

IN THE CIRCUIT COURT HELD AT DANSOMAN, ACCRA ON THURSDAY, THE 2<sup>ND</sup> DAY OF NOVEMBER, 2023 BEFORE HER HONOUR HALIMAH EL-ALAWA ABDUL BAASIT, A CIRCUIT COURT JUDGE.

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SUIT NO.: CCD/CC7/08/23

THE REPUBLIC

VS

LORD ALLOTEY

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**PARTIES:**

ACCUSED PERSON – PRESENT

CHIEF INSPECTOR WONDER FOR THE REPUBLIC – PRESENT

**COUNSEL:**

NO LEGAL REPRESENTATION

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**JUDGMENT**

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**Background:**

The Accused Person was charged with the offence **of Causing Harm: Contrary to Section 69 of the Criminal and Other Offences Act, 1960 (Act 29)**. The brief facts of the matter as incorporated from the Charge Sheet are that on the 5/6/23, the Complainant and his Two (2) friends went to swim at the Dansoman Beach to swim but after swimming for a while they decided to rest at the at the Young Chopper Paradise Bar. Whilst having a conversation, the

Accused Person appeared from nowhere and picked up a quarrel with the Complainant which later resulted in a fight of which the owner of the Bar asked them all to leave his Bar. Upon leaving the Bar, the Accused Person followed up with a broken bottle and stabbed him on the right side of his neck in the presence of a couple of friends. The Complainant then called the Police and with his assistance, the Accused Person was arrested and subsequently arraigned before this instant court.

### The Plea

On the 14<sup>th</sup> of day of June, 2023, the Accused Person pleaded not guilty to the offences after same was read and explained to him in the Ga Language. The Prosecution assumed the burden to prove the guilt of the Accused Person beyond reasonable doubt. To prove their case, the Prosecution called Three (3) Witnesses and tendered in evidence the following;

1. **Exhibit "A"** - Statement of PW 1 to the Police;
2. **Exhibit "B"** - Statement of PW 2 to the Police;
3. **Exhibit "C"** - Caution Statement of the Accused Person;
4. **Exhibit "D"** - Charge Statement of the Accused person;
5. **Exhibit "E"** - Medical Form issued to PW1;
6. **Exhibit "D"** - Picture of PW 1 with stabbed wounds.

At the close of the case of the Prosecution, the Court held that the Prosecution had established a prima facie case against the Accused Person to require him to open his defence.

### Analysis

The Accused Person, having been charged with the offence of Causing Harm, pleaded not guilty to the offence. **Section 69 of Act 29** provides that "*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*". Thus, in establishing the offence of causing unlawful harm, the prosecution had to prove the following;

- i) That Accused caused bodily harm
- ii) That the harm was intentionally caused.
- iii) The harm was not justified/lawful.

### *Evidence of Witnesses*

The first Prosecution Witness (PW1) was the Complainant, is a 23-year-old who resides at Asoredanho-Dansoman. He testified that on the 5/6/23, he was at the Dansoman Beach with his friends to swim. When they returned, they met Two (2) young men who wanted to create a misunderstanding over an issue that had happened days earlier. PW 1 and his friends tried to calm the situation but the 2 men refused to cooperate and so they decided to leave the scene. On their way to the car, the 2 men followed them to the car, broke bottles and one of the men stabbed him on the right side of his neck of which he was later informed by the Dansoman Police that Accused Person was the one who was arrested.

PW 2 is a 32-year-old who lives at Korle Gonno and testified that on 5/6/23, he went to the beach with PW 1 and another friend to swim but he chose not to swim, so he sat down waiting for his friends who returned to him after 30 minutes of swimming. He testified further that Accused Person then aggressively approached PW 1 with a broken bottle but before he could intervene, Accused Person stabbed PW1 with the bottle and he started bleeding. They then reported the case to the Dansoman Police and a Medical Form was issued for PW 1 to be taken to the hospital. From the hospital, they led the Police to Accused Person's house for his arrest.

PW3 is D/C/Inspector Heron Tsede who testified that on 5/6/2023, whilst on duty, PW1 with the assistance of Two (2) Policemen arrested and brought the Accused Person to the Station with blood oozing out of PW 1's neck to complain about being stabbed with a broken bottle. Police Medical Form was issued to the PW1 for treatment at the hospital. PW3 testified further by stating that he visited the crime scene and further reiterated the narrations of PW1 and PW2 Complainant. He then spoke to some people at the crime scene who confirmed the incident and also confirmed that the Accused stabbed the Complainant with a broken bottle at the scene but took the bottle away.

The Accused Person in his defence, Accused Person denied causing the injury to the Complainant and in his evidence on oath testified that on the day of the incident, he decided to go to the beach to swim. Upon arriving at the Beach, he spotted a Bar, entered, kept his belongings there and left for swimming. When he got back, he observed that the Complainant was in a fight with one Cissey who injured him. However, the Complainant furiously approached him for a fight and so he decided to leave the scene especially when he also sighted the Police but the Complainant and his friends started calling him a thief. This resulted in him being attacked and lynched by other persons until the Police came to his rescue and arrested him.

