

JUDGMENT DELIVERED BY HER WORSHIP CYNTHIA.A. ANDY AT THE DISTRICT COURT, BREMAN ASIKUMA IN THE CENTRAL REGION OF THE REPUBLIC OF GHANA ON MONDAY THE 19TH DAY OF DECEMBER, 2022.

SUIT NO: CR/BA/DC/021/2023

THE REPUBLIC

VS

YAW ACKOM

JUDGMENT

Accused Person: Present

Detective Inspector Alhassan Iddrisu for the Prosecution: Present

BY COURT: Judgment delivered in open today.

The accused persons charged with the following offences; Unlawful Entry contrary to section 152 of Act 29/60, Assault contrary to Section 84 of Act 29/60, and Threat of Death contrary to Section 75 of Act 29/60.

Accused person pleaded not guilty on all the four counts. Prosecution was called upon to prove their case. After the end of prosecution's case, count four(4) which was on threat of death contrary to Section 75 of Act 29/60 was not made out as such Accused was discharged on it.

The brief facts of the case as deduced from prosecution is that, the Complainants Gloria Assuman and Abena Sapomaa are daughter and mother respectively living at Apagya, a suburb of Bremana Asikuma. First Complainant is a nursing mother. Accused Person is

a photographer also residing at Apagya Street. That on the 04/08/22, at about 7: 00pm, Accused Person without authority entered Pw1's room. He was very furious. Pw2 and two other witnesses in the case were in Pw1's room then. Accused then started warning PW1 to desist from interfering in his marriage. Pw1 and Pw2 responded and it was alleged that, accused beat them.

Prosecution called six witnesses in the bid to prove their case. Pw1 was Gloria Essuman. She said whiles in her room with Pw3, Pw4, and Pw5 Accused entered the room without permission by forcibly pushing the door. According to her, accused person was angry and looked aggressive. Pw1 said, in an attempt to respond to Accused person on allegations against her to Pw2, accused person became offended and slapped her, pounced on her and beat her mercilessly. That Accused person also beat up Pw2 when she tried to rescue her from Accused person's hands.

Finally, Pw1 being a lactating mother who had gone through a caesarean section, she is in serious pains as a result of the beatings she received from the Accused person.

Pw2 was Abena Sapomaa. She said she was in Pw1's room with Pw1 and two others when Accused person without permission banged into the room looking furious. He then started complaining to her about Pw1 meddling in his marital affairs. Pw1 attempted to respond to the allegations and then was met with a slap from the Accused person.

Pw2 stated that, in her attempts to intervene for her daughter Pw1, accused person slapped and pushed her to the ground. She injured her nose as a result.

Pw3 was Akua Odura. She is a trader also living at Apagya street. She stated that, she was in the room of Pw1 that day when they heard a loud knock on the door. Pw1 then asked who the person was but without any response, accused person pushed the door open and entered without been asked to. He looked aggressive. Pw3 stated that, she saw

when Accused person beat Pw1 and Pw2 by first slapping them and pushing them down in turns. She also stated she saw the injury on Pw2's nose as a result of what Accused person did.

Pw4 was Afua Boatemaa. She is Pw1's sister. She stated that, she was in the room carrying Pw1's baby when accused person forcibly pushed the door open after a loud knock on it. She said she saw when Accused person slapped and pushed both Pw1 and Pw2.

Pw5 was Elvis Gyamfi Addo. He is a painter and a sprayer living in same house with Pw1 and Pw2 . He said on the day of the incident, accused person knocked loudly on his door, when he came out, accused person told him it was Pw1 he was looking for and he directed him to Pw1's room and he(Pw5) returned to his own room.

Final prosecution witness was No: 51265 of G/Cpl Sulemana Abdul Razak . He is a Police CID stationed at Breman Asikuma. He said on the 04/08/22, a case of assault and threat of death was reported to him for investigation. After taking statements from the witnesses, he issued a medical form to Pw1 and Pw2. The endorsed medical forms of Pw1 and Pw2 was returned to him and they were tendered in court as exhibit C and D respectively.

Pw6 went further to tender exhibit A and B being investigation caution statement and charge statement respectively.

Accused person decided to speak from the dock when asked by the court to open his defence. His evidence was not given under oath. He was not cross examined. This procedure is in line with Section 63(1) of the Evidence Decree, Act 323 and Act 30, section 174. Accused person did not also call a witness. Accused person denied the charges. In his witness statement which he moved the court to accept on his evidence in chief. According to him, on the day of the incidence, he first knocked at the wrong door and

was directed by Pw1's brother to Pw1's door. He said he knocked and heard a voice that asked him to enter before he did so. Accused person went further to say that, when he entered the room he saw Pw2, Pw3, Pw4 and Pw5 in the room. He then started complaining to Pw2 about the problem Pw1 is causing in his marriage. Pw1 according to Accused immediately interjected resulting in verbal exchanges between them. Accused person said he left to the place immediately afterwards. He insisted he did not beat up Pw1 and Pw2.

BURDEN OF PROOF

Article 19(2) of the constitution 1992 states that, a person charged with a criminal offence shall

(c) be presumed to be innocent until he is proven or pleaded guilty. The effect of the above provision is that until an Accused person is proven or has pleaded guilty, he is to be presumed to be innocent of any offence charged against him.

