CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 18TH JULY, 2023

SUIT NO. D10/1/18

THE REPUBLIC

VRS.

ANANE DANIEL

SOLOMON SEBI

JUDGMENT

On the 28th day of February, 2023, I determined that prosecution had established a prima facie case against the two accused persons on the charge of causing unlawful harm as contained in count two of the charge sheet. They were called upon to open their defence if they so desired.

Where an accused person is called upon to open his defence, he 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.***

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***

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In arriving at whether an accused has raised a reasonable doubt, the court must first consider whether his explanation is acceptable i.e. whether it believes the explanation given by the accused. If it does not, it must proceed to find out whether the the explanation by the accused is reasonably probable. If that fails, then thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. In any of these instances, the court must acquit and discharge the accused. If quite apart from the defense's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case ***of Bediako vrs. The State [1963] 1 GLR 48***

DEFENCE

In his evidence in chief, A1 said that he had been the assemblyman for Goi between 2006-2015 and was a known unifier in the town. That on the 16th day of March, 2018, he arrived from Tema around 5:pm and his wife informed him about the wake keeping of

one Larweh Sogbobjo which he later attended on the same day and returned home around 10:pm.

That his wife also informed him that the presence of the soldiers in the town was due to a coronation ceremony that was to take place but which he was not invited for.

The next day, he was accompanying a friend by name Hanson Sebi to the D.C.E' house to inform the D.C.E of the incident and the arrest of people in the town by the police and military when one Tsang Martey Miyerwoden Otipeseku pointed him out to the police as the suspect and he was arrested for beating someone. That he denied the claim.

That the police assaulted him leading to severe injuries which affected his spinal chord and also kept him in cells for three days. He tendered in evidence EXHIBIT 1 and 2 as pictures of his injuries.

In A1's investigation caution statement which was tendered in evidence as EXHIBIT A2, he had said on the said date, around 5pm, he saw a 23 seater bus full of military men approach their town. That upon getting home later in the evening around 7pm, his wife informed him that the military men were patrolling the town.

That he called the DCE on phone to inform him about the situation but he could not answer. That the next day, around 7am, he went to the DCE's house and met his absence. He called the DCE on phone and the DCE asked him to go home as he was going to work on it.

That he entered the bush to urinate and found a copper wire which he picked up and fastened to his belt holes on his jeans trousers. After he urinated, the police commander and the patrol team together with one Tsangmatey Ahuakese approached him and he was arrested to the police station.

That the commander said since there was a complaint against him and a copper wire was found fastened to his waist, then it was true that he had assaulted and wounded someone. That he was assaulted by the police.

EVIDENCE OF A2

According to A2, he saw the presence of the military in the town around 5:30pm on the said date and he was told that their presence was due to the fact that the Otipeseku family were about to install a chief.

That he went home and after watching a movie, realized that it was too late to go out again and so he slept. That it was around 9am the next morning that he and others were arrested by the police and he later found out that it was Philip Nanor alias Tsekobi who had falsely mentioned his name to the police and claimed that he had beat him.

That he never went close to any public event on the said date and he is a victim of mistaken identity.

In A2's investigation caution statement which was tendered in evidence as EXHIBIT A8, he said on the said date, upon realizing the presence of military men in the town, they (the Sebi family) approached them and the men told them they were not soldiers but bandsmen.

That their family decided to march in the town the next day around 2:00pm to protest the enstoolment of a chief by the Otipeseku family and part of their procession took them to the street in front of the Otepeseku family house.

That upon reaching there, the Otepeseku family pelted them with stones and they also did same. That they were separated by the military men after which they continued with their march through the town. That they were all later arrested by the police and military men.

CONSIDERATION

To begin with, I do not believe the evidence of the accused persons. I juxtaposed their evidence in chief and their investigation caution statement and found their statements to be conflicting. Indeed, their statements as given to the police and their evidence in chief are contradictory; particularly so for A2.

The courts have been known to treat with suspicion persons who make conflicting statements at different times without offering a reasonable explanation for the variance in their statements. In the case of *Odupong v Republic [1992-93] GBA 1038,* the Court of Appeal, coram Amuah, Brobbey JJA's (as they were then), and Forster JA held on this principle as follows: *"The law was well settled that a person whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence would be of no probative value unless he gave a reasonable explanation for the contradiction." See also the* cases of ***Gyabaah v Republic [1984-86] 2 GLR 416 and Kuo-den alias Sobti v Republic [1989-90] 2 GLR 203 SC***.

