

IN THE CIRCUIT COURT HELD AT YENDI ON WEDNESDAY 23RD FEBRUARY 2023, BEFORE HIS HONOUR ANTHONY ADUKU-AIDOO ESQ, CIRCUIT COURT JUDGE.

COURT CASE No. CT/27/2022

REPUBLIC

VRS

EMMANUAL ALHASSAN

J U D G E M E N T

Introduction

The accused person was charged with one count of causing unlawful damage, contrary to section 172 (1B) of the Criminal and Other Offences Act, Act 29, 1960 (as amended). The accused person pleaded not guilty to the charge and the case proceeded to trial. This is the judgement of this trial court.

Facts of case

The facts of the case as presented by prosecution to this court are that the complainant, Baba Seidu is a butcher and father of Zeinab Seidu, a witness in this case and they are residing at Gutingli, a suburb of Yendi. Accused person, Emmanuel Alhassan, is a farmer and an ex-boyfriend of Zeinab Seidu. They broke up in their relationship. On 27th December, 2022, at about 02.45 hrs, Zeinab Seidu was asleep in the bedroom of a chamber and a hall building with the windows open when accused person used a stick to tickle the foot of Zeinab Seidu through the window. She woke up and saw a shadow and questioned who was standing behind that window. Accused person responded that he was the one and asked Zeinab to come out of the room. Accused person threatened to set the room ablaze should Zeinab fail to come out of the room to meet him. Few minutes thereafter, Zeinab saw the window of the hall in flames and run out to raise an alarm. The neighbours were alerted and they went to the scene to quench the fire whilst the Ghana Fire Service was also called upon to assist to put out the fire.

Unfortunately, the hall which is located between the chamber and the single room containing personal belongings such as sixty eight (68) full pieces of cloth, seven (7) pieces of lace materials, three (3) set of travelling bags, cash the sum of seven thousand Ghana Cedis (GH¢7,000.00) and other assorted items in the three rooms, all valued One Hundred and Twenty Thousand Ghana Cedis (GH¢120,000.00), the property of the complainant, together with his wife and children were burnt. On the same day, at about 3.45am complainant informed the head of family, Alhaji Abdul Rauf Baba of the incident. Complainant together with his children went to the accused person's house, apprehended the accused person and handed him over to Yendi Police where accused person was formally arrested after the case was reported. After police investigations the accused person was charged with the stated offence and arraigned before this Honourable court for trial.

Burden of Proof

Section 11(2) of the Evidence Act, NRCD 323, 1975, and as posited in the Supreme Court case of Fuseini v. Rep. (J4/32/2014) [2018] GHASC 28 (09 May, 2018), that the prosecution bears the burden of proving the guilt of the accused person beyond reasonable doubt. And in accordance with the current practice directive, after the prosecution has done full disclosure and served the witness statements on the accused, it called as many as six (6) witnesses in its bid to prove the guilt of the accused person to discharge its burden of proof.

The Prosecution's Case

PW1, Zeinab Seidu, a student, testified that on 27th December, 2022, at about 02.45 am she was asleep in the bedroom of a chamber and a hall building which belongs to her mother with the windows open. She felt something tickling her foot. She then woke up to see a stick in the room with someone holding it behind the window. She questioned the person who was behind the window and the accused person, Emmanuel Alhassan, who was her ex-boyfriend responded that he was the one. The accused person asked her to come out and meet the accused person but he refused

since she did not have any relationship with the accused person any longer. According to the witness, the accused person then threatened to set the room on fire if the witness failed to come out of the room to meet him outside the house. The witness thought the accused was joking with her, only to realise after she returned into the room and laid in a sofa, that the window of the hall was in flames.

The witness then rushed out of the room and raised an alarm. Neighbours and relatives rallied, with the help of Ghana Fire Service, managed to bring the fire under control but not until all personal belongings and other assorted items got burnt in the chamber and a hall together with another single room. The witness then informed her parents about her encounter with the accused person before the fire. With that the witness ended his testimony.

