

IN THE CIRCUIT COURT HELD AT SOGAKOPE ON MONDAY, 17TH OCTOBER, 2022 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

CASE NO.: CC38/2021

THE REPUBLIC

VRS

VORSAH DELIVER

ACCUSED PERSON PRESENT

INSPECTOR DAVID NUKPENU FOR THE REPUBLIC PRESENT

JUDGEMENT

The Accused person stands charged before this Court with the offence of Causing Harm contrary to section 69 of the Criminal Offences Act, 1960 (Act 29). Upon his arraignment in this Court, the Accused person pleaded not guilty after the charge had been read over and explained to him.

BRIEF FACTS OF THE CASE

The brief facts of the case were that on the 6th November, 2020 at about 7:30pm, the Accused person visited the complainant in his house and invited him for outing. Both went out but the complainant remembered that he did not lock his door as such they returned and entered complainant's room and stayed in for some time. Finally, when they came out of the room, the Accused person started demanding for his motorbike from the complainant. The complainant told the Accused person that he did not bring a motorbike to the house but the Accused person stated the contrary. The complainant together with his brothers and the Accused person went out in search of the motorbike but it could not be found and they all dispersed. Later, when the

complainant was on his way going home, the Accused person traced and held the complainant's shirt against his neck. While the complainant was trying to free himself, the Accused person removed a pair of scissors from his back pocket and stabbed the complainant at his chest. The complainant sustained severe injury and he was rushed to the Sacred Heart Hospital at Abor where he underwent surgical operation.

THE CASE OF THE PROSECUTION

The prosecution called three (3) witnesses in establishing its case. The testimony of PW1 (Thomas Atsu) and PW2 (Benjamin Atsu) confirmed the facts as presented by the prosecution.

PW3 (Detective Inspector Japhet Prempeh) investigated the case. He relied on his Witness Statement together with the exhibits attached.

After the close of the case of the prosecution, the court ruled that a prima facie case had been made out against the Accused person, and so he was accordingly ordered to enter into his defence.

THE CASE OF THE DEFENCE

In opening his defence, the accused person testified himself and did not call any witness. The Accused person told the court that on that fateful day, he went to visit the complainant (PW1) and that when he got there PW1 was cooking. It is the case of the Accused person that he went to the house of PW1 with his motorbike and parked it outside before entering the room. That when they came out of the room, he noticed that his motorbike was nowhere to be found. So they started searching for the motorbike until they met Ben Atsu (PW2) who also said he had not seen the motorbike so they continued their search. According to the Accused person, he told PW1 that when he

came to his house, he slept for some time and so if anyone came to take the motorbike, he should be in the known since he was not sleeping. According to the Accused person, this angered PW1. Four (4) family members of PW1 came to listen to what the problem was and after that they started confronting and pushing him and one Kwadzo slapped him. They pushed him onto the ground and continued beating him. The Accused person told the court that his uncle's son was passing by to go and fetch water and he saw them assaulting him on the ground until he intervened and restrained them from beating him. The Accused person denied stabbing the complainant.

At the end of the trial, the Court had to determine whether or not the Accused person herein intentionally and unlawfully caused harm to PW1.

The common law rule that a person was presumed innocent until the contrary was proved or he pleaded guilty is reinforced by Article 19(2)(c) of the 1992 Constitution which reads:

"A person charged with a criminal offence shall ----- (c) be presumed to be innocent until he is proved or has pleaded guilty."

The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in sections 13 and 15 of the Evidence Act, 1975 (NRCD 323). Significantly, whereas the prosecution carries that burden to prove the guilt of the Accused beyond reasonable doubt, there is no such burden on him to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful.

Section 11(2) of the Evidence Act, 1975 (NRCD 323) provides that:

“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 could find the existence of the fact beyond reasonable doubt.”

In Republic v. District Magistrate Grade II, Osu; Ex parte Yahaya [1984–86] 2 GLR 361-365, where Brobbey J. (as he then was) stated and I quote:

“One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt.”

Section 69 of Act 29 provides:

“A person who intentionally and unlawfully causes harm to any other person commits a second degree felony.”

The elements of causing harm are that:

- i. The accused person has caused harm;
- ii. it was caused to a person, and
- iii. the harm was unlawful.

Section 76 defines unlawful harm as:

“Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in Chapter One of this Part.”

