

IN THE CIRCUIT COURT "A", TEMA, HELD ON THURSDAY, THE 17TH
DAY OF AUGUST, 2023, BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE

SUIT NO: D8/10/21

THE REPUBLIC

VRS:

MONICA DEDE LARWEH

ACCUSED PERSON

PRESENT

C/INSP. SUSANA AKPEERE FOR PROSECUTION PRESENT

CHARLES WALKER DAFEAMEKPOR, ESQ. FOR ACCUSED PERSON
PRESENT

JUDGMENT

FACTS:

The accused person was arraigned before this court on 12th September, 2017, on a charge of causing harm contrary to **section 69** of the Criminal Offences Act, 1960(Act 29).

The brief facts presented by the prosecution are that the complainant, David Okutu, is the brother of the victim, Joseph Sunday Ocansey, a Technician at the Ghana Broadcasting Corporation whilst the accused person is a trader and lives at Abonkor, Tema New Town. The prosecution alleges that the victim and the accused person were in an amorous relationship and were cohabiting prior to the instant case. According to the prosecution, the alleged victim ended the romantic relationship and asked the accused person to pack her

belongings out of his room due to a misunderstanding between them. Consequently, on 7th September, 2017, the accused person spent the night with a friend and on her return the following morning, at about 4:30am, an argument ensued between them. Additionally, the prosecution alleges that during the argument, the accused person took a gallon containing thinner, poured it on the victim and set him ablaze. The alleged victim of the fire was rushed to the Tema Port Clinic with the help of co-tenants, where he was on admission and receiving treatment at time the accused person was arraigned before the court. The police visited the hospital and the complainant identified the alleged victim to the police leading to the arrest of accused person and after investigations, she was charged and arraigned before the court.

THE PLEA

The accused person pleaded not guilty to the charge after it had been read and explained to her in the Dangme language. The prosecution assumed the burden to prove the guilt of the accused person beyond reasonable doubt. To prove their case, the prosecution called five witnesses and tendered in evidence **Exhibit "A"**- Investigation Caution Statement of the accused person, **Exhibit "B"**-photograph of the accused person, **Exhibit "C"**, photograph of a gallon with the inscription "thinner", **Exhibit "D"**, photograph of a mattress, **Exhibit "E"**- Police Medical Form, **Exhibit "F"**, Photograph of the victim in bandages, **Exhibit "F1"**- **"F2"**-Photograph of the victim with burns, **Exhibit "G"**- Charge Statement of the accused person.

On the 30th day of May 2022, the court ruled that a prima facie case is sufficiently made out against the accused person requiring her to open her

defence. Accordingly, the accused person opened her defence and testified in her own defence and called no witnesses in her defence. At the conclusion of the trial, Counsel for the accused person filed a written address out of time on 17th July, 2023.

BURDEN OF PROOF

The principle of law is that in criminal cases, the burden is on the prosecution to prove the guilt of the accused person beyond reasonable doubt. See **Sections 11, 13, and 15** of the Evidence Act, 1975, (N.R.C.D. 323). In the case of **Dexter Johnson v. The Republic** [2011] 2 SCGLR 60 at page 663, the Supreme Court per Dotse JSC stated that:

“Our system of criminal justice is predicated on the principle of the prosecution, proving the facts in issue against an accused person beyond all reasonable doubt. This has been held in several cases that, whenever any doubts exist in the mind of the court which has the potential to result in a substantial miscarriage of justice, those doubts must be resolved in favour of the accused person. I believe this principle must have informed William Blackstone’s often quoted statement that: “Better that ten guilty persons escape than one innocent suffer.”

The court proceeded to state at page 666 that:

*“It should be noted that the right of an accused person to a fair trial, has been guaranteed by various constitutional provisions, such as articles **14(2) and 19** of the 1992 Constitution, just to mention a few. The principle can very well be formulated that despite the seriousness of a crime, just as happened in the instant case, if the acceptable principles and requirements on the burden of proof set down by law are not satisfied and/or applied as laid down in the constitution, the Evidence Act, 1975 and the decided cases, then, just like happened in the Egbetorwokpor case, it is better for guilty persons to walk away free than for an innocent person to be punished or*

incarcerated. However, the non-satisfaction or breach of the above principles formulated above, must be such that would cause or lead to a substantial miscarriage of justice."