PW2, Mohammed Tajudeen, a butcher, and resident of the said household testified that on 26th December, 2022, he went to town in the evening. On his return to the house at about 11.45pm he spotted the accused person standing behind his mother's window. The witness approached the accused person and questioned him what he was looking for. The accused person told the witness that he was waiting for a friend. As a result, the witness warned the accused person not to come close to their house and sacked the accused person from the place. It was after their house caught fire that his sister, PW1, Zeinab told him about her encounter with the accused person and that it was the accused person who set the house on fire. The witness then helped to get the accused person apprehended and handed him over to the police. With that the witness ended his testimony.

PW3, Baba Seidu Sulemana, was the next witness prosecution called. His testimony was that on the day in question, 27th December, 2022, at about 0300hrs he woke up to perform ablution. He saw Zeinab and her mother rushing out of their room. Upon enquiry, Zeinab told him that their room had been set on fire. The witness called the Ghana Fire Service without success, so he went to their office on his motor bike to call

them. By the time he could return with the Service the fire had been controlled by the assistance of house hold members and neighbours. Afterwards, PW1, Zeinab told the witness and others present then, that it was the accused person who set the room on fire after she refused to heed to his demand to meet him outside the house. He intimated that the fire burnt three rooms and its content.

PW4, Baba Seidu, a butcher testified to corroborate what the other witnesses have testified to already but added that before the Ghana Fire Service could completely quench the fire, the fire had destroyed or burnt the content of the hall located between the single room and the chamber with personal belongings including sixty-eight (68) full pieces of cloth, seven (7) pieces of lace material, three (3) sets of travelling bags, and cash the sum of seven thousand Ghana Cedis (GH¢7,000.00). Other items burnt included assorted items in the three rooms.

PW5, Alhaji Abdul-Rauf was the next witness called by the prosecution. He testified that on the 27th December, 2022, at about 0345hrs he was on his way to the mosque when he had a phone call from his younger brother, Baba Seidu, who lives in the affected house and told the witness that their house was in flames. The witness rushed to the scene and with the help from neighbours and Ghana Fire Service, the fire was quenched. He later asked how the house caught fire and PW1, Zeinab told him about how Emmanuel, the accused person, had threatened to burn the house and for Zeinab to get burnt, earlier on. Subsequently, the witness helped in apprehending the accused person and sent to the police.

PW6, No. 7922 D/PW/Cpl Mabel A. Boakye, was the last witness called by the prosecution. She was the investigator in the case. She testified that on 27th December, 2022, a case of causing unlawful damage was reported at the Yendi Police Station and it was referred to her for investigations. It was after her investigations that she submitted this witness statement. With this statement she also attached the usual

statutory statements and other exhibits. With that she ended her testimony and the case for the prosecution.

Whether or not the prosecution has established a prima facie case

At the end of the case of the Prosecution, in accordance with section 173 of the Criminal Procedure Act, Act 30, (1960), it is incumbent on this court to find out whether, upon the evidence adduced by the prosecution against the accused person, a prima facie case has been established to warrant the accused person to proffer an answer.

On record, at the close of the case of the prosecution, the prosecution has led evidence to show that the accused person apparently was in the house just moments before the house caught fire and judging from the circumstances, he could be the offender. This could be deduced from the evidence from PW1 and PW2. The accused person therefore, ought to be given the opportunity to proffer an answer to the charge.

The case for the Accused

In opening his defence, the accused person gave evidence himself and called three other persons to testify on his behalf.

The accused person in opening his defence testified that PW1, Zeinab Seidu, was his ex-girlfriend. He stated that on 26th December, 2022, he was indoors throughout the said day and never stepped outside his house. On the said day at about 11.00pm he was watching movies with his brother, called Alhassan Kwesi, DW1, on his phone until they fell asleep in the night. He testified that DW1 was sick with a swollen hand and he was taking care of his sick brother in the house. While the accused was asleep at about 4.00am one Alhaji Abdul Rauf Baba, PW4, together with others stormed their house and woke them up and started beating them up. He was then sent to the Yendi Police station on their motor bike where he was informed that he, the accused person was suspected to have set the complainant's house on fire. With that he ended his testimony.

DW1, Alhassan Kwesi, a senior brother to the accused person was the next witness the accused person called in support of his case. He testified that on the 26th December, 2022, he was with the accused person throughout the day till night because, his hand was swollen and could not do anything for himself. It was the accused person who aided him in doing anything for him because the witness was in pain. He testified that the accused person downloaded a movie unto his phone which he watched with the accused person until about 2.00am in the morning. The accused person then fell asleep but the witness continued until he heard some voices in the compound. According to the witness, the accused person was awoken and apprehended and sent to the police station. With that the witness ended his testimony.

