

IN THE CIRCUIT COURT OF GHANA HELD AT CAPE COAST CENTRAL  
REGION ON WEDNESDAY 8<sup>TH</sup> DAY OF FEBRUARY, 2023 BEFORE H/H  
DORINDA SMITH ARTHUR (MRS.), CIRCUIT COURT JUDGE.

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SUIT NO. 12/2023

THE REPUBLIC

VRS

PATRICK FRIMPONG

**JUDGMENT**

The Accused person was arraigned before this Court for the offence of Causing Harm Contrary to **Sections 69 of The Criminal and Other Offences Act, 1960 Act 29.**

The accused person pleaded not guilty to the charge preferred against him for which reason Prosecution assumed the burden of proof and must prove the charge against the accused person beyond reasonable doubt in accordance with;

**Section 11(2) of the Evidence Act 1975 NRCD 323** states;

*“In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind will find the existence of the facts beyond reasonable doubt.”*

Further, **Section 13(1) of NRCD 323** provides that the standard of proof is nothing less than proof beyond reasonable doubt no matter the offence charged.

See the case of **Ampabeng Vrs Republic [1977] 2 GLR 171 CA**

The prosecution in order to discharge the burden placed upon them filed three witness statements but called two witnesses as one was unavailable and tendered six exhibits in evidence.

### **THE PROSECUTION CASE**

The summary of prosecution case is that PW1 is Eric Ebo alias Akwasi Arkoh and he testified that on 08/09/2019 he returned from Assin Dansaame around 10pm and he could not find his mother at home. He went to a drinking spot behind their house to enquire from the operator the whereabouts of his mother. He met one sister by name Faustina and she informed him that Frederick Frimpong and one Arhin who are both brothers of accused had attacked, beaten up and harmed his mother and she had been taken to the hospital for treatment. Upon receipt of that information, he went to the hospital to visit his mother and returned to the drinking spot. He laid on a bench inside the drinking spot and few minutes later accused appeared, pulled a cutlass from his smock that he was wearing and used same to cut PW1's forehead. According to PW1, he tried to disarm accused but he overpowered him and further inflicted cutlass wounds on his left arm and thigh without any justifiable explanation. He said he bled profusely and became unconscious. He regained consciousness and found that he was on admission at St. Francis Xavier Hospital responding to treatment. He gave his statement to the police after he was discharged from the hospital.

PW2 is G/CPL Saeed Abdul-Razak, the investigator stationed at Assin Praso police station. He tendered in evidence the investigation caution and charged statements of accused, the medical report, photographs of the injured body parts of PW1, and a CT Scan report of PW1's head from Radiology Department of Cape Coast Teaching Hospital. According to PW2, accused went into hiding after committing a crime and he

had information that accused was in custody at UCC police station so he went there and was able to obtain his caution statement in the presence of an independent witness.

## **THE DEFENCE**

Accused person denied the charges and stated that he returned from visiting his father and heard that the complainant and some boys had fought with his brother and his brother reported the matter to the police and the case went to court. He said the complainant and his mother gathered some boys to arrest him last year and he was beaten up and tied with a rope and brought to Bakano police station. According to accused person he thinks it is his brother and one Vincent Arhin who fought with the complainant and that case went to a court but he does not know the court. He denied causing harm to the complainant in 2019.

## **EVALUATION OF EVIDENCE, FINDING OF FACTS AND APPLICATION OF LAW**

**Section 69 of Act 29, Criminal offences 1960** provides that: *“a person who intentionally and unlawfully causes harm to any other person commits a second degree felony.*

In order to ground a conviction, the prosecution would have to lead sufficient evidence beyond reasonable doubt that the accused person;

- Intentionally caused harm to PW1.
- That the act was unlawful

Here, a burden is cast upon the prosecution to prove each and every one of the above two ingredients beyond a reasonable doubt that the accused person with intent to harm PW1, used a cutlass to cut the head and other body parts of PW1 without PW1's consent and that the act was unlawful.

