

IN THE CIRCUIT COURT HELD AT SOGAKOPE ON THURSDAY, 13TH APRIL, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

CASE NO.: CC126/2022

THE REPUBLIC

VRS

ETSEY AHIAMADZOR

ACCUSED PERSON PRESENT

INSPECTOR DAVID NUKPENU 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 Friday, 22nd April, 2022 about 4:00pm, there was an exchange of words between the complainant and the Accused person concerning a parcel of land at Kpekpo in which the Accused person attacked the complainant to wit 'Do you know how your father died' to the annoyance of the complainant. This provoked the complainant but they were separated. On Sunday, 24th April, 2022 about 7:10pm, the complainant went to the traffic light, Sogakope Roundabout with his motorbike to buy some items when he heard the Accused person calling his name. The complainant got down from his motorbike, went to the Accused person and asked him if he wanted to kill him too. This generated into exchange of words between them but people

came and separated them. As the complainant went back to his motorbike, the Accused person took a stone and threw it at the complainant's head. He sustained a cut on the left side of his head and bled profusely. The Accused person fled the scene. The complainant made a report to the police and he was issued with a Police Medical Report Form to attend hospital. The complainant was treated at Comboni Hospital and his medical report was endorsed. The Accused person was later arrested by the police.

THE CASE OF THE PROSECUTION

The prosecution called four (4) witnesses in establishing its case against the Accused person. The testimony of PW1 (Amemornu Michael), who is the victim and complainant in this case confirmed the facts as presented by the prosecution supra.

Detective Constable Desire Dziedzorm Ashiabi investigated the case. PW2 relied on her Witness Statement together with the exhibits attached.

THE CASE OF THE ACCUSED PERSON

In opening his defence, the Accused person testified himself and called one (1) witness as DW1.

The Accused person told the Court that they were molding blocks at a site and PW1 came to accost them as to why they were selling somebody's land. That they responded that they were not selling anyone's land but were only molding blocks to construct a building. Whilst working, PW1 went and organized about fifteen (15) boys from Kpekpo and Sokpoe township. They came and the one leading them enquired from them about who gave them the permission to work on the land. According to the Accused person, he mentioned the name of the person and sent them to his uncle's house. That

his uncle brought out land documents and showed it to the boys which indicated that the land did not belong to any other person except those mentioned in the land documents. They left and his uncle told them to continue with the work.

The Accused person further told the Court that the next morning, he was in town around the Traffic Light area when PW1 met him and threatened that he will butcher him like the way chicken is butchered. That when PW1 uttered those words, he started pushing him and held his neck and that was when the person he was walking with tried to separate them but to no avail. PW1 held his neck, pushed him onto the pavement and was choking him. He tried to free himself but to no avail. When he managed to remove one of his hands, he scrambled and found a stone on the ground and he used it to hit the head of PW1 before he let go of him from the ground. The Accused person added that his clothes became torn and so after freeing himself, he managed to run away through the market.

DW1 told the court that on that fateful day he came to town to buy food. That after buying the food, he was going and when he got to the traffic light he saw the Accused person passing. He also saw the complainant on a motorbike following the Accused person. He stopped by the Accused person and was talking to him. The complainant alighted from his motorbike, walked towards the Accused person and suddenly attacked the Accused person and pushed him to the ground and started beating him. It is the case of DW1 that the Accused person picked an object like a stone from the ground and threw it to hit the complainant on the head. The Accused person and the complainant were separated when the former was on top of the latter on the ground. DW1 further told the court that as the incident was happening, he collected the phone of the Accused person and was looking for him after the incident to

hand over the phone to him but could not see him around. That he later saw the Accused person around Willie Aguzie's store and gave the phone back to him.

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

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 the case of *Republic vrs 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 AND EVALUATION OF EVIDENCE

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.”

It is noted that the Accused person has not denied throwing a stone to hit the head of the complainant. Exhibits ‘C’ and ‘C1’ are photographs depicting the injury caused to the complainant with blood stains on the head. The medical report which was dated 25th April, 2022 and signed by Dr. Anthony Adzifome and tendered in evidence and marked as Exhibit ‘B’ reads:

“Patient reported yesterday in the evening with complaint of bleeding from the head. Patient alleged he was assaulted by a guy who has been threatening him for some time now. He said the guy used a cement block to hit him which resulted in him having a

cut on the head. On examination, a young guy who sustained a deep cut measuring 5cm in length and about 1cm deep and was bleeding profusely. The place was shaved and sutured to arrest bleeding. Patient complained of headache. Was managed for scalp laceration due to physical assault and was given tetanus injection, analgesics and painkiller. Currently stable and has no acted complaints."

Section 38 of Act 29 provides that no force used in unlawful fight can be justifiable. That is, every fight is an unlawful fight whether you were provoked or not. However, if one engages in a fight for the purposes of self-defence, then it is not unlawful. According to the Accused person, it was the complainant who pushed him onto the ground and was beating him when he also picked the stone and threw it at him to hit his head to enable him free himself from the complainant. This piece of evidence was corroborated by DW1.

In the evidence of the Accused person, he said in the course of the fight, PW1 held his penis and testis, and out of pain, he threw his fist to hit the face of PW1 in order to free himself from PW1. This piece of evidence was corroborated by the testimony of DW1.

Right of self defence of a person is recognized in all free, civilized, democratic societies within certain reasonable limits. In the case of Sabbah v. 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 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 necessary or justified under the circumstances. In the Cautioned Statement of the Accused person (Exhibit 'A') given to the police on the 27th April, 2022, the Accused person told the police the following:

"I am a farmer and a mason, residing at Mr. Ahiamadzor's house-Kpekpo, Sogakope and a native of Dzodome. On Sunday, 24th April, 2022 at about 6:40pm, I came to town with one Dan and when we were going home, we saw the complainant around Sogakope Traffic light where he parked his motorbike he was riding immediately he saw me. He then rushed on me and told me if I do not beat him today, he will beat me. He held my shirt and pushed me. I then fell on the ground. People around came to separate me from him but he held my shirt again and pushed me to the ground and I hit my back against the floor there. When I got up from the floor I took a stone from the ground and threw it against him with reasons to avoid him attacking me again. I left to the house from there. I did not threaten him." (Emphasis mine)

The Cautioned Statement was tendered in evidence without any objection by the defence. A careful scrutiny of Exhibit 'A' shows that it was taken in compliance with section 120 of the Evidence Act, 1975 (NRCD 323).

From the statement given by the Accused person to the police, it is obvious that it was when the Accused person got up from the floor that he picked a stone and used it to hit the complainant. The testimony of the Accused person in open court is inconsistent with his statement he gave to the police when the incident was fresh in his mind.

In the case of Brempong II v. The Republic [1995-96] 1 GLR 350 per holding 5, the Court of Appeal stated that:

“In law, for conflicts and inconsistencies in evidence to influence a decision, they had to be material and also destroy proof of an element of the offence or totally discredit the witnesses so as to make their testimony unreliable.....”.

Also, in the case of Kuo Den alias Sobti v. The Republic [1989-90] GLR 203, the Supreme Court in a charge of murder explained at page 213 that where there are material inconsistencies in the defence put up by the accused person, there was sufficient justification for the jury to reject the defence.

The court finds the defence of the Accused person as an afterthought and misconceived.

In Lutterodt v. 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 put forward by the Accused person is an afterthought and misconceived. The Court finds that the prosecution has been able to prove its case beyond reasonable doubt. 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, I take into consideration of the fact that he is a first time offender and also a young man. However, looking at the nature of the offence and the harm caused to the complainant, passing a fairly deterrent sentence on the Accused person will be appropriate. In the circumstances, I hereby sentence the Accused person herein to serve a prison term of Six (6) IHL. In addition, the Accused person will pay a fine of One Hundred and Twenty (120) Penalty Units and in default serve Six (6) months prison term.

Final Order:

The Accused person shall compensate the complainant, Amemornu Michael with the sum of GH¢3,000.00.

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ISAAC ADDO
CIRCUIT JUDGE
13TH APRIL, 2023