

CORAM: HER HONOUR HALIMAH EL-ALAWA ABDUL-BAASIT (MRS), JUDGE,
SITTING AT THE CIRCUIT COURT, DANSOMAN-ACCRA ON THE 10TH DAY OF
MARCH, 2025.

SUIT NO. CCD/CC7/42/24

THE REPUBLIC

VRS.

ALFRED OULDAGLASSO

Accused Person present.

Chief Inspector Wonder Afeke for the Republic – Present

No Legal Representation for Accused Person

JUDGMENT

Background

1. The Accused Person herein was charged with the following offences;
 - (a) **Causing Harm:** contrary to Section 69 of The Criminal and Other Offences Act, 1960 (Act 29).
 - (b) **Assault:** contrary to Section 84 of Act 29)
2. The brief facts of the case as narrated by D/Sgt. Budu Ansah Enock are that the Complainants, Emmanuel Avorgbelor is an Electrical Technician and Vida Amanor is a petty trader while Accused Person is also a Laborer and all resident of Anyaa Market Junction. Accused person who was a worker to Vida Amanor visited her in the house

on 03/12/2023 at about 7:00am demanding money from her. When Vida Amanor refused to give him the money, the Accused Person became offended, used a car fan belt to openly lash her severally and run away. Later, Emmanuel Avorgbelor, the first Complainant assisted by one Samuel Quainoo and Dickson Agorme approached the Accused Person, and the Accused Person who was then in an opposite direction cut the first Complainant's left hand with a knife he brought out of his pocket, stabbing his back and left upper ribs as well and ran to a neighbor's house to seek refuge.

3. Accused Person was subsequently arrested and during interrogation he admitted the allegation levelled against him and said it was the first Complainant who was holding a knife and together with Samuel Quainoo and Dickson Agorme, attacked him with other implements and subjected him to severe beating of which he collected the knife from the first Complainant but does not remember what he did with the knife. The first Complainant was admitted at the Korle Bu Teaching hospital and after investigation, Accused was charged with the offences and arraigned before Court.

The plea

4. On the 7/12/2023, the Accused Person, pleaded not guilty to all offences levelled against him after same was read and explained to him in the English Language. Having pleaded not guilty, the burden was on the Prosecution to adduce enough evidence to establish beyond reasonable doubt that the Accused Person indeed committed the offences he has been charged with. Article 19(2) (c) of the Constitution 1992 provides that *'a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty'*. Thus, throughout a criminal trial, the burden of proving the guilt of

the Accused Person remains on the Prosecution. (See **Asante vs. The Republic** (1972) 2 GLR 177).

Evidence of Prosecution

5. To prove their case, Prosecution called Three (3) Witnesses to testify and tendered in the following as Exhibits;

Exhibit 'A' - Complainant's statement at the Police Station.

Exhibit 'B Series' – Photographs of injured Complainant.

Exhibit 'B1' – Photograph of Complainant with dressed wound.

Exhibit B2 – Photograph of Complainant with dress rib wound.

Exhibit 'C' – Statement of PW2 at the Police Station.

Exhibit 'D' – Caution Statement of Accused Person.

Exhibit 'E' - Charge Statement of Accused Person.

Prima Facie Case

6. The Prosecution assumed the burden of proving the guilt of the Accused Person beyond reasonable doubt and at the close of its case of the Prosecution, the Court ruled that the Prosecution was unable to prove the charge of Assault against the Accused Person. However, the determined that the Prosecution had established a prima facie case against the Accused Person with respect to the offence of Causing Harm contrary to Section 69 of Act 30 which required the Accused Person to open his defence.

Defence of the Accused Person

7. On the 10/3/25, the Accused Person was called upon to open his defence but he failed and/or refused to speak in Court in his defence. It is trite that an Accused Person may opt not to open his defence by testifying in open Court. **A. N. E. Amissah, Criminal Procedure in Ghana**, 1982 at page 157 '*...if it appears to the court that a case has been made*

out against the accused sufficiently to require him to make a defence, the Court has to call upon him to enter into his defence. The Court must remind him of the charge and inform him that, if he so desires, he may give evidence himself on oath or may make a statement...’.