The first element is intentionally causing harm to PW1 and here the court is to ascertain whether the act of accused person was intentional and if so whether the intentional act caused harm to PW1. It is noted that PW1 knows accused person very well as they all live in the same vicinity and so there is no issue as to the identity of accused person.

The provisions relating to intent is given under **Section 11 of Act 29/1960. Subsection (1)** provides that:

*(1) If a person does an act for the purpose of thereby causing or contributing to cause an event, he intends to cause that event, within the meaning of this Code, although either in fact or in his belief, or both in fact and also in his belief, the act is unlikely to cause or to contribute to cause the event.*

Also, the learned author **P.K. Twumasi in his book Criminal Law in Ghana p77 stated that:**

“The general principle of our law is that intention, like many other states of mind, is incapable of direct proof; it is always inferred from proven facts. This is a principle of English common law which has been accepted as an important principle of our criminal law.”

Here, intention can only be inferred from the proven facts where prosecution has to prove that the accused person' actions caused harm to PW1 whether he believed or not that his actions would cause such harm.

From the evidence of Prosecution, accused person went to the drinking spot where PW1 was lying on a bench, pulled a cutlass from his smock that he was wearing and used same to cut the forehead of PW1. According to PW1, he tried to disarm accused person off the cutlass but he further inflicted cutlass wounds on his left arm and thigh. PW1 continued that he bled profusely and became unconscious and when he regained consciousness, he was on admission at St. Francis Xavier Hospital responding to treatment.

This evidence shows how accused person attacked PW1 with a cutlass causing different bodily wounds on him without any provocation. Prosecution corroborated the bodily wounds with a medical report, a CT Scan of PW1's head, and photographs of PW1. The medical report provided that PW1 had a deep cut in his skull, laceration on his cheek with open convoluted fracture of left maxillary bone and other multiple facial lacerations. From the medical report, PW1 had surgery and was referred to see a maxillariology surgeon for further management. Another medical document was tendered in evidence, a CT Scan of PW1's head and it provided that PW1's head shows multiple fractures involving left maxillary bone and walls of it sinus with associated bony fragments within the sinus cavity. It also stated that there is hematoma in the sinus cavity and the overlying soft tissue is swollen and mastoid air cells are well pneumatised. The medical doctor gave the indication that PW1's had a deep left cheek laceration with maxillary bone fractures second degree assault. After the CT Scan, the medical report further provided that PW1's has left maxillary bone including sinus fractures with sinus hematoma, facial laceration and emphysema.

The medical and radiology report corroborated the evidence of Prosecution that PW1 had cutlass wounds inflicted on his head and body and he had to undergo surgery. These wounds according to Prosecution were caused by accused person when he used a cutlass on PW1. When accused pulled the cutlass and used same on PW1, he intended to cause harm to him even if he did not in fact or in his belief, or both in fact and also in his belief, did not believe that his act is unlikely to cause such bodily harm on PW1. Under cross examination, counsel for accused person asked PW1 the following questions:

Q. On that very day was the attack by AP alone?

A. Yes, he attacked me alone.

Q. Which part of your body did you suffer injury?

A. My head, face, arm and thigh as you can see.

A. I put it to you that you suffered these injuries from being in a fight with him.

A. That is not true at all. I did not fight with him at all.

The answers from the cross examination were consistent and coherent with prosecution entire evidence that accused person went to the drinking bar armed with a cutlass and used same on PW1 causing different wounds on his body.

Then PW2 answered among others the following questions:

Q. If you had delved deeper you could have uncover why AP went to the bar and it was to enquire why they beat up his brother.

A. The AP appeared at the bar armed with a machete whilst the victim was lying on a bench relaxing.

Q. You see, AP did not take it lightly to the wounds suffered by his brother Frederick so he mastered the courage to face the victim.

A. The complainant and victim have nothing in common and there was no confrontation of AP with the victim at all.

Q. The bitter encounter had arisen from each of them being hostile to each other borne out of mutual hostility.

A. That is not true

The questions posed by counsel for accused person depict that accused person went to the drinking bar armed with the cutlass and he went there to face PW1 and even though it was a bitter encounter it was because they are hostile to each other. The line of questioning and the content of the questions support prosecution evidence that accused person went to the drinking bar with a cutlass and inflicted wounds on PW1. The answers supplied by the investigator were consistent with prosecution evidence.

