

**IN THE CIRCUIT COURT HELD AT SOGAKOPE ON THURSDAY, 6TH
APRIL, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT
COURT JUDGE**

CASE NO.: CC154/2021

THE REPUBLIC

VRS

AZUMAH ERASMUS

ACCUSED PERSON PRESENT

CHIEF INSPECTOR VICTOR SOMOAH FOR THE REPUBLIC PRESENT

JUDGEMENT

The Accused person stands charged before this Court with the offence of Causing Unlawful Harm contrary to section 69 of the Criminal Offences Act, 1960 (Act 29). Upon his arraignment in this Court, the Accused person pleaded Not Guilty after the charge had been read over and explained to him.

THE FACTS OF THE CASE

On the 7th May, 2021, the Accused person together with friends attended a funeral at Dorkploame, a nearby village of Tsavanya. At about 3:00pm on the same day, the complainant carried a pillion rider to attend the same funeral. On his way back, he met the Accused person and his friends standing right on the way to block the road users. The complainant stopped and questioned them as to their reason for blocking the road. This resulted into a quarrel but they were separated and dispersed. However, the Accused person threatened to show complainant a lesson. At about 6:00pm on the same day, the complainant took a pillion rider to Tsavanya where the Accused person lived and on his return he met one Bismarck who is a friend to the Accused person

who was standing by the roadside along the highway at Tsavanya. He stopped the complainant and immediately the complainant stopped and was talking to Bismarck. The Accused person emerged and threw a stone to hit the jaw of the complainant and he got wounded instantly and the Accused person escaped. A report was made to the police and the complainant was issued with a police medical form to attend hospital for treatment, which he did and submitted the report to the police duly endorsed. On the 12th May, 2021, the father of the Accused person and the Assembly man for the Tsavanya Electoral Area produced the Accused person to the police.

THE CASE OF THE PROSECUTION

The prosecution called two (2) witnesses to testify in support of its case against the Accused person.

The testimony of PW1 (Yona Ahiadorme), who is the victim and complainant in this case confirmed the facts as presented by the prosecution supra.

Detective Chief Inspector Ebenezer Arthur investigated the case. PW2 relied on his Witness Statement together with the exhibits attached.

After the close of the case of the prosecution, this Court determined that a prima facie case had been made out against the Accused person. As enjoined by law, the Court invited the Accused person to enter into his defence.

THE CASE OF THE ACCUSED PERSON

In opening his defence, the Accused person testified himself and called two (2) witnesses as DW1 and DW2.

The Accused person told the Court that on the 7th May, 2021, they attended a funeral and one of his siblings came to pick them on his motorbike to return. That the motorbike became faulty when his sibling met them. So, they tried repairing the motorbike when the complainant came to meet them with his motorbike and told them that it was only in this village that they live to block the road and that they cannot do such a thing at Akatsi. It is the case of the Accused person that one of his siblings by name Bismarck moved the motorbike from the path to enable them to pass but the complainant refused and rather engaged them in a quarrel. According to the Accused person, they were separated and the complainant and his entourage left on his motorbike. When they were able to fix the motorbike and set off, they met the complainant and his people at a funeral ahead. The complainants stopped them but they refused to stop. The complainant rode his motorbike, followed them and crossed them at Tagbame on the Dorkploame road and they crossed the road but the Accused person and his siblings did not cross. The one riding their motorbike stopped. The Accused person told the Court that he walked towards the complainant and told him they had a misunderstanding which resulted in a quarrel and they had been separated so why would he not let go. According to the Accused person, before he could finish talking, the complainant slapped him twice on his cheeks. He had wanted to fight him back but they were separated. The complainant warned him that he was going to deal with him anytime he saw him. After the scuffle, they left. That complainant and his entourage came to bypass them again and crossed them at a junction at Tordzinu. They attempted to stop them but they managed to pass and left and he alighted at his house. The Accused person further told the Court that he was home when he saw the complainant and the person who separated them on the road coming to his house and so he also stoned him. That after stoning him, they were separated and he left the house.

