

**IN THE TDC DISTRICT COURT HELD AT TEMA ON THURSDAY, THE
15TH DAY OF DECEMBER 2022 BEFORE HER HONOUR AKOSUA
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS
AN ADDITIONAL MAGISTRATE**

CASE NO.: B4/1/22

THE REPUBLIC

VRS

ERIC KWAMENA BENYARKO

ACCUSED PERSON PRESENT

COMPLAINANT PRESENT

INSPECTOR HILDA ASANTE SARKODIE FOR THE REPUBLIC PRESENT

KOJO TACHIE-MENSON, ESQ. FOR THE ACCUSED PERSON PRESENT

**RULING ON SUBMISSION OF NO CASE TO ANSWER AS MADE AND
FILED BY COUNSEL FOR THE ACCUSED PERSON**

The accused person herein has been arraigned before this Court charged with the offence of Assault contrary to *Section 84 of the Criminal and Other Offences Act, 1960 (Act 29)*. He pleaded not guilty after the charge had been read out to him.

The facts of the case as presented by the prosecution are that, the complainant Lordina Benyarko aged 53 and accused Kwamena Benyarko aged 69 are hoteliers and live at Community 5 Tema. They have been married for 28 years and blessed with 4 children. Complainant is having marital dispute with the accused which

has not been resolved. As a result of that they sleep in separate rooms in the same house. Complainant returned from Takoradi on 14th July 2021 and started complaining that the air condition in her room was not working. Complainant who is not on talking terms with the accused wrote a note and slipped it under the accused door, requesting for the guest room keys. Accused saw the note but did not bother to read it. On 17th July 2021 complainant claimed she was not feeling comfortable in her room. She then entered the accused bedroom through the balcony door to take the guest room keys. Accused who had information of complainant trying to enter his bedroom quickly came home and met the complainant in his room. Accused strangled the complainant's neck, dragged her to the corridor. He continued to beat and used her face to hit the wall. Accused after beating the complainant called Community 2 DOVVSU on phone and kept her at balustrade of the corridor upstairs for almost 2 hours until Community 2 DOVVSU personnel came to rescue her. Complainant who sustained contusion on her forehead and had marks of assault on her body reported the case to Community 2 DOVVSU. Police Medical Report form was given to her to attend hospital. Complainant was admitted at Tema Polyclinic overnight, treated and discharged the following day with her medical form duly endorsed by a medical officer. The case was referred to Tema Regional DOVVSU on 21/07/2021. Investigation caution statement was obtained from accused person. Photographs showing marks of assault on the complainant's face and body were taken. The scene of crime was visited and after investigation, he was charged with the offence and brought before this honourable court.

The prosecution called three witnesses in support of their case.

PW1, the complainant in her Witness Statement repeated the facts as presented by the prosecution. She tendered exhibit 'A' being General Medical Form, exhibit

'B series' being pictures of her and some parts of her body which she stated in her evidence that her sister and cousin took those photographs of marks of assault. That she submitted her statement to the police.

PW2, D/Inspector Yahaya Abuba Issifu told the court in his evidence that on 17/07 2021 at 5:50 pm he was off duty when his District crime Officer DSP/Mr. Eric Amponsah called him on phone and instructed him to go to the accused person's house at Community 5 near Aponche Clinic and attend to an emergency issue at hand in that house. That he thereafter went to the accused person's house with D/PW/SGT Bernice Asante who had earlier handled a case between the parties last year. He continued that when they arrived at the scene he saw the accused person holding PW1 firmly against the wall on the first floor and their 16 years old daughter by name Awuraba Akua Benyarko was standing in between them. That he climbed to the top with Sgt Bernice Asante to where they were and they rescued PW1 from the accused person. That after that they saw that PW1 had blood from the neck and her right eye was swollen and also the right side of her forehead was also swollen and she was limping on her right leg as well. That he asked the accused person why he was holding PW1 in that manner and the accused person told him that he saw PW1 in his bedroom holding a bunch of keys whilst searching the room. That PW1 had ever stolen his international passport and it took the intervention of a family friend before she released the passport to him. That PW1 does not stay in the house again because of the first case and she has relocated to Accra. That upon seeing her in the house he became suspicious and run to the Community 2 police station to lodge a complaint, that he was suspecting that she might have taken some valuable document from his room. So he held her and called the police to help him search her before she

