IN THE CIRCUIT COURT HELD AT GOASO IN THE AHAFO REGION ON FRIDAY THE 5TH DAY OF APRIL 2024 BEFORE HIS HONOUR CHARLES KWASI ACHEAMPONG ESQ. CIRCUIT COURT JUDGE

BR/SY/CT/156/2023

THE REPUBLIC

VRS.

FRIMPONG ERIC

JUDGMENT

The accused person has been charged with three offences namely, Stealing, Causing Unlawful Harm and threat of death. He was arraigned before the Court on the 8th of July 2022 and pleaded not guilty to all the charges. Following his denial of the the charges, Prosecution is bound in law to establish each offence beyond reasonable doubt in accordance with **Section 11(2) of the Evidence Act 1975 (NRCD 323)** which provides;

> "**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 a reasonable doubt.**"

The facts as proffered by Prosecution are that on the 2nd of January 2018 the complainant came home after having met his purchasing clerk and obtained an amount of GH¢1,600.00 from him. Complainant proceeded to keep this money in his room and went to take his bath. According to the facts complainant, met accused person and other kids in the house at the time he came home. Having freshened up, complainant went to check on the money he kept in his room only to find GH¢600.00 missing out of the lot. Complainant's first thought was that it was accused person who had stolen the money since he could not be found in the house. Complainant proceeded to inform the mother of accused person about the development and demanded that accused person returns the money in question. Prosecution, contends that no sooner had complainant made his concerns known than accused person emerged out of nowhere, attacked complainant and brutally assaulted him. It is alleged by Prosecution that accused person used a kitchen stool to hit the face of complainant and further threatened to kill the wife of complainant for speaking about the matter. Accused subsequently fled the scene and was not found for about eight months by which time complainant had lost the use of his eyes. Prosecution attributes this predicament to the attack meted out to complainant by accused person.

Despite the gravity of the offences and the manner in which it took place according to the facts, none of Prosecution's witnesses appeared to lead evidence to establish the pertinent issues raised by the facts adduced save the investigator in the person of D/Insp. Jagri Abdulai Iddrisu (Pw1). It was however revealed during the cross examination of Pw1 that the complainant had passed on hence the failure of Prosecution to call him. The testimony of Pw1 shall therefore be the focal point in ascertaining whether or not Prosecution has established all the elements necessary to found a conviction on each of the charges preferred against accused person.

The first charge against accused person was that of stealing which is proscribed under Section 124(1) of Act 29/1960 which provides that, "a person who steals commits a second degree felony" while Section 125 attempts to explain how stealing can be said to have occurred as follows;

> "A person steals if he dishonestly appropriates a thing of which he is not the owner"

Hence if a person is not the owner of a thing but dishonestly appropriates that thing, he has committed the crime of stealing. What then is dishonest appropriation? This is explained in Section
120(1) of Act 29/1960 as follows;

> "an appropriation of a thing is dishonest if it is made with an intent to defraud or if it is made by a person without claim of right, and with a knowledge or belief that the appropriation is without the consent of some person for whom he is trustee or who is owner of the thing, as the case may be, or that the appropriation would, if known to any such person, be without his consent."

With the above explanation therefore, one may deduce the following elements which require proof by Prosecution in order to secure a conviction;

a) That the accused person must not be the owner of the thing allegedly stolen;

b) That the accused person must have appropriated the thing;

c) That the appropriation must have been dishonest.

In the instant suit the facts adduced allege that the item stolen was a sum of GH¢600.00 belonging to complainant. Unfortunately, no evidence was led to

corroborate this alleged fact. Pw1 failed to confirm the amount of money stolen and whom it belonged to. His evidence was rather skeletal in that regard as he gave no evidence regarding what he found by way of investigations. I dare say that the facts attached to the charge sheet contained more details on what transpired on that eventful day than his testimony. Unfortunately, the facts attached to the charge sheet are not evidence properly so called as they were not made under oath. It follows therefore that Prosecution failed to establish the first element of the offence of stealing for which reason the said charge must fail. In any case, a perusal of the caution statements of Accused person which were tendered by Pw1 and marked as Exhibits A and A1 revealed an outright denial of the offence of stealing and no other evidence was proffered by Prosecution to establish same. This Court therefore finds Count One unproven. Accused person is therefore acquitted and discharge on the charge of stealing.

The next charge is the offence of causing unlawful harm which is proscribed under section 69 of Act 29/1960. That section provides that;

Section 69 of Act 29/1960 provides that, **"a person who intentionally and unlawfully causes harm to any other**

person shall be guilty of second degree felony" and the elements that make up this offence are;

a. That harm must have been caused to the person of another;

b. That it was accused person who caused the harm;

c. That the harm must have been intentionally caused;

d. That the harm was unlawful.

The harm complained of in this case per the facts are that accused person used a kitchen stool to hit complainant's face. Again Pw1 did not lead any evidence with regards to the harm caused. The closest he came to doing so was when he tendered a medical report of complainant which was marked as Exhibit C. According to Exhibit C the complainant reported to the facility with general bodily pains. It further stated that on examination, "there was periorbital contusion with tenderness…". A simple research on the nature of this injury reveals that the periorbital contusion also known as periorbital hematoma, "commonly called a black eye or a shiner…is bruising around the eye commonly due to an injury to the face rather than to the eye". (See: https://en.wikipedia.org/wiki/Black_eye). Consequently, this Court finds that harm was cause to complainant.

What caused the injury to the eye of complainant? Once again the testimony of Pw1 offers no answer. The answer is however obtained by a perusal of Exhibits A and A1. In Exhibit A accused person states as follows;

"I did not assault complainant but I could remember when I was lying on a bench and when complainant was coming towards me, I raised the bench and same hit him on his cheek". In Exhibit A1 Accused person stated that, "…I got up from the bench I was lying on and took the bench with the intention to go to Atitos' house. I suddenly turned and the bench hit complainant under his eye". This Court accordingly finds that accused person did cause the harm to the eye of complainant by virtue of his own admission as captured in Exhibits A and A1.

Was this harm intentional? Prosecution led no evidence to establish that accused person intentionally caused the injury to complainant's eye, the evidence they tendered rather revealed a lack on intention on the part of

accused person. As seen in Exhibits A and A1 accused person stated that it was a bench and not a kitchen stool that hit complainant's face. Again it was in his attempt to carry the bench away that the bench hit complainant's eye. There is no intentionality in the action of accused person. Whether this statement is true or not is unknown to the Court, what however remains a fact is that unlike Prosecution, there was evidence on record to suggest the lack of intention. It is therefore the finding of the Court that Prosecution failed to establish the third element of the offence and as such the charge must fail as well.

Lastly, accused person was charged with the offence of threat of death contrary to Section 75 of Act 29/1960. This charge was borne out of the allegation that accused person threatened to kill one Yaa Aseiduwaa the wife of complainant.

Without belabouring the matter, I must state that the offence of threat of death was also not established by Prosecution at all. No evidence was led by Pw1 to indicate what the nature of the threat was, who the threat was directed at and whether accused had any intention to put that person in fear of death. The offence of threat of death thus remained a mere unsubstantiated accusation. Accused person is therefore acquitted and discharged on Count Three as well.

In conclusion, the case of Prosecution must fail due to its failure to prove its case on all Counts. Accused person is therefore acquitted and discharged.

SGD
H/H CHARLES KWASI ACHEAMPONG ESQ.
CIRCUIT COURT JUDGE - GOASO