

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 25TH JULY, 2023

SUIT NO. D4/5/22

THE REPUBLIC

VRS

NANA GYAMERA AMPEM II

JUDGMENT

The accused person was arraigned before this court on the 17th day of May, 2022 on a charge of causing unlawful harm contrary to *section 69 of the Criminal Offences Act, 1960, Act 29*. The particulars of offence are that on the 8th day of September, 2021 at Community 12, Tema in the Tema metropolis and within the jurisdiction of this court, he unlawfully pushed one Mercy Nyadzi to fall on the ground by which the said Mercy Nyadzi sustained a twist on her right leg.

The accused person pleaded not guilty to the charge after same was read and explained to him in his language of preference; twi. A plea of not guilty serves as both a shield and a sword. A shield for the accused person who IS presumed to be innocent until proven guilty and does not have to say anything in proof of his innocence and a sword pointed at his accusers to lead evidence to establish a prima facie case against them.

Per *Article 19 (2) (c) of the 1992 Constitution*, the accused person is presumed innocent until proven guilty. According to the case of *Davis v. U.S. 160 U.S 469 (1895)* "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it

appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

The presumption of innocence guaranteed under the *1992 Constitution*, is **not cast in historic concrete like King Arthur's sword**. That guarantee is that she is presumed innocent *until prosecution* has been able to lead evidence to establish her guilt beyond reasonable doubt.

That being so, prosecution may lead credible, relevant and material evidence in proof of the charges to upset that presumption. A court thus commences a criminal trial where an accused has pleaded not guilty on the rebuttable presumption that the accused person is innocent until proven guilty. The onus lies on prosecution to lead evidence to establish a prima facie case against the accused person by the close of their case.

It is only then, that prosecution would be deemed, prima facie to have upset the presumption of innocence in favour of the accused person and he would in turn be called upon not to prove his innocence, but to raise a reasonable doubt as to his guilt.

In the case of *Gligah & Atiso v. The Republic [2010] SCGLR 870 @ 879* the court held that *"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 is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story.*

Prosecution in proof of its case called two witnesses. According to PW1, he accompanied the complainant to the house of PW1 at community 12 for some documents. That they arrived at 5:30 am and were asked to wait for the accused person at the porch. That after waiting for some hours, he decided to go and relax in his car.

Whilst there, he heard PW1 shouting that "my leg is injured". That he rushed to the porch to see the complainant groaning and in pain. Complainant informed him that it was the accused person who pushed her to the ground.

That he saw the accused person standing by complainant and yelling at her. when he told the accused person that he was a police officer, he turned his insults to him and abused him. Accused person also told him that there was nothing he could do to him and complainant deserved the harm that had been caused to her.

That he carried complainant into his car and drove her to Aponche clinic where she received medical treatment and subsequently to the police station to lodge a complaint.

EVIDENCE IN CHIEF OF PW2

PW2 is the complainant. Her evidence is that she and the accused person signed an agreement which involved her handing over the original copies of her company documents to him.

That when she later demanded for a return of the documents, the accused person insisted that they meet in person. That the accused person had earlier proposed love to her and she turned him down.

She continued that on the 8th day of September, 2021, she and PW1 went to accused person's house at 5:30 am to take delivery of the documents. They were asked to wait and they waited for about an hour and a half without him attending to them.

That PW1 left to his car to relax. She later called out accused person's name and upon hearing her voice, the accused person ordered his son to push her out of the house which he did.

Further that the accused person also rushed out of his room and began to angrily push her with so much force that she twisted her right leg. That in the process, the accused person's shirt fell on her and she took same as evidence.

PW1 upon hearing her groan and moan in pain rushed to the scene and carried her out to the aponkye clinic where she received treatment. That she was later rushed back to the hospital due to the excruciating nature of the pain.

That she was later issued with a police medical form which she returned to the police after same was endorsed. She tendered same in evidence as EXHIBIT A. That she also had to seek herbal treatment after attending hospital for six (6) weeks without any improvement.

Although PW2 mentions a photograph of a shirt as well as photographs of her right injured leg together with receipts of money she spent on treatment, same were not attached to her evidence in chief.

CONSIDERATION BY COURT

Section 173 of the Criminal Procedure and Other Offences Procedure Code, 1960 (Act 30) provides that; "If 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."

In deciding whether or not a case is made out against the accused sufficiently to require him to make a defence, the Court must make these considerations. The first is whether prosecution has led evidence to establish all the requisite elements of the offence. The second is whether the evidence has not been so discredited under cross examination, the third is, whether the evidence is reliable and the court can safely convict on it if the accused person exercises his constitutional right of silence when called upon to open his case and finally, that the evidence on record does not lend itself to two interpretations; one of guilt and one of innocence.