The onus of proving the guilt of the Accused is placed on the Prosecution in a case such as theirs that, the Accused has pleaded not guilty.

The burden of proof is on the prosecution is codified in sections in the evidence Act, "Section 11(1). For the purposes of this Decree, the burden of producing evidence means an obligation of a party to produce sufficient evidence to avoid a ruling against him on that issue.

In a criminal case the burden of producing evidence when it is on the Prosecution as to any fact when 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 reasonable doubt.

15(1), Unless and until it is shifted, the party claiming that, a person is guilty of crime in wrongdoing has the burden of persuasion on that issue. The combined effect of Article 19(2) of the 1992 constitution and sections 11(2) and 15(1) is that, at the beginning of the trial, the burden of producing evidence on the crime charged is on the prosecution.

UNLAWFUL ENTRY

Section 152 of Act29 provides that, a person who unlawfully enters a building with the intention of committing a criminal offense in the building commits a second degree felony. Section 153 explained what amounted to unlawful entry as; a person unlawfully enters a building if that person enters otherwise than in the exercise of a lawful right or by the consent of any other person able to give consent for the purpose for which he enters. The case for the prosecution was that, accused in a furious manner entered Pw1's room without authorization. This was corroborated by Pw1, Pw2, Pw3 and Pw4. They all said Accused person banged the door and entered the room looking very furious. As indicated above, accused person denied entering unlawfully as according to him, he was asked to enter before doing so. This defence of his is contrary to what was said by the Prosecution witnesses. Accused person did not also provide proof of his assertion. I am inclined to believe the event as given by Prosecution witnesses and hold that Accused person entered the room of Pw1 without her consent.

The mens rea requirement of section 152 above is that, accused person must have intention of committing a crime.

Section 11(3), a person who does an act of such a kind 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, the person behaved 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.

From the above provision an act done without reasonable caution or would be a great risk to the act causing or contributing to cause an event, if the event occurs, accused can be said to have intention of causing the said event.

In the instant case, Pw5 accused first knocked at his door and all the people in Pw1's room when accused entered said, accused person banged at the door. They also said accused was very furious when he did so. Accused person said he only went to the house to lodge a complaint to Pw2. This is not so because according to Pw5, when he came out of his room, accused person specifically asked to be shown Pw1's door and not that of Pw2, which therefore means that, accused person entered the house in search of Pw1 and not Pw2 as alleged.

Again all prosecution witnesses alluded that, accused person banged the door and entered the room very furious. This clearly is a recipe for chaos as it is likely to cause a criminal offense such as charged or even damage to property and it indeed led to altercations which resulted in their charge as well as the other counts.

From the above therefore, I am of the opinion that, accused person did not only enter unlawfully, he also intended per section 11(3) of Act 29 to also cause criminal offense.

Prosecution has therefore been able to prove the elements of this charge beyond reasonable doubt.

ASSAULT

Section 84 of Act 29 provides; A person who unlawfully assaults any person commits a misdemeanour.

Section 85 defined assault and battery and (b) assault without actual battery.

Assault and battery per section 86;

1. A person makes an assault and battery on another person, if without the other person's consent, and with the intention of causing harm, pain, fear, or annoyance to the other person or exciting him to anger, that person forcibly touches the other person.

Pw1 and Pw2 said Accused person hit them and pushed them to the ground. PW3, and Pw4 all said they witnessed the event and saw when accused did so. Accused person denied touching any of them. Unlike Prosecution and also as each indicated, accused person did not call any witness to prove his side of the story.

In the endorsed medical report of Pw1 tendered in by Prosecution, the medical officer observed obvious waist pain and mild bodily, soft tissue combustion with respect to Pw2.

It was observed that there was facial swelling and generalised soft issue combustion. From the medical reports, I have no doubt that, those observations from the examinations of Pw1 and Pw2 by the medical office were as a result of the said beatings they recorded from the accused person herein.

Again, accused person having furiously entered Pw1's room, with clear intention of causing fear, annoyance or exciting her to anger and forcibly touches Pw1 and Pw2 without their consent is no doubt assaulted the two.

On the basis of the above therefore, prosecution has been able to prove all the elements of assault against the Accused person. The proof is beyond reasonable doubt as accused person failed to raise doubts on the prosecution's case.

Accused person is hereby found guilty on counts one and two.

CONCLUSION

Accused person is convicted on counts 1, 2, and 3.

Accused's plea for mitigation. I pray that the court forgives me.

PROSECUTION ADDRESS: PW1 is a nursing mother from Caesarean Section. Pw2 is also an old woman battling with all manner of diseases in connection with her age. I prayed for a deterrent sentence.

BY COURT: Considering the manner in which the offense was committed as well as the facts, accused person is sentenced as follows:

- (i) C1 – A day's imprisonment in addition 100 penalty units in default 3 months' prison term in Hard Labour (I.H.L)
- (ii) C2 – 100 penalty units in default 3 months' prison term in Hard Labour (I.H.L)
- (iii) C3 – 100 penalty units in default 3 months' prison term in Hard Labour (I.H.L)

All counts are to run concurrently. Accused person is to compensate Pw1 with an amount of **GH¢1,000.00** and Pw2 with an amount of **GH¢800.00**.

.....SGD.....

HER WORSHIP CYNTHIA.A. ANDY (MRS)