IN THE CIRCUIT COURT, HELD IN NSUTA, ON MONDAY, THE 29TH DAY OF APRIL 2024 BEFORE HER HONOUR WINNIE AMOATEY-OWUSU, CIRCUIT COURT JUDGE

CASE NO: 34/23

THE REPUBLIC

VRS.

THERESAH ASAFO-ADJEI

JUDGMENT

1.On 4th November 2022, the accused was arraigned before this Court on a charge of assault contrary to Section 84 of the Criminal Offences Act,1960 (Act 29). She pleaded not guilty to the charge.

2.A summary of the facts as contained in the accompanying Charge Sheet and read by the prosecution at the commencement of the case is that, the complainant, Felicia Ansah is a seamstress living at Gomoah Dominase in the Central Region. The accused, aged 19, is unemployed living with her father, Chief Inspector Asafo Adjei at the Mampong

Police Barracks. On 31st October 2022 at about 3:30 p.m., the complainant arrived at Mampong to visit her husband, G/Sgt. Richmond Nsiah and met the accused in the room with one Emmanuel Obeng @ Yaw, the complainant's husband's nephew. Immediately the complainant entered the room, the accused went out. The complainant after she had placed her luggage in the room, went out to greet some neighbours within the Barracks. On her return, she found that the accused had locked the door denying her access to her items in the room. She approached the accused and demanded the key but the accused refused to hand it over to her. The complainant who realised the accused was then holding the keys decided to snatch them from her resulting in a misunderstanding between them. In the process, the accused used a blender to hit the complainant's head resulting in a cut. Thereafter, the complainant reported the case to the Police at Mampong-Ashanti leading to the arrest of the accused. After the investigation, the accused was charged with the offence herein and arraigned before this Court.

3.Article 19(2)(c) of the 1992 Constitution states that an accused is presumed innocent until he is proved guilty or he pleads guilty. In a criminal trial, the burden rests with the prosecution to prove the charge against the accused.

4.The burden of proof in criminal cases is codified in the Evidence Act, 1975 (NRCD 323) as follows:

"Burden of Proof

10. Burden of persuasion defined

(1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.

(2) The burden of persuasion may require a party

(a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(b) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

11. Burden of producing evidence defined

(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

(2) In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.

(3) In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the

evidence a reasonable mind could have a reasonable doubt as to guilt.

13. Proof of crime

(1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.

(2) Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt."

Also, Section 22 of NRCD 323 provides:

"22. Effect of certain presumptions in criminal actions

In a criminal action, a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond a reasonable doubt, and, in the case of a rebuttable

presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact."

5. In **Abdul Raman Watara Benjamin v. The Republic, Criminal Appeal No. H2/17/2019 dated 9th July, 2020 (unreported),** the court stated, "It is trite that in criminal trials it is the duty of the prosecution to prove the case against the accused person beyond reasonable doubt. This has been codified in sections 11(2), 13(1) and 22 of the Evidence Act, 1975 (NRCD 323). At the end of the trial the prosecution must prove every element of the offence and show that the defence is not reasonable. The prosecution assumes the burden of persuasion or the legal burden as well as the evidential burden or the burden to produce evidence. The legal burden or the burden of persuasion is to prove every element of the charge. The evidential burden is to adduce evidence that will suffice to establish every element of the offence. This burden remains on the prosecution throughout the case. Proof beyond reasonable doubt also implies that it is beyond dispute that the accused person was the one who committed the offence." Also, in **Asare v. The Republic [1978] GLR 193 @ 197**, Anin JA held, "As a

general rule there is no burden on the accused; that he is presumed innocent until his guilt is established beyond reasonable doubt; that the burden is rather on the prosecution to prove the charge against him beyond reasonable doubt".

6. In **Brobbey & Ors v. The Republic [1982-83] GLR 608,** Twumasi J explained the expression "proof beyond reasonable doubt" as follows: "Proof beyond reasonable doubt in a criminal trial implies that the prosecution's case derives its essential strength from its own evidence. Therefore, where part of the evidence adduced by the prosecution favors the accused, the strength of the prosecution's case is diminished proportionately and it would be wrong for a court to ground a conviction on the basis of the diminished evidence." Lord Denning MR in **Miller v. Minister of Pensions [1947] ALL ER 372** also explained the principle when he stated that: "The degree of cogency need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful

possibilities to affect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favor which can be dismissed with a sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt but nothing short of that will suffice".