For A1, his evidence is that he attended a wake keeping that evening and returned home around 10:00pm to take his rest and was nowhere near the scene of the incident.

In his investigation caution statement, there is no mention of his attendance of a wake keeping.

Again, in his evidence in chief, he says that it was whilst he and a friend whom he had accompanied to the home of the DCE were returning that they met the police and he was arrested after being pointed out by one TsangMartey.

In his investigation caution statement, he says he went alone to the DCE's house and whilst urinating, he found a copper wire which he fastened to his waist. It was when he finishing urinating that he was arrested by the police after being pointed out by TsangMartey.

He does not mention this wire copper which he found in the bush whilst urinating and decided to fasten to his waist in his evidence in chief. His investigation caution statement was taken on the 18th day of March, 2018, a day after the incident whereas his evidence in chief was filed in this court on the 13th of April, 2023.

The time difference is a little over five years. Between the two statements, the investigation caution statement was taken earlier in time and was at a time when the event had just occurred and issues were so fresh in his mind.

Between his investigation caution statement and his evidence in chief which was taken five years later, it is expected that he provides a reasonable explanation as to the contradiction in his statements. He chose not to and rather denied the content of his investigation caution statement under cross examination. I thus find his evidence in chief to be a mere afterthought not worthy of credit and of no probative value.

I also do not find A1's evidence in chief to be reasonably probable. This is because even though he mentions his wife and the fact that he was at home after 10:00pm, he did not call the said wife to testify for him. If his claim were true, one would have expected that he pleads alibi at the earliest possible stage.

From the record of proceedings dated the 26th day of March, 2021, the court had enquired at case management conference whether he and the other accused persons intended to plead alibi to which learned counsel for the accused persons had answered ''My Lord, we do not intend to but if need be, we would apply''.

If indeed A1 was home that evening and he has a wife as he wants this court to believe, then who better to provide him with an alibi than his wife? Even if he did not take advantage of that defence at the earliest possible stage, one would expect and rightly so that when he opened his defence, his said wife would testify to corroborate his claim that he was at home from 10:00pm on the said date.

If indeed, he was at home, then she was a material witness whose evidence was essential to raising a reasonable doubt in the mind of the court as to the prima facie case established against the first accused person. It is on this basis that I find A1's evidence in chief not reasonably probable.

With regard to A2, his evidence in chief is completely at variance with his investigation caution statement. He also fails to provide any reasonable explanation as to the variance.

Whereas in his evidence in chief, he says upon seeing the military men, his enquiries showed why they were in town, in his investigation caution statement, he said that he

and other Sebi family members confronted the military men around 7:00pm. Under cross examination by prosecution in this court, he says that whilst going home, upon seeing the military men between 5:30pm -6:00pm, he stopped to speak to them.

Again, in his evidence in chief, he said that he watched movies and retired to bed early on the said date. In his investigation caution statement, he said he and other members of the Sebi family went on a march through the town and engaged in a stone throwing melee with the members of the Otepeseku family.

Being asleep and going on a march are two contradictory statements that unless a reasonable explanation can be provided, the court would be bound to treat the evidence of A2 as being unworthy of credit and of no probative value. A2 does not provide any reasonable explanation for the contradiction. Consequently, I find his evidence in chief to be of no credit and not worthy of any probative value.

I also do not find his evidence in chief before this court to be reasonably probable. Between his evidence in chief which was given more than five years after the event and his investigation caution statement which was given one day after the incident, I find that his investigation caution statement is more relevant than his evidence in chief on the basis that as a reasonable human being, he was more likely to keenly recollect what had occurred just a day ago than what had happened over five years ago.

It cannot be reasonably probable that a day after the incident, he remembered that he was on a procession through the town and had passed by the house of their bitter rivals and engaged in a stone throwing match with them and five years after the incident, he remembers that he fell asleep after watching movies that night and did not go out again until he was arrested by the police.

Again, A2 appeared to be making up his answers under cross examination by prosecution. He showed himself as a witness who was ready to foot hop at ease even when confronted with facts. He was asked by the prosecutor;

Q: I put it to you that on 17th March 2018, at Goi, you and others at large caused harm to one Philip Nanor.

