given the lack of direct evidence, the victim's uncertainty and the DNA evidence disproving paternity showing that someone other than the accused person had sexual intercourse with the victim. And so, this court, in its sacred duty to uphold justice, refuses to chain a man upon the weight of unproven claims. The law demands proof and where proof has not been given, the law must set the accused person free. Thus, in the name of justice and fidelity to the law and in solemn acknowledgement that doubt is the enemy of conviction, I pronounce the accused person not guilty to the charge and accordingly acquit and discharge him of same. SGD. H/L JUSTICE AGNES OPOKU-BARNIEH (ADDITIONAL CIRCUIT COURT JUDGE) 13

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