Where the evidence is evenly balanced and susceptible to a construction of guilt on one hand and of innocence on the other hand, then the court must arrive at a conclusion that the accused person has no case to answer and thus proceed to acquit and discharge him. See the locus classicus cases of *The State v. Ali Kassena* [1962] 1 GLR 144, *Apaloo & Ors. v The Republic* [1975] 1 GLR 156) *Gyabaah v The Republic* [1984-86] 461 C.A and *Tsatsu Tsikata v. The Republic* [2003-2004] SCGLR 1068).

In the case of *Mali v. The State*, [1965] GLR 710, the Supreme Court laid out a fifth ground for upholding a submission of no case where it held that "where at the end of prosecution's case, the court requires further evidence given by prosecution, then the irresistible inference is that the prosecution has not made out a case and the accused should be acquitted".

On a charge of causing unlawful harm, the requisite elements for the prosecution to establish the charge are that;

1. Accused caused harm to PW2
2. The harm was intentional and
3. The harm was unlawful.

Section 1 of the Criminal Offences Act, 1960 (Act 29) defines harm to mean any bodily hurt, disease, or disorder, whether permanent or temporary. Thus prosecution must prove that the accused person by his actions or omissions caused a bodily hurt, disease or disorder to the complainant. In the case of harm by a bodily hurt, the prosecution must prove that there was a break in the skin of the complainant.

As was said by **Osei Hwere J.** (as he then was) in the case of *Comfort & Anor v. The Republic [1974] 2 GLR 1* bodily harm," of course, includes, any hurt or injury calculated to interfere with the health or comfort of the victim and, although it need not be permanent, it must be more than merely transient and trifling'.

Mere harm alone is however not enough. The prosecution must go on to prove that the harm was caused intentionally by the accused person. Provisions relating to intention are provided for under *section 11 of Act 29*. A person is presumed to intend the natural and probable consequences of his actions.

Prosecution must finally establish that the harm that was caused was unlawful. Harm according to *section 76 of Act 29* is "unlawful which is intentionally or negligently caused without any of the justification mentioned in Chapter I of this Part.

On the first element that prosecution must prove which is that the accused person caused harm to PW2, the evidence of PW1 and PW2 that the accused person pushed PW1 and she fell and twisted her leg was put to rigorous cross examination by learned counsel for the accused person.

At page 22 of the record of proceedings, learned counsel for the accused person had asked PW1;

Q: *I am putting it to you that you never saw the accused person push the complainant.*

A: *My lord, I saw it.*

Q: *I am putting it to you that you are not being very truthful to the court as there was no way you could have seen the accused person when you were outside the gate. You could not see through a locked gate.*

A: *My lord, the wall had blocks with holes and so one can see through the holes.*

Q: *Granted but not admitting that what you are saying is true, why did you not state that in your evidence in chief?*

A: *My lord, I wrote it.*

Q: *Please kindly direct the honourable court to where exactly you have stated in your evidence in chief*

BY COURT: *PW1's evidence in chief handed to him.*

A: *My lord, please it is not here*

Q: *So I am putting it to you that it is not in your evidence in chief because you did not see the accused person push the complainant and the accused person never pushed the complainant.*

A: *My lord, the accused person pushed the complainant and I took her to the hospital.*

Q: *In your own evidence in chief, you wrote that you heard the complainant shouting and you rushed to the accused person's home.*

A: *My lord, he pushed her and she was screaming that is why I went there.*

Q: *Now in paragraph 6 of your evidence in chief, (counsel reads) do you still stand by this?*

A: *Yes my lord.*

Q: *And again in paragraph 7, you said it was the complainant that said accused person pushed her. Is that also not true?*

A: *That is so my lord.*

Q: *So I am putting it to you that from your own paragraph 6 and 7, you never saw the accused person push the complainant.*

A: *My lord, I saw it.*

Q: *Again, did you see the accused person causing harm or any injury to the complainant?*

A: *My lord, what I saw was that he pushed her.*

Q: *So I am putting it to you again that the accused person never caused any injury to the complainant.*

A: *My lord, he injured her.*

Q: *How did he cause injury to the complainant?*

A: *My lord, when he was coming from inside, he saw the complainant at his porch and the accused person pushed her that is how she twisted her leg.*

Q: *So you want this honourable court believe that whilst you were relaxing in your car outside the locked gate, you saw inside the accused person's porch.*

A: *Yes, my lord. The house, the walls there are holes in it so when you are outside, you can see through the holes inside the house.*

PW2 herself under cross examination by learned counsel for the accused person at page 37 of the record of proceedings as to how the offence had occurred had this to say;

Q: *Did you have any encounter with accused person's son, Elijah?*

A: *Yes, my lord. The accused person asked his son to push me out of the house.*

Then at page 42 of the record of proceedings, she had answered;

Q: So now tell this court, your alleged push, how many people pushed you?

