

IN THE CIRCUIT COURT 'B' KOFORIDUA IN THE EASTERN REGION OF THE
REPUBLIC OF GHANA HELD ON MONDAY, 30TH OCTOBER 2023 BEFORE HER
HONOUR MRS. MATILDA RIBEIRO, CIRCUIT COURT
JUDGE _____

CC NO. B3/27/2023

THE REPUBLIC

Versus.

SAMUEL TAWIAH @ ABOAGYE

Accused person present

Belinda Naa Kwandua Otoo (Assistant State Attorney) for Prosecution present.

No legal representation for the accused person

JUDGMENT

Accused person has been arraigned before the court on a charge of Causing Harm contrary to section 69 of the Criminal Offences Act 1960 (Act 29).

The accused person aged 35 years is alleged to have intentionally and unlawfully caused harm to one Diana Ankoma aged 27 (his estranged wife) years at Nsuansah village near Akim Achiase on the 12th day of November 2021.

The brief facts of the case as presented by prosecution in support of the charge are that the complainant and the accused person are a couple who lived together with their two children in a building belonging to Complainant's father. The parties have been separated due to alleged maltreatment of the complainant by the accused person who is alleged to have threatened to kill the complainant whenever there is a misunderstanding between them. On the 12th day of November 2021 at about 10pm, the complainant was fast asleep in the room

with the door secured when the accused armed with a cutlass forcibly entered the room. He told the complainant that since she has refused to marry him, he will also not allow anyone to marry her nor allow her to live. He then proceeded to hold the complainant's neck and strangled her until she defecated and urinated on herself then collapsed to the floor. According to the facts, when the accused person realized that the applicant was weak, he picked a confidor systematic insecticide chemical which was in a bottle in the room and poured the content into the complainant's mouth forcing her to drink it. Accused person then left the complainant to her fate and run from the scene. When the complainant regained consciousness, she managed to get to her brother's house with the assistance of one Ansah Stephen and informed them of what had happened. They then gave complainant palm oil to drink to prevent any poisoning and complainant started throwing up. She was then rushed to the hospital and upon examination, the medical report indicated that complainant had multiple abrasions around the neck region, swelling of the face and subconjunctival haemorrhage secondary to physical assault.

Accused person pleaded not guilty to the charge of unlawful harm. It is trite in our criminal jurisprudence that an accused person is presumed innocent until proved guilty (see sub clause (c), of clause 2 of Article 19 of the 1992 Constitution). With accused person pleading not guilty to the charge, the onus of proof lay on the prosecution. Prosecution assumed the burden to adduce evidence to prove the charge proffered against the accused person. And the standard of proof for the prosecution is proof beyond a reasonable doubt. See **section 11(1)(2) of the Evidence Act 1975 (NRCD 323)** which states that;

“(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

(2) In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the

*totality of the evidence a reasonable mind could find the existence of the fact **beyond a reasonable doubt.**"*

The legislative provision under which the accused person was charged; **section 69 of the Criminal Offences Act 1960 (Act 29)** provides as follows:

"Whoever intentionally and unlawfully causes harm to any person shall be guilty of second degree felony "

And **section 76** defines Unlawful harm as *"Harm is unlawful which is intentionally or negligently caused without any of the justification mentioned in Chapter I of this Part"* (that is, the provisions on justifiable force and harm).

So, the prosecution bears the burden to prove the elements of the offence in order to sustain a conviction of the accused person. The combined effect of **section 11(2) of NRCD 323 and section 69 of Act 29** is that the Prosecution has to produce sufficient evidence to establish beyond reasonable doubt that harm has been caused to the victim (complainant) and that the said harm was caused by the accused person intentionally and unlawfully.