leaves the house. PW2 continued that he and Sgt Bernice brought them to Community 2 DOVVSU after they succeeded in separating them. That he took the complaint and prepared police medical form for PW1 to go to any government hospital for treatment but PW1 could not get up from the chair she was sitting on and it took the intervention of PW1's cousin and him to carry PW1 to her car where she was taken to the hospital by her cousin. PW2 concluded that on 18/07/2021 when PW1 returned the police medical form he prepared an extract and referred them to JUPOL Tema because the first case was still with them.

PW3, the investigator Detective Chief Inspector Padmore Ahenkorah stationed at Regional DOVVSU, Tema stated in his evidence that on 21/07/2021 at about 1:00pm he received an extract of occurrence from Community 2 DOVVSU in relation to this case and it was referred to him as the available investigator. That the accused person was arrested for the offence of assault, and investigation caution statement was taken from him. PW3 tendered same as exhibit 'D'. That he together with D/PW/CPL Felicity Owusu-Minka went to the house of the accused person and the complainant, the scene of crime and they were told by the complainant how the accused person physically assaulted her. He tendered photographs of the complainant showing contusion on her forehead as exhibit 'C series' and the charge statement of the accused person as exhibit 'E'.

Prosecution thereafter closed their case.

After the close of the case of the prosecution, counsel for the accused person filed submission of no case to answer on behalf of the accused person on the grounds that the prosecution have not led any reliable corroborative evidence on the allegation against the accused and have not made a case against the accused person.

The legal issue that falls for determination by this Court is whether or not a prima facie case had been made by the prosecution to warrant the accused person to open his defence.

This being a criminal case, the prosecution bears the burden of proof to establish the guilt of the accused person beyond reasonable doubt as per *sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323)* and also as was stated the case of *Asare v The Republic [1978] GLR 193 – 199*, per Anin J. A. reading the Court of Appeal decision is that:

“There was no burden on the accused to establish his innocence, rather it was the prosecution that was required to prove the guilt of the accused beyond all reasonable doubt.”

Section 173 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) provides that:

“If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit the accused.”

The Supreme Court in the case of *Tsatsu Tsikata v. The Republic* [2003-2004] SCGLR 1068 laid down the circumstances under which a submission of no case may be successfully made as follows:

“(a) where there has been no evidence to prove an essential element in the crime charged; and

(b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it”

Reference is also made to the case of *Apaloo and Others v. The Republic* [1975] 1 GLR 156-192, per Azu Crabbe C.J.

Taylor J (as he then was) also in the case of *Affail v. The Republic* [1975] 2 GLR 69-88 stated as follows:

“If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.”

I now state the provision of Act 29 in respect of the offence with which the accused person has been charged. **Section 86(1) of the Criminal & Other Offences Act, 1960 (Act 29)**, provides as follows:

“A person makes an assault and battery upon another person if, without the other person’s consent and with the intention of causing harm, pain, or fear, or

annoyance to the other person, or of exciting him to anger, he forcibly touches the other person or causes any person, animal or matter to forcibly touch him."

From the section, the elements of assault are:

1. Forcibly touching or causing any person, animal or matter to forcibly touch that person;
2. Without that person's consent;
3. With the intention of causing harm, pain, fear or annoyance to the other person, or exciting the other person to anger.

In the case of *Bruce-Konuah v The Republic [1967] GLR 611-617*, where the prosecution sought to prove the elements of assault, the learned judge Amissah also stated as follows:

"This definition is made subject to the provision that "It is not necessary that an actual assault and battery should be intended..." And upon such a charge it is open to the prosecution to lead evidence which would support either one or the other type of assault. If the court finds one particular type proved then it has to convict."