So was the harm reasonably foreseeable by the accused persons?

Any reasonable man can come to but one conclusion that if a cutlass which is a sharp object is used on someone that person will sustain injury or harm. From Prosecution, accused used the cutlass to inflict wounds on PW1's head and other parts of his body causing him to bleed profusely. This presupposes that accused persons knew that his actions can cause harm to PW1.

What then is harm?

Harm is defined under the interpretation **Section of Act 29, 1960 Section 1** to be;

*"harm" means any bodily hurt, disease, or disorder, whether permanent or temporary."*

Here, prosecution is to prove beyond reasonable doubt that whatever happened to PW1 was harm which can be any bodily hurt, disease, disorder whether permanent or temporary.

The photographs, medical record, and evidence of all prosecution witnesses corroborate the evidence that PW1 was harmed badly. The extent of harm can even be ascertained from the medical report, the CT Scan report and the photographs.

It is safe for the court to infer that the harm caused to PW1 was unreasonable and intentional on the part of accused person.

I therefore find as a fact that accused person intended to cause harm to PW1 and he reasonably foresaw the harm he caused to PW1.

The next issue is whether or not the act was unlawful. This indicates the availability of defences of justification such as self-defence and consent of the complainant of that harm.

**Section 76 of Act 29 Criminal offences Act 1960** defines unlawful harm as:

*"Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned in Chapter one of this part."*

At this stage, the evidence of accused person is determined by the court to see whether it satisfies any of the justifications mentioned in the Act or whether the evidence adduced by accused person raise a reasonable doubt in prosecution's case.



Under the Evidence Act supra what is generally called the burden of proof, it has two elements. They are the burden of persuasion and the burden of producing evidence. Here, the two are not the same. The burden of persuasion as provided in Section 10 of the Act involves the establishment of a requisite degree of belief concerning a fact in the mind of the court; or that the party raises a reasonable doubt concerning the existence or non-existence of a fact, or that the party establishes the existence or non-existence of a fact. This burden is on both the prosecution and the defence.

Here, it is for accused person to adduce credible corroborative evidence to either discredit or raise a doubt in prosecution's evidence.

Accused person stated that he returned from visiting his father and heard that the complainant and some boys had fought with his brother and his brother reported the matter to the police and the case went to court. He said the complainant and his mother gathered some boys to arrest him last year and he was beaten up and tied with a rope and brought to Bakano police station. According to accused person he thinks it is his brother and one Vincent Arhin who fought with the complainant and that case went to a court but he does not know the court. He denied causing harm to the complainant in 2019.

The evidence of accused person did not provide any justification as to why he used the cutlass on PW1. Even though he denied the offence and attempted to mention other persons other than himself as the one who caused harm to the complainant, his evidence was not credible. His evidence was not coherent and consistent. He gave a short evidence but under cross examination he contradicted his evidence.

Also, the cross examination brought to light that he is a fetish priest who was allegedly under the spell of dwarfs, where he injured other people anytime he was under the spell with a cutlass. Accused person attempted to deny that he caused injury to some people when he is allegedly under the spell but he was not convincing as he kept saying maybe. These are some of the questions under cross examination:

Q. Are you a fetish priest?

A. Yes, but my parents sent me to a pastor so I am no more a fetish priest.

Q. You said some dwarfs took hold of you. What did you mean by that?

A. Around 2018, my parents informed me that I am under a spell of dwarfs.

Q. Was it why you were harming people.

A. I did not harm anybody under the spell but maybe.

Q. But you had harmed a lot of people with the use of cutlass. Right

A. I cannot remember.

Q. Did you not injure the queen mother.

A. No

Q. You knew of what you did after committing the crimes so you run away.

A. It is not true. I was in the village. My brother Albert died in 2019.

His evidence and answers under cross examination did not provide reasons for him causing harm to PW1. It is noted that at this stage, the court had found from the proven facts that it was accused person who caused the injuries to PW1 so it is for accused to provide answers regarding his intentional and unlawful act and not only for him to

deny the acts. He mentioned that his brother and another fought with PW1 and the case went to court but he does not know which court it went. He however mentioned that he was arrested by PW1 with some others and tied up with a rope. He tendered in evidence a photograph of him tied in a rope to show how he was sent to the police station.