7. When the prosecution makes a prima facie case against the accused and the Court calls on the accused to open his defence, the accused's only duty is to raise a reasonable doubt about his guilt. See Section 11(3) and 13(2) of NRCD 323. In **Commissioner of Police v. Antwi [1961] GLR 408**, the court held, "The fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything. If he can merely raise a reasonable doubt as to his guilt he must be acquitted."

8. In considering the accused's defence, the Court is bound to consider any evidence which favors her case as well as the cautioned statements obtained from her by the Police and tendered during the trial. See **Kwame Atta & Anor v. Commissioner of Police [1963] 2 GLR 460; Annoh v. Commissioner of Police [1963] 2 GLR 306.** Further, questions asked and answers given during cross-examination form part of a party's evidence and must be considered by the court in evaluating the evidence as a whole. See **Ladi v. Giwah [2013-2015] 1 GLR 54.**

9. In **Lutterodt v. Commissioner of Police [1963] 2 GLR 429,** the Supreme Court per Ollennu JSC set out how the court should approach the defence of the accused as follows: "In all criminal cases where the determination of a case depends upon facts and the court forms the 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."

10. Also, in **Republic v. Francis Ike Uyanwune [2013] 58 GMJ 162, CA,** it was held per Dennis Adjei, JA that: "The law is that the prosecution must prove all the ingredients of the offence charged in accordance with the standard burden of proof; that is to say the prosecution must establish a prima facie case and the burden of proof would be shifted to the accused person to open his defence and in so doing, he may run the risk of non-production of evidence and/ or non-persuasion to the required degree of belief else he may be convicted of the offence. The accused must give evidence if a prima facie case is established else he may be convicted and, if he opens his defence, the court is required to satisfy itself that the explanation of the accused is either acceptable or not. If it is acceptable, the accused should be acquitted and if it is not acceptable, the court should probe further to see if it is reasonably probable. If it is

reasonably probable, the accused should be acquitted, but if it is not, and the court is satisfied that in considering the entire evidence on record the accused is guilty of the offence, the court must convict him. This test is usually referred to as the three-tier test."

11. Upon the direction of the Court, the prosecution filed its Witness Statements and other disclosures on 19th January 2023. Case Management Conference was held and the case proceeded to trial with the prosecution's case. The prosecution called two witnesses. Whereas PW1 relied on his Witness Statement and the other disclosures filed as his evidence in the case, PW2 testified on the authority of a witness summons.

    i. D/C/Insp. Divine Ati – PW1: The investigator of the case stationed at the District Criminal Investigation Department, Mampong; and

    ii. Dr. Francis Baaji - PW2: A Medical Doctor at the Mampong Government Hospital who attended to the complainant/victim.

12. The following were tendered by the prosecution through PW1 and PW2:

    i. Exhibit A: Investigation Cautioned Statement of the accused obtained on 1st November 2022;
    ii. Exhibit B: Charge Cautioned Statement of the accused obtained in November 2022;
    iii. Exhibit C: Photograph depicting the complainant's injury;
    iv. Exhibit D: Witness Summons served on PW2; and
    v. Exhibit E: Medical Form of the complainant/victim.

13. By the Court's Ruling delivered on 22nd September 2023, the Court held that the prosecution had made a prima facie case against the accused and called on her to answer the charge. The accused testified personally and called three witnesses:

    i. Emmanuel Obeng- DW1: A level 200 student of the Akenten Appiah-Menka University of Skills Training and Entrepreneurial Development,

Mampong-Ashanti (AAMUSTED) resident at the Police Barracks at Akyeremade;

ii. Daniel Bonsu- DW2: A teacher resident at Akyeremade, Mampong-Ashanti; and

iii. Prince Akosah- DW3: A Multi TV installer resident at Nkwantanan, Mampong-Ashanti.

14. The accused and her witnesses relied on their Witness Statements filed on 4th December 2023 as their evidence in the case. No exhibit was tender by or on behalf of the accused.

15. I shall now deal with the charge, evaluating the evidence against the accused to determine if it meets the standard of proof of proof beyond reasonable doubt and the accused's defence, if it raises a reasonable doubt.

16. The Charge reads:

"STATEMENT OF OFFENCE

ASSAULT: CONTRARY TO SECTION 84 OF THE CRIMINAL OFFENCES ACT 1960, (ACT 29)

PARTICULARS OF OFFENCE

THERESAH ASAFO-ADJEI, AGED 19, STUDENT: For that you on the 17th day of September 2022, about 7:30 pm at Mampong in the Ashanti Circuit and within the jurisdiction of this court, did unlawfully assault one Felicia Ansah by forcibly touching her without her consent and with intent of causing harm, pain or fear."

