

IN THE FAMILY AND JUVENILE COURT 'C' AT THE FORMER COMMERCIAL COURT BUILDING, ACCRA, HELD ON THURSDAY THE 2ND DAY OF FEBRUARY 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT SITTING AS AN ADDITIONAL MAGISTRATE WITH MADAM PHILOMENA SACKEY AND VIDA DANQUAH AS PANEL MEMBERS

SUIT NO.

R16/05/23

THE REPUBLIC

VS

PORTIA OFORI

Juvenile present with Brother.

Inspector Luke Taylor for the Republic present.

Complainant absent

Victim absent but represented by

Papa Yaw Nyamekye Yeboah Esq. for Martin Kpebu Esq. for the Juvenile present.

JUDGMENT

INTRODUCTION

The Juvenile herein was charged with the Offence of Causing Harm: Contrary to Section 69 of the Criminal Offences Act, 1960 (Act 29).

The Particulars of Offence are that on the 2nd of July, 2022 at about 2.00pm at Ngleshie Amanfrom in the Greater Accra Circuit and within the jurisdiction of

this court, the Juvenile poured acid on Lawrencia Ayim causing severe burns on her body and face.

The **Brief Facts** of the matter as incorporated from the Charge Sheet are that the Juvenile lives with the Complainant and the Victim who are a couple where she works as a house help. The facts states further that the Juvenile claimed she has been doing all the household chores without any assistance from the victim and to add up, the victim keeps insulting her. On the 2nd of July 2022 at about 2.00pm, whilst the victim was fast asleep, the Juvenile went and took acid which was kept in the kitchen and poured same on victim's body and face causing severe burns, and when the victim started crying for help, the Juvenile run out of the room living her to her fate. The victim was then attended to by other tenants and was rushed to the hospital for treatment. The Juvenile was subsequently arrested and after investigations was charged and arraigned before Court.

DETERMINATION

It must be stated that Article 19(2) (c) provides that '*a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty*'. Apart from strict liability offences, the general rule is that, throughout a criminal trial, the burden of proving the guilt of the accused person remains on the Prosecution. (See **Asante vs. The Republic** (1972) 2 GLR 177. An accused is generally not required by law to prove anything, he is only to raise reasonable doubt in the mind of the court as to the commission of the offence to secure an acquittal. (See **COP vs Antwi** (1961) GLR 408 SC; **Bruce Konua vs The Republic** (1967) GLR 611). It is also settled law that the accused's story needs not be truthful but must only be reasonably probable to raise doubt and secure

acquittal. (See **Amartey vs The State** (1964) GLR 256 SC; **Darko vs The Republic** (1968) GLR 203.

In criminal cases, it is not enough for the Prosecution to prove that a crime has been committed. The Prosecution must lead sufficient evidence to link the accused to the commission of the offence in a situation where the accused pleaded not guilty to the charge. Consequently, once the accused pleaded not guilty, the Prosecution must prove beyond reasonable doubt that a crime has been committed by the accused person. The Prosecution must also discredit the defence of the accused, if any. See **The Republic vs Gyamfi** (2007) 13 MLRG 192 CA, **Sarpong vs The Republic** (1981) GLR 790. It is trite learning that, in criminal cases such as the present one, the burden of proof is proof beyond reasonable doubt at the end of the case. This position of the law has received both statutory and judicial edification and there exist plethora of authorities on same. Section II (2) of **The Evidence Act, NRCD 323** states; *“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 reasonable doubt”*. **Section 13(1) of (Act 323)** also provides; *“In any civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt*. The reason for this high standard is that, the conviction of the accused places a fetter on his personal liberties. An accused is presumed innocent until he has been found guilty by a court of competent jurisdiction or has pleaded guilty. Thus, in our jurisprudence, an accused person, no matter how heinous a crime he is charged with, is presumed innocent until his guilt is established in accordance with due process of the law. The law places the burden of proving the guilt on the Prosecution since it is the Prosecution that is alleging the commission of the offence by the accused. It is

not for the accused to prove his innocence. It is accordingly provided by Section 15 (1) of Act 323 (supra) as follows; *“Unless and until it is shifted, the party claiming that a person is guilty of a crime or wrong doing has the burden of persuasion on that issue.”* This position as to the standard and burden of proof is strictly adhered to and our Court have insisted on the Prosecution meeting this standard with judicial jealousy as part of the courts duty to safeguard the liberty on individuals. The Supreme Court in the case of **Commissioner Of Police V. Isaac Antwi** [1961] GLR 408, held *“the fundamental principles underlying the rule of law are that the burden of proof remains throughout on the Prosecution and the evidential burden shifts to the accused only if at the end of the case for the Prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything; if he can merely raise a reasonable doubt as to his guilt, he must be acquitted.”*