Accused Person thus denied stabbing the complainant and the sole defence put up by him is that he knows nothing about the incident of causing harm. He contended that he was attacked and lynched at the instance of the Complainant by other persons until the Police came to his rescue and arrested him. Prosecution contended the Accused Person has been untruthful in his defence. The Accused Person, however, failed to call any witness or witnesses to corroborate his story. Section 7(1) of the **Evidence Act, (1975) NRCD 323** defines corroboration to consist '*...of evidence from which a reasonable inference can be drawn which confirms in some material particular the evidence to be corroborated and connects the relevant person with the crime, claim or defence*'. Corroboration, according to **Justice S. A. Brobbey** in his book; **Essentials of the Ghana Law of Evidence, 2014** at page 84 says '*... is the information which connects, affirms, or makes more certain the relevant portions of previous or future evidence in such ways that it enables the court to believe that the second or corroborating evidence confirms the previous evidence and that confirmation makes the previous evidence true... Corroborative evidence tends, in some material particulars, to substantiate, validate, verify, confirm, affirm or support all or some relevant aspects of previous or future evidence.*' Yet, the Accused Person, regrettably, was unable to call on any one to testify in his favor or corroborate his story despite the opportunity availed to him by the court.

It must however be stressed that in Criminal trials, there is absolutely no burden on the Accused Person to prove his innocence, **Section 13(2) of the NRCD 1975** however provides that "*Except*

as provided in section 15 (3), in a criminal action, the burden of persuasion, when it is on the Accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt." The Supreme Court in the case of **MALLAM ALI YUSIF vs THE REPUBLIC** [2003-2004] SCGLR 174 held that "the burden of producing evidence and the burden of persuasion are the components of 'the burden of proof.' Thus, although an Accused Person is not required to prove his innocence, during the course of his trial, he may run a risk of non-production of evidence and/or non-persuasion to the required degree of belief, particularly when he is called upon to mount a defence". Similarly, it has been held in the case of in the English case of **MILLER vs MINISTER OF PENSIONS** [1947] 2 ALL ER 372 at 373 that "... it need not reach certainty, but it must carry a high degree of probability, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt... if the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible but not in the least probable', the case is proved beyond reasonable doubt".

The Court observes however, that the Accused Person, in his defence, puts his identity as the culprit in dispute. He denied stabbing PW1 and this leaves the court to ponder over the identity of who stabbed PW1. It has been held in the case of **Adu Boahen vs The Republic** (1973) GLR 70 CA, that where the identity of the Accused Person was in issue there can be no better proof of his identity than the evidence of a witness who swore to have seen the Accused Person committing the offence. Also in the case of **Dogbe v R** (1975) GLR 118, it was established that in criminal trials, the identity of the Accused as the person who committed the crime might be proved either by direct or circumstantial evidence and other relevant facts from which the identity of the Accused might be inferred by the court. In this present case, the identity of the instant Accused Person is by direct evidence from PW1 who is the victim of the incident. As a matter of fact, PW1's testimony is that he identified Accused Person as the one who stabbed him to the Police and even led the Police to cause the arrest of the Accused Person. PW1 on oath vehemently contended under cross-examination that it was Accused Person herein who attacked him of that fateful day. Below are excerpts from the cross-examination of PW1 by the Accused Person;

Q: ... since you claimed I stabbed you with the bottle, your brothers, the tall and though ones that were with you, where were they standing and what were they doing that as smallish as I was able to stab your neck with the broken bottle.

A: One of my brother was standing in front of me and another one was behind me so the one behind me realized that the Accused Person was about to stab me with the broken bottle and he used his hands to block him with intention of preventing him from doing the act. In the process, my brother has a cut in his hands but because he could not block him totally part of the bottle got to my neck and it injured me.

PW2 during cross-examination by Accused Person also identified the Accused Person as the one who stabbed PW1. The following are excerpts of the cross examination;

Q: When your said I stabbed the Complainant with a broken bottle, can you tell me the colour of the dress I was wearing and the type of bottle I used and if possible, the colour.

A: You were in the same shorts you are in right now and a plain black T-Shirt, and when you were arrested, you removed the black T-shirt and put it in the car. With the bottle, it was a broken beer bottle.

In the circumstances, from the totality of the evidence and in the absence of cogent evidence from Accused Person to create reasonable doubt in the case of Prosecution as established on record, the guilt of Accused Person stands proved beyond reasonable doubt in respect of the offence of Causing Harm. I have also carefully analyzed the defence of the Accused Person and same also fails to raise reasonable doubt in the mind of the court as to his guilt. At the close of the entire case, the court finds the guilt of Accused proved beyond reasonable doubt. Accordingly, accused is found guilty in respect of Causing Harm and he is convicted of same forthwith.

#### **SENTENCING:**

**H/H HALIMAH EL-ALAWA ABDUL-BAASIT.  
CIRCUIT COURT JUDGE**