

IN THE CIRCUIT COURT HELD AT ACHIMOTA, ACCRA ON THURSDAY,  
THE 27<sup>TH</sup> DAY OF APRIL, 2023 BEFORE HER HONOUR AKOSUA  
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE

CASE \_\_\_\_\_ NO.:

D8/003/2023

THE REPUBLIC

VRS

1. BRIGHT DEKYI @BRIGHTINO

2. YAW BARFO @ OH BRA

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1<sup>ST</sup> ACCUSED PERSON ABSENT  
2<sup>ND</sup> ACCUSED PERSON PRESENT

CHIEF INSPECTOR ROSE ANIMAH HOLDING THE BRIEF OF A.S.P. KWAKU  
OBENG FOR THE REPUBLIC PRESENT

NO LEGAL REPRESENTATION FOR THE ACCUSED PERSONS

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**JUDGMENT**

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The accused persons were charged and arraigned before this Court on 10<sup>th</sup>  
March, 2023 on the following charges;

1. Causing Harm, contrary to **section 69** of the Criminal Offences Act, 1960  
(Act 29)
2. Abetment of Crime to wit Causing Harm, contrary to **sections 18(1) and  
69** respectively of the Criminal Offences Act, 1960 (Act 29)

However the 1<sup>st</sup> accused person has never appeared before this Court; from when the case was first called in Court on 10<sup>th</sup> March 2023 up to date. The trial therefore was in respect of the 2<sup>nd</sup> accused person herein was arraigned before this Court on count two being the charge of Abetment of Crime to wit Causing Harm contrary to *sections 18(1) and 69 respectively of Act 29.*

The self-represented 2<sup>nd</sup> accused person pleaded not guilty to the charge after it had been read and explained to him in Twi, being his language choice. The 2<sup>nd</sup> accused person having pleaded not guilty on count two, puts the facts of the prosecution in issue. Thus the burden was therefore placed on the prosecution to prove the guilt of the 2<sup>nd</sup> accused person beyond reasonable doubt.

The facts of the case as presented by the prosecution are that the complainant, Vincent Acquaye @ Allotey is a trader living at Begyewahome, a suburb of Mile 7. Accused persons Bright Dekyi @ Brightino and Yaw Barfo @ Oh Bra are bosom friends and also residents of Begyewahome. On 22/02/2023, rumours were rife that the 1<sup>st</sup> accused person had raped a certain lady in their area and the case was reported to the police, hence some policemen were in the area to effect the arrest of the 1<sup>st</sup> accused person later in the evening. The 1<sup>st</sup> accused person got wind of the police presence and attempted to flee from the community. However, the complainant accosted the 1<sup>st</sup> accused person right in front of the 2<sup>nd</sup> accused person's drinking bar and held him to wait for the police. The 1<sup>st</sup> accused person, however, began to struggle with the complainant to free him and the 2<sup>nd</sup> accused person went in to grab the complainant so that the 1<sup>st</sup> accused person could escape. Suddenly, the 1<sup>st</sup> accused took advantage and stabbed the complainant's left arm with a scissors and took to his heels. The complainant chased the 1<sup>st</sup>

accused person and caught with him in a big gutter nearby. However, the 2<sup>nd</sup> accused person once again rushed in to grab the complainant and the 1<sup>st</sup> accused person went on to stab the complainant twice in his neck and once at his back with the same scissors. Fortunately the police arrived at the scene timely and arrested the accused persons. The 1<sup>st</sup> accused person admitted the offence but claimed that he acted in self defence. After investigation, they were charged with the offences.

The prosecution in establishing its case, called three (3) witnesses including the investigator.

### *Evidence of PW1*

**PW1** who is also the complainant told the Court in his evidence that he lives at Begyewahome a suburb of Mile 7 and on 22<sup>nd</sup> February, 2023 he got information that the 1<sup>st</sup> accused person had raped a certain lady in the area he lived so he heard that policemen were in the community looking for the 1<sup>st</sup> accused person. That when he saw the 1<sup>st</sup> accused person running away to escape from the police he quickly got hold of the 1<sup>st</sup> accused to prevent him from escaping. According to PW1, a struggle ensued between them and a young man who happens to be 2<sup>nd</sup> accused person suddenly appeared at the scene and joined the fray. That he grabbed his hands and it allowed the 1<sup>st</sup> accused to pull a pair of scissors from his pocket and stabbed him several times on his hands. That he fell down and the 1<sup>st</sup> accused person took to his heels and that he chased him until he caught him in a nearby gutter. That the 2<sup>nd</sup> accused person again rushed there and grabbed him and the 1<sup>st</sup> accused stabbed him again with the same scissors. That the timely intervention of the police saved his life but the two accused persons escaped before the arrival of the police. PW1 continued that with lots of severe injuries he

was rushed to the police station and quickly got a medical report form which was duly endorsed. That whilst getting treated by the medical team he took photographs of the injuries he sustained and he tendered a copy of the photographs as exhibit 'A'.

