CORAM: IN THE AMASAMAN DISTRICT COURT B HELD ON 26th AUGUST, 2023 BEFORE HER WORSHIP ANNETTE SOPHIA ESSEL (MRS.) SITTING AS MAGISTRATE

CC3/06/23

REPUBLIC

V

ISAAC EGAH

JUDGMENT

The accused person has been charged with the offence of Causing Harm; contrary to Section 69 the Criminal and Other Offences Act, 1960 (Act 29). The accused person was arraigned before the court on the 20th March, 2023. He pleaded "Not Guilty" to the charge.

FACTS OF THE CASE AS PRESENTED BY PROSECUTION:

The facts as recounted by prosecution in this case is that the Complainant; Delali Atidegah (PW1) aged fifteen (15) years old, a juvenile is a welding apprentice. Accused is a mason. Both Accused and Complainant are residents of Egakofe. Accused claimed that he approached Complainant with a foreign coin to be perforated so that he: accused could use same as a pendant for a necklace. Complainant however responded that he could not undertake this task. Accused consequently became offended with Complainant's response and walked away.

On 13th March, 2023, whilst Complainant was on his way to meet his friends, Accused appeared from behind him and ordered him to stop. Complainant stopped at Accused instruction only to be inflicted with a cutlass wound on his left arm. Accused not satisfied with the cutlass wound inflicted on Accused, subsequently asked Complainant who had started bleeding from the cutlass wound to strip naked. Complainant heeded to Accused second instruction and stripped himself naked only for Accused to collect Complainant's clothes too leaving him naked in public.

Complainant thereafter returned to his home and reported the incident which had occurred to his mother; Rejoice Godson. Complainant in the company of his mother subsequently proceeded to the Adjen-Kotoku Police Station where they lodged a complaint. Complainant was issued a Police Medical Form to attend hospital and Accused was later arrested.

In his caution statement which he gave in Ewe language and same translated and recorded in English, Accused admitted the offence, with further explanation that Complainant charged him a fee for the service to be rendered, failed, refused and neglected render the service and thereafter lost the coin. He thus approached Complainant when he saw him passing in front oof his house to collect his coin which resulted in Complainant falling down. He admitted that he seized Complainants clothes and kept same in his room but provided no reason for this act. Accused was charged with the above-mentioned offence and then hauled before the court. In his charge statement he relied on his caution statement.

EVIDENCE ADDUCED BY PROSECUTION:

Prosecution called two witnesses in the persons of the complainant and the investigator. In his testimony PW1 stated that on 13th March, 2023 whilst on his way home at the close of work, at about 5pm, on reaching Accused house, Accused beckoned him to approach him to which he obliged him. Complainant stated that the accused person handed over a coin to him to be perforated for use as a necklace pendant which same he informed accused that he could not undertake this task. Complainant stated that the accused person pressured urged on him to do it and thus handed over the coin into PW1 possession and walked away. According to Complainant (PW 1), he lost the coin and subsequently informed Accused the next day.

On 14th March, 2023 at about 8pm, he met Accused who demanded is coin from him and when Complainant failed to produce same, Accused amid threats ordered Complainant to undress which same he complied with. Accused consequently collected all the clothing of Complainant leaving him in only his underwear. Following this, Accused pulled out a cutlass, and slashed Complainant on his left arm thereby inflicting a wound on Complainant's left arm which caused him to bleed. PW 1 thereafter returned home and reported that incident to his mother who reported Accused to the police for prosecution and was issued with a medical form to attend hospital. The completed dated and signed medical form of Complainant was tendered as exhibit "B" without any objection from the accused person. PW1 also tendered a picture

taken of his injuries and same were tendered as exhibits "D" without any objection. Exhibit "D" is a coloured image of PW1 with his left hand dressed and heavily wrapped in gauze. The image shows PW1 in pain. In exhibit "B" or the medical officer's report which was signed by a medical officer from the Kotoku Health Centre reported as follows:

> *"Client reported at the health facility with complain of a cut on his left hand as a result of an alleged assault. On examination, client has a cut of about 5cm on his left hand. Client has been seen and due treatment given."*

During trial, PW1 tendered his witness statement and was cross-examined on same. He stated that he did not return to Accused the money paid him for the perforation of the coin.