A: I was pushed by his son, then later on, the father also pushed me.

I have reproduced the relevant portions of the cross examination in extenso because it speaks for itself. Counsel for accused person had discredited the evidence in chief of prosecution witnesses as to how the offence was committed. In his evidence in chief, PW1 said he was outside relaxing in a car and it was the screams of PW2 that had brought him inside accused person's house. That he met PW2 in pain and it was then that she told him that accused had pushed her.

Then under cross examination, he changes this to say that he saw the accused person push PW2 through the holes of accused person's fence wall. That he had a first hand knowledge of the incidence and it is not PW2 who told him. This is in stark contradiction to his own evidence in chief.

I do not believe his evidence for the simple reason that as a police officer, if he had indeed witnessed any such act, one would have expected him to spring into action to save the situation rather than wait for PW2's screams before going into the house.

PW2 herself says accused person's son pushed her upon the instructions of the accused person and accused person had then joined in to push her. If indeed PW1 saw the entire incidence as he wants this court to believe, then he would naturally have seen the son of the accused person push PW2.

Counsel for accused person in cross examining prosecution witnesses, had also picked on the time of their arrival at the house. In so doing, he had asked PW1 at page 26 of the record of proceedings;

Q: *And even if the time is 5:30am what did you go there to do.*

A: *My lord, I spoke to the accused person earlier on before that day, and he agreed that complainant and I should come for the document that is why we went there.*

Q: *So do you want this honourable court to believe that you and the accused person agreed that you should come to his house at 5:30am for collection of document.*

A: *My lord, the complainant spoke with the accused person before we went there.*

Q: *From your own answer, you just told this court that you spoke to the accused person you agreed that you come to his house for the document and now you are saying complainant spoke to accused person. which is which?*

A: *My lord, I spoke with the accused person before I went there with the complainant.*

Q: *I am putting it to you that there is no way the accused person will tell you to come to his house as early as 4am or 5:30 for the document.*

A: *My lord, it is the complainant who asked that we go at that time because she has spoken to the accused person.*

Q: *So I am putting it to you that if you were acting in good faith, you would have told the complainant that 4am or 5:30am is too early so she should wait till 7am or 8am before going.*

A: *My lord, according to the complainant, she said that Nana that is accused person normally goes somewhere so it is at that time that we can find him at home.*

Then at page 35 of the record of proceedings, he had asked PW2;

Q: *And you knowing that the accused person is an honourable chief, were you supposed to go there even at that 5:30am and as a married woman as you claim?*

A: *Accused person gave the time to chief inspector Amoah that we should come around that time.*

Q: *I put it to you that you are not being very forthright with this honourable court. When PW1 was asked, he said you gave him the time.*

A: *It is never true.*

Clearly, PW1 and PW2 had decided not to be forthright to this court. I hesitate to accept their evidence as a being credible. I find that their evidence as to the accused person pushing PW2 and causing her to twist her leg has been so discredited under cross examination that I cannot safely rely on same.

This trial is evidence of the fact that a house divided against itself cannot stand. There was no evidence from the investigator in this case and so there is neither an investigation caution statement or charge statement in evidence before this court.

It is elementary that the Attorney General of the Republic is vested with the right to initiate and prosecute all criminal offences within Ghana. *See Article 88 (1) of the Constitution, 1992.* As part of its powers, the Honourable Attorney General through E.1. 4 of 1976 has delegated some of its prosecutorial powers to the Ghana Police Service.

It is thus a legal known that criminal trials are carried out in the name of the Republic and not an individual. A complainant, no matter how aggrieved he or she is, cannot prosecute a criminal case in any court within the jurisdiction. The complainant is

regarded as a witness whose evidence would aid prosecution in establishing its case against an accused person.

In this case, it appears that there are two prosecutors; the police and PW2, the complainant. I say so because the abundant evidence on record shows that right from the onset of proceedings, the prosecution and complainant were set on different paths which could only lead to a head on collision.

The evidence on record indicates that police prosecution filed its disclosures and witness statements on the 10th day of June, 2022. Case management conference commenced on the 15th of July, 2022 and ended on the 14th of October, 2022. The long duration of C.M.C was due to the fact that prosecution had indicated in the witness statement of complainant some proposed exhibits which are attached to the said witness statement which were absent in the disclosures. These proposed exhibits were indicated in paragraph 15, and 21 of PW2's evidence in chief.

In as much as the court granted prosecution various extensions of time to put its house in order, the prosecutor is on record as having said that the complainant is unwilling to hand those proposed exhibits to him to file and complainant had caused her lawyer rather than herself through prosecution to prepare the witness statement which was filed on her behalf.

At page 4 of the record of proceedings, prosecution had indicated during CMC;
Prosecution: My lord, with the complainant, she brought her own witness statement and said a lawyer had prepared it for her. She is quite controversial and she insisted that we should file what the lawyer has brought even though we do not have the exhibits she is mentioning. My

lord, the lawyer can cross-examine on it. With the investigator's paragraph 9, it appears to be an oversight and so I would ask him. If the pictures exist, then we would file same.

BY COURT: In the circumstance, the court would give prosecution time to put its house in order.

Prosecution: My lord, I can put my house in order in 2 weeks' time.

Then at page 5 of the record of proceedings, prosecution had again indicated to the court;

Prosecution: My lord, we are sorry. We have not been able to put our house together because I am having issues with complainant. She is a difficult person who does not understand anything. I have prepared all that needs to be done but I require some intended exhibits which are in her custody. All this while, I have been speaking to her on phone and so I pray for a last adjournment to put our house in order.

Further at page 6 of the record of proceedings, prosecution had indicated; *Prosecution: My lord, counsel during case management conference requested for an exhibit that our intended PW1 had indicated in her witness statement. I contacted her and she refused to hand it to me. Counsel also pointed out a mistake that we have made as to complainant's name. I have retyped everything for her to come and sign and she has refused it on the basis that we know the mistake and filed so we should go ahead with it. Meanwhile, she brought us the witness statement herself and said her lawyer prepared it. I have asked her to tell me the lawyer's name so that I can contact him myself but she has refused to. My lord, that is our predicament. In all these, she has reported us to PIPS because she has reported the chief inspector who accompanied her to arrest the accused person. I pray that the court allows me to correct the mistake by pen so that we can go to trial on what we have as it is.*

All the submissions of prosecution were on different dates during the course of case management conference. The court had thus ended case management conference without material exhibits indicated by the complainant; PW2.

The complainant mounted the box as PW2 and her witness statement was adopted as her evidence on chief on the 13th of June, 2023. The cross examination of learned counsel for accused person had harped on the absence of a photograph of accused person's shirt as mentioned in paragraph 15 of her evidence in chief, photographs of PW2's supposed injured right leg, receipts of money spent on treatment and transportation as well as a video footage of the incident which PW2 kept repeating. Counsel for accused person sealed her mouth and the case was adjourned to the 23rd day of June, 2023 for further cross examination.

On the 23rd day of June, 2023, at 10:57 am, PW2 on her own volition proceeded to file some documents at the registry of this court which according to her constitute the evidence which prove her case. Prosecution indicated that PW2 had decided to finally hand them the said documents after the last adjourned date and he had explained to her that it was too late in the day to file as C.M.C had concluded and the said documents were always in her possession during the C.M.C. That after this explanation, pw2 had decided on her own to file the said documents.

I disregarded whatever process PW2 filed because it is not part of the records of this court as documents prosecution intends to rely on at the trial or documents which came into the possession of the police in the course of investigations. Whatever she filed on her own volition was without an order of this court and learned counsel for accused person had not under cross examination prayed for an order of the court for her to produce the said documents.

It appears that she believed herself capable of prosecuting this case on her own. Unfortunately, the law does not allow for individuals or private prosecutors and neither can there be two prosecutors in one case. The documents which PW2 considers relevant to her case should have been handed to prosecution to file as part of its disclosures prior to case management conference.

The absence of the relevant documents in evidence means at the close of prosecution's case, aside from the evidence of prosecution witnesses having been so discredited under cross examination that this court could not safely rely on same, the court also required further evidence to be given by prosecution in proof of its case.

On these basis, I hereby determine at the close of prosecution's case that it has failed to establish a prima facie case against the accused person. He is hereby acquitted and discharged.

(SGD)

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

D.S.P J. ASAMANI FOR THE REPUBLIC

BERNARD ASARE FOR THE ACCUSED PERSON