THE CASE OF PROSECUTION

Prosecution in discharging the burden on them adduced both oral and documentary evidence. Prosecution called five witnesses including the victim (complainant). All the witnesses relied on their witness statements filed on their behalf on the 12th day of June 2023 as their evidence in chief. In the evidence of the first prosecution witness Diana Ankomah the victim and complainant herein (hereinafter referred to as (PW1), she and the accused person were living together in her father's house with their two children (aged 3years and 8months at the time). That the accused person had been maltreating her for some time and threatened to take the children away from her when he leaves so she reported his conduct to her father and the chief linguist of the village and he was summoned by the elders on or

about 8th November 2021. At the said meeting, accused was warned to leave the house, find work to do and raise money to perform the necessary marriage rites. That accused angrily packed his belongings and left the house the same day. That on the 12th November 2021, she was asleep in the room with the two children when the accused armed with a cutlas, forcibly entered the room. She said she woke up and saw the accused person armed with a cutlas. That the accused then threatened her saying that since she had refused to marry him, he will not allow anyone to marry her neither would he allow her to live. According to the complainant, the accused person then started strangling her neck until she became weak and collapsed to the ground. She said the accused person then picked a confidor chemical which was in her room, opened her mouth and forced it down her throat. Accused person then left her to her fate. She said she later regained consciousness, stumbled out of the room and met Ansah Stephen (PW3) who took her to auntie Benyewaa who lives in the same house as her brother, Kwame. She said though she was weak, she managed to narrate to them what the accused person had done to her.

The evidence of Francis Ankomah (hereinafter referred to as PW2), Ansah Stephen (PW3), and Yaa Benyewa (PW4) were a report of what PW1 told them the accused had done to her. PW2 (who happens to be Kwame the brother of PW1) stated in his Evidence in Chief that on or about the 12th November 2021 at about 10:30 pm to 11:00pm, he was in the room when he heard his name being called out. He came out and saw PW1 looking very weak. That whilst PW1 was narrating to them what the accused person had done to her, she collapsed. With the help of his landlady Maame Benyewaa (hereinafter referred to as PW4) they gave her palm oil to drink to prevent poisoning after which she vomited. He said they later took PW1 to the hospital for treatment. According to witness Ansah Stephen (hereinafter referred to as PW3), he was passing by PW1's house that evening when he heard her children crying so he entered the house to check what was happening. Upon entering the house, he found PW1 very weak and could not speak loudly. He took PW1 to PW4 because she (PW4) was not asleep at the time. Upon reaching there, PW1 called out her brother and she informed

them (PW2, PW3 and PW4) of what accused person had done to her. According to PW3, he used a torchlight and indeed found the Confidor chemical smeared around PW1's mouth and neck. That with the assistance of PW4 they gave her palm oil to drink and rushed her to the hospital. PW4, Yaa Benyewa also corroborated the narrative by PW2 and PW3 and added that while changing PW1's clothing, they realized that she had defecated on herself. The investigator of the case, Chief Inspector Edward Kwafo Amoani (hereinafter referred to as PW5) in his Evidence in Chief confirmed the narrative by PW1 and stated further that the accused person armed with a cutlas attacked PW1 in the night of 12th November 2021 whilst she was asleep. That the accused assaulted and strangled her (PW1) until she lost consciousness, he then forced her to drink confidor weedicide while unconscious. PW5 said she issued PW1 with a Police Medical form to go to the hospital for treatment. That PW1 was admitted at the Community Hospital Akim Oda for treatment and was discharged on the 16th day of November 2021. The next day the 13th November 2021, the Accused person was arrested by the town folks of Nsuansa village and handed over to the police at about 2:25am together with a liquid substance in a plastic bottle suspected to be weedicide. According to the investigator, he visited the crime scene with the accused person on the 14th day of November 2021 at about 3:45pm and took pictures. That faeces and urine were found on the floor of the crime scene indicating some sort of struggle. (This piece of evidence corroborates PW4's evidence that she saw faeces on PW1's clothing while cleaning her up before going to the hospital). That upon the discharge of PW1 from the hospital, she (PW5) took pictures of her red eyes and abrasions on the neck which were tendered and admitted into evidence as Exhibits B Series ('B', 'B1'), and 'C' respectively. According to the investigator PW1 submitted the medical report to the police on the 24th day of November 2021 and the report (Exhibit 'D') which was signed by Dr. Albert Arthur of the Community Hospital indicated that PW1 had multiple abrasions at the cervical (neck) region, facial swelling and bilateral subconjunctival hemorrhage (red eyes). That upon the advice of the Attorney General, the accused person was charged with the offence and a cautioned statement taken from him on the 21st day of September 2022.