### *Evidence of PW2*

**PW2**, gave her name as Rose Abonkoro and told the Court that she is a trader living at Begyewahome a suburb of Mile 7. That on 22<sup>nd</sup> March, 2023 she accompanied her sister Esi to lodge a complaint at Mile 7 police station. Shortly after lodging the complaint, the police were leading them to effect an arrest when she suddenly saw the 1<sup>st</sup> accused fleeing from the area. That she saw the complainant holding the 1<sup>st</sup> accused to stop him from running and a struggle ensued between the complainant and the 1<sup>st</sup> accused person. That in the course of this, the 2<sup>nd</sup> accused person who happens to be Yaw Barfo appeared at the scene and grabbed the complainant by his hands. According to PW2, the 2<sup>nd</sup> accused person suddenly pulled a pair of scissors and stabbed the complainant with it. That the 1<sup>st</sup> and 2<sup>nd</sup> accused persons managed to flee and she saw the police chasing them and eventually got out of sight. That she later went to the police station to give her statement. She tendered a copy of the statement she gave to the police as exhibit 'B'.

### *Evidence of PW3*

According to **PW3** (investigator), the complainant and the accused persons are all residents of Begyewahome, a suburb of Mile 7. PW3 repeated the facts as presented by the prosecution. He tendered the investigation caution statement

and charge statement of the 1<sup>st</sup> accused person as exhibits 'C' and 'C1' and that of the 2<sup>nd</sup> accused person as exhibits 'D' and 'D1' respectively.

Thereafter, the prosecution closed its case.

After the close of the case of prosecution, the Court examined the evidence of the prosecution witnesses to determine whether a prima facie case had been made by the prosecution to warrant the 2<sup>nd</sup> accused person to open his defence. The Court then ruled that a prima facie case had been made and the 2<sup>nd</sup> accused person was to raise a reasonable doubt in the case of the prosecution.

In the case of *The Republic v District Magistrate Grade II, Osu, Ex parte Yahaya* [1984-86] 2 GLR 361 – 365 Brobbey J (as he then was) stated that:

*“...evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused himself has given evidence.”*

In view of the above, the Court found that the 2<sup>nd</sup> accused person had a case to answer and was therefore called upon to enter into his defence, after the options available to him as an accused person were explained to him.

#### **OPENING OF DEFENCE / EVIDENCE OF THE 2<sup>ND</sup> ACCUSED PERSON**

The 2<sup>nd</sup> accused person stated in his evidence that he lives at Begyewahome and that he is a labourer and into drinking bar and provision shop. He testified that he does not know the complainant and does not also know PW2. That he knows PW3. The 2<sup>nd</sup> accused person further testified that it is not true that he held the

complainant for the 1<sup>st</sup> accused person to harm him. That he separated them from fighting in front of his drinking bar for peace to prevail. According to the 2<sup>nd</sup> accused person, he did not follow any of them thereafter to anywhere or follow him to the gutter and made Bright Dekyi cause complainant harm. He continued that it is not true that he told the 1<sup>st</sup> accused person to flee and hide in the gutter and run away. That it is not true that he deliberately held Bright Dekyi to be prevented from arrest and that he did not know that the police were there to arrest Bright Dekyi.

The 2<sup>nd</sup> accused person did not call witness and closed his defence thereafter.

*The legal issue to be determined by this Court is whether or not the 2<sup>nd</sup> accused person abetted the 1<sup>st</sup> accused person to cause harm to the complainant.*

This being a criminal case, the prosecution bears the burden of proof to establish the guilt of the 2<sup>nd</sup> accused person beyond reasonable doubt.

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 requirement is the essence of *sections 11, 13 and 15 of the Evidence Act, 1975 (NRCD 323)*.

