

IN THE CIRCUIT COURT HELD AT BOLGATANGA IN THE UPPER EAST REGION OF GHANA ON MONDAY THE 6TH DAY OF FEBRUARY, 2023 BEFORE HIS LORDSHIP JUSTICE ALEXANDER GRAHAM SITTING AS ADDITIONAL (CIRCUIT COURT JUDGE)

CRIMINAL SUIT NO. UE/BG/CT/B3/01/2022

THE REPUBLIC

VERSUS

AKOLKA AKOLGO.

JUDGMENT

Accused was charged with the offence of:

STATEMENT OF OFFENCE

CAUSING HARM: Contrary to Section 69 of Act 29/60.

PARTICULARS OF OFFENCE

AKOLKA AKOLGO, FARMER: For that you on 1st April, 2019 at Dorungu/Bolga in the Bolgatanga Magisterial District and within the jurisdiction of this Court, you intentionally and unlawfully stabbed Atia Akeyongo with a broken bottle.

Accused pleaded 'GUILTY WITH EXPLANATION' and after the court listened to his explanation, a plea of 'NOT GUILTY' was entered on behalf of accused.

According to the facts presented by the prosecution, complainant Atiah Akeleyongo is a farmer residing at Dorungu a suburb of Bolga whiles Accused person Akolka Akolgo is also a farmer residing at Sirigu/Bolga. On 01/04/2019 at about 8:00pm, the complainant went to a drinking bar located at Dorungu to buy drink and met the Accused person and his friend already seated in the bar drinking. The complainant greeted them, and

went and sat at a different table. Complainant ordered for his drink and after the bar attendant brought complainant's drink, complainant went into the bar and paid for his drink. When the complainant was returning to his table, the accused person without any provocation confronted the complainant as to why he came to the bar and greeted only one person. It resulted in exchange of words and in the process, the accused person run to his table and picked a beer bottle, broke it and stabbed the complainant in the stomach causing severe injury to the complainant. The complainant was rushed to the Bolgatanga Regional Hospital where he was admitted for treatment. A report was made to the police and accused person was arrested. After police investigation, accused person was charged with the offence.

In order to prove its case, the prosecution relied on the evidence of five prosecution witnesses.

PW1----- Akeleyongo Atia

PW2----- Beatrice Ayine

PW3----- Asongo Justina

PW4----- NO. 37734 D/SGT. Taamanja Francis Kofi.

PW5----- Dr. Victor Dassah

Accused testified but failed to call a witness.

PW1 stated in his evidence-in- chief that on the 1st day of April, 2019 at about 8:00pm, he left the house and went to a drinking bar at Dorungu. Upon reaching the bar, he saw accused seated with Akatuiso and greeted them and went and sat at a different table.

While sitting, Nsoyine came and joined him at the same table and he requested for two bottles of beer for himself and Nsoyine. Whiles the bar attendant was on her way to

bring the drinks he ordered for, he heard accused asking Akatui why he responded to his greetings. According to accused, PW1 greeted one person instead of the two seated.

Akatui turned and asked him whether he greeted one person instead of two people. PW1 retorted that he greeted two people he saw seated at the table.

There was a heated argument between PW1 and accused but Nsoyine calmed the two them.

PW1 finished taking his drinks and got up and walked towards the bar to pay for the drinks.

While returning to his table, accused attacked him and stabbed him with a broken bottle in his stomach.

He fell on the ground unconscious, and accused stabbed him again on his shoulder and mouth. A few people came and supported him with a cloth tied around his stomach and rushed his to the Bolgatanga Regional Hospital for medical attention.

PW1 stated that his intestines gushed out and he cried for help and some people came and supported him.

PW2 corroborated the evidence of PW1 and added that she was attending to other customers and she heard someone cry out for help.

She rushed out and saw accused sitting on PW1 with a broken bottle of root extra beer in his hands.

She found out that accused was bleeding seriously with his intestines out.

She run to the house and called PW3 to come and assist and before PW3 and she returned to the scene, accused bolted away leaving PW1 lying in a pool of blood.

PW3 removed her cloth and tied on accused stomach and also arranged for a tricycle to rush accused to the Bolgatanga Regional Hospital for treatment.

PW3 in her evidence-in chief stated that upon reaching the drinking bar, she found accused in a pool of blood with his intestines out.

She quickly removed her cloth and tied it to the intestines to prevent it from drying up and called a tricycle rider who sent accused to the Bolgatanga Regional Hospital for medical attention.

PW4 is the investigator who investigated this case.

According to PW4, 01/04/2019 at 9:00pm a case of causing harm was reported at the station.

A Police medical report form was prepared and handed over to complainant for the endorsement by a medical officer and visited the intensive care unit of the Bolgatanga Regional Hospital on 01/04/2019.

He met PW1 receiving treatment at the intensive care unit, (ICU) of the Bolgatanga Regional Hospital.

Akatui Abeisakiya's name was mentioned in connection with the crime and was arrested on 2/04/2019. However, investigation revealed that he left the accused person long before the incident happened.

He visited the scene at Dorungu a suburb of Bolgatanga and obtained a witness statement from Justina Asongo.

He retrieved a broken bottle with stains of blood and PW1 gave a statement to police. Investigation caution statement was obtained from accused and accused admitted having stabbed complainant with a broken bottle.

He obtained witness statement from PW2 and his investigations revealed that on 01/04/2019 at about 9:00pm, PW1 left his house and went to a drinking bar at Dorungo a suburb of Bolgatanga.

Upon reaching the drinking bar, PW1 saw accused and one Akatui Abeisakiya seated at the bar and greeted them and went and sat at a different table.

PW1 ordered for his drinks and while the bar attendant was on her way to bring his drinks, he heard accused speaking with a loud voice asking Akatui why he responded to PW1's greetings.

According to accused, PW1 greeted only one person instead of the two seated at the table.

Akatui went to PW1 to confirm if PW1 actually greeted one person and PW1 said No and that he greeted both of them.

After PW1 received his drinks from the bar attendant, he went to pay for the drinks and when he was returning to his table, accused attacked him and in the process of their struggle accused stabbed him with a broken bottle.

PW1 fell in a pool of blood with his intestines out and eye witnesses rushed to his aid and found him unconscious lying in a pool of blood.

A tricycle was arranged and PW1 was rushed to the Bolgatanga Regional Hospital for medical attention.

On the instructions of the District crime officer, accused was charged with the offence of causing unlawful harm.

PW4 tendered in evidence the following exhibits.

exhibit "A" --- investigation caution statement of accused.

exhibit "B" ---further statement of accused.

exhibit "C" ----charge caution statement of accused.

exhibits "D, D1, D2" --- photographs of PW1 when he was admitted at the Bolgatanga Regional Hospital.

exhibit "E" ---photograph the broken bottle which accused used to stab PW1.

exhibit "F" --- photograph of the cloth which PW3 used to tie the stomach of the victim when his intestines gushed out.

exhibit "G" ---medical report.

PW5 tendered in evidence the medical report of PW1 which was marked as admitted in evidence as exhibit ' G '

Accused in his evidence-in-chief stated that PW1 came to the said bar on the day of the incident and sat at a different table and without any provocation, PW1 started to insult him. The bar attendant tried to calm down the situation and PW1 went to the bar attendant which was close to where accused was sitting.

According to accused, he tried to move from PW1 and the bar attendant but PW1 followed him with a knife and threatened to harm him with words 'I won't leave you'.

After taking his drink, accused moved towards the direction of where some blocks were parked.

According to accused, he does not remember how PW1 sustained the injuries but he remembers that PW1 pushed him and both of them fell and rolled over the blocks and landed on the ground.

He remembers waking up with wounds at the hospital.

EVALUATION OF EVIDENCE

The issues for determination are:

1. Whether or not accused caused harm to PW1?
2. Whether or not the harm was intentional?
3. Whether or not the harm was lawful?

It is trite law that the burden of proof in criminal cases rests on the prosecution and that the standard is “proof beyond reasonable doubt”. Section 11(2) of Evidence Act, 1975 (NRCD 323) states that

“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 could find the existence of a fact beyond a reasonable doubt.”

The burden thus has two aspects: the duty to lead evidence on any fact required to be proved; and the duty to provide sufficient evidence to persuade a reasonable mind as to existence of any such fact otherwise known in American criminal jurisprudence as ‘the burden of going forward’; and ‘the burden of persuasion’. To satisfy the burden of persuasion, the standard of ‘proof beyond reasonable doubt’ must be met.

The meaning of this hallowed phrase of ‘proof beyond reasonable doubt’ has been the subject of many decisions. The most cited of these is by Lord Denning in *Miller v Minister of Pensions* [1947] 2 All ER 372 when he explained the standard of proof at p.373 thus:

“It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to

deflect the course of justice. If the evidence is strong against a man as to leave a remote possibility in his favour which can be dismissed in a sentence of course it is possible but not the least probable, the case is proved beyond reasonable doubt, but nothing short will suffice."

Section 69 of the criminal offences Act 29, 1960 states that a person who intentionally and unlawfully causes harm to any other person commits a second-degree felony.

In **BROBBEY & ORS V THE REPUBLIC (1982-83) GLR 608**, it was held that the harm must not only have been intentional, but also unlawful.

This is a very high standard indeed. What was the evidence produced against Accused? Accused denied involvement in the crime during his evidence-in-chief.

On this score, the Court analyzed the evidence into some detail.

During cross-examination of PW1 by accused PW1 was emphatic that accused stabbed him.

These are excerpts of the cross examination.

Q. You lied that you were sitting and I stabbed you with a bottle?

Ans. I went to pay some money at the bar and when walking back you stabbed me.

Q. We engaged in an argument and you went and removed your shirt and came with a knife. When I took my bottle and attempted to run away, we all fell on blocks and I cannot tell whether the bottle injured?

Ans. What you are saying is not true. After I paid for my drink you leaned against blocks and stabbed me on my stomach, back, shoulder and mouth.

Q. It is not true that I leaned against blocks because the blocks were not packed?

Ans. The blocks were behind the wall at the bar and there is a corner there so you hid at the corner and stabbed me when standing behind the blocks.

Q. You will agree with me that Accused did not deliberately stab you with a broken bottle?

Ans. Accused intentionally stabbed me with a bottle.

Although accused suggested to PW1 that PW1 attacked him with a knife, PW1 denied that assertion.

Q. You attacked me with a knife?

Ans. That is not true. I was not holding a knife.

Q. You advanced towards Accused with a knife isn't it?

Ans. I went and greeted them before I went and sat down. I was not holding a knife.

Counsel for accused in an attempt to shift the post suggested to PW1 that PW1 injured himself when the two of them were rolling on the stone but PW1 denied that suggestion.

This is an excerpt of the cross examination.

Q. When the two of you were rolling on the stone that was when the bottle stabbed you?

Ans. It is not true.

What I can glean from the record of proceedings is that accused supported PW1 with GHC 1,500 during PW1's second operation.

This is the extract.

Q. When the accident occurred, accused person and his family came to support you to get well because you are related?

Ans. It is not true. It was during my 2nd operation that Accused gave GHC1,500.00 to my family.

PW2 emphasized what she saw outside the bar on the day in question during cross examination.

Q. So, you could not have seen the Accused sitting on the complainant with a broken bottle?

Ans. When I came out, I saw Accused sitting on top of the complainant holding a broken bottle cutting complainant.

Q. You did not see the Accused person breaking the bottle on blocks?

Ans. When I came out, I saw that Accused hit the bottle against the blocks and broke it.

Q. You saw Accused holding a broken bottle is that it?

Ans. Yes.

Q. But you did not see Accused breaking that bottle?

Ans. I heard the noise and I run out.

Q. You heard the noise of someone breaking a bottle is that it?

Ans. In the bar we were playing music, and when I served them, there was no broken bottle there.

PW2 explained during cross examination that when PW1 went to the bar he was wearing a singlet and he removed the singlet and sat down.

PW4 insisted during cross examination by accused that the broken bottle tendered in evidence is a root extra beer bottle.

I have seen the medical report on PW1.

The medical report states as follows:

“A young male adult in severe pain, conscious but Lethargic, Pallor+++, Peripheries cold with bleeding from multiple sites.”