When he was asked why he was arrested by PW1 and others he mentioned that they said he had injured PW1. It is noted that accused person is well built and looks strong contrary to the looks of PW1. Thus, if indeed they had to arrest accused person, they will have struggled very well before they could take him to the police station. Even so, it is not for anybody to threat anybody without respect and dignity. When counsel for accused asked PW1 under cross examination why they tied up accused with a rope he was so surprised and said he has never heard of it before. Whatever it is, those photographs did not provide justification for accused person to use force or harm on PW1. The photograph shows only accused person and not PW1 and court cannot infer from the photographs whether it was PW1 and others who tied accused up with a rope.

Notwithstanding, I will deal with the issue of whether or not the harm caused to PW1 by accused was unlawful. **Sections**

**Section 31(e) Act 29,(1960) states:**

**“Force may be justified in the case and in the manner, and subject to the conditions, provided for on the grounds;**

**(e) of necessity for the prevention of or defence against a criminal offence(See also section 37 of Act 29, (1960).”**

**Section 174(5) of Act 29, (1960) also states:**

**“Despite anything contained in Part One as to mistake of law, a person is not liable to punishment in respect of doing a thing which that person in good faith, believes to be entitled to.”**

The combined effect of **Sections 31(e) and 174(5) of Act 29 (1960)** is that if the accused person can show that they he with just cause and in good faith, he would not be liable for punishment and would not have then acted unlawfully.

In the light of the above the accused did offend **Section 172 of Act 29**. This is because according to prosecution, accused person could not provide any credible evidence to show that he had a right to use the cutlass to inflict wounds on PW1.

The court therefore does not put much weight on the evidence of accused person and find his evidence not credible because of all the inconsistencies and contradictions as shown above.

Hence, accused person was not able to raise a doubt in prosecution’s case and could not also discredit the evidence of prosecution.

I have considered accused person’s caution statement, charge statement and his evidence and find that accused person failed to discharge the burden of persuasion placed on him and he was not able to raise a reasonable doubt as to his guilt as required of him under **Section 13(2) and 14 of NRCD 323** supra.

### **DISPOSITION/HOLDING**

I therefore find as a fact that accused person caused unlawful harm to PW1 without any justifiable cause.

The Accused Person is thus found guilty of the offence of causing unlawful harm **Contrary to Section 69 of Act 29, 1960** and I hereby convict him.

### **PRESENTENCING HEARING**

I have considered the mitigating factors presented by counsel for accused person on his behalf that he is remorseful and has been in custody for four months pending trial. I have also considered the harm he caused to PW1. The gravity and severity of the injuries PW1 suffered in the hands of accused person where he used a cutlass to cause wounds on his body and head. I have again considered the nature and degree of the offence as accused person could have killed PW1. I have noted that accused has been in custody for four months pending trial.

Much as the pre- sentencing hearing does not form part of the proceedings, I want to comment that accused person admitted that it is only when he went to the police cells that the alleged dwarfs did not possess him. He further stated that when they possess him, they take him to places they want and make him do anything they want without him realising his actions. The court does not deal in spiritualities but I am of the candid opinion that if the alleged dwarfs cannot possess him when he is in police custody, then they may leave him alone when he is incarcerated. This is for the public good as he has pending cases of similar nature in our courts.

I hereby sentence accused person to five years IHL.

Additionally, accused person to recompense PW1, the victim, with the amount of Five Thousand Ghana Cedis (Ghc5000) for his medical bills.

**H/H DORINDA SMITH ARTHUR (MRS.)**

CIRCUIT COURT JUDGE

ACCUSED PERSON PRESENT.

PROSECUTOR: C/INSP. GILBERT ANYONGO PRESENT.

ENOCK. M. DZAPASU ESQ FOR ACCUSED PERSON PRESENT.