It is also well established that in criminal cases, the accused person has no legal obligation to prove her innocence. All that is required when the accused person is called upon to open his defence is to raise a reasonable doubt in the case of the prosecution as to his guilt and the standard of proof on the defence is on a balance of probabilities only. See section 10 of NRCD 323 and the case of **Osae v. The Republic** [1980] GLR 446.

ANALYSIS

Here, the accused person is charged with causing harm contrary to **Section 69** of Act 29. The said section provides as follows;

"A person who intentionally and unlawfully causes harm to any other person commits a second-degree felony."

In the case of **Brobey v. The Republic** [1982-1983] GLR 806, the court held in its holding 1 that:

"an essential element for the constitution of the crimes of causing harm contrary to section 69 and causing damage contrary to section 172 of the Criminal Code, 1960 (Act 29), was that the harm or damage must not only be intentional but also unlawful. Mere harm or damage without more was insufficient."

Therefore, to secure conviction on a charge of causing harm, the prosecution must prove the following essential elements.

- i. That the act of the accused caused harm to another person.

- ii. That the harm caused by the accused person was intentional.
- iii. That the harm caused was without any legal justification.

On the first ingredient of the offence charged, **the prosecution must prove that the accused person caused harm to another person.** Section 1 of the Criminal Offences, Act, 1960 (Act 29) defines the word “*harm*” as:

“A bodily hurt, disease, or disorder, whether permanent or temporary.”

To prove that the accused person caused bodily harm to the alleged victim, the first prosecution witness (PW1), Joe Isaiah Amu Ocansey, testified that the accused person was his girlfriend and prior to this incident, they had cohabited for about eight (8) months. Due to irreconcilable differences, he informed the accused person that he was no longer interested in the relationship and asked her to pack out of his house. Consequently, on 7th September, 2017, the accused person did not spend the night in his house. PW1 further testified that on 8th September, 2017, at about 4:30am, he was lying on his bed when the accused person entered his room, packed her bags and left. Subsequent to that, the accused person returned the second time and when he asked her about the reason for her return to his room, she did not answer and left. She returned for the third time and he decided to sit up and observe her movements.

The first prosecution witness testified that whilst sitting on his mattress, he saw the accused person holding a gallon of thinner he used in mixing paint and had kept in one of the rooms. When he enquired from her what she was using the gallon of thinner for, the accused person poured the thinner on him and lighted a matchstick. PW1 further testified that when he realised that he was burning, he shouted for help and ran out of the room, removed his shirt, threw it in a gutter and ran to his sister’s place to narrate the issue to her.

Thereafter, he became unconscious until he found himself at the Port Clinic receiving treatment. Based on that, his brother, the complainant lodged a complaint at the Tema New Town Police Station. Subsequently, the investigator visited him at the hospital to take his statement. On 10th September, 2017, he was transferred to the Tema General Hospital for further treatment where he was on admission until 27th October, 2017 before being referred to the Korle Bu Teaching Hospital for further treatment.

The third prosecution witness (PW3), James Lartey, testified and corroborated the testimony of PW1 that PW1 is his uncle and he lived in the same room with him. According to PW3's testimony, on 7th September, 2017, the accused person did not spend the night with them in the house. However, on 8th September, 2017, between 3:30am and 4am, he was preparing to leave home to his mother's house to assist her smoke fish when the accused person returned from where she spent the night and entered the room. He left the room to his mother's place and at the time he was leaving, there was no argument, misunderstanding or quarrel between PW1 and the accused person. Later, his mother told him that the accused person had poured thinner on PW1 and set his room ablaze. He rushed home and saw PW1 with burns and sent him to the Tema Port Clinic where he was admitted at the Emergency ward for treatment.

The second prosecution witness (PW2), No. D/PW/L/CPL Magdalene Allotey, also testified that when the case was reported by David Okutu and James Lartey, it was referred to her for investigations. She visited the hospital where PW1 was on admission at the Emergency Ward and found him unconscious. A nurse informed her that a brother of the victim had told her that the

victim's burns were as a result of thinner that was poured on him by his girlfriend. Due to the critical condition of PW1, she could not interrogate him. The accused person had come to visit PW1 and the complainant identified her as the one who poured the substance on PW1. Based on that, the accused person was arrested and sent to the police station. She tendered the investigation caution statement of the accused person admitted and marked as **Exhibit "A"**. PW2 further testified that she later went to the hospital and met the victim responding to treatment and she obtained statement from him. She also tendered photographs of the state of the PW1 admitted and marked as **Exhibit "B"**.

The second prosecution witness further testified that as part of investigations, she visited the scene of crime where she went to the PW1's wooden structure and James Lartey showed her a white gallon with red inscription, which indicated that it was cellulose thinners, a highly flammable substance. She took photograph which was admitted and marked as **Exhibit "C"**. She also tendered in evidence a photograph of a partly burnt mattress she found at the scene admitted and marked as **Exhibit "C1"**. According to her testimony, investigations revealed that a serious misunderstanding ensued between PW1 and the accused person on 7th September, 2017, and he asked her to leave his house. She left and returned on 8th September, 2017, to commit the alleged offence. She tendered the medical report form, admitted and marked as **Exhibit "E"**, photographs of the victim undergoing treatment at the hospital, admitted and marked as **Exhibit "F"** series and the charge statement of the accused person admitted and marked as **Exhibit "G"** series.

The fourth prosecution witness (PW4), Dr. Philip Kasu, a medical officer at the Korle Bu Teaching Hospital, testified that he was previously working at the Reproductive Department of Tema General Hospital and was part of the team that treated PW1 when he was admitted at the hospital. He identified **Exhibit "E"**, as a medical report he prepared. According to his testimony, he first saw the victim on 10th September, 2017, at the Tema General Hospital on referral from the Port Clinic. The complaint was that his girlfriend had set him on fire. They surgically managed him for superficial body burns. According to his testimony, when PW1 was brought to the facility, he had burns covering both hands and on the left side of his body which at the time of the report, was estimated at 15%. They admitted him and gave him antibiotics wound dressing and the plan was to refer him to the Plastic unit of Korle Bu Teaching Hospital. Under cross-examination, he stated that PW1 spent more than two weeks on admission at the Tema General Hospital. He also stated that he could not tell the cause of the burns apart from the history of the incident recounted by PW1.

The fifth prosecution witness (PW5), Dr. Martin Dum of the Tema General Hospital testified and tendered in evidence a comprehensive medical report admitted and marked as **Exhibit "H"**. The report states that PW1 was presented at the hospital with superficial-partial thickness chemical burns with an estimated surface area of about 20%. According to the report, he was admitted and treated. The wound was later debrided in theater under general anesthesia. He was first seen on 10th September, 2017, as a referral from Port Medical Center and he was discharged to go home on 23rd October 2017, to follow up for wound dressing. Under cross-examination, he testified that classification of burns has varied and currently classified as superficial burns, superficial partial thickness burns and full thickness burns which all

deal with the extent of burns and PW1 suffered superficial-partial thickness chemical burns.

The accused person in her defence testified that PW1 introduced a herbalist to her to seek treatment and through that they became lovers and cohabited as a couple. According to her testimony, at the time, PW1 was working with GTV in Accra and she performed household duties to prove to him that she was a marriageable material. According to her testimony, when she moved in with him, she discovered that he was an alcoholic and he would often come home drunk and beat her up mercilessly. From their initial loving relationship, their co-existence was gradually turning sour and she discovered that he had other girlfriends. According to her, after investing in the relationship, PW1 asked her to leave his house and on several occasions when he asked her to leave his house, to the point of packing her things, she would inform his sisters who would advise him to stop changing women and settle down with her.

Furthermore, the accused person testified that in his drunken state and during one of those beatings, he threatened to burn her with thinner and since the police are his friends, they will not arrest him. She further testified that the thinner was in a gallon in her room because she moved in to live with PW1. On the 7th day of September, 2017, when she was leaving for work, he again told her to leave because they had quarreled. For fear of being beaten and because of the weight of emotional and psychological abuse he was meting out to her, when she returned from work on that 7th day of September 2017, she decided to pass the night in a neighbour called Naomi's house. She woke up early on Friday, the 8th day of September, 2017 and went to PW1' house to pack her things and leave.

