

**IN THE DISTRICT COURT HELD AT AKIM ODA ON 26TH FEBRUARY, 2024 BEFORE HER
WORSHIP ADELINE OWUSUA ASANTE (MS.) SITTING AS THE DISTRICT MAGISTRATE**

B3/15/22

THE REPUBLIC

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REPUBLIC

VRS

SAMUEL AMPAH

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ACCUSED

JUDGMENT

Background

The Accused herein was arraigned before this Court on 4th February, 2022 and has been charged with the offence of Causing Harm contrary to section 69 of the Criminal Offences Act, 1960 (Act 29).

The facts in support of the charge as presented by prosecution are that; the Complainant is a worker at the Electricity Company of Ghana, Akim Oda whilst the Accused is a trader and are both residents of Akim Oda. On 31st January, 2022 at about 2:39pm, the Complainant in the company of his two (2) co-workers embarked on disconnection exercise within Old Town Akim Oda. The team went to the house of accused to disconnect his electricity power since he owed the company an amount of GHS 1,700.00. Accused who was not present at the time the team arrived was called by his wife. Accused rushed to the house and asked complainant and his team to stop the disconnection and call the ECG manager which they declined and asked him to call the manager by himself. This generated into an argument between them and accused picked a stick on the ground and hit the right hand of complainant and slapped him when he attempted disconnecting the line. Complainant and his team quickly left accused's house and reported the case to the police. On 2nd February 2022 accused was arrested. During investigation, it was established that earlier 2021, accused attacked and seized a motorbike

from a group of ECG workers when they went to the area for similar exercise. It took the intervention of the police to retrieve the motor bike for them.

The accused pleaded guilty with explanation to the charge after it had been read and explained to him in the Twi Language. A plea of not guilty was entered upon listening to the explanation and as such the facts of the prosecution was put in issue and the prosecution assumed the burden to prove the guilt of the accused beyond reasonable doubt.

I wish to state that this suit was previously handled by my predecessor and I subsequently took over the case at the stage where Accused was to open his defence.

Burden of Proof

Under Article 19(2) (c) of the 1992 Constitution, a person charged with a criminal offence is presumed innocent until proven guilty or has pleaded guilty. This simply means that anytime a person is charged with a criminal offence, prosecution bears the burden of proving the guilt of the accused beyond reasonable doubt. In the case of **Commissioner of Police vs Isaac Antwi [1961] GLR 408@412** it was held that;

“The fundamental principles underlying the rule of law that the burden of proof remains throughout on the prosecution and that the evidential burden rests on the accused where at the end of the case of the prosecution an explanation is required of him, are illustrated by a series of cases. Burden of proof in this context is used in two senses. It may mean the burden of establishing a case or it may mean the burden of introducing evidence rests on the prosecution in the first instance but may subsequently shift to the defence, especially where the subject matter is peculiarly within the accused’s knowledge and the circumstances are such as to call for some explanation... The law is well settled that there is no burden on the accused. If there is any burden at all on the accused, it is not to prove anything, but to raise reasonable doubt. If the accused can raise only such reasonable doubt he must be acquitted”.

Analysis of Evidence

Before I delve into the substance of this suit, a careful scrutiny of the investigation and charged cautioned statements taken from Accused on the 2nd of February 2022 respectively denote that the offence the accused was charged with was Assault on Public Officer in both statements. This boggles my mind as to what exactly prosecution intended to charge accused with and to say I am baffled will be an understatement. It is settled law that at any stage of a trial, before the close of prosecution's case, the court suo motu or at the instance of the prosecution amend any charge proffered against the accused.

It is important to note that by law this court has no power to amend the charge after the close of the case for the prosecution. More importantly, where both sides have closed their respective cases, the Court at that stage has no power to amend the charge in the course of reading the judgment as the amendment will be null and void. The relevant enabling provision is section 176 of Act 30. See also ***Iddi vs. The Republic [1980] GLR 623.***

The accused is charged with causing harm contrary to section 69 of Act 29 which states as follows; *whoever intentionally and unlawfully causes harm to any person shall be guilty of second degree felony.* Harm is defined in Act 29 as any bodily hurt, disease or disorder, whether permanent or temporary. Harm is unlawfully caused when it is intentionally caused without any of the justifications mentioned in Part II of Chapter 1 of Act 29. Force or harm is justified only when it is used or caused under any of the instances under section 31 and within the limits of section 32 of Act 30 and as such mere harm without more is insufficient.