From the testimony of PW1, she has been living in Takoradi for about a year now because of marital issues between the accused person and her. That she wrote a letter to the accused person complaining of the inconvenience of sleeping in her room that was too hot because the air conditioner was not working so she needed the guest room key to sleep there but the accused person ignored her even after she reminded him verbally. According to the complainant she already knew where the keys were in the master bedroom so she went there to pick the

bunch of keys with the intention of trying them to get the one for the guest room so she could sleep there. That barely two minutes after she had entered, the accused person also entered angrily and held her neck strangling her to death and shouting "*I will kill you today*" several times. That she tried to free herself but she could not because the accused person was still holding her neck and she was suffocating. That the accused person dragged her from the room to push her over the balustrade with shouts that he will throw her over and kill her but she resisted the push and lowered herself and moved to a corner in order not to fall over downstairs. She also told the court that the accused person held her dress tightly at the neck level and hit her head and face several times against the wall; and also punched her left eye several times. That the accused person asked the houseboy who came to beg him to stop, to go to the police station and call the police; and this was after their 16 years old daughter had tried to stop the accused person but was unsuccessful. That before the police came to the rescue the accused person held her hostage and kept on kicking, hitting, punching and insulting her.

From Exhibit 'A 'which is the General Medical Form where Dr. Naa Ayele Mensah, the medical officer who attended to the complainant when she reported to the Tema Polyclinic, stated that upon examination the complainant had her face with swelling of forehead and darkening of left eye region. That she also had bruise to her neck and same left eye, among others. That she was detained overnight for observation and given treatment and discharged the morning on medications.

The medical doctor's examination was at 9:00pm on 17th July 2021 which was some few hours after the incidence that happened between the complainant and the accused person in their home on the said date. The said examination

supports the evidence of PW1 that the accused person on that day, 17th July 2021 hit her head and face against the wall several times and she got bruises on parts of her body and parts of her forehead was swollen.

PW2 in his evidence told that court that when he and Sgt Bernice Asante got to where the accused person and the complainant were, they rescued the complainant from the accused person. That after that, they saw that PW1 had blood from the neck and her right eye was swollen and also the right side of her forehead was also swollen and she was limping on her right leg as well.

The evidence of PW2 largely corroborates the evidence adduced by PW1 which also substantiated the brief facts of the case as presented by the prosecution in relation to the elements/ingredients of the offence of assault.

Exhibit 'C series' are photographs of the complainant which were taken on the day of the incidence on 17th July 2021, and from the said photographs the complainant had a side of her forehead just above one of her eyes swollen.

From exhibit 'D' being the investigation caution statement of the accused person, the accused person concluded his caution statement he gave to the police on 21st July 2021 as follows:

"So, therefore in the evening of 17th July 2021 after I had chanced upon her ransacking my room I held unto her, whilst calling the police so that she would not get away with any of my important documents. I must admit the confrontation was violent, and in the process she suffered bruises which was not intended".

From the above pieces of evidence adduced by the prosecution witnesses, and having considered the ingredients of the offence of assault the accused person has been charged with, I find that the accused person has a case to answer.

Flowing from the above, I find from the evidence presented by the prosecution before this court that the prosecution have been able to make a prima facie case against the accused person.

In the case of *The Republic v District Magistrate Grade II, Osu, Ex parte Yahaya* [1984-86] 2 GLR 361 – 365 Brobbey J (as he then was) stated that:

“...evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused himself has given evidence.”

Contrary to what counsel for the accused person submitted therefore, and relying on the authority of *Ex parte Yahaya* (supra), there is a prima facie case against the accused person on the charge of assault and he now has a duty to raise a reasonable doubt in the case of the prosecution. The accused person is therefore called upon to enter into his defence if he is minded to give evidence.

[SGD.]
H/H AKOSUA A. ADJEPONG
(MRS)
CIRCUIT COURT JUDGE
15TH DECEMBER 2022