According to PW2, a case of causing harm was reported by Complainant. PW1 was issued with police medical forms to attend hospital and returned with the medical form duly endorsed by the medical officer. He was plastered where he sustained the injury and photographs of the injury were also taken for evidence. Complainant led police to the scene of the incident. Accused was arrested and detained and investigation caution statement taken from him.

The crime scene was described as the front of a compound house. According to PW2; the investigator, the accused person admitted the offence and as at the time of his arrest had Complainant's clothes in his room which he was directed to fetch out. PW2 tendered the investigation and charge caution statements of Accused which were marked as Exhibit "C" and "E" and all other annexures in support of the charge against Accused. During trial, PW2 informed the Court that unarrest of Accused, PW 1 clothes were found in his possession which same he subsequently handed over to Prosecution.

The relevant part of Exhibit "C" or the investigation caution statement of Accused is reproduced as follows:

> *"…On 13th March, 2023 at about 8:00pm I saw the complainant passing in front of my compound and I warned him to give the coin to me. It resulted into a struggle between us and the complainant …. On others spread and he got injured. I took the dresses into my room and seize them."*

ISSUE FOR DETERMINATION:

From a careful examination of the charges and the facts presented the court had to determine whether or not the accused persons caused harm to PW1.

BURDEN OF PROOF;

It is apt before I proceed to evaluate the evidence led during trial that I set out the burden that prosecution bears in a criminal case of this nature. **Section 11(2) of the Evidence Act, 1975 (NRCD 323)** states that;

> *"In a criminal action the burden on the prosecution of facts essential to guilt requires the prosecution to produce sufficient evidence so that the court can find the guilt of the accused proved beyond reasonable doubt."*

Section 13(1) of the Evidence Act, 1975 (NRCD 323) states as follows:

> *'in any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt'.*

And there seems to be a further emphasis under **Section 22 of the Evidence Act 1975 (NRCD 323)** which states that:

> *"in a criminal action, a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond reasonable doubt…"*

In the wise words of His Lordship, Eric Kyei Baffour, JA. sitting as an Additional Justice of the High Court in the case of **The Republic v Eugene Baffoe Bonnie Suit & 4 Others Suit No. CR/904/2017**:

> *"As far as the standard of reasonable doubt is concerned there is no room for an accused to be convicted on the basis that the charges or the allegations against him might be true. If there is such a possibility then what it means is that prosecution has not made out a case or has not proved its case beyond reasonable doubt. There could be a doubt only that the doubt should not affect a reasonable person's belief regarding the guilt of an accused. It is on that score that Lord Denning notes in Miller v Minister of Pensions [1947] ALL ER 372 @ 373 that it is needless for prosecution to attempt to proof the guilt of the accused beyond a shadow of doubt since that*

standard will be impossible to attain and were the law to allow that there will be the admission of fanciful possibilities to deflect the course of justice. In effect and in simple language the standard expected of prosecution by reasonable doubt means that by the end of the trial prosecution must prove all the elements of the offences charged and the explanations offered by the accused must be one that is not reasonable probably. See Justice Brobbey in his work Essentials of Ghana Law of Evidence at pages 48-55. Lord Chief Justice of the King's Bench from 1822 - 1841, Charles Kendal Bushe put what is reasonable doubt in a much more elegant language as follows: ''… the doubt must not be light or capricious, such as timidity or passion prompts, and weakness or corruption readily adopts. It must be such a doubt as upon a calm view of the whole evidence a rational understanding will suggest to an honest heart the conscientious hesitation of minds that are not influenced by party, preoccupied by prejudice or subdued by fear''.

Accused however is not under any obligation to prove his innocence as the burden of proof is on the prosecution throughout the trial. All that an accused is required to do when invited to open his defence is to raise reasonable doubt regarding his guilt. It is only when the defence raised is not reasonably probable that an accused would be convicted. The Supreme Court aptly put it in the case of **Mallam Ali Yusif v The Republic [2003-2004] SCGLR 174** 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''

The court in a Ruling delivered on the 4th July, 2023 stated that Prosecution had established a prima facie case and thus invited the accused person to open his defence. The court having found that a prima-facie case had been established by the prosecution against the accused person ordered him to open his defence.

