

**IN THE CIRCUIT COURT HELD AT YENDI ON THURSDAY 30TH MARCH 2023,
BEFORE HIS HONOUR ANTHONY ADUKU-AIDOO ESQ, CIRCUIT COURT
JUDGE.**

COURT CASE No. CT/06/2023

REPUBLIC

VRS

ALHASSAN ABDUL

J U D G E M E N T

Introduction

The accused person was charged with one count of causing harm, contrary to section 69 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, Kwame Ntanyi, is a native of Kpassa in the Oti Region but a resident farmer at Buya village near Kpandai. The accused person, Alhassan Abdul, is a resident farmer at Buya village. On 20/11/2022 at about 3.30pm complainant was resting in his house when he overheard accused shouting and mentioning his name while heading towards his house. Complainant upon sensing danger stood in his compound in an attempt to ascertain what was happening. Accused person finally got to his house wielding a cutlass in an aggressive manner and pounced on the complainant and slashed him with the cutlass. Complainant who sustained cutlass wound on his left shoulder with blood oozing from same took to his heels. Accused person pursued him with the cutlass until he was rescued by a good Samaritan who seized the cutlass from the accused person. Complainant thereafter lodged a complaint with the Kpandai police leading to the arrest of the accused person. During interrogation the accused

person admitted the offence. Investigations further retrieved the exhibit cutlass which is being kept for evidential purposes. After investigations, the accused person is charged with the stated offence and arraigned before this 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 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 only two witnesses in its bid to prove the guilt of the accused to discharge its burden of proof.

The Prosecution's Case

PW1, Kwame Ntanyi, the complainant and a resident farmer at Buya, testified that on 20th November, 2022 at about 3.30pm whilst he was in his house, he overheard the accused person shouting his name and dashing towards his house. The accused person appeared in the complainant's house wielding a cutlass, fuming with anger. The accused person then pounced on the complainant, and started assaulting him with the flat side of the cutlass. The witness then realised that his life was in danger so he ran to a nearby house where a resident in the house came to his rescue. He subsequently realised that he had sustained a deep cut on his right shoulder with blood oozing out profusely. With that the witness ended his testimony.

PW2, the investigator, No. 54909 G/L/Cpl. Tetteh Felix Anthony was the second and last witness the prosecution called to prove its case. He testified that on 20th November, 2022, at about 6pm this case was referred to him for investigations. He issued a police medical report forms to the complainant to attend hospital for treatment. The complainant returned an endorsed medical form after he was treated of his wounds. The accused person was later arrested and admitted having inflicted the said injury

on the complainant. The cutlass he used in inflicting the wound on the complainant was retrieved as Exhibit D. With that the prosecution closed its case.

Whether or not the prosecution has established a prima facie case

At the end of the case for 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, a prima facie case has been established to warrant the accused to proffer an answer.

On record, at the close of the case of the prosecution, there is evidence that the accused person inflicted wounds on the complainant as evidenced in Exhibits C and E, a photograph of the complainant bearing a cutlass wound on his should and an endorsed medical report, respectively. The accused, was therefore offered the opportunity to state his side of the case in defence.

The case for the Accused

In entering his defence, the accused gave evidence himself and called one other witness in support of his defence. The evidence of the accused was that, on the day in question, while at the farm he received a call from his wife, DW1, who informed him that the complainant, Kwame Ntanyi, has defiled their eight-year-old daughter. He became very much annoyed. He simply picked the cutlass he was working with and headed straight to the house of the complainant. Upon reaching the house of the complainant he used the flat side of the cutlass he was holding to slap the complainant. The accused person emphasised that he used the flat side of the cutlass in beating the complainant because, if he had used the sharpened edge of the cutlass, judging from the way he was angry he would have killed his victim which he did not intend to do so. He further testified that as a result of the defilement of his daughter he has spent a lot of money in treating the child. That was the testimony of the accused person.