DW2, Alhassan Abdul Razak, another senior brother of the accused person was next to testify before this court in support of the case for the accused person. His testimony was that he was in the house on the day in question with the accused person together with DW1 throughout the night. He emphasised that the accused person did not go out of the house the whole night. At about 4am and 5am PW4 together with some other persons entered their house and asked about the whereabouts of the accused person. Before they could respond appropriately, the visitors started to beat them up including the witness. Thereafter, complainant sent the accused person to the police station. With that he ended his testimony.

DW3, Sandoo Alhassan who is the biological father of the accused person was the last witness the accused person called in support of his defence. His testimony was largely what his wife had told him upon his return from work on the night in question. Consequently, his testimony was largely hearsay evidence and therefore of little relevance and probative value. His testimony ended the case for the defence of the accused person.

The guilt of the Accused Person

The accused person is charged with one count of causing unlawful damage, contrary to section 172 (1b), of the Criminal and Other Offences Act, Act 29, 1960 (as amended).

Section 172—Causing Unlawful Damage.

(1) Whoever intentionally and unlawfully causes damage to any property by any means whatsoever —

(a) to a value not exceeding ₦1 million, or to no pecuniary value, shall be guilty of a misdemeanour;

(b) to a value exceeding ₦1 million, shall be guilty of second degree felony.

(2) Whoever intentionally and unlawfully causes damage to any property in such a manner as to cause or to be likely to cause danger to life shall be guilty of first degree felony.

(3) In this section property means movable and immovable property of every description.

Unlawful damage is explained in section 174 thus:

Section 174—Explanation of Unlawful Damage.

“(1) A person does an act or causes an event unlawfully, within the meaning of the provisions of this Code relating to unlawful damage, in any case in which he is liable to any civil action or proceeding, or to a fine or other punishment under any enactment, in respect of his doing such act causing such event, or in respect of the consequences of the act or event, or in which he would be so liable if he caused the event directly by his own act, or in which he is liable to be restrained by injunction or any other proceeding from doing such act or causing such event.”

From the above definition of causing unlawful damage, for prosecution to ground a conviction of the accused person, it has to prove beyond reasonable doubt that the accused person herein has directly or indirectly caused damage to the properties listed in the charge sheet. But before I delve into that I would want to satisfy myself that the

accused person is the rightful person who is being charged to have caused the said damages.

The first hurdle that the prosecution has to clear in all criminal prosecutions is to satisfy the trial court that the person who stands accused before the court is the one who purportedly committed the charged offence. In the case of *Razak & Yamoah v. the Republic* [2012] 2 SCGLR 750 the Supreme Court posited thus:

“In every criminal trial it is not only necessary for the prosecution to prove the commission of the crime, but also to lead evidence to identify the accused as the person(s) who committed it.”

In the instant case, evidence on record indicate that PW1, whom the accused person admits was his girlfriend testified that the accused person came to a window of the room where she was sleeping and asked her to come out of the room to meet him outside. PW1, initially enquired who the person was and the accused person allegedly identified himself making PW1 go to him at the window to speak with him. So according to PW1 she clearly heard and saw his former boyfriend, the accused person, at the window albeit in the dark.

PW2, also gave evidence that he saw the accused person at the same window of the burnt room at about 11.45pm earlier, and he accosted him to withdraw from the place and warned him not to be lurking around their house in such dark places. The accused person responded to PW2's admonition and moved away from the said place while PW2 moved away and entered their house.

So, for the prosecution, these two pieces of evidence directly link the accused person to the crime as the culprit. On the other hand, the accused person and his witnesses led evidence to show that the accused person did not go out on the said night. If it is true, indeed, that the accused person did not go out as he and his team of witnesses testify then, the two pieces of evidence are contradictory. Definitely, one version of

testimony cannot be true. It is for this reason that this court examines the record of evidence a bit more into detail to unravel the truth.

For better appreciation of the evidence on record, I would like to reproduce the cross-examination of PW1 by the accused person.

Q Did you see me at the scene.

A Yes, I did. I was asleep when you called me. I responded and asked you who you were. You told me it was you, Emmanuel Alhassan.