In the case of *Asante (No.1) v. The Republic (No.1) [2017-2020] 1 SCGLR 132* at 143 per Pwamang JSC, it was held that:

*“Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has a burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in Court, including that led by*

*the accused person, the Court would believe beyond a reasonable doubt that the offence has been committed and that it was the accused person who committed it. Apart from specific cases of strict liability offences, the general rule is that throughout a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by law to prove anything. He is only to raise a reasonable doubt in the mind of the Court as to his commission of the offence and his complicity in it except where he relies on a statutory or special defence."*

Also, in the case of *Asare v The Republic [1978] GLR 193 – 199*, Anin J. A. delivering the Court of Appeal decision stated thus:

*"There was no burden on the accused to establish his innocence, rather it was the prosecution that was required to prove the guilt of the accused beyond all reasonable doubt."*

Again, in the case of *Kugblenu vrs. The Republic [1969] CC 160 CA*, Ollenu JA stated the law as follows:

*"It is trite law that the onus upon the prosecution is to prove their case beyond all reasonable doubt. This applies to all material issues and matters, which form the pivot of the case of the prosecution or the pillar or foundation of the case upon which the case rests. If the prosecution leads evidence which creates uncertainty, they have failed and the accused should be acquitted".*

Therefore, the prosecution has a statutory duty to prove the essential ingredients of the offence charged against the 2<sup>nd</sup> accused person beyond reasonable doubt.

Before examining the evidence given at the trial it is important to set out the provisions of **Act 29** under which the 2<sup>nd</sup> accused person has been charged.

Under count two on the Charge Sheet herein, the 2<sup>nd</sup> accused person is charged with Abetment of Crime to wit Causing Harm contrary to **sections 18(1) and 69** respectively of Act 29.

**Section 18(1) of Act 29** is on **attempt to commit criminal offence** and it provides that:

*“A person who attempts to commit a criminal offence shall not be acquitted on the ground that the criminal offence could not be committed according to the intent (a) by reason of the imperfection or other condition of the means, or (b) by reason of the circumstances under which they are used, or (c) by reason of the circumstances affecting the person against whom, or the thing in respect of which the criminal offence is intended to be committed, or (d) by reason of the absence of that person or thing.”*

**Section 69 of Act 29** on Causing Harm, provides as follows:

*“Whoever intentionally and unlawfully causes harm to any person shall be guilty of second degree felony.”*

**Section 76 of Act 29** defines Unlawful Harm as follows:



*“Harm is unlawful which is intentionally or negligently caused without any of the justification mentioned in Chapter I of this Part.”*

**Section 31 of Act 29** is the chapter 1 mentioned under section 76 being grounds on which harm may be justified and it provides as follows:

*“Force may be justified in the cases and manner, subject to the conditions, hereinafter in this Chapter 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 exercise 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.”*

At the end of the trial, I made the following findings of fact and observations.

Before the analysis of the evidence adduced at the trial, it is noteworthy to mention that, **section 18(1) of Act 29** under which the prosecution charged the 2<sup>nd</sup> accused person abetment of crime is not the accurate section for abetment of crime. This is because section **18(1) of Act 29** makes provision on **attempt to commit a criminal offence** and not abetment of a criminal offence. Rather, it is

section 20(1) of Act 29 that makes provision on **abetment of a criminal offence**. Therefore the prosecution got it wrong when they charged the 2<sup>nd</sup> accused person with abetment of crime contrary to section 18(1) of Act 29 when that section does not provide about abetment of crime.

**Section 20(1) of Act 29 on abetment provides as follows:**

*“A person who directly or indirectly instigates, commands, counsels, procures, solicits or in any other manner purposely aids, facilitates, encourages, or promotes, whether by a personal act or presence or otherwise and a person who does an act for the purpose of aiding, facilitating, encouraging or promoting the commission of a criminal offence by any other person, whether known or unknown, certain or uncertain, commits the criminal offence of abetting that criminal offence, and of abetting the other person in respect of that criminal offence”.*

From the evidence before this Court, PW1 told the Court that on 22<sup>nd</sup> February, 2023 he learnt that that policemen were looking for the 1<sup>st</sup> accused person who had been accused of rape, to arrest; and so when he saw the 1<sup>st</sup> accused person running away to escape from the police he quickly got hold of him to prevent him from escaping. In the course of that the 2<sup>nd</sup> accused person suddenly appeared at the scene and grabbed his hands allowing the 1<sup>st</sup> accused to pull a pair of scissors from his pocket and stabbed him several times on his hands. From the evidence of PW1, it made 1<sup>st</sup> accused person run away but he chased him and caught him and the accused the 2<sup>nd</sup> accused person again grabbed him making the 1<sup>st</sup> accused stab him again with the same scissors. That he was rushed to the police station with severe injuries and was given a medical report form which was duly endorsed. PW1 under cross examination maintained that the 2<sup>nd</sup>

accused person was the one who held him to grant the 1<sup>st</sup> accused person access to stab him.

No police medical form was tendered in evidence even though PW1 stated in his Witness Statement that he was tendering same. From the evidence before this Court, none of the prosecution witnesses tendered the said endorsed police medical form as an exhibit. Although PW1 spoke about the said medical report form in his evidence and stated that he was tendering it as an exhibit, no such exhibit was tendered before this Court during the trial. The prosecution never attached the said endorsed medical report form to any of the Witness Statements they filed, even after the Court drew the attention of the prosecutor to same during Case Management Conference stage in the instant case.

It is unfortunate that the prosecution did not tender in evidence such an essential exhibit to buttress the allegation that there was a medical report form which was duly endorsed. In a case like the instant one, an endorsed medical report form by the appropriate medical officer is a key evidence as to the alleged cause of harm or its abetment.

PW1 rather tendered exhibit 'A' which is the photograph of him with bandage on his neck, hand and some parts of his upper body.

Regarding the evidence of PW2, same contradicts the case of the prosecution against the 2<sup>nd</sup> accused person in the sense that, she stated in her evidence that on 22<sup>nd</sup> March, 2023 she accompanied her sister to lodge a complaint at Mile 7 police station which was the basis for the police to attempt arresting the 1<sup>st</sup> accused person leading to the instant case. However, the said 22<sup>nd</sup> March, 2023 could not have been the accurate date because the instant case was brought to this Court on 10<sup>th</sup> March 2023 and on the said 22<sup>nd</sup> March 2023, this Court had begun Case

Management Conference in this case. Therefore the date stated by PW2 is not factually correct.

Also PW2 told the Court in her evidence that the 2<sup>nd</sup> accused person pulled a pair of scissors and stabbed the complainant with it. However that is inconsistent with the case of the prosecution against the 2<sup>nd</sup> accused person. This is because the prosecution's case is that, the 2<sup>nd</sup> accused person held the complainant which made the 1<sup>st</sup> accused person stab the complainant with scissors and run away. Indeed PW1 who is the complainant told the Court that the 2<sup>nd</sup> accused person grabbed his hands and then allowed the 1<sup>st</sup> accused person to pull a pair of scissors from his pocket and stabbed him several times on his hands. Therefore the evidence of PW2 that the 2<sup>nd</sup> accused person pulled a pair of scissors and stabbed the complainant with it, is highly inconsistent with the case of the prosecution.

Additionally the evidence of PW2 also contradicts her own statement given at the police station tendered as exhibit 'B' which stated among others that, the 2<sup>nd</sup> accused person held the complainant in an attempt to allow the 1<sup>st</sup> accused person to escape and the 1<sup>st</sup> accused person stabbed the complainant twice with a scissors one on his arms and the other in his neck.

From the above inconsistencies the Court is unable to attach any probative value to the evidence of PW2.

PW3 basically tendered the investigation caution statements and charge statements of the accused persons. He did not tell the Court the exact investigation he conducted and what came out of the said investigation, except to repeat the facts of the case.

The 2<sup>nd</sup> accused person throughout the trial denied abetting the 1<sup>st</sup> accused person to cause harm to the complainant. In his defence, he denied the charge against him and testified that he separated the 1<sup>st</sup> accused person and the complainant from fighting in front of his drinking bar for peace to prevail; and that he did not follow any of them thereafter to anywhere to make the 1<sup>st</sup> accused person cause the complainant harm.

In his investigation caution statement the 2<sup>nd</sup> accused person denied the offence and stated among others, that he did not hold the complainant for the 1<sup>st</sup> accused person to stab him as claimed.

The 2<sup>nd</sup> accused person having denied the offence he is charged with, the prosecution had a legal burden to establish the ingredients of the offence beyond reasonable doubt, from the evidence adduced before this Court.

In the case of *Commissioner of Police v. Isaac Antwi [1961] GLR 408-412*, it was held that the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt.