DW1 (Akli Samuel) told the court that some time ago, they attended funeral at Dorkploame. At the funeral, the deceased was taken to another town for burial. So, some of them being the youth followed up to where the deceased was to be buried. That after the burial, he wanted to go home but the Accused person and his colleagues called him to come and pick them to Tsavanya. On his way going to the funeral grounds, he met the Accused person and others on the way walking on a footpath. That path was the only path in the village. When he met the Accused person and others, he turned to pick them. Whilst he was turning, the complainant and his friends on a motorbike were also coming so he raised his hand to signal them. When they got to where they were they started shouting at them that what they were doing was uncivilized. So, he told them the path is a footpath and very narrow and that was the road he was turning. The complainant said they cannot do that at Akatsi. According to DW1, he told him their place was a village so he should mention Akatsi but they almost quarreled and were separated. The complainant later crossed and bypassed them on the way at the funeral grounds but they were advised not to mind them and they left. That they later bypassed them again on a rough road before Dorkploame Tordzinu junction. They went and parked their motor on the bridge at one side and they also stopped. The Accused person told the complainant that as a motor rider who had pillion riders he should not ride carelessly. The complainant stopped the Accused person but he was not present when they fought.

DW2 (Forgive Azumah) told the court that on the 7th May, 2021, there was a funeral at Dorkploame. The Accused person and his colleagues attended the funeral. It is the case of DW2 that when they returned, she was with her mother cooking in the house and the Accused person came to sit with them and told them about that quarrel that ensued at the funeral grounds. That the complainant crossed him on the road and slapped him when he complained.

Whilst he was telling them this, they heard the sound of a motorbike. All they saw was that the person parked his motorbike and was walking into the house and that one Bismark was holding him and preventing him from doing something. So, when the person came to the house, the Accused person asked him whether he wanted to kill him. The Accused person took a stone and before they could prevent him, he threw it to hit the complainant. The Accused person said the complainant slapped him on the way and threatened to kill him and that was why the complainant came to the house and so he threw the stone at him.

At the end of the trial, the Court had to determine whether or not the Accused person intentionally and unlawfully caused harm to the complainant.

BURDEN OF PROOF

The common law rule that a person was presumed innocent until the contrary was proved or he pleaded guilty is reinforced by Article 19(2)(c) of the 1992 Constitution which reads:

“A person charged with a criminal offence shall ----- (c) be presumed to be innocent until he is proved or has pleaded guilty.”

The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in sections 13 and 15 of the Evidence Act, 1975 (NRCD 323). Significantly, whereas the prosecution carries that burden to prove the guilt of the Accused beyond reasonable doubt, there is no such burden on him to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful.

Section 11(2) of the Evidence Act, 1975 (NRCD 323) provides 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 the fact beyond reasonable doubt.”

In Republic v. District Magistrate Grade II, Osu; Ex parte Yahaya [1984–86] 2 GLR 361-365, where Brobbey J. (as he then was) stated and I quote:

“One of the cardinal principles of criminal law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt.”

THE LAW ON CAUSING UNLAWFUL HARM

Section 69 of Act 29 provides:

“A person who intentionally and unlawfully causes harm to any other person commits a second degree felony.”

The elements of causing harm are that the accused person has caused harm, it was caused to a person, and the harm was unlawful.

Section 76 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.”

EVALUATION OF THE EVIDENCE

It is noted that the Accused person has not denied throwing a stone to hit the jaw of the complainant. According to the Accused person, he did that to defend himself because the complainant had slapped him twice and

threatened to teach him a lesson anytime he sees him, and so when he saw the complainant come to his house and was moving towards him, he picked the stone and threw it at him to hit his jaw. The Cautioned Statement of the Accused person was tendered in evidence and marked as Exhibit 'A'. A careful scrutiny of Exhibit 'A' shows it was taken in compliance with section 120 of the Evidence Act, 1975 (NRCD 323).

The following is the Cautioned Statement taken from the Accused person on the 12th May, 2021:

"On 07-05-2021, myself together with friends less than twenty attended a funeral at Dorkploame from Tsavanya. We were by the roadside at Dorkploame when a motor rider we engaged to carry us back home to Tsavanya arrived and the engine of his bike suddenly went off. While trying to push the bike off the road complainant arrived and was blowing the horn of his bike and said 'Do you think you can do this in Akatsi'. His utterances made Samuel and others became offended and were arguing. After the situation was calmed down he left. We came and met him along the way and engaged my friends into disagreement. There he did a mistake in the sense that he shouldn't have stopped when he left the first place. He became offended and slapped me twice, I had wanted to fight him but I was prevented and dispersed. I came to the house at Tsavanya and saw Bismark seated by the roadside close to my house at Tsavanya. I came out with an intention to collect my phone from Bismark and saw complainant walking towards me. It occurred to me that he was coming to attack me so I first picked a stone and hit the jaw and he got wounded. I did so because he earlier warned me that anytime he sees me in Akatsi he will teach me a lesson. Complainant was still advancing towards me so I escaped from the scene. It was until today 12/5/21 my uncle told me that I'm being wanted by the police and he brought me. I have to admit that I threw the stone against complainant and got him wounded. I have regretted for my actions and pleaded that I will not repeat it any longer."

