

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/157/2023

THE REPUBLIC

VRS.

FRIMPONG ERIC

JUDGMENT

According to Prosecution on the 5th of August 2022 accused person allegedly seized monies belonging to a young boy called Paa Kwasi. Complainant observed accused person's conduct and advised him to give the money he had seized to the parents of the boy. This apparently did not sit well with accused person who, according to Prosecution, proceeded to assault complainant, tore his shirt and threatened to kill complainant as well. Upon a report being lodged with the police, accused person was charged with the offences of Assault and threat of Death.

On the 8th of November 2022, the accused person was arraigned before the Court where he pleaded not guilty to the charges preferred against him. Prosecution thus assumed the burden to establish its case against accused person 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 offence of Assault as prohibited under section 84 of Act 29/60 may be „assault and battery“ or „assault without actual battery“ and „imprisonment“. (See: Section 85 of Act 29). Section 86(1) of the Act explains how the offence is founded as follows;

“A person makes an assault and battery upon another person, if without the other person's consent, and with the intention of causing harm, pain, or fear, or annoyance to the other person, or of exciting him to anger, he forcibly touches the other person, or causes any person, animal, or matter to forcibly touch him.”

It follows therefore that the elements which make up the offence which require proof are;

- a. The accused forcibly touches another person.
- b. The accused lacked the consent of the person to touch him
- c. The accused had the intention of causing the other harm, pain, fear or annoyance.

According to the facts, Prosecution simply stated that when complainant suggest to accused person that he should give the money to the parents of the boy, “accused became offended and assaulted complainant and torn his shirt” (sic). Clearly the nature of the assault is not made evidently apparent by the

facts alone and the particulars of offence was of no help either since it merely stated that accused person had “unlawfully assaulted one Issah Mohammed...”. There is the need to thus identify the nature of this alleged assault and this Prosecution sought to do by calling the Complainant in the person of Issah Mohammed (Pw1) who testified that on the 5th of August 2022 accused person came to a certain kiosk to change coins. Pw1 alleged that at the time accused person came there, he (Pw1) was also present at the Kiosk. At that moment accused person intimated to him and the owner of the kiosk that he took the coins he wanted to change from one Paa Kwasi. The said Paa Kwasi then came to the kiosk crying and demanding for the return of his coins. Complainant alleged that, he asked accused person to give the money to Paa Kwasi’s parents if he did not want to give same to the young boy but this suggestion angered the accused person who landed a hefty punch on the left cheek and forehead of Pw1. Pw1 further alleged that accused person further threatened to hit him with a stone but the latter dropped it when he, complainant, also picked up a stone in like manner. Pw1 then stated at paragraph 15 of his witness statement filed on the 20th of January 2023 that when accused, “knocked me, I fell down and sustained injuries and he also torn my shirt” (sic). Complainant further alleged that accused person slapped him as well. From the testimony of Pw1, the assault complained about were as follows;

- i. Accused person punched complainant on his left cheek and forehead.
- ii. Accused person tore the shirt of complainant.
- iii. Accused person threatened to hit complainant with a stone. iv. Accused person slapped complainant.

Indeed, all the above alleged conduct constitute assault and battery. All that is therefore required of Prosecution is to establish the occurrence of any one of the above alleged conduct beyond reasonable doubt.

Prosecution consequently tendered Exhibit C the medical report of Pw1 which was dated the 5th of August 2022. A perusal of the contents of Exhibit C is indicative of the occurrence of an assault on the person of Pw1. The medical officer in the person of Owusu Yaw confirmed the presence of abrasions on the shoulder of complainant which he attributed to some form of trauma. These abrasions are also seen in a picture tendered and marked as Exhibit D which depicts various levels of injuries on the shoulder, wrist and knee of the complainant. This Court therefore finds no difficulty in finding that complainant was assaulted on the day of the incident.

Who committed this assault? According to Prosecution, the assault was perpetrated by accused person as testified to by Pw1. Accused person however denied same and Counsel made it a point to deny complainant's assertions under cross examination. However, perusing Counsel's line of questioning, one gets the impression that Counsel sought to put across the fact that the aggressor on the day of the incident was complainant rather than accused person. So for instance Counsel questioned Pw1 as follows;

Q. You attacked accused which prompted accused to pick up a stone but he never hit you with it? A. Not true.

Q. Accused did not slap you, you rather slapped him?

A. Not true.

This was disproved by Prosecution's second witness Agyei Mensah Adams (Pw2) who testified that when he got to the scene in his tricycle, he saw the Complainant quarreling with the accused person and the latter was throwing stones at complainant. In a bid to deescalate the situation, Pw2 indicated that he told complainant to sit in the tricycle so he takes him away from the scene but accused person resisted this attempt and proceeded to threaten Pw2 to the

effect that he would smash the windshield of Pw2's tricycle should he attempt to drive off with complainant. This threat, prompted Pw2 to call a police officer who warned accused person to desist. It was only after this was done that accused permitted Pw2 to leave the scene with complainant.

Despite the fact that Counsel denied these assertions made by Pw2 during cross examination, this Court found the testimony of Pw2 large credible. There were little or no inconsistencies in his evidence and even if there were any it was of no consequence to the matters at issue. This Court therefore finds that contrary to Counsel's contention, accused person was rather the aggressor and it was accused person and no other who assaulted complainant. The assault perpetrated by accused person left the Complainant bruised, injured and his shirt torn. This Court therefore finds that Prosecution has established Count One against accused person beyond reasonable doubt. Accused is therefore convicted on Count One.

With regards to Count two which relates to the threat of death, Prosecution alleges that accused person told complainant that he would kill complainant should he step a foot in the path to his farm or in the alternative cursed him to the effect that a stream called Akasa should kill complainant. The offence of threat of death is proscribed under section 75 of Act 29/1960 which provides;

"A person who threatens any other person with death with intent to put that person in fear of death commits a second degree felony"

According to section 17 of Act 29/60 „Threat“ means, inter alia, **„a threat of criminal force or harm“**.

Thus prosecution must establish the following;

- a. That the accused did threaten another.**

- b. That the threat was criminal in nature, that is the use of criminal force or harm.**
- c. That the accused person had the intent to put that person in fear of death.**

Hence the first issue is to ascertain whether accused person made any threats at all. Unfortunately, aside the testimony of complainant, there were no other corroborative evidence proffered by Prosecution and the only testimony in support of that assertion was duly challenged under cross examination by Counsel as follows;

Q. It is not true accused cursed you using the stream Akasa?

A. He cursed me with Akasa stream.

Q. Accused did not threaten to kill you should you step foot on your farm?

A. It is true that he threatened to kill me in my farm or house should the curse he placed on me not work.

Consequently, the allegations of a threat remained complainant's word against that of accused person and as such not established beyond reasonable doubt. Accused person is accordingly found not guilty on Count Two and acquitted and discharged on same.

In conclusion, given the fact that accused person was found guilty on Count One and duly convicted, he is sentenced to pay a fine of 200 penalty units and in default 18 months imprisonment in hard labour. Accused person shall further serve a term of imprisonment of 5 months imprisonment in hard labour.

Since the 10th of August 2023, Accused person has failed to appear in Court. A bench warrant is accordingly issued for his arrest and upon his arrest, he shall

be brought to Court and processed to serve his sentence which shall take effect from the day of his arrest.

Accused person is ordered to pay Complainant the sum of GH¢2,000.00 which is reasonable compensation for the injuries sustained.

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