This is further emphasized by *sections 11(3) and 13(2) of the Evidence Act, 1975 (NRCD 323)*.

When the Court gave the prosecutor the opportunity to cross examine the 2<sup>nd</sup> accused person on his evidence which was a denial to the offence allegedly committed, the prosecutor opted not to cross examine the 2<sup>nd</sup> accused person. The failure of the prosecutor to cross examine the 2<sup>nd</sup> accused person implied that the prosecution accepted the evidence of the 2<sup>nd</sup> accused person and did not have to challenge same by way of cross examination.

The Court of Appeal in the case of Quagraine v. Adams [1981] GLR 599 CA, held that:

*“where a party makes an averment and his opponent fails to cross-examine on it, the opponent will be deemed to have acknowledged, sub silentio, that averment by the failure to cross-examine.”*

The principle was further enunciated by Ansah JSC in Takoradi Flour Mills v. Samir Faris [2005 -2006] SCGLR 882 when he referred to the case of Tutu v. Gogo, Civil Appeal No. 25/07, dated 28<sup>th</sup> April 1969, Court of Appeal unreported; digested in 1969 CC76 where Ollenu JA (as he then was) stated thus:

*“In law, where evidence is led by a party and that evidence is not challenged by his opponent in cross-examination and the opponent did not tender evidence to the contrary, the facts deposed to in the evidence are deemed to have been admitted by the party against whom it is led, and must be accepted by the Court.”*

The prosecutor did not cross examine the 2<sup>nd</sup> accused person on his evidence denying the charge against him and so relying on the above principle and authorities, those facts in the evidence of the 2<sup>nd</sup> accused person are deemed to have been admitted by the prosecution and the Court accepts same.

All that the 2<sup>nd</sup> accused person needed to do was to raise a reasonable doubt in the case of the prosecution against him; and the failure by the prosecutor to cross examine him on his evidence helped the 2<sup>nd</sup> accused person to raise a reasonable doubt in the case of the prosecution. The defence of the 2<sup>nd</sup> accused person has

been able to raise a reasonable doubt as to his guilt since his defence was not discredited or challenged in any cross examination.

The prosecution has not been able to prove beyond reasonable doubt from the evidence adduced before this Court that the 2<sup>nd</sup> accused person indeed abetted the 1<sup>st</sup> accused person to cause harm to the complainant. The evidence of the 2<sup>nd</sup> accused person is consistent with his investigation caution statement; and in the absence of cross examination of the 2<sup>nd</sup> accused person by the prosecutor, I find that the 2<sup>nd</sup> accused person has been able to raise a reasonable doubt as to his guilt.

In the case of *Dexter Johnson v. The Republic* [2011] SCGLR 601, Dotse JSC had this to say about the standard of proof in criminal matters:

*“Our system of criminal justice is predicated on the principle of the prosecution, proving the facts in issue against an accused person beyond all reasonable doubt. This has been held in several cases to mean that, whenever any doubts exist in the mind of the Court which has the potential to result in a substantial miscarriage of justice, those doubts must be resolved in favour of the accused person”.*

The learned judge continued that:

*“I believe this principle must have informed William Blackstone’s often quoted statement that ‘**Better than ten guilty persons escape than one innocent suffer**’ which was quoted and relied upon by me in the unanimous decision of this Court in the case of *Republic vrs Acquaye alias Abor Yamoah II, ex-parte Essel and Others* [2009] SCGLR 749 @ 750”.*

Crabbe J.S.C. in the case of *The State v. Sowah and Essel* [1961] GLR 743-747, S.C. held that:

*“A judge must be satisfied of the guilt of the crimes alleged against an accused person only on consideration of the whole evidence adduced in the case; and only then can he convict”.*

On the totality of the evidence led by the prosecution and the defence put up by the 2<sup>nd</sup> accused person which was not challenged by the prosecutor by way of cross examination, I am not satisfied of the guilt of the 2<sup>nd</sup> accused person as I find that the prosecution has not been able to prove beyond reasonable doubt that the 2<sup>nd</sup> accused person actually abetted the 1<sup>st</sup> accused person to cause harm to the complainant.

Accordingly, the 2<sup>nd</sup> accused person herein, *Yaw Barfo* is hereby acquitted and discharged.

**H/H AKOSUA A. ADJEPONG (MRS)**  
**(CIRCUIT COURT JUDGE)**