

21: 07: 2023

IN THE DISTRICT MAGISTRATE COURT HELD AT VAKPO ON FRIDAY THE 21ST DAY OF JULY, 2023 BEFORE HER WORSHIP GIFTY CUDJOE THE MAGISTRATE.

SUIT NO. B3/03/2023

THE REPUBLIC

VERSUS

1. BRIGHT OSABUTEY
2. KUMAH (AT LARGE)

J U D G E M E N T

The accused person herein was before this court and charged with abetment of Crime Contrary to Section 20 (1) of The Criminal and Other Offences Act, 1960 (Act 29) to Wit: Causing Harm Contrary to Section (69) of Act 29/60.

The accused pleaded "Not Guilty".

The Prosecution presented the facts of the Case of that complainant resides at Anfoega Agatanyigbe while A1 is a driver residing at Aveme-Danyigba. A2 now at large also resident of Aveme. Before the case, A1 had confrontation with the complainant on 14/01/2022 at a funeral held at Anfoega where A1 was heard to be insulting the aunt of the complainant but the Issue was resolved.

A1, who was not satisfied planned to attack the complainant. That on 26/01/2022 at about 6: 30 p. m. A1 Procured A2 and two Others, drove them in a taxi to Aveme-Beme for them to attack the complainant who came thee to buy food. On arrival A2 questioned the complainant why he fought with A1 on 14/01/2022 at the funeral. The complainant in an attempt to reply A2 drew a knife he armed himself with and stabbed the complainant at his back. He came managed to escape from the scene and made a report at the Police Station. The complainant was issued with Police Medical Report Form to attend hospital for treatment. A1 was subsequently arrested to assist in investigation. A2 upon hearing Police were after him absconded. A1 was charged after Investigation and put before court.

THE CASE FOR PROSECUTION

The Case for the Prosecution is that in 26/01/2022 Pw (1) was going to Aveme-Beme to buy food in the company of one Elias.

Before they got to town A1 already brought a group of boys waiting including A2, who was armed with a knife.

Immediately they got to a bend in when A2 and his gang stopped them. Just as he got off his buck A2 hit his face with the knife and subsequently stabbed him at the back. He sustained Injury at his back and face. Pw (2) states that on 26/01/2022 at about 9 p.m. they were in a convoy to Aveme-Beme and on reaching a curve in to when at the junction, they saw A2 signalling the complainant the complainant to stop. Complainant stopped and got off his motorbike. All of a sudden the suspect. A2 hit his face with the handle of the knife he was holding. He stabbed him at the back and when he tried to separate them A2 slapped him several times and took his phone away from him. He finally managed to rescue the complainant and they left and made a report to the Police. In his witness statement Pw (3) states that on 26/01/2021 at 9. P.m. they were at "Borborbor" music practice with wife of A1 called him on lop her voice of come witness something. He rushed to the scene along the road. On his way he met A2 chasing a certain boy and later saw Pw (1) who had injury which he said was inflicted on him by A2 with a knife.

CASE FOR ACCUSED

In his defence accused tells court that one Folivi sent his wife on a motorbike. He went to pick them and his child but she refused to come with him. They struggled and an assemblyman saw them and approached them. He tried to convince his wife to go to with him while going, the said Folivi was insulting him and he also equally responded to the insult. Upon his insult the said Folivi slapped him and the became a struggle and the assemblyman separated them. He then reported to his father in-law and a date was given for settlement. Once A2 and some others were walking towards him. They stopped him and he picked them

up at a place where they all get Income. Not long the said Folivi came with about (8) eight people and started beating him up. He tried to separate them and A2 threatened to beat him up. His in-law came to separate them and the Issue came to an end. On the 2nd day he was coming from Kpando and Police Stopped and arrested him.

The Prosecution has the burden to prove the guilt of the accused person before the Court. Prosecution is under an obligation to prove beyond all reasonable doubt that in deed the accused person has committed the offences preferred against him. Where the burden of persuasion is on the accused however as to a fact the converse of which is essential to his guilt, the accused the accused is only required to raise a reasonable doubt. **See Sections 11 (2) and (13) of the Evidence Act, 1973 (NRCD 323).**

Section 20 (1) of Act 29/60 reads:-

“Every Person who directly or indirectly,
instigates, commands, Counsels, Procures,
Solicits or in any manner purposely aucts,
facilitates, encouraged or Promotes whether
by his act or Presence or otherwise and every
person who does any act for the purpose of
aiding, facilitating, encouragement, of
Promoting the Commission of a Crime by
any Other Person, whether known or unknown,
certain or uncertain, is quilting of abetting that
Crime, and of abetting the other person in
respect of that Crime”

Section (69) of Act 29/60, the Crime accused is alleged to abet reads:-

“Whoever intentionally and unlawfully
Causes Harm to any person shall be

guilty of a second degree felony”.

The ingredients necessary and which Prosecution must prove against the accused person are that:-

1. Accused had specific intention to facilitate the commission of Crime by A2.
2. That accused had the requisite Intent of the underlying substantive offence.
3. That accused assisted or Participated in the commission of the Underlying substantive offence.
4. That A2 committed the underlying offence thus Causing Harm to the Complainant.

The elements of the offence of Causing Harm Prosecution must prove are that :-

1. That the accused is the cause of the harm inflicted on the complaint/Victim.
2. That but for the act of the accused the Victim would not have suffered an Injury.
3. The Prosecution must also prove that the accused intended to cause Harm which amounts to Injury to the Victim.

From the evidence adduced by the Victim, A1 was the one who brought A2 with Others wanting for them at the Crime Scene. Pw (2) however did not mention A1 in his Witness Statement but corroborated the evidence of Pw (1) that it was A2 who hit the Victim with the knife he was holding and stabbed him as well. A3 in his Witness Statement disclosed that he did not see A2 stab the Victim but saw him chasing a certain boy and later saw the Victim with an Injury which he stated was inflicted on him by A2. On all of the evidence of the Prosecution Witnesses and what their various Witness Statements disclose, A2 is mentioned by the Victim as the person who came along to the Crime Scene with a gang including A1 who later inflicted knife wound on Pw (1).

The evidence adduced however disclosed that prior to the incident on the 26/01/2022, there had been an earlier confrontation between accused A1 and Pw (1). Cross examination on Pw (1) by accused revealed:-

Q. Why have you snatched my girlfriend?

A. I have not snatched your girlfriend.

Q. Are you saying I organised people to stab you with a knife?

A. Yes. When A2 called me he asked why I quarrelled with you.

Q. I did not ask anybody to stab you. The people were already there. I did not instruct them to do so?

A. You went for the boys and they called me upon questioning I was stabbed.
They asked what authority I had to assault you.

Section 20 (2) of Act 29/60 reads:-

“Every person who abets a Crime shall
If the Crime is actually committed
in Pursuance or during the continuance
of the abetment, be deemed guilty of
that Crime”.

The evidence on record did not disclose that A2 had any issues with Pw (1) prior To the incident. The Court however finds as a fact that the injury inflicted on Pw (1) was done by A2. All Prosecution Witnesses have attested to this fact including Dw (1) who testified in support of A1.

On the evidence, there had not been any misunderstanding between Pw (1) and A2 prior to the incident, but I was clear A1 had an issue with Pw (1), and the intention of A1 to revenge the previous incident not farfetched. This part of Cross examination on Pw (1) by A1 is instructive: -

Q. Are you saying I organized people to stab you with a knife.

A. Yes. When A2 called me he asked why I quarreled with you and questioned the authority had to assault you.

A2's approach towards Pw (1) before the commissioning of the Crime and the words used point to the fact that A1 carefully briefed him about the previous incident between Pw (1) and A1, based on which A2 (1) with the knife. A1 had full knowledge of the circumstances and the evidence did not disclose any dissent from the action of A2.

The Principal offender A2 is at large but the evidence clearly shows that A1 has abetted the Crime of Causing Harm to Pw (1) Contrary to Section 69 of Act 29/60. The

Prosecution, having established the guilt of the accused Person herein, the Court convicts him accordingly.

Plea In Mitigation

Accused: I am pleading with the court; I have not behaved well.

SENTENCE

Accused Sentence to pay 50 penalty units or in default. 2 weeks' imprisonment in H.L.
A compensation of GHC 500.00 to be paid to the victim to defray his medical expenses.

.....sgd.....

GIFTY CUDJOE

THE MAGISTRATE