ANALYSIS:

With the burden of proof satisfied only when it has been proved to the standard required by law by the prosecution in mind, I proceed to an examination of the evidence led in respect of

each of the counts against the accused persons. The offence of Causing Harm as provided by **Section 69 of the Criminal and Other Offences Act, 1960 (Act 29)** provides that:

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

For this offence the prosecution will have to prove that:

i. the act of the accused person falls within the provisions of **Section 11 (1) of the Criminal and Other Offences Act, 1960 (Act 29)** which deals with intentional acts.

ii. It must also be proven that the act was done without any justification recognized under **Section 33 of the Criminal and Other Offences Act, 1960 (Act 29)** and

iii. Finally, it must be proven that the act caused bodily hurt disease or disorder, permanent or temporary to the victim.

Under **Section 11(1) of the Criminal and Other Offences Act, 1960 (Act 29)**, Where a person does an act for the purpose of causing or contributing to cause an event, that person intends to cause that event within the meaning of this act, although in fact or in the belief of that person or both in fact and also in the belief, the act is unlikely to cause or to contribute to cause the event.it is provided that:

> *"Section 11—Provisions Relating to Intent.*
>
> *(1) If a person does an act for the purpose of thereby causing or contributing to cause an event, he cause that event, within the meaning of this Code, although either in fact or in his belief, or both and also in his belief, the act is unlikely to cause or to contribute to cause the event.*
>
> *(2) If a person does an act voluntarily, believing that it will probably cause or contribute to cause and he intends to cause that event, within the meaning of this Code, although he does not do the act purpose of causing or of contributing to cause the event.*
>
> *(3) If a person does an act of such a kind or in such a manner as that, if he used reasonable caution observation, it would appear to him that the act would probably cause or contribute to cause an event that there would be great risk of the act causing or contributing to cause an event, he shall be presumed to have intended to cause that event*

until it is shown that he believed that the act would probably not contribute to cause the event, or that he did not intend to cause or contribute to it.

(4) If a person, intending to cause an event with respect to one or some of several persons or things such indeterminate person or thing as may happen to be affected by his act, causes such event with any such person or thing, he shall be liable in the same manner as if he had intended to cause the with respect to that person or thing."

Section 31 of the Criminal and Other Offences Act, 1960 (Act 29) provides the conditions under which force may be justified as follows:

"Section 31—Grounds on which Force or Harm May be Justified.

Force may be justified in the cases and manner, subject to the conditions, hereinafter in this mentioned, on the ground of any of the following matters, namely—

(a) express authority given by an enactment; or

(b) authority to execute the lawful sentence or order of a Court; or

(c) the authority of an officer to keep the peace or of a Court to preserve order; or

(d) authority to arrest and detain for felony; or

(e) authority to arrest, detain, or search a person otherwise than for felony; or

(f) necessity for prevention of or defence against crime; or

(g) necessity for defence of property or possession or for overcoming the obstruction to the ex of lawful rights; or

(h) necessity for preserving order on board a vessel; or

(i) authority to correct a child, servant, or other similar person, for misconduct; or

(j) the consent of the person against whom the force is used.

From the evidence led by the prosecution as well as the defence put up by the two accused persons the court in sum made the following findings of fact; Accused confronted PW1 and put him in a state of fear, seized his apparel and subsequently inflicted the cutlass wound on him.

His evidence-in-chief did not in any way focus on what is relevant; the charge before this court. Below is a snippet of what transpired in court:

"My Lady, I gave Complainant a silver coin; a foreign coin to perforate for me to use as a locket. I did not see the Complainant for three weeks after this. The Complainant was avoiding me and he evaded me every time he met me. After one month, I saw complainant pass in front of my house. I called him and he stopped and approached me. I enquired from the complainant why he had not done the job, I assigned him. The Complainant asked for an extension of time and that he will bring the coin to me when he completes the job. I was at home when the Police arrested me the next day."

Strikingly, it was the testimony of Accused in his statements to the Police that PW1 charged him a fee, yet in his defence and cross-examination he failed to disclose the said amount. Accused claimed that PW1 was avoiding him yet this incident took place in front of his house when PW1 was passing by. Accused is manifestly telling untruths all these statements were different. The Court of Appeal coram Amuah, Brobbey JJA's (as they then were) and Forster JA. held on this principle as follows in the case of **Odupong v Republic [1992 – 93] GBA 1038:**

"the law was well settled that a person whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn was not worthy of credit and his evidence would be of no probative value unless he gave a reasonable explanation for the contradiction."

The court is puzzled that if indeed PW1 was avoiding Accused he would walk past his house and respond to his call. The law is settled that where an accused person gives evidence which conflicts with his earlier statement, the court is bound to treat him with suspicion as to the veracity of his evidence.

Thus, in no way did PW1 provoke Accused. The court finds that both the confrontation by the accused person was done without any prior provocation from PW1 who was strolling past Accused house on the day of the incident and therefore intentional.

The court finds that Accused did not sustain any injury from a fall in his confrontation with PW1. Again, here in this case, Accused intentionally caused harm to PW1 because there was no provocation on the part of PW1 to merit the attack meted out to him by the accused person. From the facts Accused was not pleased that PW1 did not meet his demand of perforating a hole in his coin and the subsequent loss of the very coin which he abandoned and walked off

leaving same in PW1 hand on 13th March, 2023 and decided to register his displeasure by attacking PW1.

Therefore, it cannot be true that PW1 fell and sustained such a deep wound in his attempt to avoid Accused. It is clear that in the confrontation that took place as averred by Accused, the main aggressor was Accused.

Again, the court further finds that PW1 sustained a cut on his left hand as evidenced by Exhibit "B and D" and the cuts were mainly inflicted by Accused. The cuts inflicted on PW1 by Accused was deep: 5cm leading to his injury and subsequent loss of blood through bleeding as per Exhibit "B".

In addition, Accused seized PW1 clothes (leaving him to return home with his dignity badly bruised as he was left partially naked against his will) and this is based on his own admission in his caution and charged statements. During trial Accused denied in to that he had harmed Complainant. Below is a snippet of what transpired during cross-examination of Accused:

Q: *I put it to you that on 13th March, 2023 you met Complainant at 8:30 pm and you slashed the Complainant with a cutlass you were holding.*

A: *It is not so, please.*

Q: *Have a look at Exhibit 'D'. You caused harm to Complainant left hand.*

A: *That is not so, my Lady.*

Q: *With the cutlass in your hand, you ordered him to undress and you took Complainant dresses to your house.*

A: *It is not so.*

Q: *When the Police came to arrest you, they found Complainant's clothes in your room.*

A: *It is not so.*

Q: *I am putting it to you that on 16th March, 2023, evidence disclosed that the cut on Complainant hand was 5 cm deep.*

A: *It is not so.*

Q: *I am finally putting it to you that on 13th March, 2023 you intentionally and unlawfully caused harm to complainant.*

A: *It is not so, please.*

In the case of **Gyabaah v Republic [1984 86] 2 GLR 416** Mensa Boison, Edward Wiredu and Osei-Hwere JJ.A. coram held that:

> *"To establish guilt, it is generally necessary for the prosecution to show that (a) the injury or harm specified in the crime occurred; (b) this injury or harm was caused by someone's criminal activity; and (c) the accused was the guilty party."*

The defence of the accused person to the charge did not raise any doubt at all on the prosecution's case that Accused attacked PW1 and inflicted harm on him. Again, the harm caused by Accused was unjustifiable because his conduct does not fall under any of the grounds under Section 31 of the Criminal and Other Offences Act, 1960 (Act 29) where the law provides justification for harm caused. For this matter any harm outside the remits of section 31 above quoted cannot be justifiable harm and such is the nature of the harm caused by the accused person to PW1. Therefore, court is satisfied that on this score the prosecution has established beyond reasonable doubt that the two accused persons are guilty of the offence of causing harm and accordingly convicts them.

Applying the law to the facts, it is evident that Accused confronted, threatened and attacked PW1 and in the process caused harm to him. In view of that the court finds Accused guilty of Causing Harm; contrary to Section 69 of the Criminal and Other Offences Act, 1960 (Act 29) and accordingly convicts him.

SENTENCE:

In the case of **Abu and Others v. The Republic [1980] GLR 294-302** Taylor J. held that:

> *"In imposing sentence, it seems to me that the court has a duty to consider all aggravating and mitigating circumstances."*

To aid a court in applying mitigating and aggravating factors in sentencing, I would first need to have regard to three main principles being the crime committed, the criminal and the community. What I mean by the crime committed is basically the nature of the offences and the circumstances under which the crime was committed.

In dealing with the convict himself, I take into consideration that he is a first-time offender he has not had any previous brush with the law. In the case before me, the age of Accused shows

clearly that he is a young man. For youthfulness itself induces leniency in the eyes of the law as there are lessons to be learnt by persons of young age. In the case of **Dabla and Others v. The Republic [1980] GLR 501-520** Taylor J said that:

> *"… when young offenders have their first brush with the law, it is essential for the purpose of the reformative element in criminal justice that as a general rule they are not given custodial sentences unless the trial court has legally no other alternatives or a non-custodial sentence is on principle and for good reasons not feasible. If this approach is not adopted and such young persons are invariably sent to prison on their first going wrong, they will obviously get contaminated by contacts with hardened criminals. This will certainly not be in the interest of the public, for it may launch those inexperienced and impressionable young persons on a life of crime as they rub shoulders with the garrulous criminal recidivists."*

In this instance Accused has just demonstrated that he is a person of an ungovernable character indeed within his community. In that circumstance, an exemplary and deterrent punishment is necessary to send the right signals to other young persons that if they fail to be well-behaved members of their community, they would not be left off the hook by the law. I am further guided by the wisdom in a plethora of judicial decisions on sentencing such as **Kwashie and Another v. The Republic [1971] 1 GLR 488-496** where Azu Crabbe JA. (as he then was) stated that:

> *"…. We would state that there is no obligation on a trial judge to give reasons, when imposing sentence on a convicted person. The determination of the length of sentence within the statutory maximum sentence is a matter within the discretion of the trial court, and the courts always act upon the principle that the sentence imposed must bear some relation to the gravity of the offence: … an offence which is of a very grave nature merits severe punishment … In determining the length of sentence, the factors which the trial judge is entitled to consider are: (1) the intrinsic seriousness of the offence; (2) the degree of revulsion felt by law-abiding citizens of the society for the particular crime; (3) the premeditation with which the criminal plan was executed; (4) the prevalence of the crime within the particular locality where the offence took place, or in the country generally; (5) the sudden increase in the incidence of the particular crime; and (6) mitigating or aggravating circumstances such as extreme youth, good character and the violent manner in which the offence was committed… Where the court decides to impose a deterrent*

sentence, the value of the subject-matter of the charge, and the good record of the accused become irrelevant."

The plan to cause harm to Complainant which Accused hatched was the product of conscious premeditation and the ultimate decision to consummate it was made by Accused with a full appreciation of the consequences of his respective acts. It would seem therefore that he has not got any social or psychological problems which would necessitate any consideration of rehabilitative measures. Azu Crabbe JSC. stated in the case of **Adu Boahene v The Republic [1972] 1 GLR 70** that:

"Where an offence is of a very grave nature, the sentence must not only be punitive, but it must also be deterrent or exemplary in order to mark the disapproval of society of the particular offence. When the court decides to impose a deterrent sentence the good record of the accused is irrelevant.

With the aggravating factors preponderating against the mitigating factors and being guided by the utilitarian concept of deterrence of both Accused and the public, I proceed to sentence the accused person to pay a fine of three hundred (300) penalty units or in default serve a term of six (6) months imprisonment in productive hard labour. Accused is informed of his right to appeal the sentence.

FURTHER ORDER:

The accused person is ordered to pay a compensation of Six Thousand Cedis (GHC 6,000.00) only to PW1 to offset his medical expenses and the trauma caused him.

Accused is forthwith not to come within fifty (50) metres range of PW1 and in default of this order will serve a further term of ten (10) months imprisonment.

H/W ANNETTE SOPHIA ESSEL (MRS.)

MAGISTRATE