

**CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 10TH DECEMBER, 2022**

SUIT NO. D3/15/21

THE REPUBLIC

VRS

ERICSON TSEDIKY

RULING

The accused person is before this court on a charge of causing harm contrary to *section 69 of the Criminal Offences Act, 1960 (Act 29)*. The particulars of offence are that on the 5th day of May, 2020 at light industrial area at community 9, Tema in the Tema Circuit and within the jurisdiction of this court, you intentionally and unlawfully used a stone to inflict injuries on one Loretta Aniukwu by using the said stone to hit complainant's face resulting in her sustaining injury.

The accused person pleaded not guilty to the charge and by so doing, cast upon the prosecution the duty of leading evidence to establish his guilt. A plea of not guilty serves as both a shield and a sword. A shield for the accused person who is presumed to be innocent until proven guilty and does not have to say anything in proof of his innocence and a sword pointed at his accusers to lead evidence to establish a prima facie case against him.

It is only when prosecution has discharged their duty by leading cogent and credible evidence in proof of their case that the sword would now turn towards the accused

person; not to establish his innocence but to raise a reasonable doubt in the mind of the court.

Where prosecution fails to establish such a prima facie case, the court must acquit and discharge the accused person.

Also, by his plea of not guilty, the accused person had invoked the protection accorded him under *Article 19 (2) (c) of the 1992 Constitution*. Per that provision, he is presumed innocent until proven guilty. According to the case of **Davis v. U.S. 160 U.S 469(1895)**. "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

In the case of *Gligah & Atiso v. The Republic [2010] SCGLR 870 @ 879* the court held that *"Under article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story."*

In proof of its case, prosecution called eight witnesses. According to PW1 who is the complainant, on the 5th day of May, 2020 she had hired a truck to clear sand which accused person had caused to be tipped in front of her shop. Whilst the truck was working, accused person threw a stone to hit her back and she fell.

That someone tried to assist her to rise but accused picked another stone and slammed it in her face. That accused person's brother assisted her to the hospital. She tendered in evidence exhibits A and A1 respectively two pictures of her face dated 5th and 6th May 2021, Exhibit B – Police medical form, Exhibit B1 – Dental Clinic report signed by Dr. Akosah, Exhibit B2 – Patient medical record.

She further tendered in evidence Exhibit C – Report from Salem Eye Center dated 15th May 2020, Exhibit C1 – Prescription from Salem Eye Center dated 13th May 2020, Exhibit C2 – Receipt from Top Up pharmacy dated 11th May 2020 at 10:22am, Exhibit C3 – Receipt from Tema Christian Eye Centre dated 7th May 2020 at 12:40pm, Exhibit C4 – International Maritime Hospital receipt dated 14th May 2020 at 11:00, Exhibit C5 – Tema General Hospital Patient Bill receipt dated 7th May 2020.

Exhibit C6 – Top up pharmacy receipt dated 14th May 2020 at 20:58pm, Exhibit C7 – Top up pharmacy receipt dated 14th May 2020 for GH¢152, Exhibit C8 – Receipt from Salem Eye Center dated 13th May 2020 for GH¢530 and Exhibit C9 – Medical Diagnostic Services Ltd dated 15th May 2020 for Salem Eye Centre.

She finally tendered in evidence Exhibit D and D1 – Prescription forms for Tema General Hospital, Exhibit D2 and D3 – X-ray request form and Exhibit E – Pen drive of video footage of the alleged incident. Under cross examination, counsel for accused tendered a picture of the heap sand through PW1 as Exhibit 1.

The evidence of PW2 is that she is a sales girl at PW1's shop. That on the day in question, whilst the truck was clearing the sand, accused person came over screaming and questioning why the sand was being cleared from its location. Accused then picked a stone and hurled it at PW1. The stone hit PW1's waist and she fell to the ground.

That whilst PW1 was still on the floor, accused person picked another stone and hurled it at her face. Blood started oozing from behind her eyes and the brother of accused person took her to the hospital.