The accused person further testified that immediately she entered the room, he picked up a quarrel with her again. Due to emotional hurt, frustration and loss of self-control, she reached for the gallon of thinner, poured a little on the floor and lit a matchstick to it to scare him. When the mattress and the bedsheet which were on a plywood on the floor caught fire, she was alarmed and immediately went to fetch water and doused the flame. After that, she left the room to Naomi's place and PW1 was still in the room when she left. Whilst at Naomi's house, PW1's sister by name Adede called her on phone and told her that PW1 suffered burns and was sent to the Tema Port Clinic. Out of concern, she rushed to the Tema Port Clinic to check how he was doing. It was whilst visiting him at the clinic that she was arrested and brought to the Tema New Town Police Station where she gave a statement to the police. She was kept at the Police Station from that Friday and arraigned before the court on the 12th of September, 2017 and remanded into police custody. She was later granted bail on the 20th day of October, 2017 and has since been attending court. She testified that she is very sorry that he suffered burns and that she did not mean to hurt him, she did not pour the thinner on him and light a match to set him on fire. She took it all as one of their usual quarrels and he was hoping he would change his mind about her leaving and they would make up again and eventually marry one day soon and that she did not intend to burn him.

On the totality of the evidence led by the prosecution and the evidence led by the accused person, there is no doubt that harm was caused to PW1 as a result of the fire set in the room that PW1 was occupying by the accused person.

The **second ingredient of the offence which the prosecution must prove is that the accused person intentionally caused harm to PW1. Section 11** of Act 29 has elaborate provisions on what constitutes intent for the purpose of causing or contributing to cause an event. It is trite learning that not even the devil knows the intent of man and a man intends the natural and probable consequences of his actions. It is the contention of the defence that the accused person in pouring the thinner and setting the room ablaze was to scare PW1 but not to cause harm to him for various abuses he had subjected her to. The defence also contends that the accused person did not pour the thinner on him but on the floor and lighted the matchsticks to scare PW1. PW1, under cross-examination by Counsel for the accused person, the following ensued exchanges took place.

Q. She went for the thinner only to scare you since she knows that you know that thinner is inflammable.

A. My Lord, I do not know what she was thinking when she went for the thinner.

Q. At this point, only you and the accused person were in the room. Is that correct?

A. I was in the room and she had been going and coming out.

Q. I put it to you that when she went for the thinner, she did not intend to cause any harm to harm to you.

A. My Lord, I do not know what was in her mind. I can only testify to what I saw.

Q. In fact she did not pour the thinner on you as you alleged.

A. She poured the thinner on me.

Q. She rather poured the thinner on the floor near the bed and lit the matches just to scare you.

A. My Lord, I was wearing a shirt that day and the shirt got burnt and attached to my body where I got burnt, so if she had poured it on the floor I would not have got burnt.

Q. When she came to her senses and noticed that that the mattress was burning, she went for water and poured it on the mattress in your presence. I put that to you.

A. It is not true. She was watching me and I had to run away from the room.

It can be gleaned from the evidence that at the time the accused person poured the thinner and lighted the matches, the relationship between the parties had turned sour and PW1 had asked the accused person to leave the house. It is also evident on record that the accused person went in and out of the room and it was on the third occasion that she poured the said thinner. To my mind, the issue of whether or not the thinner was poured directly on the body of the PW1 or on the floor close to the mattress, the effect of the actions of the accused person in pouring the thinner which is highly flammable in an enclosed room where a human being was sleeping is indicative that she formed the necessary intention to cause harm to the first prosecution witness. I therefore find that the accused person intentionally caused harm to the PW1.