Analysis

The Juvenile herein is alleged to have caused harm to PW1 contrary to **section 69** of the Criminal Offences Act, 1960 (Act 29). **Section 69 of Act 29** provides as follows; *“A person who intentionally and unlawfully causes harm to any other person commits a second degree felony.”* Harm is defined in **section 1** of the Criminal Offences, Act, 1960 (Act 29) as: *“A bodily hurt, disease, or disorder, whether permanent or temporary.”* Unlawful harm is also defined in **Section 76** of the Criminal Offences Act 1960 (Act 29) as follows: *“Harm intentionally or negligently caused without any of the justifications mentioned in chapter one in that part of the Act.”* Therefore, to succeed on a charge of causing harm, the Prosecution must prove the following essential elements.

- i. That harm has been caused permanent or temporary bodily hurt, disease or disorder to the victim.
- ii. That the Juvenile intentionally caused the harm to the victim.

- iii. That the harm caused was unlawful i.e. the act was done without legal justification.

The Prosecution in discharging this heavy duty called Six (6) witnesses, PW1 is the Complainant, Mr. Ronald Osei Mensah who is the husband of the Victim; PW2 is the Victim, Lawrencia Ayim; PW3 is Olivia Amoako, the victim's neighbor; PW4, Essel Isaac, a witness; PW5 is Detective Inspector Edmund Ayim, the Investigator stationed at DOVVSU/AR; and PW6, is Dr. Solomon Atindana, a Senior Resident at the National Reconstructive and Plastic Burns Centre at the Korle Bu teaching Hospital. The Juvenile opened her defence but called no witness.

The evidence of all Prosecution Witnesses were materially the same and to the fact that they did not see the Juvenile pour the acidic substance on the victim. PW2, the Victim, testified among others that in June 2022, when she realized that her sink was choked, she called in a plumber who used an acidic substance to blow the choked sink but warned her that the substance can burn the human body so she should hide it from her children which she did by keeping the bottle on the kitchen shelves where her children could not reach but informed the Juvenile about the substance and warned her of how dangerous it was. She testified further that on the 2nd of July 2022 between 1pm and 2pm, she was lying on a rubber mat and a pillow but later fell asleep only to feel a hot liquid being poured on her face and body. She stated that the Juvenile was prior to that in the kitchen and the only person who knew of how the acidic substance works.

It is ample from the evidence of the Prosecution that, none of them witnessed the act complained of in this case as well as the person(s) who committed same. The Juvenile herein, from the evidence of the Prosecution, was arrested only because the victim informed them of the presence of the acidic substance in the

house as well as the fact that it was only the Juvenile who knew where the said substance could be located in the house. There is therefore no direct evidence to link the victim to the crime but it must be stated emphatically that the fact that there is no direct evidence on an offence does not mean that the Prosecution cannot lead other pieces of evidence to prove the commission of a crime. However, in view of the fact that direct evidence is often uncommon, most crimes are proved by the use of circumstantial evidence which is said to be *“evidence of surrounding circumstances, which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say it is circumstantial.”* The evidence in this case against the Juvenile can at best be said to be circumstantial evidence. Our Courts use circumstantial evidence with extreme caution and same is used within certain parameters. The parameters are well captured in the local locus classicus case of *State v Anani Fiadzo [1961] GLR 416* where the Supreme Court held at page 418 that: *“Presumptive or circumstantial evidence is quite usual as it is rare to prove an offence by evidence of eye-witnesses and inference from the facts may prove the guilt of appellant. A presumption from circumstantial evidence should be drawn against the appellant only when that presumption follows irresistibly from the circumstances proved in evidence; and in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the appellant, and incapable of explanation upon any other reasonable hypothesis other than guilt. **A conviction must not be based on probabilities or mere suspicion.**”*[Emphasis mine]

Thus, to found a conviction on circumstantial evidence, the evidence must be cogent and compelling and must establish the commission of the offence and most importantly, the fact that, it was committed by the person charged before the Court and no other person. Hence, the requirement is that, it should be inconsistent with the innocence of the Juvenile. In *Odupong v Republic* (1992-93) GBR 1038 per holding 2, the Court of Appeal said *“When a charge was*

grounded on circumstantial evidence, that evidence must not only be consistent with guilt, but must also be inconsistent or incompatible with any other rational conclusion". As stated earlier, the whole case against the Juvenile was based upon the fact that she knew where the said acidic substance was placed. The Juvenile has denied committing the offence and the Prosecution had a duty to prove that the Juvenile poured the acidic substance on the victim. This is particularly important when none of the Prosecution witnesses could state with certainty that, the Juvenile poured the acidic substance on the victim. In fact, during cross-examination of the victim, the following transpired;

Q: In your first statement you said you did not know who poured the acid on you.

