CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 10TH JANUARY, 2023

SUIT NO. D3/4/21

THE REPUBLIC

VRS

EDEM OCANSEY

JUDGMENT

The accused person is before this Court on a charge of causing harm contrary to ***Section 69 of the Criminal Offences Act, 1960 (Act 29)***. The particulars of offence are that on the 6th day of January, 2021 at Community 8, Tema in the Tema Metropolis and within the jurisdiction of this Court, you intentionally and unlawfully caused harm to Daniel Prempeh by stabbing his head, face, back of head and body with a broken Guinness bottle.

The accused person pleaded not guilty. The accused person pleaded not guilty to the charge and by so doing, cast upon the prosecution the duty of leading evidence to establish his guilt. A plea of not guilty serves as both a shield and a sword. A shield for the accused person who is presumed to be innocent until proven guilty and does not have to say anything in proof of his innocence and a sword pointed at his accusers to lead evidence to establish a prima facie case against him.

It is only when prosecution has discharged their duty by leading cogent and credible evidence in proof of their case that the sword would now turn towards the accused person; not to establish his innocence but to raise a reasonable doubt in the mind of the court.

Where prosecution fails to establish such a prima facie case, the court must acquit and discharge the accused person.

Also by his plea of not guilty, the accused person had invoked the protection accorded him under ***Article 19 (2) (c) of the 1992 Constitution***. Per that provision, he is presumed innocent until proven guilty. According to the case of ***Davis v. U.S. 160 U.S 469(1895)***. "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

In the case of ***Gligah & Atiso v. The Republic [2010] SCGLR 870 @ 879*** the court held that *"Under article 19(2)(c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story."*

Prosecution in proof of its case called four witnesses. The complainant testified as PW1. According to PW1, on the 6th day of January, 2021, after he had finished bathing, the accused person rushed on him in the bathroom and sprayed pepper into his face. He continued that the accused person held his rasta hair from behind and hit his head to a wall. That the accused person then broke a bottle he was holding and started stabbing him with it. That the accused stabbed him at the back of his neck and on his head. That he became blinded and fell down immediately.

PW2 is the wife of PW1. Her evidence is that on the said date, the accused person came to their home and said that he had dreamt of she entering his room and sprinkling some concoctions. That there were people around and they all laughed at this as they thought the accused person was joking. That she left the scene but the accused person followed her and threw a pack of rice he was holding at her. That she did not mind him because she thought he was there to cause trouble.

That she later left the house but received a call from her son; Elvis Acheampong that the accused person had returned to the house to attack her husband; PW1. That she rushed back home and met them exchanging words. That she pulled her husband away. Later, after her husband had gone to take his bath and come out of the bathroom, the accused person attacked him, sprayed pepper spray into his face, stabbed him with a broken Guinness bottle and inflicted multiple wounds on him.

PW3 is Elvis Acheampong; the son of PW1 and PW2. His evidence is that on the 2nd day of January, 2021, he was in his father's room when accused person forcefully entered the room. That accused left a threatening message for his parents who were then absent. Accused told him that PW2 had entered his room to sprinkle some concoctions. That he was going to Accra and upon his return, PW2 would see what would happen to her. That he conveyed the message to PW1.

He continued that the next day, the accused person came over to their house again. He had a pair of scissors and a stick and he used the scissors to damage part of the wooden structure which is their home. That his parents were not at home that day too.

PW3 further testified that on the 6th day of January, 2021, the accused came to their house with a broken bottle in his hands and started exchanging words with PW1. That PW2 managed to separate them and PW1 left to take his bath.

Just after PW1 finished bathing and was coming out of the bathroom, the accused person sprayed a pepper spray into his face, held his rasta hair from the back and used the broken bottle to inflict multiple wounds on him and bolted. That PW1 started bleeding profusely and he (PW3) began taking pictures. When accused person saw him doing this, he threw stones at him.

PW4 is the investigator. He tendered in evidence the investigation caution and charge statement of the accused person as exhibit A and B respectively. He further tendered in evidence two photographs of PW1 as exhibit C and C1 and a medical form of PW1 as exhibit D.

Prosecution closed its case after this.

CONSIDERATION BY THE COURT

Section 173 of the Criminal and Other Offences Procedure Code, 1960 (Act 30) provides that; "If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."

According to the Supreme Court in the case ***of Asamoah & Anor. v. The Republic [2017-2018] 1 SCGLR, 486, Adinyira JSC*** speaking for the apex court, stated that "the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there

is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial by indictment may be restated as follows;

a) There had been no evidence to prove an essential element in the crime
b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or
c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it
d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence.

See the celebrated case of ***The State v. Ali Kassena [1962] 1 GLR 144 in which the Practice Direction issued by the Queens Bench Division in England [1962] 1 E.R 448 (Lord Parker CJ) was approved*** **of.**

On a charge of causing unlawful harm, the requisite elements for the prosecution to establish the charge are that;

1. Accused caused harm to PW1
2. The harm was intentional and
3. The harm was unlawful.

Section 1 of the Criminal Offences Act, 1960 (Act 29) defines harm to mean any bodily hurt, disease, or disorder, whether permanent or temporary. Thus prosecution must prove that the accused person by his actions or omissions caused a bodily hurt, disease or disorder to the complainant. In the case of harm by a bodily hurt, the prosecution must prove that there was a break in the skin of the complainant.

On the first ingredient, the evidence of prosecution is that the accused person used a broken Guinness bottle to stab PW1 and this led to PW1 sustaining injuries on his forehead and neck.

EXHIBIT C is a picture of PW1. There is a flow of blood on the right side of his forehead and face. EXHIBIT C1 shows a picture of PW1 with a bandage on his head. EXHIBIT D is a police medical form. In same, the medical doctor observed lacerations on PW1's forehead and neck and the said lacerations were sutured.

The accused person does not deny causing this harm to PW1. His contention is that the harm was only to the forehead of PW1 and not to the back of his neck. His further contention is that the said harm was done in self defence and by mistake. In cross examining PW1, accused had asked at page 3 of the record of proceedings;

Q: You say I stabbed you at the neck. Can you show to the court the stab wound on your neck just like there is a stab wound on your head indicating that I broke a bottle on your head.

A: You stabbed my forehead, my scalp and my stomach and then I fell and you began to run away.

Then at page 10 of the record of proceedings, PW2 answered;

Q: *In your evidence in chief, you said there were multiple wounds that I inflicted on your husband. Where were these wounds?*

A: On his forehead, you stabbed him with a broken bottle. In the course of the struggle, the bottle also stabbed his leg.

Then PW3 had at page 14 of the records of proceedings answered under cross examination;

Q: You said I inflicted multiple wounds on your father. What part of your father's body did I inflict those wounds.

A: You used the bottle to inflict a wound on the back of his neck and his forehead as well.

On his part, PW4 had answered at page 20 and 21 of the record of proceedings under cross examination;

Q: *I knew that I mistakenly broke a bottle on the forehead of first prosecution witness but I do not recall injuring him at the back of his neck. In the course of investigations, did you find any other wounds aside those on his forehead, since bottle wounds have marks even after healing.*

A: My Lord, I recall there were wounds on the chest and forehead and on his right hand.

Out of the four witnesses called by prosecution, three of them including the victim had indicated under cross examination that the accused person had not stabbed PW1 to the back of his neck. Indeed, PW1 himself in gesturing as to the injury marks on his body caused by the accused person had made gestures at his forehead, stomach and head. He had not made a single gesture at any part of his neck as part of the injuries he suffered.

By PW1's answer, the accused had not stabbed the back of his neck. However, the requirement of injury does not require multiple injuries to a victim. One bodily hurt is sufficient.

Per EXHIBIT C, C1 and D, there had been a break in the skin of PW1 by virtue of the said injury. As was said by **Osei Hwere J.** (as he then was) in the case of ***Comfort & Anor v. The Republic [1974] 2 GLR 1*** bodily harm, "of course, includes, any hurt or

injury calculated to interfere with the health or comfort of the victim and, although it need not be permanent, it must be more than merely transient and trifling".

As prosecution witnesses had proved by their evidence which the accused person himself admits, that accused had stabbed PW1's forehead with a bottle and by so doing caused blood to ooze from that injury, I thus find that prosecution has led sufficient evidence to establish the first ingredient of the offence.

Mere harm alone is however not enough and the prosecution must go on to prove that the harm was caused intentionally by the accused person.

Provisions relating to intention are provided for under ***Section 11 of Act 29***. A person is presumed to intend the natural and probable consequences of his actions. Thus if the ultimate occurrence is the natural or probable consequences of the conduct engaged in, it does not lie in the mouth of the accused to assert that he did not intend the achieved result. This test was applied in the case of **Serechi & Another v. The State [1963] 2 GLR 531.**

As a man intends the natural and probable consequences of his actions, his intentions can be deduced by looking at the circumstances of the particular case and looking at what any reasonable man would intend by engaging in those acts in those circumstances.

According to prosecution witnesses, the accused person had attacked PW1 after what appeared to be a series of disputes between them and a warning from the accused to PW1. The attack occurred when PW1 was on his way out from the bathroom. The accused person under cross examination had pointed out some inconsistencies in prosecution's case.

These were as to whether the incident happened when PW1 was in the bathroom or when he had just stepped out. PW1 maintained that it was when he stepped out. I find this inconsistency not to be material. Also, the fact that all the other prosecution witnesses had indicated that the attack occurred when Pw1 had just stepped out of the bathroom.

Although there is no art to find the mind's construction on the face, the fact that the accused person attacked PW1 with a broken bottle when PW1 was on his way out of a bathroom shows a premeditated action. It is indicative that the accused person had intended to cause harm to PW1. I find that prosecution has established the second element of the offence.

Prosecution must finally establish that the harm that was caused was unlawful. Harm according to ***section 76 of Act 29*** is "unlawful which is intentionally or negligently caused without any of the justification mentioned in Chapter I of this Part".

As I have found that prima facie the harm was intentionally caused, the duty is on prosecution to prove that the accused person caused it without any of the justifications provided under the law. According to prosecution witnesses, PW1 did not pose any danger to accused person at the time of this incident. Accused person however disputes this and put across his case that it was a matter of self defence. I found prosecution witnesses credible. Accordingly, I find that prosecution has established the last element of the offence.

At the close of prosecution's case, the court determined that it had established a prima facie case against the accused person and called upon him to open his defence.

Denning J (as he then was) in the celebrated case of ***Miller v. Minister of Pensions [1947] 1 All ER 372 at 373*** held that. "The constitutional presumption of innocence of an

accused person is that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes a prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt." See also the dictum of Dennis Adjei JA in the Court of Appeal case of ***Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J. 32***

An accused person when called upon to open his defence does not have a duty to prove his innocence. His only duty if at all at this stage, is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the prosecution. If he is able to raise a reasonable doubt in the mind of the court, he must be acquitted and discharged. See ***Bruce-Konuah v. The Republic [1967] GLR 611*** and ***Section 11(2) and (3) of NRCD 323***.

The justification for the use of force or harm is provided for in **Section *30*** through to ***Section 37 of Act 29***. For the purposes of this case, the accused person may lead evidence to prove that the harm he caused to PW1 was justified on the grounds of self defence.

Self defence is one of the circumstances that justifies an accused person's commission of an offence and thus exculpates him from liability. According to ***Section* 37 of Act 29** "For the prevention of, or for the defence of himself or any other person against any crime, or for the suppression or dispersion of a riotous or unlawful assembly, a person may justify any force or harm which is reasonably necessary extending in case of extreme necessity, even to killing'. See the the case of ***Asante v. The Republic [1972] 2 GLR 177***.

The onus thus fell unto the accused person to lead evidence as to the lawfulness of the force that he used in causing harm to PW1. In order for an accused to successfully plead

self defence in the circumstances of this case, he must prove that the use of force was reasonable and proportionate to the harm caused and it was in circumstances that the action he took was the only available one to him.

In his evidence in chief before this court, he had said "I heard some noise in front of my door. When I came out, first prosecution witness had a small shorts on. I think he had just had his bath. He had a bottle with some small drink in it and a cutlass. If a background check is done on me, I fought in the 1989 Ghana Korea games. I was trained by the late commander Dadzie who was an Olympic referee and the chairman of the Ghana Taekwando Association. On opening the door, I saw first prosecution witness and the cutlass and bottle, I quickly attacked him and tried collecting the knife and bottle from him which I successfully did. When I found the two objects in my hand through the struggle, I mistakenly broke the bottle on his forehead. My door did not have a lock.

In accused person's investigation caution statement, he said on the said date, at about 7:30 am, he met PW1 pouring libation and cursing him. PW1 was holding a white bottle in which the drink he was using to pour the libation was in and he also held a knife in the other hand. He asked PW1 what he was doing and he answered that he would kill him.

That PW1 came face to face with him and tried to stab him with the knife he was holding. He held PW1's hands and he started headbutting him. That he retrieved the bottle and hit PW1's head with it as he was still headbutting him. The knife PW1 was holding fell and so he picked it up whereupon PW1 run home and returned with a cutlass and chased him to his house. That he locked himself up in his room. Accused person relied on the same statement in his charge statement.