8. The learned Jurist, S.A. Brobbey states that there are Four (4) situations that may arise when an Accused Person refuses or fails to speak in Court in his defence. One of such situations is where the Accused Person appears in Court but refuses or fails to speak when called upon to open his defence. In such a situation, the Court has to conduct an inquiry under Section 133 of Act 30 into the state of mind of the Accused Person especially when the Court has reason to believe that the Accused Person is of unsound mind. (See **S. A. Brobbey, Practice and Procedure in the Trial Courts and Tribunals of Ghana**; 2nd Ed, 2011 at page 129). I must say that the Accused Person was first arraigned before Court on the 7/12/23 and throughout the proceedings, the Accused Person has never exhibited any signs of being of unsound mind and the Court therefore has no reason to believe that the Accused Person is of unsound mind.

9. The point being made is that when the Prosecution has presented its evidence and the Court finds that there is sufficient evidence to require the Accused Person, the Accused Person is given the opportunity to present a defence. So that when the Accused Person decides to remain silent, the Court will have to draw reasonable inferences from the Accused Person’s silence. It must however be emphasized that by the Accused Person remaining silent, the Court cannot proceed to convict the Accused Person because of his refusal to open his defence. This is because the burden of proof remains on the prosecution to prove the case beyond a reasonable doubt. The Court will therefore proceed to make a determination based on the evidence adduced by the Prosecution to establish the guilt or otherwise of the Accused Person.

Analysis

10. Article 19(2)(c) of the 1992 Constitution provides that a person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty. The fundamental principle of criminal jurisprudence is that the guilt of an Accused Person must be established beyond reasonable doubt and the burden of persuasion on the Prosecution has been stated in Sections 13 and 15 of the Evidence Act, 1975 (NRCD 323). So that whereas the Prosecution carries that burden to prove the guilt of the Accused Person beyond reasonable doubt, there is no such burden on the Accused Person to prove his innocence. (See the case of Asare vs. the Republic [1978] GLR 193) At best, all that the Accused Person can do is to raise a doubt in the case of the Prosecution.

11. The Accused Person was charged with Causing Harm and Section 69 of Act 29 defines 'Causing harm' to mean '*...when a person intentionally and unlawfully causes harm to any other person...*'. Section 76 of Act 29 also defines 'unlawful harm' as follows: '*... Harm is unlawful which is intentionally or negligently caused without any of the justifications mentioned...*' As such, the ingredients of unlawful harm are:

- (a) Causing harm;
- (b) Intentionally or negligently;
- c) Unlawfully and/or without any justification.

The Prosecution must therefore prove the above ingredients beyond reasonable doubt in order to discharge the burden placed on them and secure the conviction of the Accused Person.

12. At the conclusion of trial, I have made observations as well as findings of fact. The totality of evidence as adduced by the Prosecution is to the effect that the PW1 was stabbed by the Accused Person at his back and rib region with a knife he pulled out

of his pocket. To establish that the Accused Person intentionally and unlawfully caused harm to PW1, Prosecution called in Three (3) witnesses. The first Prosecution Witness (PW1) is Emmanuel Avorgbedor, a Complainant and victim. He testified that on 3/12/2023, he was at home and about to take a shower when he heard a loud noise from the compound. He got closer to make enquiries when he saw the Accused Person assaulting the land lady. He then moved towards him and advised him to take the landlady to the hospital as he had inflicted wounds on her. Suddenly, the Accused Person pulled a knife from his pocket and stabbed him on his wrist, left rib and bolted. He then went with his landlady to lodge a formal complaint and they were issued Medical Form respectively to attend the hospital. Subsequently, his statement was taken by the Investigator.

13. PW1 was cross-examined by the Accused Person and the following transpired;

Q: That 03/12/2023, Sunday, who was there before I take fan belt I come lash Vida and took some money and run away?

A: I was off to the bath house when I heard the noise that he was beating the lady (Vida).

Q: After I lashed her, when I took some money and run away, how many people came to where I stay?

A: After you had beaten her, you run to the roadside and I came to you.

Q: Were you the only one who came to attack me?

A: When it happened, I went to him when he crossed the road. I was the only one who went to him before two other guys joined.