In support of the case of prosecution, Prosecution tendered in evidence through the investigator the investigating cautioned statement of the accused person as Exhibit 'A', Pictures of the crime scene showing faeces and urine on the floor as Exhibit 'B' series (B and B1), Picture of Diana Ankomah endorsed and dated 16th November 2021 as Exhibit C, the Medical Officers Report dated 16th November 2021 as Exhibit 'D' and the Charged Cautioned Statement (of accused person) dated 21st September 2022 as Exhibit 'E' all as documentary evidence.

At the close of prosecution's case, the Court made a determination that a prima facie case had been made against the accused person. In that, Prosecution adduced sufficient evidence to establish that accused person had caused harm to PW1 and that the accused did so intentionally without any lawful justification. The Court therefore called upon the accused person to open his defence in accordance with **section 174 of The Criminal and Other Offences Procedure Act, 1960 (Act 30)**.

THE CASE OF ACCUSED PERSON

The accused person stated in his defence whilst in the witness box, that PW1 was diagnosed with HIV after the birth of their second child whilst he tested negative so he informed PW1 (his wife) that he can no longer live with her as a husband since she had HIV virus. He stated further that PW1 then indicated to him that if he will no longer live with her, then she is going to create problems for him. According to him, this is the reason why PW1 has fabricated this story against him and that he has not committed any offence. He alleged further that had it been the truth, the sitting judge at Akim Oda would have convicted him. That the sitting judge at Akim Oda asked the Prosecution to produce evidence in support of their case and a medical report, but they could not do so apart from the bottle containing the chemical. That the investigator informed the court (in Akim Oda)that the chemical had been sent to the Attorney General to ascertain whether it was injurious to human health and

that he was discharged by the sitting judge. According to him, the investigator later informed the judge that he had finished with his case and was sending him to the High Court Koforidua because all the documents related to the case were in Koforidua.

Accused person entered a plea of alibi and called one witness Nana Kwaigyaa (hereinafter referred to as DW1). The evidence of DW1 was to the effect that the accused person used to come to her house every evening for the treatment of his leg. That one evening after treating the accused's leg, he left to go and sleep, and she also went to sleep. The following morning, she heard noise in the town, so she decided to go and see what was happening. When she got there, she saw accused person in a vehicle, but she didn't know what he had done to be put in that vehicle.

In support of his plea of alibi, accused person indicated that upon ejection from PW1's father's house, he went to live with DW1 for the treatment of his leg injury and created the impression that on the day of the incident, he was with DW1 and couldn't walk because of the injury to his leg. The evidence of DW1 revealed that the accused person did not live with DW1 upon his separation with PW1 but only went to her in the evenings for the treatment of his injuries and on the night of the incident, DW1 as usual treated accused person's leg injuries after which he left to go and sleep. DWI confirmed during cross examination that she was not with accused person at about 10:00pm of the 12th November 2021, the night of the incident.

Generally, the accused person bears no burden at all in a criminal trial, not even to prove his innocence. Though the accused person may testify and call witnesses to explain his case, all accused has to do when the burden of persuasion shifts to him is to raise a reasonable doubt as to his guilt in the evidence of the prosecution as provided under **section 11(3) of the Evidence Act 1975 (NRCD 323)**. The burden of persuasion when on the accused person requires that the accused person produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt. (See section 13(1) and 15(1) of

NRCD 323). Where the accused is able to raise a reasonable doubt in the evidence of the prosecution he ought to be acquitted. [see the case of Osafo v. The Republic 1993 2GLR 1993-94 402]

