

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON  
THURSDAY THE 17<sup>TH</sup> DAY OF NOVEMBER, 2022 BEFORE HER  
HONOUR ENID MARFUL-SAU, CIRCUIT COURT JUDGE

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CASE NO. D3/47/2020

THE REPUBLIC

VRS.

AKUA DUFIE

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*ACCUSED PERSON PRESENT*

*PROSECUTION: C/INSP SALIFU NASHIRU PRESENT*

*COUNSEL: GAD COBBINAH ESQ. FOR ACCUSED PERSON ABSENT*

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## **JUDGMENT**

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The Accused is charged with one count of Causing Harm, contrary to Section 69 of the Criminal Offences Act, 1960 (Act 29).

The facts as presented by prosecution are that the Accused and complainant are Co-tenants in a house at Nii Boi Town in Accra. According to prosecution, on 2<sup>nd</sup> May, 2020 at about 6:40pm, the Accused alleged that complainant had placed juju on the house which complainant denied. Prosecution says that this brought about a misunderstanding in the house between the two and on 3<sup>rd</sup> May, 2020, Accused insulted complainant and scratched her left jaw but she did not mind the Accused. Prosecution says that on 4<sup>th</sup> May, 2020 at about 4:00am whilst the complainant was going to fetch water in the kitchen, the Accused pounced on complainant and immersed her head into a barrel of water. According to Prosecution, Accused then picked a metal bar from the ground and hit complainant several times and caused harm to her. Prosecution says that complainant's daughter came to complainant's aid and

took the metal bar from the Accused. The complainant made a report at the Lapaz Police Station and based upon these facts Accused was arraigned before this court.

By a Ruling dated 29<sup>th</sup> March, 2022, the Accused was called upon to open her defence to the charge. Accused testified viva voce on oath on 25<sup>th</sup> April, 2022. At the end of her testimony, her lawyer indicated that he wanted to tender a certain document through the Accused person. On this basis, Accused person's mouth was sealed for purposes of tendering the said document at the next adjourned date for cross-examination to proceed. On the said date, a further order was given that all of Accused person's witnesses are to file Witness Statements for speedy trial. On 19<sup>th</sup> July, 2022, when the case was called, counsel for the Accused was absent and the witness statements had not been filed. On 7<sup>th</sup> October, 2022, counsel for accused was again absent so hearing proceeded in his absence. When Accused mounted the Witness box, she indicated that the said document the case had been adjourned since for her to tender was with her lawyer, accordingly her evidence in chief was ended and prosecution proceeded to cross examine her on her evidence. As of 7<sup>th</sup> October, 2022, counsel for Accused had still not complied with the orders of the court to file the witness statements of the said witnesses of the Accused person, accordingly the case of the Accused was closed for Judgment.

Accused testified that one day she tried to open her trap door but there was something blocking it so she called her husband. She tendered as Exhibit 1 a photograph of the said object blocking the door. So upon advice of a friend she spoke to a prophetess on phone who informed her that her neighbour wants to kill her so she should vacate from where she lives. And that the object found was meant to kill her if the needles entered her so the said prophetess sent someone to pick the object up around 10:30am. She stated that on the day in question at about 3:00am-4:00am, she was going to the toilet and she passed in front of PW1's door. According to her when she got to

PW1's door, she opened it and the door hit her and PW1 used wood to hit her head and blood started oozing so she pounced on her, and they both fell after PW1 had hurt her. According to her, PW1 was on the ground, and she was on top of her and her husband came to lift her. She testified that when her husband tried to lift her, PW1 pulled out a metal object in an attempt to strike her and in an attempt to prevent the strike she moved from the point of struggle to a different location.