The accused called DW1, Selima Atta, the wife of the accused, in support of his defence. Her testimony was that, on the day in question she called his husband, the

accused person, on phone to tell him while he was still at the farm that their daughter, the victim in this case, had told her that the complainant, Kwame Ntanyi, had defiled her. Upon hearing this the accused person went straight to the house of the complainant to confront him in respect of what the witness had told him, the accused person, even before the accused person came home. According to the witness, the accused person admitted assaulting the complainant out of the anger he had from hearing that the complainant had defiled his daughter. With that the witness ended her testimony. And so did the accused person end his case in his defence.

The guilt of the Accused

The accused is charged with one count of causing harm, contrary to *section 69 of the Criminal and other Offences Act, Act 29, 1960, as amended*. To this charge he pleaded not guilty, hence this trial.

Evidence on record, as indicated earlier on in this report, clearly shows that the complainant had sustained harm as exhibited in Exhibits C and E, a photograph of the complainant with a fresh wound on his shoulder and an endorsed medical report to that effect, respectively. In fact, the accused person himself admits that he caused the harm on the complainant.

However, his defence was that, when his wife called him on phone to inform him that the complainant had defiled their daughter, he became so angry that he lost control of his mind and went straight to the house of the complainant to confront him on that fact which resulted in the accused person attacking the complainant with the cutlass he was working with at his farm. Thus, it appears, the accused person has mounted a defence under provocation which is a lawful defence under Act 29.

Section 53 of the Criminal and Other Offences Act, 1960, Act 29, as amended states the defence of extreme provocation as follows:

“Section 53—Matters which Amount to Provocation.

The following matters may amount to extreme provocation to one person to cause the death of another person namely –

(a) an unlawful assault and battery committed upon the accused person by the other person, either in an unlawful fight or otherwise, which is of such a kind, either in respect of its violence or by reason of accompanying words, gestures, or other circumstances of insult or aggravation, as to be likely to deprive a person, being of ordinary character and being in the circumstances in which the accused person was, of the power of self-control;

(b) the assumption by the other person, at the commencement of an unlawful fight, of an attitude manifesting an intention of instantly attacking the accused person with deadly or dangerous means or in a deadly manner.

(c) an act of adultery committed in the view of the accused person with or by his wife or her husband, or the crime of unnatural carnal knowledge committed in his or her view upon his or her wife, husband, or child; and

(d) a violent assault and battery committed in the view or presence of the accused person upon his or her wife, husband, child, or parent, or upon any other person being in the presence and in the care or charge of the accused person.”

Under this law the closest provision that may be applicable in the instant case would have been section 53(c) where the defence of extreme provocation may inure to an accused person when the act of sexual assault is committed on his wife or child in his full view. In other words, the accused person ought to have witnessed the complainant defiling his daughter, personally, for this defence to inure to him.

Evidence on record, indicates that the accused person was called on phone by his wife, DW1, and was given the information that the complainant had defiled their daughter. Whether this information was true or not could not be ascertained immediately by the accused person for him to act on. The defence of extreme provocation requires that the accused person should directly observe the act of defiling of his daughter for it to be applicable to him.

In fact, it appears to me that, the defence of extreme provocation is limited to the offence of murder where the accused would be allowed to defend himself having lost his sense of self-control to go to the extent of taking the life of another when the accused observed his wife or daughter being sexually abused under his nose. If it was allowed under any other offence then every accused person committing a crime against the other would claim in his defence, to have lost his sense of self-control. In the circumstances, the accused person's defence of extreme provocation does not apply. Consequently, the harm inflicted by the accused person on the complainant was not lawful. The accused person is hereby, found guilty of the offence of causing harm as charged and he is convicted of same accordingly.

Mitigation Plea

Prosecution pleads in mitigation that the accused person is a young offender who ought to be given another opportunity with a lenient sentence. The accused person also prays for forgiveness and has promised not to repeat such a thing again in his lifetime. The court should consider his children and family to deal leniently with him.

Sentence

Having heard from both the prosecution and the accused person on their respective mitigation pleas, I hereby sentence the accused person to a fine of 50 penalty units for the sole charge. In default the accused person shall serve a three-month prison sentence.

(SGD)

H/H ANTHONY ADUKU-AIDOO ESQ.

(CIRCUIT COURT JUDGE)