Having evaluated the evidence before me, I do not believe the story of the accused person because it is full of inconsistencies and contradictions (see the case of C.O.P v. Lutterodt [1963] 2GLR 429, SC). The accused person tried unsuccessfully to create an impression in the mind of the court during cross-examination that at the time of the incident, he was injured and could not walk so he could not have gone to PWI's residence to commit the offence as alleged. That when he was asked to leave PWI's father's house he went and lived with PW4 for the treatment of his leg and so he knew nothing about the offence. He alleged further that he was asleep around 8:30pm when a friend called him for some job and around 2am the following day, the same friend came and woke him up that he had forced PWI to drink confidor. He however did not call this friend, Awusi as a witness. When he mounted the witness box however, his story was totally different. He alleged that he had threatened to leave PWI because she had been diagnosed of HIV and PW1 indicated that she was going to create problems for him hence a fabrication that he had strangled her and forced her to drink confidor. Thus the story of the accused person as he tried to put across during cross examination of prosecution witnesses and his statements to the police is inconsistent with his evidence under oath when he entered the witness box and I find it not to be reasonably probable. His evidence in the witness box was totally at variance with his statement to the police and his case as he put across the prosecution witnesses. However, the prosecution witnesses were all consistent in their answers that though the accused person was injured at the time, he could walk. For instance, during cross examination of PW4 (Maame Benyewaa) who is said to have cleaned PW1 up before going to the hospital, the accused person asked;

"Q: At the time of the incident was I not injured and in my room?"

A: He was injured at the time. He was in the room but could walk."

Earlier during cross examination of the complainant (PW1) by the accused person, below is what transpired:

“Q: On the day that your parents asked me to leave the said house I had a cutlas wound on my leg and hand. It was swollen and I was lying in the room.

A: It is true that he had a wound on his leg and hand as well. The leg was swollen. He was not lying in bed. He was sitting in front of the door.

Q: On the 8th of November 2021 a week after I had been asked to leave the house, I left the house and went to a woman by name Nana Kwaigyaa. I could not carry my bag. It was one of the children of the said woman that went for my bag and I told the woman that Mansa had ejected me from the house so I want to stay with her so that she takes care of me and I will work to pay her the expenses. I also told the woman that Mansa did not even look at (consider) my sickness and ejected me”.

On this same issue, even accused person’s only witness, Nana Kweigyaa, whilst under cross examination by the prosecution admitted that accused person’s injury was not one that had caused him to be bedridden because at each time he walked on his own to her place for treatment of his injuries. She also confirmed that she was not with the accused person on the 12th November, 2021 at about 10pm; and that accused had left her place earlier to sleep.

PW1 identified the accused person as the one who caused the harm to her by his body scent, physical appearance and by he calling out her name. During cross examination of PW1 by accused person, the accused asked:

“ Q: My Lord, I want to ask the witness what did you identify me with to indicate that I was the person who committed this offence?

A: Please he is a man I have lived with for over seven (7) years. When he entered the room, I identified him with his body smell. Even if he had not mentioned my name, I could still identify him and his body smell because I have lived with him for seven years.

This evidence by PW1 was re-enforced by accused himself in his responses during cross examination by Prosecution when he was asked:

Q: You will agree with me that as her husband, the complainant knows you very well.

A: Yes, my lord.

Q: So, it is right that even in the dark, the complainant will be able to recognize you.

A: Yes my lord"

I have come to the following conclusions from the analysis of the evidence before the Court. The medical report signed by Dr. Albert Arthur MD, OD of the Community Hospital dated 16th November 2021 (exhibit "D") supports prosecution's case that PWI was strangled, and she had multiple abrasions at neck region, swelling of the face and subconjunctival hemorrhage.

The Complainant identified the accused person as the one who attacked and assaulted her by his physical presence and his body scent having lived with him for about seven (7) years and by he calling out her name. That the harm caused by the accused person to PWI was intentional and he had no justification for causing the harm to PW1. The evidence in chief of the accused person is totally at variance with his cautioned statements to the police, exhibits 'A' and 'E' and his case as he put across prosecution witnesses during cross examination.

I also find that the Accused person's evidence was discredited by Prosecution during cross examination, yet he could not explain the contradictions to the satisfaction of the court.