Q. What evidence do you have to prove that I was the one you saw.

A My evidence is that when you woke me up you mentioned your name Emmanuel Alhassan.

Q You were in the room and you said I came behind the room, were you sleeping alone or you were with other persons.

A I was with my younger sister but she was asleep.

Q What did you say after you saw me at the scene.

A I asked you what you wanted here. You told me to come out to meet you which I refused.

Q When you saw me did you inform someone about it or it was a conversation just between you and me.

A There was no one else in the room except my younger sister who was asleep.

This was the set of questions that the accused person asked PW1 when he had the opportunity to quiz her on her evidence, she gave to this court to show this court whether the witness was telling this court the truth or not. Interestingly, the accused person refused to ask further questions of his ex-girlfriend despite the fact that this

court warned him that if he refuses to cross-examine any material fact that the witness has testified to, then the court would not have any option than to admit that fact as the truth.

Further to that, PW2 testified that he saw the accused person at the window to the burnt room in the night in question. The accused person cross-examined the witness but at no point did he indicate to this court that PW2 did not see the accused person as he testified to this court. Below is an excerpt of what transpired between the accused person and PW2 during his cross-examination.

Q Did you see me standing in the dark or in the light.

A I saw you standing in the dark and I told you to go to where there is light.

Q When you sacked me from the place did, I move out of the place before you left or I refused and was still at the place where you sacked me from.

A When I asked you to move to where there is light you were moving towards that direction and I left the place. Later I was informed that you were the one who set the room on fire.

Q How I was standing, was it for good or bad.

A I saw you standing close to the window to the room that got burnt. And I know that I used to see you with my sister but I do not know whether he is dating my sister or not. I did not see him holding anything like knife or a gun that could be used to cause any harm.

Q When you saw me at the scene and engaged me in a conversation was it a peaceful engagement or otherwise.

A When I saw you, you were standing at some odd place, that is close to the window. And I know women live in that room. As a result, I told you to move away from that place. That aside I do not have any issue with you.

Examining this piece of evidence, I gather that the focus of the accused person in his cross-examination is not as to whether PW2 found the accused person there at the window that night or not but rather whether the accused person was doing anything wrong when PW2 found him at the window of the burnt room. So, whether it was the accused person or not that PW2 accosted at the window that night was not an issue for the accused person, judging from the line of questions the accused person asked the witness in his cross-examination. At no point in his line of questioning that he questioned PW2 about his identity, if he was not the one the witness engaged at their house in the night in question.

Again, the accused person was also identified by his ex-girlfriend, PW1, Zeinab Seidu, later in the night when she testified that the accused person woke her up with a stick through a window. The accused person agrees that he had been in a relationship with PW1 for about seven years. It is true that PW1 was awakened from her sleep and the person who woke her up was lurking in the dark, but it should not be difficult at all even in the darkest of night to identify your boy friend when he spoke to her and when she walked to him at the window where the accused person asked her to come out of the room to meet him outside. The accused person mentioned his name to PW1 when she enquired and having identified whom he was made her go to him at the window to engage him at close range. It, therefore, would be farfetched for this court to entertain a doubt as to the identity of the person who woke PW1 up and later met him at the window and spoke to, in the night in question.

From the analysis of the evidence above, it is firmly established in the mind of this court by both PW1 and PW2, that the accused person was the one so identified at the window of the burnt house in the night in question. I, therefore, find as a fact that the accused person herein has been properly linked to the offence charged. The testimony of the accused person and his family members to the effect that the accused person did not go out in the night in question is only a calculated pack of untruths to thwart justice.

Having satisfied myself that the accused person is the right person in court, I now proceed to answer the question as to whether or not the accused person is the one who set the fire to the room and the resultant damage to property.

Examination of the evidence on record does not show that any of the witnesses called by prosecution provided direct evidence stating that he or she saw the accused person set the window where the fire started on fire. However, the evidence of PW1 is instructive and has some probative value to look at. PW1, Zeinab Seidu, testified to this court that the accused person woke her up from her sleep with a stick from the window of the room in which she slept. After the accused person identified himself as Emmanuel Alhassan, PW1 went close to him at the window where the accused person asked PW1 to come out of the house and meet him. He followed that request with a threat that if PW1 does not he, the accused, would set the room up on fire to burn her to death. PW1 did not take the threat seriously, refused to comply with the accused person's request and went into the room to lie down, only to realise a couple of minutes later that the window where she met the accused person was on fire.