It is not in dispute that PW1 suffered some stab wounds on his chest. The testimony of PW2 corroborated that of PW1. PW1 and PW2 were consistent in their testimony and I have no cause to disbelieve what they told the court in respect of the charge against the Accused person.

It is noted that the Accused person in opening his defence, flatly denied stabbing PW1. In his Cautioned Statement given to the police on the 18th November, 2020, the Accused person again denied the offence.

On the part of the defence, that is the Accused person, all that he needs to do by way of producing evidence is to raise a doubt as to his guilt. Woolmington v Director of Public Prosecution [1935] AC 462 is the locus classicus on this principle where the Appeal Court of England per Sankey LC expressed the view that:

"...while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence."

In his evidence in open court, the Accused person told the court that when the four (4) family members of PW1 heard what the problem was and pushed him to the ground and started beating him, his uncle's son intervened and restrained them from further assaulting him. The Accused person failed to call his uncle's son to corroborate his testimony or to testify in support of his case.

The Medical Report authored and signed by Dr. Evans Quarshie of the Sacred Heart Hospital, Weme-Abor stated as follows:

"Client was rushed to our facility on 07/11/2020 around 6:49pm with a history of stabbed wound. He alleged he was stabbed with a knife on the left side of the chest. On examination: young male, sweating profusely and has a stabbed wound on the left hemithorax about 2cm deep (on the 3rd to 4th intercostal space). Air entry was reduced on the left hemithorax.

Diagnosis: Left haemothorax 2nd degree stabbed wound.

Had chest tube insertion done in theatre and was given two (2) units of whole blood.

Was admitted and managed for ten (10) days”

Right of self defence of a person is recognized in all free, civilized, democratic societies within certain reasonable limits. In *Sabbah v. The Republic* [2009] SCGLR 728, the Court held as follows:

“It is therefore trite learning that whenever the defence of self-defence is put up by a person, the use of force or harm in defending oneself or another person shall be reasonably necessary within the circumstances.”

Also, in *Larti v. The State* [1965] GLR 305, the Court held that:

“In the defence of self defence, the nature of the injury or harm caused by the person to another that is not reasonably necessary within the circumstances may displace the defence of self defence.”

A legal philosopher, Michael Gorr in his article “*Private Defense*” (published in the Journal “*Law and Philosophy*” Volume 9, Number 3/August 1990 at Page 241) observed as follows:

“Extreme pacifists aside, virtually everyone agrees that it is sometimes morally permissible to engage in what Glanville Williams has termed “private defence”, i.e. to inflict serious (even lethal) harm upon another person in order to protect oneself or some innocent third party from suffering the same.” This quotation is captured under section 37 of Act 29.

The question to pose at this stage is whether or not the harm or injury caused to PW1 by the Accused person was justified and reasonably necessary under the circumstances. Upon the totality of the evidence adduced at the trial, the

court finds that the Accused person was not attacked by the Accused person in anyway whatsoever for this harm to be caused to him. More so, in his evidence in open court, the Accused person told the court that four (4) family members of the Accused person pounced on him, pushed him to the ground and started assaulting him. Assuming without admitting that four (4) family members of the Accused person assaulted PW1, then who is this person who stabbed PW1 on the chest since he was not part of the alleged four (4) family members.

In Lutterodt v. Commissioner of Police [1963] 2 GLR 429 at 430 at holding 3, the Court stated and I quote:

- a) *if the explanation of the defence is acceptable, then the accused should be acquitted;*
- b) *if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;*
- c) *if quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict...".*

The court finds the defence of the Accused person as afterthought, infantile, misconceived and an attempt to escape from criminal liability. Upon a careful consideration of the totality of the evidence on record, the court finds the prosecution has been able to prove its case beyond reasonable doubt. In the circumstances, the court finds the Accused person herein guilty of the offence of Causing Harm, and he is accordingly convicted.

SENTENCING:

In sentencing the Accused person, I take into consideration of the fact that he is a first time offender and also a young man. However, looking at the nature of the offence and severity of the harm caused to PW1 which could have made him lose his life, passing a deterrent sentence on the Accused person will be appropriate. In the circumstances, the Accused person herein, Vorsah Deliver is hereby sentenced to serve a prison term of Five (5) years In Hard Labour.

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ISAAC ADDO
CIRCUIT JUDGE
17TH OCTOBER, 2022