PW3's evidence is that he was the driver in charge of the truck that was moving the sand from PW1's shop. That the accused person approached him with a stone; about half the size of a regular building block and asked him to stop moving the sand. That he refused.

That the accused then hid the concrete block behind him and swiftly moved towards PW1 and threw it at her. That PW1 fell and accused person took another stone (different stone) and threw it at her face. That PW1 was rescued from further harm by the accused. Further that he took the big stone thrown at complainant and hid it and also made a video of some of the events that transpired.

PW4 is a dentist; Dr. Vanessa N. Akossah. According to her, PW1 visited the Tema General Hospital where she works. PW1 reported of toothache and a tingling sensation of the upper lip which according to her, occurred from an assault on her right face.

She tendered in evidence a medical report. Her examination observations include a healing scar about 0.5 cm from the right side of PW1's face. There was no step deformity.

PW5 is Dr. Ernestina Twumasi Ankrah, a doctor at the Tema General Hospital. Her evidence is that PW1 reported at the hospital on the 15th day of May, 2020 with severe pain as a result of assault on her. She examined her and attached her patient records.

The clinical notes indicate that upon examination, there were no obvious wounds at her lower back. However, there are multiple bruises (dark patches) on both sides of the waist and both thighs. There was tenderness on her lower back and hip joint. The impression is a closed pelvic fracture or fracture of the lumbosacral spine.

PW6 is Dr. David O. Adiepena; an ophthalmologist. His evidence is that PW1 reported to the Salem Eye Clinic where he works with a three-day history of assault. He duly examined her and attached his report.

PW7 is Dr. Isaac Agblor, a doctor at the Tema General Hospital. His evidence is that PW1 reported to the hospital with a police medical form and a with a complaint that she had been assaulted. He attached the medical report to his statement.

PW8 is the investigator. His evidence is that PW1 reported a case of causing unlawful harm against the accused person on the 11th day of May, 2020. That he obtained a statement from PW1 and witnesses. He subsequently arrested the accused person and obtained an investigation caution statement from him. That he visited the scene and took photographs.

He continued that his investigations revealed that there was a heated argument between PW1 and the accused person in the course of a pay loader machine moving the sand which accused person had deposited in front of PW1's shop away. Accused person became offended and assaulted PW1 leading to injury. That he issued a police medical form to PW1 which she returned duly endorsed. He later charged the accused person with the offence of causing harm and took a charge statement from him.

He tendered in evidence Exhibit F, the investigation caution statement of accused person, Exhibit F1 as the charge statement of accused person, Exhibit G being a picture of heap of sand, Exhibit H being the stone allegedly thrown at PW1 by the accused person.

CONSIDERATION BY THE COURT

Section 173 of the Criminal and Other Offences Procedure Code, 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 him."

According to the Supreme Court in the case of *Asamoah & Anor. v. The Republic* [2017-2018] 1 SCGLR, 486, *Adinyira JSC* speaking for the apex court, stated that "the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial by indictment may be restated as follows;

- a) There had been no evidence to prove an essential element in the crime
- b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or
- c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it
- d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence.

See the celebrated case of *The State v. Ali Kassena* [1962] 1 GLR 144 in which the *Practice Direction issued by the Queens Bench Division in England* [1962] 1 E.R 448 (Lord Parker CJ) was approved of

At the close of prosecution's case, I find that they have established all the relevant elements of the offence of causing harm as contained in the charge sheet against the accused person. The evidence has not been so discredited under cross examination, the evidence is reliable such that a court can safely convict on same and the evidence lends itself to one explanation at this stage; the prima facie guilt of the accused person. Consequently, I hereby determine that prosecution has established a prima facie case against the accused person and he is thus called upon to open his defence if he so desires.

(SGD)

H/HBERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

INSPECTOR JACOB KUUBAL FOR THE REPUBLIC

ANDREWS K. VORTIA FOR THE ACCUSED PERSON