Q: *So how many of you came to attack me?*

A: *I was the only person before two men joined.*

Q: *Where do you know me from?*

A: *We all are lived in the same house.*

Q: *Did you know me before the incidence?*

A: *I know him about Two years ago.*

Q: *When I lash him and took the money, you and the other two who people attacked me, are you Police officers?*

A: *We are not Police officers.*

Q: *Where did I stab you with a knife, is it where I took the money and run away or where you came to attack me?*

A: *It was when he crossed the road that he stabbed me.*

Q: *Where did you keep my phone after the incident happened?*

A: *I did not know he was having a phone.*

14. The second Prosecution Witness (PW2) is Vida Amenornu who testified that she knows the Accused Person very well because he once worked for her as a Toilet Sanitation Officer but left after Two (2) years without any provocation. Accused Person returned one day and started raining insults on her and eventually subjected her to severe beatings. While shouting for help, PW1 came to rescue but the Accused Person pulled a knife from his pocket and stabbed PW1 twice. She also fell on the ground as a

result of being assaulted by the Accused Person and subsequently sought Police assistance.

15. PW2 was also cross-examined by the Accused Person and the following was captured by the record of proceedings;

Q: *Before the incidence, where do you know me from?*

A: *I was in the house when he came and I told him I need someone to work with, then he responded that he will be able to do it, but then he did not have a place of abode and I constructed one for him to live with me.*

Q: *Was I the one who came personally to you to ask you for a job?*

A: *Yes.*

Q: *Do you know me well before giving me the job?*

A: *I did not know you well, I was just home when you came.*

Q: *Was I still working with you before this incident happened or I stopped?*

A: *You stopped.*

Q: *How many years have I worked with you?*

A: *It will be about Three (3) years but I cannot remember the exact time.*

Q: *Did I willingly stop the work or you sacked me?*

A: *I sacked you because you are always threatening of killing people.*

Q: *Who was there when I lashed you with the fan belt and run away?*

A: *I was the only one there.*

16. The third Prosecution Witness (PW3) is D/Sgt. Budu Ansah Enoch, the Investigator herein who testified by repeating the narrations of the Complainants. He testified further that a Police Patrol Team proceeded to the house and arrested the Accused Person who was being detained by the occupants of the house. The knife used in committing the offence was retrieved and the necessary statements were obtained from the parties. He testified again that he visited the scene of crime and found blood stains on the ground. Witness statements were respectively obtained from Samuel Quainoo and Dickson Agorme.

17. PW3 testified further that Accused Person was interrogated and he admitted the allegations levelled against him and said he did so because the PW1 with Two (2) other persons had also collected his phone and subjected him to beatings. PW3 testified further that the necessary statements were obtained from the Accused Person, photographs of the injured PW1 were taken at the Korle Bu Teaching Hospital and parties were paraded before the District Commander, resulting in the Accused Person being charged and arraigned before Court.

18. PW3 was also cross-examined by the Accused Person and the following ensued;

Q: *What did I do and you sent Police to come and arrest me?*

A: *The Complainant reported a case that the Accused Person has assaulted her with a knife and has fled to a neighboring house. Police quickly proceeded to the house and arrested the Accused Person.*

Q: *Were you at the scene when the incident happened?*

A: *Police was not at the scene when the incident happened but the Accused Person was arrested at the neighbour's house.*

Q: *When you went to the hospital to take the Complainant's picture, why did you say I was the one who used the knife to assault the Complainant?*

A: *At the station, the Complainant brought a knife which was having blood stains at the edge and after visiting the hospital, the mark on the Complainant's ribs indicate that he was stabbed with a sharp object.*

Q: *Can you tell Court why you are saying that knife belongs to me?*

A: *During investigation caution statement Accused Person admitted being in possession of that particular knife but did not use it in stabbing the Complainant.*

Q: *Can you tell Court how many people came to my house to "attack me"?*

A: *Police was not at the scene of the day of the incident but according to the Complainant they were only Three (3) people at the scene whiles Accused Person also narrated that the people who attacked him were more than ten in number.*

19. To prove its case further, Prosecution tendered in Exhibit 'D', the Caution Statement of Accused Person and Exhibit 'E' which is the Charge Statement of Accused Person. These exhibits are the confession statements of the Accused Person and according to Justice Brobbey, supra at page 119, '*... confession is a statement by a suspect which when take together with other facts and circumstances constitutes an admission of the commission or participation in the commission of an offence. It is classified as hearsay evidence in so far that*

it takes place outside the Court room. Being hearsay evidence, confession is generally not admissible. NRCD 323, s. 120 makes confession admissible as an exception to the hearsay rules provided certain conditions are satisfied...'