17. Section 84 of Act 29 provides that a person who unlawfully assaults another person commits a misdemeanour. Assault is defined in Section 85 to include (i) assault and battery; (ii) assault without actual battery; and (iii) imprisonment. From the Particulars of Offence and the accompanying prosecution's facts, it is clear to me that the charge is one of assault and battery. Section 86 (1) of Act 29 provides that a person makes an assault and battery upon another person, if without that person's consent, and with the intention of causing harm or pain or fear or annoyance to that person, or of exciting that person to anger, he forcibly touches that person, or causes any

person, animal or matter to forcibly touch that person. To successfully prove the charge, the prosecution must lead sufficient evidence to prove that:

i. The accused forcibly touched the victim;
ii. The accused touched the victim without the victim's consent;
iii. The accused acted with intention to cause harm or pain or fear or annoyance to the victim; or excite the victim to anger; and
iv. The accused's act was unlawful.

18. The slightest actual touch suffices for an assault and battery if the requisite intention is present. A person is touched if his body is touched or if any clothes or other thing in contact with his body or with the clothes upon his body is or are touched. See **Section 86(2)(c) and (d) of Act 29.**

19. I have observed that although it is indicated in the Particulars of Offence that the incident leading to the offence happened on 17th September 2022 around 7:30 p.m., the accompanying

prosecution's facts state that the incident happened on 31st October 2022 around 3:30 p.m.

20. PW1 testified that on 31st October 2022, a case of assault was reported by Felicia Ansah against the accused and referred to him for investigation. He obtained a statement from the complainant/victim after which he visited the scene. On 1st November 2022, the accused was arrested and Investigation Cautioned Statement was obtained from her. He received and filed a copy of the medical report on the docket as well as a photograph depicting the complainant's head injury. After the investigation, he received instructions to charge the accused, which he did. Exhibit C depicts the victim's head injury.

21. PW2 testified that he got to know the victim when she attended the hospital for treatment on 31st October 2022. He said the victim told him she was assaulted by another woman who hit her head with a blender. On examination, the victim's scalp was seen to be lacerated at the left parietal region with profuse bleeding from the site. However, she was not in any respiratory difficulty nor pale nor febrile. The laceration was

sutured and dressing was applied with appropriate treatment and the victim was discharged the same day to be reviewed in two weeks. He tendered as Exhibit E, the original Police Medical Form he authored for the victim depicting the nature of injuries she sustained. Exhibit E confirms the injury depicted in Exhibit C. Section 121(2) of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) provides that a document purporting to be an original report signed by a qualified medical practitioner relating to the nature or extent of the injuries of a person certified to have been examined by the practitioner may, if produced by a Police Officer in a trial before a court, be admitted as evidence of the facts stated therein.

22. By way of defence, the accused testified that the complainant/victim is her rival. She said on the said date at about 3:30 p.m., she was in her kitchen cooking when the complainant came there and demanded keys belonging to her alleged husband. She (the accused) was then eight months pregnant. She told the complainant she did not have the keys but without any provocation, the complainant pounced on her

and attacked her mercilessly. At the time, she was holding a blender containing blended vegetables and later she realized that through the attack and struggle, the complainant may have sustained an injury. The complainant took a kitchen stool and wanted to hit her with it but it was blocked by DW2. After the attack, she was feeling abdominal pains so she was rushed to the hospital. The next day, 1st November 2022 around 6:00 a.m., she went to the Police Station to lodge a complaint against the complainant but after her complaint was received, she was detained and her case was not pursued.

23. A careful perusal of Exhibit A shows it is a confession, yet, there is no indication that it was taken in the presence of an independent witness, neither does it have the independent witness' written certificate indicating the accused made the statement voluntarily and that the contents were fully understood by her. Non-compliance with the statutory requirement in Section 120 (3) of NRCD 323 which is in mandatory language renders Exhibit A inadmissible per se and therefore, although Exhibit A was admitted without objection, same is rejected by this Court. The position of the

law is that where inadmissible evidence has been received with or without objection, it is the duty of the court to reject it when giving judgment and if the court does not do so, it will be rejected on appeal, as it is the duty of the court to arrive at its decision upon legal evidence only. See **Amoah v. Arthur [1987-1988] 2 GLR 87; Tormekpey v. Ahiable [1975] 2 GLR 432**.