This piece of evidence was not in anyway questioned by the accused person in his cross-examination even though this court warned him to the effect that if he refused to cross-examine any material fact that PW1 had testified to, in this court, this court would have no option than to admit such evidence as true. This court observed that PW1 was truthful on her account and the accused could not confront her on what she testified to this court. Even though the witness does not specifically say that she saw the accused person set the window on fire, her evidence qualifies to be considered as circumstantial evidence that ought to be evaluated for its probative value.

In the case of THE STATE v. ANANI FIADZO [1961] 1 GLR 416-419 the Supreme Court, presided over by Korsah CJ (as he then was) had this to say about circumstantial evidence:

“Presumptive or circumstantial evidence is quite usual, as it is rare to prove an offence by evidence of eye-witnesses, and inferences from the facts proved may prove the guilt of the appellant. A presumption from circumstantial evidence should be drawn against the appellant only when that presumption follows irresistibly from the circumstances proved in evidence; and in order to justify the inference of guilt the inculpatory facts must be incompatible with the innocence of the appellant, and incapable of explanation upon any other reasonable hypothesis than that of guilt.”

Again, in the case of DUAH v. THE REPUBLIC [1987-88] 1 GLR 343-360, the Court of Appeal also had this to say in respect of the use of circumstantial evidence.

“However, before drawing the inference of the guilt of an accused from circumstantial evidence, it was very important to make sure that there was no other co-existing circumstances which would destroy or weaken the inference. Thus, circumstantial evidence had to be closely examined and acted upon only when the circumstances were such that the guilt of the accused had of necessity to be inferred and that the facts led to no other conclusion.”

From the above, the guilt of the accused person could be presumed only when the presumption follows irresistibly from the circumstances proved from the evidence on record. It is on record that the accused person had interaction with PW1, his ex-lover on the night in question. He asked her to meet her outside failure of which he threatened to burn the ex-girlfriend and the room in which she was. If after a couple of minutes, the window from which the accused issued the threat caught fire, then the irresistible conclusion is that the accused person has carried out his threat when PW1 refused to comply to his request. I have warned myself about the dangers of the use of circumstantial evidence and clearly, this conclusion that it is the accused person who had carried out his threat and had set the fire to the window, is inconsistent with his innocence in this matter. This court, accordingly, finds as a fact that it was the

accused person who set the window of the room in which the ex-girlfriend was sleeping, on fire and subsequently spreading to other rooms of the house.

Section 11(1) of the Criminal and Other Offences Act, 1960, Act 29, as amended provides:

Section 11—Provisions Relating to Intent.

“(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.”

The above provisions of the law means that a man intends to cause the natural consequences of his action even though, in his belief he did not intend the outcome of his action. It could be said that, perhaps, the accused person intended to set his ex-lover’s room on fire to hurt her, but, by the operation of the above quoted law he is now fixed with every damage caused by the fire he started.

Unfortunately, the prosecution could not lead enough evidence to enable this court to independently assess the actual value of damage caused, though substantial when casually assessed. That could have been the basis for this criminal court to award compensation damages to the complainant. The complainant may subsequently, proceed against the accused person in a separate civil action to recover damages against him on that score.

In conclusion, I find that the accused person indeed is the person who set the window on fire and caused the resultant damage. He is hereby found guilty of the offence of causing unlawful damage as charged and he is accordingly convicted.

Mitigation Plea

Before the accused person was sentenced, both prosecution and the accused person were allowed to plead in mitigation before the accused person was sentenced.

Sentence

The accused was charged under section 172(1B) of the Criminal and Other Offences Act, 1960, Act 29, as amended which is a second-degree offence, as quoted earlier. Under section 296(2) of the Criminal Procedure Act, 1960, Act 30, a second-degree felony is punishable with imprisonment of up to ten (10) years. This court has taken note of the mitigation plea from both the prosecution and the accused person. Taking cognisance of all that, the accused is hereby sentenced to serve five (5) years imprisonment (IHL) for the sole count charged. I hereby order.

(SGD)

H/H ANTHONY ADUKU-AIDOO ESQ.

(CIRCUIT COURT JUDGE)