The direct evidence of PW1, the complainant is that on the day in question, she went to the bathroom in the morning to take a shower and saw that there was someone in the bathroom so she decided to fetch water from the barrel and go behind the house to take her bath. She testified that as soon as she put her head in the barrel to fetch the water, the accused came from the bathroom and pushed her head into the barrel and subjected her to beatings saying that 'today I will kill you.' She testified that she struggled to save herself and her water poured on the floor so she slipped and fell and the Accused used a cooking iron rod lying on the floor to hit her body so she screamed and called her daughter. According to her, when her daughter came out she (PW1) was holding one end of the metal while the accused was also holding the other end and her daughter managed to collect the metal from them. She stated that later the Accused person's husband and daughter came to see her clothes with blood and a friend of hers took her to the Lapaz police station where she was issued with a medical form to attend hospital.

PW2 testified that on the day in question, which was 4<sup>th</sup> May, 2020, she was in the room around 4:00am when she heard PW1 shouting her name. She stated that she quickly rushed out to the kitchen and to her surprise she saw PW1 on the wet floor with bruises on her body while Accused was on her struggling with a metal object being an iron rod hook. She testified that she rushed to hold the metal and tried to collect it from them. She stated that immediately the Accused person's husband and her two children came in and the Accused

then left the metal. She stated that PW1 got up from the floor and asked for her phone which she did and PW1 called a neighbour who came with his wife and sent PW1 to the hospital.

It is apparent the Accused and PW1 do not have a cordial relationship. This is largely due to the fact that Accused highly suspects PW1 to have engaged in black magic in the house within which they live as co-tenants in a bid to kill her and paralyze her husband.

In Exhibit D which is Accused person's Investigative Cautioned Statement, she indicated that on the morning of the said day, PW1 opened her kitchen door to hit her and when she turned she saw PW1 pick up a stick so she rushed on her and fought her very well. According to her, she did not use any object on PW1, but it was through the struggle that she sustained bruises on her body. However, in her evidence before this court, she is silent on any injury caused to PW1 and in fact under cross examination denies having caused any injury to PW1. Her explanation was that what is seen is the bleached skin of PW1 and that if she had in fact caused injury to PW1, her skin would not look as it is.

In Exhibit D which was written closer in time to the occurrence of the incident, Accused stated that she saw PW1 bend to pick up a stick so she rushed on her and fought her. However, in her evidence on oath some years after Exhibit D was given, she indicated that when PW1 opened her door to hit her, she used a piece of wood to hit her, and blood was oozing out. This is clearly distinct from her narration of events in Exhibit D. She went on to add that she went to the hospital, but the said hospital report was never produced before this court.

In **YARO AND ANOTHER v. THE REPUBLIC [1979] GLR 10** the court held as follows:

*"A previous statement made by a witness to the police which was in distinct conflict with his evidence on oath was always admissible to discredit or contradict him and it*

*would be presumed that the evidence on oath was false unless he gave a satisfactory explanation of the prior inconsistent statement. A witness could not avoid the effect of a prior inconsistent statement by the simple expedient of denial. Where the witness did not distinctly admit that he had made such a statement, proof could be given, as in the instant case, that he had in fact made it."*

I am unable to find any satisfactory explanation for the prior inconsistent statement made by the Accused and I therefore consider that Accused has been discredited.

Aside the direct evidence of PW1 and which is largely corroborated by PW2, there is also *Exhibit F series* which are photographs showing injuries on the back, arm and chest of PW1 and *Exhibit H*, which is a medical report endorsed by Dr. Richard Fayah dated 4<sup>th</sup> May, 2020 with the time indicated as 5:30am. According to the Report, PW1 'has multiple wide retracted lacerations involving her left upper limb, right forearm, upper chest and back.' Therefore, the harm caused to PW1 was more than just bruises.

I find that the explanation of the defence by Accused of a complete denial of the injuries sustained by PW1 is unacceptable, and further her explanation is not reasonably probable in view of inconsistencies in her case. (See. **LUTTERODT v. COMMISSIONER OF POLICE [1963] 2 GLR 429**). I find the Accused Person Guilty as charged and she is hereby convicted.

**H/H ENID MARFUL-SAU**

**CIRCUIT JUDGE**

**AMASAMAN**