24. In Exhibit B, the accused is said to have relied on Exhibit A. Since Exhibit A has been rejected as being inadmissible per se, Exhibit B has no legs to stand on. Hence, no probative value will be attached to Exhibit B.

25. The evidence shows that Bonsu alias Wadaski and Prince alias Collay whom DW1 referred to are DW2 and DW3 respectively. Likewise, Kooley whom DW2 referred to is DW3. There is undisputed evidence that there is a rivalry between the accused and the complainant because of one Sergeant Nsiah Brimpong Richmond, their common love interest. The accused admitted under cross-examination that the complainant is the legally married wife of Sergeant Nsiah

Brimpong Richmond whilst there is ample evidence on record that the accused is also his fiancée. There is also undisputed evidence that it was the complainant's demand from the accused, the keys to Sergeant Nsiah Brimpong Richmond's room, that resulted in the incident. DW1 maintained throughout the trial that he was the one in possession of the key on the said date.

26. The record shows the complainant/victim did not appear before this Court to testify. PW1, the investigator was also not at the scene and therefore could not testify about what happened. The available evidence is the evidence from the accused corroborated by DW1 and DW3 that the complainant was the one who first attacked her. The evidence shows that the accused was attacked while in the kitchen at her father's residence. Under cross-examination, DW1 testified that the complainant went straight to the accused angrily, held her hand and demanded the key from her leading to the altercation. In the circumstance, I do not think the accused needed the consent of her aggressor (the complainant) to react

to her attack. This is because had the complainant not first attacked the accused, the accused would not have also touched her. The complainant cannot be without blame.

27. There is also no dispute that the complainant sustained a head injury due to what ensued between her and the accused. But, as to how the complainant sustained the injury, the evidence suggests that the accused and DW1 were the only persons who witnessed that part of the incident. DW2 and DW3 testified that the complainant was already injured at the time they arrived at the scene; they saw blood oozing from her head.

28. There is also evidence from the accused corroborated by DW1 that she was holding a blender containing blended vegetables at the time the complainant attacked her. There is however no evidence to support the prosecution's claim that the blender was empty. The accused's testimony is that she did not know how the complainant sustained the head injury save that she realised following their struggle that the complainant was injured. However, the accused's answer to the cross-

examination question below shows that she was aware that the blender caused the complainant's head injury. This ensued during her cross-examination:

Q: I am putting it to you that you are not telling the court the truth if you say you did not hit the complainant with the blender.

A: I am telling the court the truth. Through the struggle with the complainant, then, the blender hit her. [emphasis on the underlined]

29. DW1 also testified that he realised the complainant had been injured after they had been separated. This transpired when he was cross-examined:

Q: I am putting it to you that that day, the accused used a blender to attack the complainant.

A: The truth is that the accused was holding a blender that day because she was cooking. At that moment, the accused

had finished blending vegetables and she was holding the blender when the complainant pounced on her. The complainant also took a kitchen stool and she and the accused struggled so I do not know if it was the blender which hit the complainant or the kitchen stool. [emphasis on the underlined]

30. DW1's testimony under cross-examination suggests the complainant had attacked the accused with a kitchen stool during the struggle and before she got injured. But, his testimony is inconsistent with the accused's sworn testimony which shows that it was after the complainant had sustained the injury that the complainant wanted to hit her with the kitchen stool. According to the accused, DW2 was the one who blocked the kitchen stool from hitting her. As pointed out earlier, DW2 and DW3 testified that the complainant was already injured when they arrived at the scene. DW1's testimony about what caused the complainant's injury is thus, not worthy of believe.

31. Undoubtedly, the accused's conduct caused harm and pain to the complainant. But, did the accused intend to cause the complainant such harm and pain? The evidence suggests the complainant attacked the accused with her bare hands. There is also evidence that the accused was holding a blender containing blended vegetables when the complainant first attacked her. In deciding to also attack the complainant, the accused ought to have known that depending on the kinds of vegetables in the blender, it could cause harm to the complainant if it should pour into the complainant's face during the struggle. She should also have known that depending on the force used, the blender could cause harm to the complainant if it should hit her. Despite these probable consequences, the accused did not put the blender aside but held on to it even as she struggled with the complainant.

32. Section 11 (3) of Act 29 states that a person who does an act of a kind or in a manner that, if reasonable caution and observation had been used, it would appear to that person

(a) that the act would probably cause or contribute to cause an event, or

(b)that there would be great risk of the act causing or contributing to cause an event,

intends, for the purposes of this section, to cause that event until it is shown that that person believed that the act would probably not cause or contribute to cause the event, or that there was not an intention to cause or contribute to it.