Akamba JSC in the case of Ekow Russel v. The Republic [2016] 102 GMJ 124 SC, stated and I quote:

*“..... A confession is an acknowledgement in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. **By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused.** It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person’s own free will without fear, intimidation, coercion, promises or favours”* (Emphasis mine)

The medical report issued from the Akatsi Government Hospital to PW1 by Dr. Benjamin Akorli on the 7th May, 2021 and tendered in evidence and marked as Exhibit ‘C’ reads as follows:

*“Yona Ahiadome 21 years. Three (3) Hours Post alleged assault. Complained of Headache, Neck ache, painful swollen and lacerated lower lip and fractured teeth resulting from the said attack. On direct questioning, patient has dizziness; no bleeding per natural orifice, No chest pain, no nor abdominal pain. On examination, lacerated lower lip at the left lateral corner fractured left upper incisor, canine and first premolar teeth. Bleeding is minimal. Moderate tenderness on the anterior -lateral (left) aspect of neck. No bruises, swellings nor lacerations observed elsewhere. Chest – clinically clear with adequate air entry. Abdomen – No abnormality detected. Central nervous system is grossly intact. Impression: - **Skin (facial) ulceration, Teeth fractures, Musculo-skeletal pain secondary to alleged assault. Patient managed and sent home on OPD basis.**”* (Emphasis mine)

Right of self defence of a person is recognized in all free, civilized, democratic societies within certain reasonable limits. In the case of Sabbah vrs The Republic [2009] SCGLR 728, the Court held as follows:

“It is therefore trite learning that whenever the defence of self-defence is put up by a person, the use of force or harm in defending oneself or another person shall be reasonably necessary within the circumstances.”

Also, in the case of Larti v. The State [1965] GLR 305, the Court held that:

“In the defence of self defence, the nature of the injury or harm caused by the person to another that is not reasonably necessary within the circumstances may displace the defence of self defence.”

A legal philosopher Michael Gorr in his article “Private Defense” (published in the Journal “Law and Philosophy” Volume 9, Number 3/August 1990 at Page 241) observed as follows:

“Extreme pacifists aside, virtually everyone agrees that it is sometimes morally permissible to engage in what Glanville Williams has termed “private defence”, i.e. to inflict serious (even lethal) harm upon another person in order to protect oneself or some innocent third party from suffering the same.” This quotation is captured under section 37 of Act 29.

The question to pose at this stage is whether or not the harm or injury caused to PW1 by the Accused person was reasonably justified under the circumstances. The Accused person in his own evidence as well as the evidence of his sister (DW2) point to the fact that the Accused person picked a stone and threw it to hit the jaw of the complainant when he saw him coming to his house.

The Accused person could have easily avoided the use of force by escaping or running away. This Court is of the humble view that the defence put forward by the Accused person is not reasonably justified.

In the case of Lutterodt vrs Commissioner of Police [1963] 2 GLR 429 at 430 at holding 3, the Court stated and I quote:

"In all criminal cases where the determination of a case depends upon facts and the court forms an opinion that a prima facie case has been made the court should proceed to examine the case for the defence in three stages:

- a) if the explanation of the defence is acceptable, then the accused should be acquitted;*
- b) if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;*
- c) if quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict..."*

Upon a careful consideration of the case of the prosecution as well as the case of the defence as I am enjoined by law so to do, I find the explanation of the defence unacceptable and unreasonable. In the circumstances, I find the Accused person herein guilty of the offence of Causing Unlawful Harm and he is accordingly convicted.

In sentencing the Accused person, the Court takes into consideration of the fact that he is a first-time offender and also a young man. However, looking at the severity of the harm caused and to serve as deterrent to others, passing a fairly deterrent sentence on the Accused person will be appropriate. The Accused person is hereby sentenced to serve a prison term of Six (6) months

IHL. In addition, he will pay a fine of One Hundred and Twenty (120) Penalty Units and in default serve a prison term of Six (6) months IHL.

Final Order:

The Accused person shall compensate the complainant (Yona Ahiadorme) with the sum of GH¢3,000.00.

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ISAAC ADDO
CIRCUIT JUDGE
6TH APRIL, 2023