

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
THURSDAY THE 13TH DAY OF OCTOBER, 2022 BEFORE HER HONOUR
ENID MARFUL-SAU, CIRCUIT COURT JUDGE

CASE NO. D3/17/2022

THE REPUBLIC

VRS.

LOVETT SUNDAY

ACCUSED PERSON PRESENT

PROSECUTION: ASP HANSON ARMAH PRESENT

*COUNSEL: MATHIAS YIR-ERU ESQ. WITH JOHN NDEBUGRI AWUNI ESQ.
FOR*

ACCUSED PERSON PRESENT

JUDGMENT

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 on 16th January, 2022 at about 11:00am, the accused visited the complainant, a sixty-one-year-old Swiss national in his hotel room at Mosco Hotel in Kwabenya. According to prosecution, the Accused and complainant had sex after which he gave the Accused GH¢250.00 and she left. According to prosecution, Accused called the complainant and informed him that her father had been involved in a serious accident in Nigeria and so she needed GH¢100.00 in addition to what he had already given her so she could send to her father. Prosecution says that the Accused went back for this amount and left. However, Accused was not satisfied so she decided to go back to the hotel in the company of a young man and called to inform complainant that she left her keys in the room. According to prosecution, complainant peeped through the window and saw

that she was with another man so he locked the door and removed the key as soon as the Accused entered leaving the man behind. Prosecution says that the Accused tried to take the key to open the door, and this resulted in a struggle between them. According to Prosecution, the Accused took a Fanta bottle and broke it and used a piece to stab the complainant on the head and above the right eyebrow. The complainant then called the hotel manager who called the receptionist, and he contacted the Police who arrived at the scene and the Accused was arrested. Based upon these facts, the accused was charged and arraigned before this court.

Prosecution called 3 witnesses in support of its case. By a Ruling dated 16th September, 2022, the Accused was called upon to open her defence to the charge.

Accused testified on oath by means of a witness statement filed on 27th September, 2022. She testified that on 16th January, 2022 at about 11:00am, she visited PW3 at his request. According to her, PW3 had sex with her and handed her an amount of GH¢200.00 contrary to an earlier agreement to pay GH¢400.00 therefore she protested, and he added GH¢50.00 which she took and went away. She stated that she returned to PW3 as an attempt to get him to pay her the balance agreed on but on meeting him, he gave her GH¢100.00 and she left again. She says that PW3 informed her that he would pay the full amount if she spent the whole day with him. According to her, when she got home after the second visit, she could not find her keys so she knew it was PW3 who had taken it so she called him, and he informed her that she could return to search for the keys in the room. According to her, she went back a third time because of her keys. Accused stated that PW3 had a strange look on his face and she could tell that he was up to some evil against her but she went straight to the dustbin thinking she could find her keys there. She says that to her surprise, PW3 locked the door as soon as she entered the room and

while searching for the key PW3 started fondling her against her will. According to her, she protested and begged PW3 to let her go but he refused to open the door, so she dashed into the bathroom to try to stay away from PW3's persistent unwanted sexual harassment but PW3 locked her inside the bathroom so she climbed out of the bathroom and prevailed on complainant to open the door for her to leave.

She testified that during a confrontation between her and PW3, they knocked the fridge in the room and a Fanta bottle on top of the fridge fell and broke into pieces. She stated that as part of her attempts to get PW3 to open the door for her, she picked a piece of the broken bottle thinking that would frighten PW3 but PW3 held her by her hair and pulled her to the ground compelling her to scratch his body with the broken bottle to get PW3 off her but to no avail. She stated that PW3 held her to the floor and overpowered her and that was when he called the hotel officials informing them that she was rather attacking him so they should come to his rescue. She testified that when PW2 entered the room, she was still on the floor struggling. She stated that police came and took her to the police station, but she was unable to tell the full story because the Police and PW3 threatened her that if she says anything to put PW3 in trouble, she will rot in jail so the statement she gave was not of her own volition. She says that she did nothing unlawful as her acts toward PW3 were in self-defence.

In *Exhibit E* which is the investigative cautioned statement of the accused, she stated that she went back to the hotel of PW3 for a second time because she had seen a lot of money on PW3 so she told a fib that her father had had an accident in Nigeria and so she needs an amount of GH¢100. Again, she added that a bottle on the fridge broke, and she took a piece in the midst of a struggle and in the process the bottle hit PW3's upper eye and he started

bleeding. She stated therein that she did not mean to hurt PW3 and that it was just a coincidence.

Now in her evidence before the court, Accused says that this statement, *Exhibit E* was not of her own volition. I must state that the Accused had legal representation throughout the trial of this matter. The Cautioned Statements of the Accused Person form part of the evidence in this case and these were admitted without objection. Counsel for the Accused Person did not invite an adjudication by the court on the issue of admissibility of *Exhibits E* and *E1*. Also, after its reception in evidence, there were no issues of a fundamental breach of the requirements stipulated under section 120 of NRCD 323 raised. The evidential value or weight of *Exhibit E* is thus not negligible. During cross examination of Accused, she stated as follows:

“Q: Who threatened you

A: Mr. Roland threatened me in the hotel before he called the manager. He told me that if I tell the Police the truth he will let me stay in the Police Station but I have to agree with whatever he is going to tell me. I did as instructed and when we went to the Police Station I spent 3 days and was given bail and asked to return on 25/01/2022”

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."