33.Section 11(3) above raises a rebuttable presumption of intention against the accused and could be rebutted by the accused showing that the act would probably not cause or contribute to the event or there was no intention to cause or contribute to the event. In **Akorful v. The State [1963] 2 GLR 371,** the Supreme Court discussed the effect of Section 11(3) and held that the court was entitled to presume that the accused intended to cause an act or an event in the absence of any explanation that the accused used reasonable caution and observation where there would be great risk of the act or event causing or contributing to the offence charged. See also

Adekura v. The Republic [1984-86] 2 GLR 345, CA. In considering the explanation of the accused, the test is an objective test based on the hypothetical reasonable man.

34. The accused led no evidence to show that she believed that holding a blender filled with blended vegetables while engaged in a struggle with the complainant would probably not cause or contribute to cause any harm to the complainant. There is also evidence on record from which can be inferred that the accused had the intent to cause harm to the complainant because of their existing rivalry. Portions of the accused's cross-examination are reproduced below:

Q: Because of your constant attacks, you have managed to sack the complainant from her matrimonial home.

A: That is true.

Q: You have now taken over everything, including the room of G/Sgt. Richmond Nsiah.

A: Yes, My Lord.

35. Under Section 85(2) of Act 29, an assault is unlawful unless it is justified on one of the grounds mentioned in Chapter 1 of Part II of the Act. Under Section 30, force or harm is justifiable only when it is used or caused under any of the instances in Section 31 and within the limits of Section 32.

36. According to the accused in her evidence-in-chief, the complainant's attack on her and the merciless beatings she gave her degenerated into a struggle between them. The evidence shows that it was during the struggle that the accused used the blender she was then using to hit the complainant's head. It is noteworthy that the accused did not expressly raise the defence of self-defence. That notwithstanding, I believe her testimony that she was pregnant at the time, corroborated by DW1, DW2 and DW3 and unchallenged by the prosecution, should be considered as pointing to the defence of self-defence. According to the accused, she was then eight months pregnant.

37. Section 31(f) of Act 29 provides that harm or force may be justified on the grounds of a necessity for the prevention of, or a defence against a criminal offence. In furtherance of Section

31(f), Section 37 of Act 29 provides that for the prevention of, or for personal defence, or the defence of any other person against a criminal offence, or for the suppression or dispersion of a riotous or an unlawful assembly, a person may justify the use of force or harm which is reasonably necessary extending in case of extreme necessity even to killing. Section 32 also states that despite the existence of any justification, force or harm cannot be justified when it is in excess of prescribed limits or used beyond the amount and kind reasonably necessary for the purpose for which it is permitted.

38. In **Bodua alias Kwata v. The State [1966] GLR 51**, Ollennu JSC stated, "Now, for a plea of self-defence and defence of property as provided in sections 30 and 31 of the Criminal Code, 1960 to succeed, it must be proved that the harm was inflicted at a time when the life or property of the accused was in imminent danger, i.e. at a time when the accused person or his property was being assailed. In other words, the act of defence must have been committed simultaneously with the attack upon him or his property or just when such an attack was imminent, for example to ward off a heavy blow aimed at

his person or his property. Harm inflicted when the danger to life or property is over might be inflicted in vengeance, or to take a more favourable view, it might be inflicted in consequence of extreme provocation."

39. The question then is, was the force used by the accused or harm caused to the complainant reasonably necessary for the accused's self-defence? In my considered view, a pregnant woman in a state as the accused was would be in imminent danger when she is being attacked and beaten mercilessly by the complainant. The danger is not only to the accused's life but that of the unborn baby. Hence, any reasonable force used or harm caused by the accused to the complainant in her bid to prevent danger to her and the unborn baby would be justified. The resultant harm caused to the complainant, in my considered view, was reasonably necessary to prevent danger to the accused and her unborn child.

40. **On the totality of the evidence adduced, I find that the accused has raised reasonable doubt about her guilt. Accordingly, she is acquitted and discharged.**

SGD.

HH WINNIE AMOATEY-OWUSU

CIRCUIT COURT JUDGE

PARTIES AND REPRESENTATION:

1. **THE ACCUSED PRESENT AND SELF-REPRESENTED**
2. **D/C/INSP. AMOS WAJAH FOR THE PROSECUTION PRESENT**