Clearly, accused person's statement to the police and his evidence before this court are at odds with each other. In the case of ***State v. Otchere [1963] GLR 463***, it was held that *"a witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn, is not worthy of credit. Such evidence cannot be regarded to be of any importance in the light of the previous contradictory statement, unless the witness is able to give a reasonable explanation for the contradiction''*.

Although the accused person was alleging self defence all along, he appeared to have abandoned same and to have admitted the offence. Accused person had then continued with his evidence in chief to say '*I am very sorry for what happened, for injuring first prosecution witness and also wasting the time of Her Lordship and the court. I would still like to make amends and find a way of supporting first prosecution's witness wife and children that I have done for a longtim*e'

In any case, from his contradictory statements, the defence would not have availed him. PW1 was not attacking him for him to say that he was defending himself. As there was no attack on him, the issues of proportionality and necessity do not even arise for consideration by the Court.

Accused person called one witness. DW1's evidence is that he saw accused person and PW1 struggling. That PW1 held a bottle and used same to hit the accused person after which the bottle got broken.

Under cross examination, his evidence was shredded into pieces of paper and shown to be a complete lie. At page 34 of the record of proceedings, under cross examination by the prosecutor, he had answered:

Q: *Are you aware that the rasta man had injuries in his head and neck.*

A: Yes My Lord. Before I realized, there was a mark on his forehead.

Q: And are you saying that it was the rasta man, complainant who used the bottle to hit the accused person.

A: Yes My Lord. It was the rasta man.

Q: Did accused person have injuries as a result of the bottle being hit on his head.

A: I did not check for any injuries and I also did not see one.

Q: Are you telling the court that the one who was rather hit with the bottle did not obtain any injury but the one who did the hitting rather got hurt.

A: Yes My Lord.

Q: I put it to you that you just came to the court to tell the court untruth, what you do not know and what you did not witness.

A: I am being truthful. I saw them fighting with the bottle. The rasta man was holding it and accused person was trying to take it away from him. There was blood on the rasta man's forehead.

I attach no weight to DW1's evidence because he was clearly before this court to tell lies to the court. Accused person himself had never said that PW1 hit him with the bottle and yet DW1 wants this court to believe that that is what happened! I cannot but treat his evidence with the little regard it deserves.

At the close of accused person's defence, I find that his explanations do not meet the test of self defence and he had gone on to admit the offence even though he pleaded not guilty. The entire evidence on record also does not raise any defence in favour of the accused person. At the close of the trial, I find that prosecution has proved the guilt of the accused on the charge of causing unlawful harm beyond reasonable doubt. Accused person is hereby convicted of the offence.

PRE SENTENCING HEARING

According to prosecution, the convict is not known. The injuries to the victim have not completely healed.

The victim is in lawful custody serving a sentence and so the court could not take a victim impact statement from him.

According to the convict in mitigation, he was willing to make amends and provide for the family of the victim by paying them some money to enable them take care of their needs as the said victim is currently in prison custody. He also sought to make restitution by paying the medical bills of the victim. I adjourned sentencing to enable him make restitution. He was unable to do so.

The offence of causing harm is a second degree felony which carries with it a maximum sentence of ten (10) years imprisonment.

In consideration, the convict has shown remorse for his actions and prayed to this court to be allowed to make some form of restitution to the family of the victim. However, he did so during his defence and after prosecution had gone through the process of leading evidence to establish a prima facie case against him. That process involved time and resources to the state.

From the evidence, the convict and the victim have been good friends for many years and this incident occurred after a rather protracted misunderstanding. The convict is well known to the victim's family and as PW2- the wife of PW1 answered, the convict has very much been a part of their lives including lending assistance to the birth of all their children. He is also on good terms and has helped in raising the children.

A long custodial sentence in the circumstances of this case would not be of benefit to either society, the victim or the convict. A sentence aimed at reformation in order to

help the convict manage his anger better would be in the right direction. I have also taken into account the time he has been in custody during the pendency of this case.

Consequently, convict is sentenced to a two (2) year term of imprisonment. He is also to enter into a self recognizance bond to keep the peace and be of good behavior for a period of three months after his release from custody. He is to compensate the victim with an amount of six thousand Ghana cedis (Ghs 6,000) by the 10th of February, 2023. As the victim is himself in custody, the amount is to be paid to PW2-his wife.

H/H BERTHA ANIAGYEI (MS)
(CIRCUIT COURT JUDGE)

DSP JACOB ASAMANI FOR THE REPUBLIC PRESENT