The learned author P.K Tsumasi in his book **Criminal Law in Ghana, Ghana Publishing Corporation 1996, page 258-259** stated thus "*in proving any intentional and unlawful act against the accused all that the prosecution need to do are:*

1. *To adduce evidence to bring the act within any of the provisions of section 11 of the Criminal Code, 1960 (Act 29) which deals with intention (see s. 16 supra*
2. *To establish that the act was done without any justification recognized under our criminal law (see section 33 supra)*

3. *To prove that the act of the accused caused bodily hurt, disease or disorder whether permanent or temporary to another person."*

A similar view was held by his Lordship Justice C. J. Honyenuga sitting as an additional high court judge in the case of the **Republic v. Aaron Mfarfo (supra)** where he opined that, *"By section 69 thereof, harm must not only have been intentional, but also unlawful. To prove the charge, the prosecution needed to adduce evidence on intention within section 11 of Act 29 and establish that the act was done without justification under our Criminal law under section 30 of Act 29. Next, the prosecution must prove that the act of the accused caused bodily hurt, disease or disorder whether permanent or temporary.*

In sum, the prosecution needed to prove:-

- (1) *That the accused's act was intentional and unlawful*
- (2) *That the act of the accused caused bodily harm to the victim."*

Section 1 of Act 29 defines harm as *"any bodily hurt, disease or disorder whether permanent or temporary whilst section 76 of Act 29 also states thus "Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in chapter 1 of this part".*

In summary, to support a charge of unlawful harm under **section 69 of Act 29**, the prosecution must establish that the act of the accused person was intentional and unlawful and that the unlawful and intentional act caused harm to another person; in this case, PW1.

As is said, 'A man intends the natural and probable consequence of his action'. By entering PW1's room and strangling her to the point of unconsciousness, there is no doubt that the natural and probable consequence of the accused person's action was to cause harm to PW1. And he had no justification for causing such harm to PW1 as provided under **sections 30 and 31 of Act 29 of 1960**. Exhibit 'D' (the medical report) confirmed the harm caused to the complainant (PW1).

The evidence of the prosecution witnesses in the instant case was uncontroverted. Prosecution also discredited the evidence of the accused person by highlighting the contradictions and inconsistencies in the evidence of the accused person. I align myself with the reasoning and observation of the learned Justice Honyenuga sitting as an additional high court judge in the case of the **Republic v. Aaron Mfarfo [2011] dlhc7952** when he stated that *“The accused’s evidence is not worthy of believe. This grave inconsistency between the evidence he led in court and that in his caution statement Exhibit B is not worthy to believe and that the accused is not a credible witness. This shows that his previous statement to the Police and his testimony in court were contradictory and the law required that this contradiction be pointed out during cross-examination and this was duly done. His evidence is therefore not credible and not worthy of believe.”*

From the above analysis of the facts of this case in support of the charge, the evidence adduced by the prosecution and the law on the subject matter as discussed above one can draw only one irresistible conclusion without a shadow of doubt that the accused person intentionally caused harm to the complainant (PW1) by strangling her to the point of unconsciousness and that he had no lawful justification for doing so.

The accused person on the other hand could not raise a doubt in the case of the prosecution. Prosecution has proved the guilt of the accused person beyond reasonable doubt on the charge of Causing Harm. I therefore find the accused guilty of the aforementioned charge and convict him of same.

Upon the conviction of the accused person, he pleaded with the court to deal leniently with him for the reason that his children are very young, and he is the bread winner. Also, that he has been in custody for 2yrs and two weeks on remand. According to Prosecution, the convict is a first time offender.

Having heard the plea of accused person to be treated leniently, the court having considered the fact that he is a first-time offender, with young children (mitigating factors) as against the nature of the offence he was charged with being a second degree felony, the fact that the act or offence was premeditated, the nature of the harm caused to the complainant (per exhibit D) and the increase in cases of violence against women by their spouses (as aggravating factors); This Court will be justified in imposing a punishment that will serve as a deterrence to the accused person and others of like mind who resort to violence as a medium for addressing relationship conflicts. The Court is also obliged by law to consider the period the convict has been in custody pending trial when imposing a sentence. From the records, the convict has been in custody for about two years. The court therefore sentences the convict to four (4) years imprisonment with hard labour.

SGD

H/H MATILDA RIBEIRO (MRS)

CIRCUIT COURT JUDGE