A: That is not true. Philip Nanor who mentioned my name is an electrician in Goi. We know each other very well. I thought I would see him in court so that he can tell me how I beat him. Whether I threw a punch to hit him with something.

Q: Philip Nanor was in court as PW3.

A: Yes. I am saying that I thought that he and I would cross-examine each other in the box. That I could cross-examine him and vice versa.

Q: Your counsel did through cross-examination of that person on your behalf.

A: That is so but he did not speak the truth.

From A2's answers, he appeared to be speaking on both sides of his mouth. One minute his accuser was not present in court and the next, after being confronted with the fact that his accuser was in court, he shifted his position to say that he thought he rather than his counsel and his accuser would be given an opportunity to cross examine each other. I generally found A2 to be a witness who lacked an ounce of credibility and whose evidence in chief was not reasonably probable.

I have combed through the complete record of proceedings in search of any defence that may be available to the accused persons even if they have not pleaded same. I have found none of any such defence. Accordingly, I find that the accused persons have failed to raise a reasonable doubt in my mind as to their guilt.

At the conclusion of the trial, and after an evaluation of the whole evidence on record, I find that prosecution has established the guilt of the accused persons beyond reasonable doubt. They are accordingly convicted on the charge of causing unlawful harm to Philip Nanor as contained in count two of the charge sheet.

PRE-SENTENCING HEARING.

According to prosecution, the convicts are not known.

The victim was not present in court. However, complainant says that they have suffered greatly from the incident. That two of the victims after their hospital attendance continue to attend hospital until they passed on. That Philip Nanor is now ok.

Counsel for the convicts in mitigation says that respectfully they are down and pray for mercy from the court. Prosecution has just told the court that convicts are unknown to the police and accused persons have been in and out of court for five years or more.

We are asking for a non custodial sentence seeing that this is a matter between two groups in one community. They engaged in some altercations and we are of the firm conviction that My Lady would give them a non custodial sentence.

A1 happens to be a former assembly member of the area and may be a victim of circumstances. A2 has a a young family who attend school. My lord, on bended knees, if some fine would be imposed and they ordered to enter into a bond to keep the peace of the area. They would learn to be of good behavior and live in peace. We pray accordingly and My Lord, we are ready to compensate the victim and pay for all the medical costs involved.

The offence of causing harm is a second degree felony. Per section 296 (2) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), the court may sentence him to a term of imprisonment not exceeding ten years.

Prior to arriving at a just punishment, I must take into account both aggravating and mitigating circumstances. The convicts are first time offenders whom until now have had no brush with the law.

They are fathers who are responsible for the maintenance of their family and so the well being of their dependents must be taken into account when arriving at a just sentence.

Also the injuries suffered by PW3 were not grievous. As indicated in my ruling on a submission of no case, per the police medical form report, i.e. EXHIBIT 4, he suffered headache and facial abrasions and was duly treated. In EXHIBIT 4A, which is a picture of him there is an indication of blood on his right cheeks from the ear down to the chin. At the time he testified in this court in January, 2022, there were no visible signs of his injury and neither did he indicate any lasting effects of the said injury.

This offence was committed as a result of a chieftaincy dispute between complainant's family and the Sebi family all of Goi. It appears to all intents and purposes to have been premeditated.

It appears that despite the existence of the police and the courts to ensure peace, order and justice within the jurisdiction, people tend to believe and resort to a state of anarchy, chaos and self help when it comes to chieftaincy matters.

The courts must be seen to be handing down sentences that would make others stop and reflect whenever they are attempted to resort to a state of anarchy, chaos and self help in such instances.

Upon these considerations, I hereby sentence both A1 and A2 to twenty months term of imprisonment each. They are also each to enter into a self recognizance bond to keep the peace and be of good behavior for a period of twelve (12) months after their release from custody. They are hereby ordered to compensate Philip Nanor with 500 penalty units each by the 31st day of August, 2023. In default, they would each serve a two month term of imprisonment.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

D.S.P. J. ASAMANI FOR THE REPUBLIC PRESENT

PAUL AKWAKWA FOR EKOW DADSON FOR THE ACCUSED PERSONS PRESENT.