20. In **State vs Otchere** [1963] 2 GLR 463, the Court held that '*...a confession made by an Accused Person in respect of a crime for which he is being tried is admissible against him provided it is shown by the Prosecution that it was made voluntarily and the accused was not induced to make it by any promise or favour, or menaces or undue terror...*' (See also **The Republic vs. Dr. Frederick Mac-Palm (Deceased) and 9 Ors** [2024] Suit No. CR/0401/2021; DLHC 17178). I can critically examined the said exhibits and I am satisfied that the said exhibits meet the standard required under NRCD 323 since the statements were made in the presence of an Independent Witness. (See **Frimpong alias Iboman vs The Republic** (2012) SCGLR 279).

21. It is also trite that confession statements are unsworn statements by an Accused Person and generally, evidentiary weights of a sworn and unsworn statements differ. The evidentiary weight attached to an unsworn statement is relatively low especially when such an unsworn statement is not subject to cross-examination. Courts may however still consider such unsworn statements as part of the overall evidence in the event that it provides context or raises reasonable doubt in the case of the Prosecution. The Court is however guided by the major principle of criminal jurisprudence which is to the effect that the onus remains on the Prosecution throughout the trial to prove the guilt of the Accused Person beyond reasonable doubt.

22. In this instant case, the Accused Person stated at page 2 line 13 of Exhibit 'D' as follows; '*later, the Complainant together with Dickson Agorme @ Efo Garri and Samuel Quaiboo approached me at where I worked and began beating me with stones. I also retaliated same by*

collecting a knife from the Complainant and I do not remember what I used the knife for...' In Exhibit 'E', the Accused Person repeated the above statements and same was captured in page 2 line 13.

23. The statements made by the Accused Person, to a large extent amounts to a defence. This then shifts the burden of proof to the Prosecution to convince the Court beyond reasonable doubt that the Accused Person indeed intentionally and unlawfully caused harm to the Accused Person. To make a determination, I shall start with an analysis of all Prosecution witnesses. PW1 is the Complainant as well as the victim and he testified that the Accused Person stabbed him with a knife. During cross-examination, the Accused Person specifically asked him the following among others;

Q: Where did I stab you with a knife, is it where I took the money and run away or where you came to attack me?

A: It was when he crossed the road that he stabbed me.

24. However, PW2 is the sole witness who swore on oath and testified to have seen the Accused Person stab the victim. PW2 therefore is an eye witness as far as this case is concerned and Prosecution was able to produce the said eyewitness who was also subjected to cross-examination by the Accused Person. It must however be emphasized that the role of the Court is to seek the truth of an incident with impartiality and this is often achieved with the role of an eyewitness who was present at the time of the commission or omission of the crime. It is essential that the testimony of the eye witness is subjected to the highest level of scrutiny so as to deliver justice with fairness and without any form of bias. In this instant case, the eye witness is PW2, a landlady

and it is not in dispute that both PW1 and PW2 know each other and it is not as if she was a mere passer-by when the incident happened.

25. PW2, the landlady testified at that the Accused Person used to be her employee but returned one day and started raining insults on her and eventually subjected her to severe beatings. While shouting for help, PW1 came to her rescue but the Accused Person pulled a knife from his pocket and stabbed PW1 twice. PW1, the victim, also testified that he was at home on the day of the alleged incident and about to take a shower when he heard a loud noise from the compound. He got closer to make enquiries when he saw the Accused Person assaulting the land lady. He then moved towards him and advised him to take the landlady to the hospital as he had inflicted wounds on her. Suddenly, the Accused Person pulled a knife from his pocket and stabbed him on his wrist, left rib and bolted. The combined testimony of both PW1 and PW2 suggest that PW1 was assaulted in the landlady's compound and when he was about to take a shower. This testimony was however contradicted during cross-examination of PW2 by the Accused Person, the following was captured by the record;

Q: *Where did I stab you with a knife, is it where I took the money and run away or where you came to attack me?*

A: *It was when he (Accused Person) crossed the road that he stabbed me.*

26. The third and final Prosecution Witness is PW3, the Investigator herein and the role of an Investigator is to substantiate the claims of the PW1 by conducting the necessary investigations. Bryan A. Garner's **Black's Law Dictionary**, 9th Ed., at page 902 defines 'investigate' as follows; '*...to inquire into (a matter) systematically; to make (a suspect) the subject of a criminal inquiry...*' In the case of **Republic vs. Iddrisu @ Mbadugu & 14 others**; Suit No. B.O.I 14/2010 [2011] Unreported CA, Justice E.K. Ayebi JA held that: '*...investigation does not mean taking statements from suspects and charging them before the*

court. True investigation involves following clues and leads gathered from the statements of suspects and witnesses...'