Following from the above, the essential ingredients of the offence as gleaned from the statutory provision which the prosecution must prove are;

- (1) The accused caused the harm to the victim and
- (2) The harm was intentional and unlawful.

To prove its case, Prosecution called three (3) witnesses namely Agor Benjamin, Bismark Appiah and G/L/Corporal Gyabaah Sebastian, who all relied on their witness statements filed on 1st June 2022.

PW1, Agor Benjamin, is a staff of ECG, Akim Oda branch. On 31st January 2022 at about 2:30pm, together with PW2 proceeded on a disconnection duty. He entered the house of accused who was owing the sum of GHS 1,700 and same was confirmed from the meter number at the house of accused. He was informed by a woman in the house that it is accused who usually pays the bills so the team should await his arrival as they met his absence. He says accused informed them that his boss was aware of the debt so he, PW1 should call the boss which he declined. This generated into an argument between him and accused who became angry and picked a stick which was lying by his leg and hit his right elbow. He subsequently called his supervisor who instructed that he leaves the house of the accused.

PW2, Bismark Appiah recounted and corroborated the testimony given by the PW1 and as such same will not be reproduced.

PW3, is General Lance Corporal Sebastian Gyasaah formerly stationed at Divisional Headquarters, Akim Oda but currently stationed at Upper East Regional Police Headquarters, Bolgatanga. He testified that on the 31st January 2022, a case of causing harm involving the accused was referred to him for investigation. Thereafter he took statements from the Complainant, hereinafter referred to as (PW1) and his witness and obtained Cautioned statements from the accused in the presence of an independent wherein accused admitted to hitting PW1 with a stick. He took a photograph of Complainant's right arm. Without objection from the Accused, he tendered the following;

- (1) Statement from PW1, Agor Benjamin marked as Exhibit 'A'
- (2) Statement from PW2, Appiah Bismark marked as Exhibit 'B'
- (3) Investigation Cautioned Statement of Samuel Ampah dated 02/02/22 marked as Exhibit 'C'
- (4) Charged Cautioned Statement of Samuel Ampah dated 02/02/22 marked as Exhibit 'D'
- (5) Photograph of PW1's Right Arm –Exhibit 'E'

No police medical form was issued to PW1 for endorsement by a medical officer and as such no medical report was tendered.

It is from the foregoing that the court invited Accused to open his defence. The law is that it is only after a prima facie case has been established by the prosecution that the accused will be called upon to give his side of the story and I must state that the duty of accused at that point will be to raise reasonable doubt about his guilt.

To make his defence, accused elected to give a sworn testimony but failed to call any witness after several adjournments had been opportuned him to file witness statements of the witness (es) he intended to call. He thus relied only on his Witness Statement filed on 10th November 2023. He testified that on 31st January 2022, the PW1 and some personnel from the Electricity Company of Ghana, Akim Oda came to his house to disconnect his ECG meter. He says he explained to them that when the ECG bill came he sent the bill to the manager of the branch for verification as the amount on the bill was outrageous and was informed by the said manager that it was an estimated bill so he does not need to pay and explained that he should wait for the original bill. As such when PW1 and his team came he avers that he tried explaining this to them and even asked them to call their branch manager and this they refused and proceeded to disconnect his electricity power. He says he did not struggle with the PW1 or any of the team members and as such did not cause the alleged harm to the PW1.

In the Investigation Cautioned Statement dated 2nd February 2022, Accused stated that on 31st January 2022 at about 4:00pm, he was holding the one week funeral ceremony of his mother and had left for Akim Apoli to inform the family of his wife. He was called by his wife who informed him that a team from ECG had come to disconnect the power from the house. He quickly returned home where he was shown a list of the names of all ECG defaulters and found his details therein with the amount GHS 1,200 stated against it. He informed them that he had been to their manager to discuss this current bill and further asked PW1 to call the said manager which he refused. He says he then touched the shoulder and told PW1 to move outside with him so they could talk but complainant refused. He further stated that he then

picked a stick and hit PW1's hand with it. The team left after this and he subsequently got a call later in the day that his presence was needed at the police station.

In his Charged Cautioned statement also given on 2nd February 2022, Exhibit D, the accused relied on his former statement, Exhibit C.