FINDINGS

- Evisceration of Bowel with sand Debris in Abdominal cavity, Bowel normal, no lacerations. About 100MLS of fresh blood in abdominal cavity.
- Lacerations sutured and Abdomen closed up in layers.

In the case of **REPUBLIC V NWOKOCHA (1949)12 WACA 452** , it was stated that medical reports like scientific reports are admissible as prima facie evidence on the matter contained therein.

This court is under obligation to consider the defence of the accused covering his evidence at the trial and the statement he gave to the police. SEE TOGBE FITI IV V THE STATE (1965) GLR 33.

In **section 10(1) of NRCD 323** when the burden of persuasion shifted to him after a prima facie case had been made against him. Section 10(1) provides that his burden of persuasion required him

“to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by a preponderance of probabilities...”

With a much lighter burden than that of the prosecution’s, section 11(3) provides that

“In a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to his guilt.”

Accused apart from denying the offence was evasive during cross examination.

I have read the statements which accused gave to police. Those statements are not confession statements.

Accused defence that he does not remember how PW1 sustained the injuries but he remembers that PW1 pushed him and both of them fell and rolled over the blocks and landed on the ground.

Why did accused give GHC1,500.00 to PW1 for PW1’s medical bill.

Defence of accused *is not reasonable and probable and does not raise a reasonable doubt as to his guilt.*

From the evidence on record, this court makes the following findings of fact.

- a. That accused stabbed PW1 with a broken extra root beer bottle thereby causing harm to PW1.
- b. That accused took to his heels after stabbing PW1.
- c. That the harm caused to PW1 was intentional.
- d. That the harm was unlawful and without justification.

Prosecution has proved its case beyond reasonable doubt that accused caused unlawful harm to PW1.

The reasons for the decision are borne out from the evidence of PW1 and PW2 when PW1 stated that accused attacked him and stabbed him with a broken bottle in his stomach.

He fell on the ground unconscious, and accused stabbed him again on his shoulder and mouth. PW2 corroborated the evidence of PW1 and added that she was attending to other customers and she heard someone cry out for help.

She rushed out and saw accused sitting on PW1 with a broken bottle of root extra beer in his hands.

She found out that accused was bleeding seriously with his intestines out.

Accused gave GHC1,500.00 to PW1 for PW1's medical bill.

In the case of **ADU BOAHENE V THE REPUBLIC (1972) I GLR 70** it was held that where the identity of an accused is in issue, there can be no better proof of his identity than the evidence of a witness, who swears to have seen the accused committing the offence charged.

Fortunately, as Justice S.A. Brobbey observes in his book, *'Essentials Of The Ghana Law Of Evidence* –Datro Publications Accra, Ghana 2014, p.86, *"the position of the law is that a case can be decided on the evidence of one witness"*.

Accused is convicted accordingly.

After listening to accused plea for mitigation of sentence, there was no evidence that the accused had had any previous conviction for violence or any allied offence from which the trial court might have probably inferred that the accused has not yet learnt her lesson. It seems to me that the offence was a serious one. In the case of THE REPUBLIC V ADU-BOAHEN, [SUPRA] the court stated that:

“Where the court finds an offence to be grave, it must not only impose a punitive sentence, but also a deterrent or exemplary one so as to indicate the disapproval of society of that offence. Once the court decides to impose a deterrent sentence the good record of the accused is irrelevant.”

I find from all indications that accused quite unremorseful. A complete perusal of the evidence on record demonstrates his resolve to deny his actions by and through any means. Using all the factors and principles enunciated in the above case, it is my opinion that this Court will be justified in imposing a deterrent sentence for the offence of causing unlawful harm. The age of accused was not disclosed in the charge sheet but counsel for accused says that accused is 31 years. I have considered the youthfulness of accused

I have had serious reflections on all the circumstances of this case and weighed all the mitigating circumstances. I see the need to impose a deterrent sentence which would go a long way to help promote peace in the society.

I therefore sentence accused to ten years imprisonment I.H.L.

RICHARD ADAZABRA FOR ACCUSED

CHIEF INSPECTOR OSMAN NDEGO FOR PROSECUTION

**JUSTICE ALEXANDER GRAHAM (HIGH COURT
JUDGE) SITTING AS ADDITIONAL (CIRCUIT
COURT JUDGE).**