27. In his book **Criminal Procedure in Ghana**, the learned A.N.E Amissah at page 31 stated as follows: '*... at the initial stages, the object of an investigation is not to prove a case against any particular person but to find out whether or not the complaint lodged can be substantiated and if so, how. Consequently, it is advisable that the Police pursue all openings, leads, and clues brought to their notice...every person mentioned as having relevant information has to be checked. The aim should be to build up a complete case ...'* PW3 in his Evidence in Chief, testified that the knife used in committing the offence was retrieved from PW1 but neither the physical knife nor a picture of the said knife was disclosed by the Prosecution during trial.

28. It is trite that evidence adduced during trial can be in the form of oral, documentary or real evidence. In this case, the said knife is a form of a real evidence and the failure of the Prosecution to produce the said knife prevents the Court from seeing for itself the shape and size of the knife. Upon seeing the said knife, the Court would have been able to draw up certain inferences and probably jump into certain conclusions, yet the Prosecution failed to do so. (See Ho, Hock Lai, **The Legal Concept of Evidence**, 2015 in the *Stanford Encyclopedia of Philosophy (Summer 2020 Ed.)*). PW3, the Investigator testified again that he visited the scene of crime and found blood stains on the ground. Yet, no picture of the said blood stains was not produced to convince the Court. Again, Prosecution could not furnish the Court with further evidence to aid in identifying the perpetrator as evidence such as DNA, blood or other biological materials from the crime scene and on the retrieved knife could have been of significant importance.

29. PW3, the Investigator, again testified that he obtained statements from Samuel Quainoo and Dickson Agorme, who the Court assumes are additional witnesses to the commission of the crime. Unfortunately, however, the Prosecution failed to call these material witnesses to testify and be subjected to cross-examination. According to **Justice S. A. Brobbey**, supra at page 91, '*... as a general rule, the Prosecution are required to call any material or relevant witness whose evidence might resolve doubts in the case one way or the other; and failure to call such a witness has been held to be fatal to the case of the Prosecution...*' In the Court of Appeal's decision in **Tsatsu Tsikata vs The Republic** [2003-2004] 1 GLR 296, the Court held that: "*Any failure on the Prosecution's part to call such a witness, if that witness's evidence could settle the matter one way or the other, would result in the failure of their case because they would not have proved their case beyond reasonable doubt...*'

30. Additionally, Prosecution also failed to adduce any corroborative evidence of Causing Harm especially a Police Medical Form which would have been a vital evidence to establish that the offence of Causing Harm was committed by the Accused Person. The Medical Form could have supported the case of the Prosecution by further establishing facts and provide substance on the nature of harm suffered by the victim. More so, the Medical Form could have in one way or another corroborated the testimony of Prosecution Witnesses or contradicted the Accused Person's defence.

31. **Conclusion**

32. I have carefully and critically examined and evaluated all the evidence adduced by the Prosecution as well as drawn inferences from the failure and/or refusal of the Accused Person to testify. At this stage, the Court observes that there are two sides of the story; the first is that the Accused Person pulled out a knife from his pocket and stabbed the victim; and the second is that the Accused Person collected the knife from the victim but he does not remember what he did with the said knife. Consequently, the Court is doubtful as to which of the Two (2) sides of the story to believe. In such situation, the Court must resolve this doubt in favour of the Accused Person. The conclusion therefore is that the Prosecution has been unable to meet the standard of proving its case beyond reasonable doubt. In the circumstances, I find the Accused Person, Alfred Ouadaglasso, not guilty and he is accordingly acquitted and discharged on the charge of Causing Harm contrary to Section 69 of Act 29.

H/H HALIMAH EL-ALAWA ABDUL-BAASIT.

CIRCUIT COURT JUDGE