Section 80 of the Evidence Act, 1975, (NRCD) 323 provides that matters which may be relevant in considering the credibility of a witness include a statement or conduct which is consistent/inconsistent with the testimony of the witness at the trial. It is settled law 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. See **Odupong vs The Republic [1992-93] GBR 1038**

The testimony of the accused during trial, it is noted is fraught with inconsistencies as same contradicts his earlier statements (Exhibits C & D) given when he was arrested. This leads to the conclusion that accused is not a credible person and his evidence should be taken skeptically. This is what ensued during cross examination of Accused by Prosecution;

Q: You will agree with me that you hit the complainant with a stick?

A: No. I never did. I was holding a small stick used to stir paint.

Q: Were you the one using the stick to stir paint?

A: Yes

Q: I am putting it to you that you were never stirring paint with a stick

A: I never used a stick to hit him

Q: in your own statement when you asked complainant to call the boss, he refused is that the case?

A: Yes.

Q: You touched the shoulder of the complainant is that not the case?

A: Yes

Q: You again picked a stick and hit his hand

A: I never said that. The stick that the painter was using to stir the paint is what I took and told them to go outside so we speak and the paint touched one, Benjamin Agor.

Q: This is your own statement that after speaking to complainant they should call the boss and they refused, it was there you picked the stick and hit him.

A: I never hit his hand.

Q: In your cautioned statement, you did not mention that there was a stick used to stir paint but rather picked a stick.

A: I never said that the stick I was holding touched the shirt but I said we should go out and talk.

Q: You were not in the house when the complainant and his colleagues came to the house.

A: I was present.

Q: So when you were called and you came from elsewhere, so already you were angry before you came to the house.

A: No, I wasn't angry.

In the present suit, PW1 testified that Accused hit his hand with a stick and PW2 has also corroborated this testimony because they were together when the incident occurred but both did not state that PW1 sustained any bodily hurt. Accused also takes that he did not cause any harm to PW1 albeit that in his cautioned statements he admitted hitting PW1 with a stick he picked from the ground. Prosecution produced Exhibit 'E' which is a photograph of a swollen hand alleged to be that of PW1 but failed to produce a medical report on PW1 reason being that PW1 declined to go the hospital during investigation. Now the question to be asked is, did the purported injury sustained by PW1 fall within the confines of the definition of harm in Act 29? If PW1 sustained any bodily hurt why did he refuse to seek medical treatment?

It is this Court's opinion that, if indeed PW1 sustained any bodily hurt he would have sought medical treatment from a medical facility and not decline same having alleged during cross examination that he broke his arm. This is what ensued during cross examination of PW1 by accused;

Q: There was a stick in a paint bucket which when I removed hit your arm when I was asking you to come out of the room with me.

A: I do not remember where you picked the stick but you hit me well with it and the arm even got broken.

This raises doubt with respect to the offence Accused has been charged with. The court is satisfied that the accused is guilty but not of the offence of causing harm contrary to section 69 of Act 29 because although PW1 alleges that he sustained bodily hurt there is an iota of doubt that the hurt was caused by the Accused.

Section 154 of the Criminal Procedure Code (Act 30) as amended by Act 653 provides as follows;

- (1) "Where a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete lesser offence, and the combination is proved but the particulars are not proved, he may be convicted of the lesser offence although he was not charged with it.*
- (2) Where a person is charged with an offence and facts are proved which reduce it to a lesser offence, that person may be convicted of the lesser offence although he was not charged with it".*

Section 84 of Act 29 which is the offence creating section for Assault provides as follows; *whoever unlawfully assaults any person is guilty of misdemeanor.*

Section 85(1) of Act 29 provides; *assault includes (a) Assault and battery, (b) Assault without actual battery and (c) Imprisonment.*

Section 86(1) of Act 29 also provides; 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.

Conclusion

The facts in the instant suit have proved that the accused assaulted PW1 when he hit him with the stick without his consent or any justification in law and this was admitted by accused in his cautioned statements. On the strength of section 154(2) of Act 30 as amended cited above, this court hereby finds accused guilty of the offence of Assault to PW1 and convicts him accordingly.

Having considered that the Accused is a first time offender and his plea in mitigation, he is hereby sentenced to 200 penalty units in default eight (8) months imprisonment. Accused is also to sign a bond to be of good behaviour for Twelve (12) months.

(SGD)

**ADELINE OWUSUA ASANTE (MS.)
(MAGISTRATE)**