

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON WEDNESDAY,
THE 29TH DAY OF MARCH 2023 BEFORE HER LADYSHIP ROSEMARY BAAH
TOSU – HIGH COURT JUDGE SITTING AS AN ADDITIONAL HIGH COURT
JUDGE

SUIT NO: D8/5/2021

THE REPUBLIC

VS

ALBERT ADJETEY ADJEI

RULING

Torkonoo JA (as she then was) in the case of *Aaron Kwasi Kaitoo vs Republic*, case number H2/25/2017, unreported

“The decision of the Supreme Court from this summation is that the time the prosecution concludes the presentation of the evidence of the State is not the time to analyze the various ingredients of the offence and determine whether evidence has been tendered to prove them beyond reasonable doubt. The threshold for guilt being proof beyond reasonable doubt must be the subject of the court’s evaluation only at the end of the suit and at the time for writing a judgment.

The duty of the Court at the end of prosecution’s case is to determine and act on the import of the evidence not its positive weight. The relevant question is-is the evidence preferred by the prosecution insufficient to ground the finding of the offence? Or is it of such quality that the Court finds the essential elements of the offence as presented?

The court has to be satisfied that the evidence presented is of such a quality that inter alia, the essential elements of the offence are not missing from the evidence”.

Accused is charged with causing unlawful harm to the Complainant, Emmanuel Salifu Suleman. He pleaded not guilty to the charge.

PROSECUTION’S CASE

Per the facts relied on by Prosecution, on the 20th July, 2020, Accused engaged the complainant to roof his building for him. Even though, the complainant tried to negotiate his fee, Accused insisted that he should complete the work first and he would pay him afterwards.

The complainant consented to this arrangement and requested a fee of GHS300 after completing the work. Accused however insisted he could afford only GHS100, whilst complainant insisted that he should at least pay GH200.

This resulted in a heated argument between the two, complainant then left. The next day, complainant returned to demand for his fees, Accused also stood his ground that he could only afford GHS100. This annoyed the complainant, who climbed the roof to remove the roof he fixed. The Accused also climbed to prevent complainant from doing this.

In the struggle that ensued, Accused pushed the complainant and when he was falling, Accused held on onto his leg and they both fell down. The complainant had serious injuries and could not move, a passer by rushed him to the Police Hospital for treatment but he was later referred to 37 military Hospital. Whilst the complainant was receiving treatment, the Accused went to the Osu Police Station and lodged a complaint.

Prosecution called three witnesses. The first is the complainant and victim., Emmanuel Salifu Sulemana. His evidence is that he is a carpenter who resides at Osu. He testified that on 20th July, 2020, Accused employed his services to roof a building. He says that he attempted to negotiate his fee, however, Accused insisted he would pay him after the work is complete. After completing the work, PW1 says he charged a fee of GHS 300, but Accused insisted he could only pay 100 GHS. PW1 says that he then reduced the fee to GS 200 but Accuses still insisted on the GHS100.

On 22nd July, PW1 returned to the house and insisted on payment. Failing to convince Accused to pay him the sum, he climbed up to remove the roof. Accused then climbed and started to fight with PW1. Both parties fell down the roof.

PW1 says he climbed back onto the roof and accused followed suit and pushed him down. PW1 says that he fell on his back and Accused fell directly on him. PW1 says that he suddenly became weak and motionless when Accused stepped on his neck and used a broken bottle to hit his head.

The second prosecution witness is Detective Sergeant Welbeck Adjena. He testified that he was the investigator on the 24th July, 2020 when a case of Causing Unlawful Harm was reported. The Police then proceeded to the house of PW1 to obtain a statement from him after was discharged.

Upon being interrogated Accused informed Police that he fought with PW1 on a roof and they both fell down from the roof to the ground. Accused led Police to the scene and pointed out where the PW1 fell but the place was found repaired. Accused was then charged with Causing Unlawful Harm. PW2 attached exhibits

- Investigative Cautioned Statement – Exhibit A
- Charged Statement – Exhibit B
- Photograph of victim- Exhibit C and C1
- Medical Report- Exhibit D

PW3 is a witness in this matter, Ernest Amewu. He testified that on the 21st July, 2021, he was asleep when he overheard noise outside his room. He rushed out and saw both Accused and PW1 on a roof of Accused person's building. He testified that Accused refused to come down when he was asked to, the two fought until they both fell down through one broken slate into Accused person's room.

PW3 says he rushed to the room and separated them, upon enquiry PW1 informed that Accused had refused to pay him for the work done as a result, he would remove the wood work done. Accused also retorted that if PW1 was unwilling to take a fee of GHS100, he can go ahead and remove the roof.

PW1 climbed the building to remove the roof, and Accused followed him. As PW1 was removing the slab, Accused pushed him and both of them fell. Accused landed on his back and became motionless, Accused took a broken bottle and hit PW1's head. PW3, says he rushed to push Accused off PW1.

At that moment, PW1 started complaining about his heart so PW3 fetched water and poured it over him. He took a vehicle to take PW1 to the hospital, his request to Accused to accompany them was rejected.

THE CHARGE OF CAUSING HARM

'A person who intentionally and unlawfully causes harm to another person commits a second degree felony'.

The ingredients of the offence which the Prosecution must prove therefore are

1. That Accused caused harm
2. That the harm was unlawful

3. That the harm was caused intentionally.

The first element to consider is that Accused caused harm to PW1. In this case, there are only two actors, PW1 and Accused person. The evidence, though denied by Accused is that he pushed PW1 and he fell down the roof. The harm caused PW1 is evidenced by exhibits C series, pictures of the wounds on PW1 and the medical report, exhibit D. I find that Prosecution has proved sufficiently that Accused caused harm to PW1.

The second element Prosecution must prove is that the harm was unlawful.

Section 76 of Act 29 defines unlawful harm

'Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in Chapter 1 of this Part.

Section 31 of Act 29 provides a list of grounds on which force or harm may be justified, it reads

Force may be justified in the cases and manner, subject to the conditions, hereinafter in this Chapter mentioned, on the ground of any of the following matters, namely—

- (a) express authority given by an enactment; or*
- (b) authority to execute the lawful sentence or order of a Court; or*
- (c) the authority of an officer to keep the peace or of a Court to preserve order; or*
- (d) authority to arrest and detain for felony; or*
- (e) authority to arrest, detain, or search a person otherwise than for felony; or*
- (f) necessity for prevention of or defence against crime; or*
- (g) necessity for defence of property or possession or for overcoming the obstruction to the exercise of lawful rights; or*
- (h) necessity for preserving order on board a vessel; or*
- (i) authority to correct a child, servant, or other similar person, for misconduct; or*

Section 37 of Act 29 provides

'For the preservation of or for the defence of himself or any other person against any crime, or for the suppression or dispersion of a riotous or unlawful assembly, a person may justify any force or harm which is reasonably necessary extending in case of extreme necessity, even to killing.'

I have not sighted any justification so far in the evidence led. I find that the Prosecution has led sufficient evidence that the harm caused to PW1 was unlawful.

The third element Prosecution needs to prove is that the harm was caused intentionally. PW3 testified that Accused pushed PW1 down this was confirmed by PW1's evidence in chief that Accused pushed him.

I find finally that Prosecution has proved sufficiently that the harm caused was intentional.

Section 174(1) of Act 30 provides

'At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require him to make a defence, the court shall call upon him to enter his defence'.

I find that Prosecution has made out a prima facie case against Accused, I would call on him to enter a defence at the next sitting of this Court.

(SGD)

**H/L ROSEMARY BAAH TOSU (MRS)
HIGH COURT JUDGE SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE**