

**IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON TUESDAY  
THE 19<sup>TH</sup> DAY OF SEPTEMBER, 2023 BEFORE HER HONOUR ENID  
MARFUL-SAU, CIRCUIT COURT JUDGE**

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CASE NO. D3/29/2020

**THE REPUBLIC**

**VRS.**

**ESTHER HONEY**

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*ACCUSED PERSON PRESENT*

*PROSECUTION: C/INSP. SALIFU NASHIRU PRESENT*

*COUNSEL: F.A. ACQUAYE ESQ. FOR ACCUSED PERSON PRESENT*

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**JUDGMENT**

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The Accused is charged with one count of Causing Harm to Benedicta Aboagye, contrary to Section 69 of the Criminal Offences Act, 1960 (Act 29).

The facts as presented by Prosecution are that the Accused and complainant live in the same house with their parents at Achimota. Prosecution says that on 6<sup>th</sup> January, 2020, the Accused and her sister had a quarrel with complainant's uncle who also lives in the same house. According to prosecution, during the quarrel, complainant came out to warn the Accused and her sister to stop making noise but they ignored her. Prosecution says that the complainant went out again and confronted the Accused person that she has three children with different fathers, and she is there quarrelling. This statement provoked the Accused and she wanted to beat the complainant, but people intervened, and complainant left the house. According to prosecution, around 7:00pm, when complainant returned home, the Accused attacked her with a fight and in the process of fighting she used a blade to cut complainant's face and bit her right breast. The case was reported to the police and the Accused was arrested and arraigned before this court.

Prosecution called two witnesses in support of its case. PW1 was the complainant Benedicta Aboagye and PW2 was the investigator D/Insp. Seth

Acolatse. PW1 testified that she is a sixteen-year-old student living in a family house shared to her aunties and uncles. According to her, one of her aunties rented her portion out to some people and since they came to live in the house there has been no peace. She testified that there were five people living in the said rented room including the Accused person and on 6<sup>th</sup> January, 2020, a fight broke out between her uncle and one of the people in the room called Faustina. She testified that Faustina was making noise and insulting her uncle to she went out and asked her to stop and talked to her uncle as well. She says that immediately the Accused came out of the room and Faustina told her she is a prostitute, so she also replied to her that if she is a prostitute then what about her who has given birth to two children with different men. She testified that the Accused asked her what she said to her sister and became offended and rushed on her and gave her a slap, so they started fighting and some tenants came to separate them. According to her, the Accused took a stone to throw at her, but she was held, and she was told to leave the house, so she left to her sister's place. She testified that she returned around 7:30pm on the same day and she was sent by her sister on an errand. On her way, the Accused person met her and said she was there to continue the fight, but she informed her she had been sent and started walking away. She says that the Accused pushed her, and she asked her what she wants from her, and she told her she was there to beat her so she asked her to do so. She testified that immediately the Accused brought out a blade and used it on her face and people came around to beat her, but she locked herself in a room till 11:00pm. She testified that she was taken to the police station by her brother and given a police medical form to attend hospital.

PW2 tendered the following which were admitted and marked:

- Exhibit A & A1: Investigative and Charge Caution Statement of Accused
- Exhibit B: Statement of PW1
- Exhibit C: Medical Report
- Exhibit D Series: Photographs
- Exhibit E & E1: Charge Sheet and Brief Facts

On 24<sup>th</sup> November, 2022, this court found that a prima facie case has been made against the Accused and called upon her to open her defence. The Accused testified on oath on 8<sup>th</sup> August, 2023 by means of a witness statement filed on 5<sup>th</sup> December, 2022. She testified that she lives in PW1's uncle's house with her mother. According to her on 6<sup>th</sup> January, 2020 there

was a quarrel between PW1's uncle and her sister because her sister had her decoration under the window of the said uncle and he threw them away. She testified that PW1's uncle started to insult her sister but though her sister was angry she did not insult him back. According to her, within an hour her sister and aunty were sitting outside when PW1's uncle passed and insulted them, but they did not respond because he is older and he drinks. She says that PW1 came out insulting them that they came to rent and not buy land and so her aunty also replied to her that she was a bad girl who loves to play with any man. She says that PW1 said to her aunty that she had given birth to two children with different men and this led to a fight and people came around to witness it. According to her, on the evening of the same day, PW1 came insulting her and she asked her if it was her she was insulting. According to her, PW1 responded that she does not have time for weeds like them and she proceeded to insult her mother without provocation. She says that that led to exchange of words and PW1 became aggressive and held her braided hair so she was throwing her hands at her to leave her hair. She testified that she had fixed artificial nails so while struggling to free herself he nails caused injuries to PW1's face. She says that PW1 refused to release her hair so in an attempt to free herself, she bit her chest but she did not stop until the braided her removed in her hands. She says that she did not intentionally cause harm to PW1 with any implement and that PW1's injuries were a little severe than hers. She says that PW1 was aggressive and mobilized more people to attack.

As already indicated, the Charge against the Accused is Causing Harm contrary to section 69 of Act 29. **Section 69 of Act 29** states as follows:

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

**Section 76 of Act 29** defines Unlawful Harm as follows:

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

The Justifications under Chapter One as referred to in section 76 are found in **sections 30 and 31 of Act 29** which provide as follows:

*“Section 30—Justification for Force or Harm.*

*(1) For the purposes of this Code, force or harm is justifiable which is used or caused in pursuance of such matter of justification, and within such limits, as are hereafter in this Chapter mentioned.*

*(2) Throughout the remainder of this Chapter, expressions applying to the use of force apply also to the causing of harm, although force only may be expressly mentioned.*

*Section 31—Grounds on which Force or Harm May be Justified.*

*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*
- (j) the consent of the person against whom the force is used.”*

Therefore, the elements of Causing Harm are that:

1. That the accused person caused harm
2. That the harm was caused to a person
3. The harm was unlawful

Prosecution tendered before this court Exhibits C and D in support of its case. Exhibit D Series shows images of PW1 with a stitched cut running vertically across her face as well as a bite on her breast. Exhibit D which is the medical Report provides in part as follows:

“...bite right breast  
...lacerations of face (sutured), scalp and neck  
Contusion of left eye  
Tension ...  
Neck contusion ”

There is therefore ample evidence of harm caused to PW1 on record.

PW1 has testified that the injury she sustained was caused by the Accused person. Accused on the other hand testified that PW1 held her hair and she (Accused) had fixed artificial nails so while struggling to free herself, her nails caused injuries to PW1's face. The Accused testified that PW1 refused to release her hair so in an attempt to free herself, she bit her chest, but she did not stop until the braided her removed in her hands. Therefore, she stated that she did not intentionally cause harm to PW1 with any implement. In her Investigative cautioned statement tendered as Exhibit A, Accused stated as follows:

“...This message provoked us and we fought with her and she ran away from the house. In the evening at about 6:30pm the complainant returned home and I met her going outside, I asked her what she was saying in the house she told me she has no time for me, and she straight [sic] her finger at my face. This resulted to fight again though I was holding blade but I did not use it to cut her face. I used only my finger nails to scratch her face. I could remember to have bit her breast.”

Clearly, the above extract is inconsistent with Accused person's evidence before this court that she was not armed with any implement.

In **REPUBLIC v. MAIKANKAN AND OTHERS [1972] 2 GLR 502** it was stated as follows:

*“Once it has been proved that a witness has made previous statements to the police, the contents of which are inconsistent with the evidence given in court by the same witness, the effect of the evidence is negligible.”*

Also, in **YARO AND ANOTHER v. THE REPUBLIC [1979] GLR 10** it was held as follows:

*“A previous statement made by a witness to the police which was in distinct conflict with his evidence on oath was always admissible to discredit or contradict him and it would be presumed that the evidence on oath was false unless he gave a satisfactory explanation of the prior inconsistent statement. A witness could not avoid the effect of a prior inconsistent statement by the simple expedient of denial...”*

When afforded the opportunity to explain the inconsistency in her prior statement and sworn statement, Accused stated as follows during cross examination:

**Q:** I put it to you that a finger nail couldn't have caused the harm

**A:** I did not use any implement

**Q:** I put it to you that you were armed with a sharp blade

**A:** I was not armed with a blade

**Q:** I put it to you that it was the same blade you used in giving complainant a deep cut on the face

**A:** No”

On the basis of the foregoing, I consider that the evidence of Accused on oath is negligible. During cross examination of PW1 by counsel for Accused the following ensued:

**Q:** I suggest to you that whatever happened to you during the fight was a self defence on the part of the Accused

**A:** No”

The defence of self defence shall therefore be considered on behalf of the Accused. Under Section 37 of the Criminal Offences Act, 1960 (Act 29), a person may for the prevention or for the defence of that person or any other person against a criminal offence or for the purpose of suppression use force or harm which is reasonably necessary to prevent or defend himself or another person. It is trite, that when a defence of self-defence is put-up by a person, the use of force or harm in defending oneself or another person must be reasonably necessary within the circumstances.

In this case, Accused has indicated in her evidence on oath that PW1 was the aggressor and that PW1 held her hair therefore in a struggle to free herself her nails caused injured to PW1's face. She added that because PW1 refused to release her hair, she bit her chest. Her statement to police however is indicative of the fact that on the said night of the incident, she (accused) was the one who approached PW1 while she was exiting the house and asked her a question and when PW1 indicated that she had no time for her, she says PW1 stretched her finger in her face which resulted in a fight. As already indicated, the inconsistencies in Accused person's prior statement is presumptive of the fact that her evidence on oath is an afterthought. The other version of what happened is contained in the

evidence of PW1 that the Accused crossed her on her way to her brother's place on the night of day of incident and informed her that she was there to continue the fight but she informed her she had been sent and started to walk away but the Accused pushed her and when she asked what she wanted from her, she informed her that she was there to beat her so she asked her to do so and the Accused immediately took a blade and used it on her face. Assuming even that the version of Accused on oath was what indeed happened, the question which arises is whether or not the human bite as well as the lacerations and contusions on the face of PW1 reasonably necessary within the circumstances. In other words, was the harm justified in the circumstance?

In the case of **SABBAH V. THE REPUBLIC (2009) SCGLR 728** it was held as follows:

*“The use of force or harm for the prevention of or for personal defence against crime as provided under section 37 of the Revised Criminal Offences Act, 1960 (Act 29), was subject to the limitation stated in section 32 of the Act governing all sections relating to the grounds on which force or harm might be justified. Therefore, whenever the defence of self-defence was put up, the harm used in defending oneself must have been reasonably necessary in the circumstances...”*

Also, in the case of **LARTI V. THE STATE (1965) GLR 305**; the Supreme Court held that in the Defence of Self Defence, the nature of the injury or harm caused by a person to another that is not reasonably necessary within the circumstances may displace the defence of Self Defence.

From the severity of the injury sustained by PW1, it is evident that the Accused used a blade to cause the harm to PW1's face and her teeth on PW1's breast. Indeed, I do not consider that it is reasonably probable that the said artificial nails could have caused the kind of injury on PW1's face as Accused is urging on this court. This to my mind cannot constitute reasonable harm in the circumstances. On a consideration of the entirety of the evidence, I find that the injury the Accused Person inflicted on PW1 could not be said to be reasonable in the circumstances. The defence of self-defence will therefore be rejected.

I find that the harm caused PW1 was without any of the justifications stipulated under Chapter One of Act 29 thereby making the harm inflicted on PW1 unlawful. I find the Accused Person Guilty and she is hereby convicted.

**H/H ENID MARFUL-SAU  
CIRCUIT JUDGE  
AMASAMAN**