A: That is correct because I was asleep I did not know who poured the acid on me. Prior to my sleeping, I was in the house with three of my children and the Juvenile and I told the Juvenile to cook yam and take some stew from the fridge and eat. I made a call to my father and we had a conversation on same monetary matters before I slept off.

So that in the absence of any direct evidence linking the Juvenile to the crime, then the court has no option than to rely on circumstantial evidence in an attempt to establish the guilt or innocence of the Juvenile. This is because crimes are often committed when there is no other person around to witness it. As such, circumstantial evidence is utilized where direct evidence is not available or where direct evidence is not easy to obtain as in this present case. According to Justice Brobbey in his book 'Essentials of the Ghana Law of Evidence', 2014 at page 253, '*circumstantial evidence is the fact from which may be inferred, presumed or deduced, the existence, non-existence or proof of another fact. Circumstantial evidence is not proof of the fact itself, it is the pieces or incidents of facts, considered or put together, which provided the basis for drawing conclusion*'. In the case of Frimpong alias Iboman vs The Republic [2012] 1 SCGLR 297, the Supreme Court held as follows; '*circumstantial evidence was evidence that could indirectly link the accused to the crime. Some forms of evidence which could be termed*

circumstantial and accepted by the courts would include: (i) forensic examinations; (ii) DNA results; (iii) mobile phone conversations or SMS messages; (iv) e-mail messages; (v) crime scene investigations and others.

Relating the above mentioned forms of circumstantial evidence to the instant case, the court notes that the prosecution failed to lead any evidence in the form of forensics and/or crime scene investigations. For instance, the bottle that contained the alleged acidic substance was not an exhibit. In fact, the following transpired during cross-examination of PW 5, who is the Investigator in this case;

Q: *When you obtained the half built docket, as part of the investigations, you spoke to the previous Investigator on the matter, did you not?*

A: *I did.*

Q: *The previous Investigator must have told you he went to the scene of the crime, did he not?*

A: *He did.*

Q: *When the previous Investigator went to the scene of the crime, he saw the alleged plastic container containing the acidic substance, did he not?*

A: *He did not give me that detail.*

Q: *You mean the Investigator went to the scene of the crime but did not inform you that he saw the plastic bottle containing the alleged acidic substance?*

A: *That is so.*

Q: *As part of you investigation, would it not have been prudent to ask the previous Investigator if he saw the container containing the alleged acidic substance?*

A: *That would have been so but the Juvenile informed me that she threw the said container in the dustbin and that the waste management vehicle came for it together with other refuse.*

Q: *But the Investigator saw the container with the alleged acidic substance before the docket was brought to you and before the Juvenile gave you this information.*

A: *I cannot tell.*

Q: *I put it to you, if you had done a thorough investigation you would have found that the previous Investigator saw the alleged container containing the alleged acidic substance.*

A: *I did a thorough investigation.*

Additionally, in Exhibit B, which is a statement the victim made to the police on the 24th of July 2022, she stated among others that; '*...Police came to the area looking for Two(2) Nigerians who live in the same area with us... I do not know whether the said Nigerian thought I was the one who gave the information to the police leading to their arrest. In fact, I cannot tell who actually poured the acid on me...*' In Exhibit B1, which is a further statement made by the victim to the police on the 16th of September 2022, the victim stated that '*... I started calling the Juvenile by her name thrice but she did not respond. Apparently, she had poured the acidic substance on me and ran out of the room...*'.