The last ingredient of the offence which the prosecution must prove to secure conviction is that the harm caused to the PW1 was without any legal justifications. **Section 31** of Act 29 provides the grounds under which the use of force or harm may be justified subject to specified conditions as follows;

- (a) of express authority given by an enactment; or*
- (b) of authority to execute the lawful sentence or order of a Court;*
- (c) of the authority of an officer to keep the peace or of a Court to preserve order;*

- (d) *of an authority to arrest and detain for felony; or*
- (e) *of an authority to arrest, detain, or search a person otherwise than for felony;*
or
- (f) *of a necessity for the prevention of or defence against a criminal offence; or*
- (g) *of a necessity for defence of property or possession or for overcoming the*
obstruction to the exercise of lawful rights; or
- (h) *of a necessity for preserving order on board a vessel; or*
- (i) *of an authority to correct a child, servant, or other similar person, for*
misconduct; or
- (j) *of the consent of the person against whom the force is used.*

The accused person stated in her evidence that she was in a relationship with the first prosecution witness with the hope that it would lead into marriage. She further stated that she had endured so much psychological and emotional abuses from the first prosecution witness and she was hoping that the relationship would get better and did not expect him to dump her after sacrificing so much in the relationship. The accused person testified to various forms of abuses without proving same. Assuming, without admitting that the accused person was subjected to all forms of abuses by the first prosecution witness, from her own account, she had the opportunity to leave the relationship when on numerous occasions, he told her that the relationship was over between them. On the day in question, the accused person had even packed out of the room of the first prosecution witness but for reasons best known to herself, she returned to set the room ablaze. The accused person had the opportunity to report the abuses to the police and to flee such an abusive relationship and therefore her decision to pour thinner and light it to

set the room ablaze cannot be lawful and therefore there is no legal justification for the actions of the accused person.

On the totality of the evidence led by the prosecution and the defence put up by the accused person I hold that the accused person intentionally and unlawfully caused harm to the first prosecution witness by pouring thinner, a highly inflammable substance and setting the room ablaze causing severe burn to the first prosecution witness. I therefore pronounce the accused person guilty of the offence and I accordingly convict her on the charge of causing harm.

Pre- Sentencing

In accordance with **Section 313A**, which mandates the court to order for pregnancy test before sentencing a woman unless there are reasonable grounds to believe that the woman is post-menopausal, the court ordered for pregnancy test to be conducted on the victim. The Court has received the medical report confirming that the Convict is not pregnant. It is true that Section 313A of Act 30 only deals with sentencing of pregnant women and provides the procedure to follow when the woman tests positive for pregnancy. The court under such circumstances shall pass on her non-custodial sentence or may suspend the sentence for a period that it may determine. This Section does not apply to nursing mothers and the Criminal Procedure Act (Act 30) has not specifically provided for the treatment of nursing mothers. This case has been pending for six years and during the trial the court observed that the Convict was heavily pregnant. From the pre-sentencing hearing, the Convict has delivered and the child is one month old. Learned Counsel for the Convict also informs the court that the Convict also

underwent Caesarean Operation during delivery of the baby. Ghana is a member of the United Nations and the **United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules)**, adopted on 12th December, 2010 by the UN General Assembly provides the standard minimum rules for the treatment of Women Prisoners. The Rules, though not a binding treaty, and do not have direct legal effect under Ghanaian law, it is necessary to acknowledge, respect and fulfil the specific needs of women convicted before the courts. From the text of the Rules, it is addressed to prison authorities and criminal justice agencies (including policy makers, legislator, the prosecution service the judiciary and the probation service. The rules apply to all women deprived of their liberty including criminal or civil untried or convicted prisoners, as well as women subject to “security measures or corrective measures” ordered by a judge.) **Rule 64** of the Bangkok Rules specifically provides that:

*“Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the **best interests of the child or children**, while ensuring that appropriate provision has been made for the care of such children.”*

Section 2 of the Children’s Act (1998) Act 560 provides that the best interest of the child shall be paramount in any matter concerning a child and emphasizes the primacy of the best interest of the child in matters before the court.

From the pre-sentencing hearing, the Convict went through Caesarean Section which the court is yet to receive medical evidence on her condition. To assist the court to make a just decision, a report from the Social Welfare

Department within the jurisdiction of the court on arrangements for the care and control of the one-month-old baby will be required. Under the circumstances, the court will defer sentencing to receive evidence from a medical officer from a Government Hospital and the Social Welfare Department on arrangements for the care of the child and post-natal care for the Convict.

H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)