Had it been the case that Accused was indeed threatened by the police, this would have been a fundamental issue counsel for accused would have raised at the earliest opportunity. I consider that by virtue of the prior statement made by Accused and in the light of her evidence on oath, Accused has been discredited and the reason that she was threatened by the police and/or PW3 could only be an afterthought.

Paragraph 14 of Accused's evidence in chief is as follows:

"As part of my attempts to get complainant to open the door for me to go, I picked a piece of the broken bottle thinking that would frighten the complainant to let me go. However, complainant violently grabbed me by my long hair and pulled me to the ground compelling me to scratch his body with the piece of the broken bottle just to get the complainant off me but to no avail."

From the testimony of Accused above, she admits that she used a piece of broken bottle to scratch the body of PW3 in a bid to get the complainant off her and this is the basis of Accused person's plea of self defence. However, during cross examination, Accused told a different story. She stated as follows:

Q: PW3 stated as per paragraph 20 of his Witness Statement that you picked an empty bottle on the fridge and hit his upper right eye and his head is that so

A: It is not so. He rather wanted to chook me with the bottle, and I struggled with him till the bottle cut him

Q: He said after hitting him with the bottle he started bleeding profusely what do you have to say

A: I did not hit him, he struggled with me till the bottle cut him

...

Q: Look at Exhibit C, the blood on the body of PW3 was as a result of the injury you caused him

A: I did not cause the injury; he was trying to use the bottle to chook me and I struggled with him till the bottle cut him"

Here, Accused states that PW3 wanted to stab her with the bottle and so she struggled with him. This is distinct from her evidence that the Accused held her hair and held her down. Accused alleges that PW3 was cut by the bottle as a result of the struggle between himself and Accused and not as a result of her using the bottle to hit him. This is also clearly at variance with an admission that she indeed scratched PW3 with the said bottle to free herself. Therefore, if indeed, it is the case that the injuries of PW3 were not caused by Accused as she claims under cross examination, then I find it curious why Accused makes a defence of self defence as that does not arise at all.

I shall nonetheless consider the defence of self defence raised by Accused. Under Section 37 of the Criminal Offences Act, 1960 (Act 29), a person may for the prevention or for the defence of that person or any other person against a criminal offence or for the purpose of suppression use force or harm which is reasonably necessary to prevent or defend himself or another person. It is trite, that when a defence of self-defence is put-up by a person, the use of force or harm in defending oneself or another person must be reasonably necessary within the circumstances.

In this case, Accused has indicated that she wanted to get PW3 to open the door for her to go, so she I picked a piece of the broken bottle thinking that would frighten PW3 to let her go but he violently grabbed her by her long hair and pulled her to the ground compelling her to scratch his body with the

piece of the broken bottle just to get PW3 off her. Was the harm caused PW3 justified in the circumstance?

In the case of **SABBAH V. THE REPUBLIC (2009) SCGLR 728** it was held as follows:

“The use of force or harm for the prevention of or for personal defence against crime as provided under section 37 of the Revised Criminal Offences Act, 1960 (Act 29), was subject to the limitation stated in section 32 of the Act governing all sections relating to the grounds on which force or harm might be justified. Therefore, whenever the defence of self-defence was put up, the harm used in defending oneself must have been reasonably necessary in the circumstances...”

Also, in the case of **LARTI V. THE STATE (1965) GLR 305**; the Supreme Court held that in the defence of Self Defence, the nature of the injury or harm caused by a person to another that is not reasonably necessary within the circumstances may displace the defence of Self Defence.

The medical report of PW3 is indicative of the fact that PW3 had deep lacerations on his right upper eye and scalp and was bleeding profusely. The report categorizes his injury as a 2° laceration which was sutured. There is also before the court *Exhibit B* which is a photograph of PW3 with blood from his head, on his face and chest. From the severity of the injury sustained by PW3, it is evident that the Accused used more pressure than just a scratch on PW3. In view of the inconsistencies in Accused person’s evidence, I am unable to find from the evidence that the injury caused PW3 constitutes reasonable harm in the circumstances.

On a consideration of the entirety of the evidence, I find that the injury the Accused Person inflicted on PW3 could not be said to be reasonable in the circumstances. The defence of self-defence will therefore be rejected.

I find that the explanation of the defence by Accused 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.

Finally, I wish to commend counsel for the accused for accepting to represent Accused on 7th April, 2022 when he was before this court in respect of another matter and was directed by the court to act as an amicus curiae to advise the Accused and proceeding from there to take the brief of the Accused; the dedication and industry of counsel did not go unnoticed.

**H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN**