

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA AT CIRCUIT COURT '2' ON WEDNESDAY, 14TH JUNE, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

CASE NO.: D3/20/2023

THE REPUBLIC

VRS

ALHASSAN ABDUL RAHUF

ACCUSED PERSON PRESENT

CHIEF INSPECTOR JONAS LAWER FOR THE REPUBLIC PRESENT

JUDGEMENT

The Accused person stands charged before this Court with the following offences contrary to sections 152 and 69 respectively of the Criminal Offences Act, 1960 (Act 29):

- i. Unlawful Entry, and
- ii. Causing Harm.

Upon his arraignment in this Court, the Accused person pleaded Not Guilty after the charges had been read over and explained to him.

THE FACTS OF THE CASE

On the 28th April, 2023 at about 0710 hours, the Accused person who worked with Protea Coin Security Company as a security guard was on guard duty at Arabella Estates and sought permission from his supervisor to use the washroom but failed to return. The Accused person after using the washroom went to the apartment of the victim and entered the room through the children's playroom window. The Accused person changed his clothes and wore the victim's husband's attire, left his uniform and boots in a polythene

bag in the room and hid himself. On the 29th April, 2023 at about 1330 hours, the victim after taking her bath was dressing up when the Accused person suddenly appeared on her naked in her bedroom. The victim shouted for help but the Accused person rushed to the kitchen, picked a knife and a meat fork, and stabbed the victim twice in the abdomen with the meat fork. The victim started bleeding and rushed out of the room naked. The Accused person also rushed out and cut one of the electric fence wires and scaled the wall. The victim was rushed to the police hospital for treatment by a neighbour. The Accused person was later arrested at a nearby construction site through police intelligence. The Accused person admitted the offence in his cautioned statement and led police to retrieve his security uniform kept in the victim's room.

At the trial, the prosecution called three (3) witnesses to testify in support of its case against the Accused person.

The testimony of PW1 (Belinda Akorli), who is the victim in this case confirmed the facts as presented by the prosecution supra. In addition, PW1 tendered in evidence a Photograph of the wounds inflicted on her tummy.

PW2 (Detective Chief Inspector Cephas Amansunu) investigated the case. PW2 relied on his Witness Statement as his Evidence-In-Chief and tendered in evidence the Medical Form Issued to the Victim and endorsed by the doctor, Investigation Cautioned Statement of Accused person, Charge Statement of Accused person, The Meat Fork and its Photograph, the Security Uniform and its Photograph, and a Photograph of the Accused person dressed in the Victim's husband's attire.

PW3 (Rita Owusu) testified as the Assistant Manager of Arabella Estates located at Cantonments. PW3 told the Court that on the 29th April, 2023 at about 1:30pm, she was in the office with the security officer by name Priscilla when a call came to the latter requesting her to come to the back gate immediately. So, she locked the office and followed her to the back gate. Upon reaching there, the electric fence triggered so they rushed to the back of the building. That was when they saw the victim sitting outside her apartment naked and wailing in pain and bleeding from fresh wounds on her stomach. She quickly provided her with a cloth and arranged for a taxi and sent to the hospital for treatment. PW3 tendered in evidence a Pen Drive containing a CCTV Footage on the day of the incident. Let me put it on record that this video was played in open court.

After the close of the case of the prosecution, this Court decided on whether or not a prima facie case had been made out against the Accused persons. In the case of *The Republic vrs District Magistrate Grade II, Osu, Ex parte Yahaya* [1984-86] 2 GLR 361-365 Brobbey J (as he then was) stated that:

"...evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused himself has given evidence."

THE CASE OF THE ACCUSED PERSON

In opening his defence, the Accused person offered to give oral evidence from the Witness Box. The Accused person neither called any witness to testify in support of his case nor tendered any exhibit in evidence.

The Accused person told the Court that on the 28th April, 2023, he reported for work at the premises of Arabella Residence as a security guard. That he sought permission from his supervisor to use the washroom. After the

washroom, he was so hungry and there was a waakye seller at the back of the premises and so he passed behind the wall to see whether the waakye seller was in or not. So, he realized the waakye seller was in. It is the case of the Accused person that there are two apartments separated on their own so he used the way that the victim lives and saw that one of the victim's windows was opened. According to the Accused person, he was almost going black out because he did not eat on the Thursday evening and needed a place to relax. So, he entered the premises of the victim through the window to relax for a while. He slept till the evening and continued sleeping till the next day. The Accused person further told the court that he was wearing a security uniform and his security pair of boots and that he felt heat in the pair of boots and removed the uniform and the pair of boots. After removing them, he found an attire in the room and wore it. So, he slept and realized that it was in the afternoon and he heard the victim making a call. So, he came out from where he was sleeping and entered the bedroom of the victim and realized she was naked and shouted for help upon seeing him.

The Accused person added that upon the shouting, his intention was not to harm the victim and thought her shout could alarm people to come to her aid, so he rushed to the kitchen and needed something to silence the victim. He found the meat fork in the kitchen, went back to the bedroom and the victim started struggling with him. Unknowingly, he realized he had stabbed the victim with the meat fork, then run away through the window and used his hand to cut the electric fence notwithstanding the electric shock but he managed to put it off, and scaled the wall.

After the trial, the Court determined the following issues:

- i. Whether or not the Accused person unlawfully entered the room of the victim.

- ii. Whether or not the Accused person intentionally and unlawfully caused harm to the victim.

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 (supra), 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 THE EVIDENCE

The Law on Unlawful Entry:

Section 152 of Act 29 provides that:

“Whoever unlawfully enters any building with the intention of committing crime therein shall be guilty of second degree felony”

Section 152 of Act 29 has been explained under section 153 of Act 29 as follows:

“A person unlawfully enters a building if he enters otherwise than in his own right or by the consent of some other person able to give such consent for the purposes for which he enters.”

In establishing the offence of Unlawful Entry, the prosecution shall prove that the Accused person unlawfully enters a building, he enters with the intention of committing a crime, and the offence is to be committed in the building.

In the case of Kanjarga vrs The State [1965] GLR 479-483, Ollennu JSC had this to say:

“To constitute the offence of unlawful entry, the entry must be made with a purpose or intent to commit a crime. It follows that in addition to proving entry, the prosecution, to succeed, must prove that intent to commit a crime in the premises existed at the time of entry and was the purpose for the making of the entry” .

The Law on Causing 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 the offence 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 entering the room of the victim. According to the Accused person, he did that because he almost had a black out so he entered the room of the victim to relax. What then was the intention of the Accused person in entering the room of the victim? To be able to prove the state of mind of the Accused person at the time of entering the room of the victim, the prosecution shall be required to prove intent or knowledge or malice of the Accused person and this will be determined by the evidence adduced at the trial. Mr. P.K. Twumasi in his book “CRIMINAL LAW IN GHANA” at page 77 stated as follows:

“The general principle of our law is that intention, like many other states of mind, is incapable of direct proof; it is always inferred from proven facts.....”.

From the facts and the evidence adduced at the trial, it is not doubted that the Accused person entered the room through the window. When he entered the room on the 28th April, 2023 in the morning, he slept in the room till the next day. Also, when the victim came out from the bathroom naked, the Accused person attacked her with the meat fork and stabbed the tummy of the victim twice. Under cross examination, the Accused person could not tell the

number of times he stabbed the victim. On the face of the medical report, the victim was stabbed twice with the meat fork, i.e. two in the epigastrium and two in the para-umbilical region. The following is what the Medical Doctor, Superintendent/Dr. B.S. Kuofie wrote in the report:

“COMPLAINT: ALLEGEDLY STABBED IN THE ABDOMEN FOLLOWING UNLAWFUL ENTRY

c/o 1. GENERALIZED ABDOMINAL PAIN

2. BLEEDING FROM MULTIPLE WOUND SITE

PHYSICAL EVIDENCE: MULTIPLE STAB WOUNDS

2.2cm ×1cm 3cm ×1cm TWO IN THE EPIGASTRIUM AND TWO THE PARA-UMBILICAL REGION

OOZING BLOOD

NO INTER-PERITONEAL SPACE

IMPRESSION: ABDOMINAL STAB WOUNDS 2⁰

PHYSICAL ASSAULT WITH MEAT FORK” (Emphasis mine)

A careful look at Exhibit ‘E’, i.e. the meat fork shows that it has two (2) teeth or fingers. The question to pose at this stage is; If the Accused person did not intend to cause harm to the victim, why did he stab her twice on the abdomen and not once. From the evidence, at the time the Accused person returned from the bathroom naked, she was not holding any object or weapon to make the Accused person feel threatened. Being a security guard, one would have thought that the Accused person could have easily overcome any form of resistance from the victim, if any at all. The use of the meat fork on the victim by the Accused person is unreasonable and unjustified in law.

Another question to pose is; If the Accused person was almost going black out, why did he not go back to the security post to inform his supervisor but

rather chose to enter the victim's room through the window? It is also established by the prosecution that when the Accused person stabbed the victim and she run away naked outside, the Accused went to the kitchen, picked a knife and started chasing her. So, if not to cause harm to the victim, then what else did the Accused person intend to do. A CCTV footage captured the Accused person on the premises of the Arabella Residency but not inside the victim's room. The Accused person has not denied being the person seen the video. The Accused person also changed his security uniform and pair of boots and wore an attire belonging to the husband of the victim and kept his uniform in a polythene bag and left same in the room. Upon his arrest, he led police to the said room to retrieve the polythene bag containing the uniform. In the humble view of this Court, all the above point to the fact that the Accused person unlawfully entered the room of the victim with the intention to unlawfully cause harm to her.

Upon his arrest, the Accused person submitted a Cautioned Statement to the Police dated 29th April, 2023. The following is what the Accused person told the police:

"I am a security guard with Protea Coin Security Company Limited. I have worked with the company for the past four months and I am currently detailed for duty at Arabella Residence, located at Cantonments – Accra. On 28/04/2023 at about 0620 hrs, I reported for work as the day guard at the Arabella Residence together with my other colleagues and will close at 18 hrs. At about 0710 hrs, I informed my supervisor that I was going to visit the washroom and I left. After using the washroom, I realized that one of madam Belinda's windows was opened. I then entered the room through the window that was opened and hid in one of the bedrooms. She was in the apartment at the time I entered the place. Madam Berlinda later went out and came home very late whilst I was still hiding in the room. On the 29/04/2023, at about

1300 hrs, I overheard her making some sounds. I came out from the room I was hiding, went straight into her bedroom and met her naked in the room just from the bathroom. On seeing me, she started shouting for help, I went to the kitchen, took an implement in the kitchen and stabbed her twice. I went into her room with the purpose of stealing some money to pay off a loan I took. I rushed out of the room and she also rushed out naked. I held the electric fence, pulled it and it cut even though I had an electric shock. I then scaled the wall and in the process the knife I had on me fell outside the fence wall. Before I came out, I removed my security uniforms, took a trouser and shirt in her room and wore. I went to a construction site closed to the workplace, scaled the wall into the site. I slept there for a while, washed my shirt. I was later arrested by the site security and brought to the Police Station."

The Cautioned Statement of the Accused person was tendered in evidence and marked as Exhibit 'C' without any objection. A careful scrutiny of Exhibit 'C' shows that it was taken in compliance with section 120 of the Evidence Act, 1975 (NRCD 323). There was an independent witness in the person of Kassim Yussif of Cantonments, Accra.

In the case of Ekow Russel v. The Republic [2016] 102 GMJ 124 SC, Akamba JSC 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)

I conclude this judgement by relying on the case of *Lutterodt vrs Commissioner of Police* [1963] 2 GLR 429 at 430 at holding 3, where 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 that the prosecution has been able to prove its case against the Accused person beyond reasonable doubt. I therefore find the Accused person herein guilty of the offences of Unlawful Entry and Causing Harm, and I accordingly convict him.

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. He has also been in police lawful custody for some period of time. However, looking at the severity of the harm caused, the seriousness of the offence, the fact that it was premeditated, and also the fact that the Accused person was a security guard whose duty was to protect the lives and property of the residents of Arabella

Estates, the Accused person deserves a deterrent sentence and must be kept away from the society for a considerable length of time.

Count 1:

The Accused person is sentenced to serve a prison term of Fifteen (15) years IHL.

Count 2:

The Accused person is sentenced to serve a prison term of 7 years IHL.
Both sentences shall run concurrently.

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ISAAC ADDO
CIRCUIT JUDGE
14TH JUNE, 2023