In spite of the above, the Prosecution, regrettably did not also call the said Plumber to testify who may have corroborated the victim's story as narrated in Exhibit B2. Even though the Prosecution had discretion as to which witness to call, the discretion is exercised judicially and sometimes, the failure to call such a witness could be of dire consequences for the case of the Prosecution. Yet, it is not always the case that, the failure to call a particular person as a witness must always mean the failure of the Prosecution's case. Again, **Exhibit "G"** dated 7th July 2022 is the Investigation Caution statement of the Juvenile; **Exhibit "G1"** is dated 27th July 2022 and is a further Investigation Caution Statement of the Juvenile whilst **Exhibit "G2"** is dated 8th August 2022 is also a further Charge Statement of the Juvenile. In Exhibit 'G', which is the first statement the Juvenile made to the Police, she denied knowledge of the crime and stated that she was out of the house when the

incident happened as she had gone out to buy biscuit at a shop but left the gate opened because she would not get anyone to open the door for her when she returns. Upon her return, she saw a certain man with black shorts and a black Lacoste top leaving the compound of which she later heard the victim shouting for help and this prompted her to also get help from neighbors for the victim.

In Exhibits G1 and G2 which were statements given by the Juvenile to the Police at later dates, she admitted to pouring the acid on the victim. It is in evidence that on such later dates, the Juvenile was accompanied by PW1, who is the victim's husband to the Police Station when she made those Statements. It must be stated emphatically that in criminal trials, the statement, answers and explanations given by the suspect is entirely for the benefit of the suspect and the Prosecution cannot use such statements to fill up any gap or lacuna left in the Prosecution's evidence. However, when the Juvenile opened her defence, the Prosecution had all the opportunity during cross-examination to ask pertinent and significant questions relating to the inconsistencies in her statements because the purpose of cross-examination is to discredit, cause doubt about the witness' credibility or truthfulness, or even about her knowledge of the matter. The Prosecution, regrettably failed to ask the Juvenile such substantial questions that will elicit more information and give an explanation or better insight as to what exactly happened on the day of the incident.

In essence, the Prosecution failed to lead evidence to link the Juvenile directly to the instant crime but has been able to establish that although the victim did not see the Juvenile pour the acidic substance on her because she was fast asleep, the Juvenile is a suspect only because she was aware of the acidic

substance being in the kitchen. In the case of **State vs Ali Kasena** [1962] 1GLR 144, the court held that; *“it is dangerous in jury cases to leave to the jury evidence which amounts to suspicion only as there is the fear that they may put a multitude of suspicions together and make proof out of it”*. In this particular instance, apart from the fact that the Juvenile was aware of the acidic substance in the house, it appears to the court that the Juvenile may have committed the crime or may not have committed the crime. In other words, the evidence so adduced by the Prosecution appears to establish the guilt and innocence of the Juvenile at the same time. In the case of **Domena vs Commissioner of Police** [1964] GLR 416, the court held as follows; *“since the whole evidence against the appellant was circumstantial, the court should not have convicted the appellant unless the evidence pointed to guilt and nothing else. Since the circumstantial evidence was consistent with guilt as well as with innocence, the court should have acquitted the appellant.”* It is also the principle of law that in order to justify a conviction the evidence adduced against an accused (in this case a Juvenile) should attain a degree of certainty. (See **Moshie vrs. Republic** [1976] 2 GLR 310).

In the case of **G/L/CPL Ekow Russel vs. The Republic** [2016] DLSC 2800 at page 3, Akamba JSC stated that the basic principles underlying our criminal justice system are as follows; *first is that an accused person is presumed innocent until the Prosecution proves or establishes the contrary and this is a constitutional guarantee provided under article 19(2)(c) of the Constitution 1992. Secondly, throughout the trial of an accused person, the Prosecution has the burden to prove each ingredient of the charge against the accused, beyond reasonable doubt. Failure to meet this high burden in relation to one of the ingredients of a charge must resonate in an acquittal on that particular charge. The Prosecution must produce the evidence to meet the requirements of S. 11 (2) of the Evidence Act, NRCD 323. Lastly, our criminal justice system is premised upon the principle that it is better for*

ninety-nine criminals to go away scot free, than for one innocent person to be wrongly incarcerated or jailed.

DECISION

In the circumstances, the court holds that Prosecution’s case is based on probabilities and suspicion which cannot secure a conviction. The Prosecution’s failure to adduce cogent evidence left a vacuum in proving an essential element of the offence charged, that is, as to the fact that, the Juvenile was the person who poured the acidic substance on the victim as mentioned in the Charge Sheet. The Prosecution’s case fails and same is hereby dismissed. Juvenile is accordingly discharged unconditionally.

.....

H/H HALIMAH EL-ALAWA ABDUL-BAASIT.

PRESIDING JUDGE

I AGREE

.....

**MADAM PHILOMENA SACKKEY
DANQUAH
PANEL MEMBER**

I AGREE

.....

**MADAM VIDA
PANEL MEMBER**

