

IN THE DISTRICT COURT, DZODZE HELD ON MONDAY THE 3RD OF OCTOBER,
2022 BEFORE HIS WORSHIP NELSON DELASI AWUKU DISTRICT MAGISTRATE.

Case No. B4/10/19

THE REPUBLIC

VRS

KORBLA TOFAH & 3 ORS.

JUDGMENT

PARTIES

COMPLAINANT PRESENT

ACCUSED PRESENT

REPRESENTATION

CHIEF INSPECTOR HAMID MOHAMMED FOR PROSECUTION PRESENT

BACKGROUND

The accused persons were arraigned before this Court on 9th May, 2019 on charges of assault with A4 specifically charged with an additional offence of causing harm contrary to Sections 84 and 69 of the Criminal Offences Act, 1960 (Act 29).

BRIEF FACTS

The facts as attached by the Prosecution stated that the complainant, Noah Tofah is a driver and resides in Dzodze-Bedzeme together with the accused persons.

The Prosecution stated that on the 21st day of February, 2019 around 7:20 pm, the complainant was riding a bicycle from Bedzeme to Fiagbedu and upon reaching a section of the road, met the accused persons.

The Prosecution stated that while the complainant was by passing the accused persons, A4 indicated to the others that, "that is Robert's brother" and upon that remark, A1 quickly held the bicycle, pulled the complainant back and accused him of directing the bicycle's light towards their faces.

The prosecution stated that A1 hit the complainant on the mouth and while attempting to escape, he was kicked onto the ground by A3 and all the accused persons pounced on him and further assaulted him.

The prosecution stated that A4 in the process slashed the back of the complainant with a cutlass while A1 hit him with a stick. In the process the complainant was stated to have lost his infinix mobile phone valued GH¢ 700.00, the medicine he was sending to his mother and a cash amount of GH¢ 200.00.

PLEA OF ACCUSED

The accused persons pleaded not guilty to the offences when the charges and particulars of the offences were read and interpreted to them and were admitted to bail.

Witness statements of witnesses of prosecution together with charge statements and investigation caution statements of the accused persons were filed by the prosecution together with a medical report and a photograph evidencing the injured state of the complainant and served on the accused for trial.

THE CASE OF PROSECUTION

The prosecution called in addition to the complainant the police investigator as a witness to prove his case.

In his evidence to the Court, the complainant, first prosecution witness stated that, on the 21st of February, 2019 at about 7:30pm, he was riding a bicycle from Dzodze Bedzeme towards Fiagbedu to give a medicine to her mother when upon reaching a section of the road he spotted the accused persons ahead of him and while attempting to bypass them heard A4 indicated to the other accused persons that, "this is Robert's brother".

PW1 stated that A1 held the back of his bicycle and accused him of directing the bicycle light towards his face.

PW1 stated further that A1 hit his mouth with a blow while A2 held on to the bicycle and while attempting to escape, A3 kicked him onto the ground at which point A4 slashed his back with a cutlass and assaulted him additionally with a stick.

PW1 stated that in the cause of the assault, he lost his mobile phone infinix valued at GHC 700.00, cash amount of GHC 200.00 and the medicine he had bought for his mother.

PW1 stated that one "tortoise" and another woman called Yevu who were at the scene rescued him after which he went to report the case to the police and was issued with a medical report form to attend hospital.

CASE OF ACCUSED PERSONS

All the accused persons denied the charges against them.

The first accused stated that on the 21st February, 2019 at about 8:21pm, he together with other accused persons were on their way to Fiagbedu when PW1 at a section of the road knocked him from behind with his bicycle and he fell down.

A1 stated that when PW1 was confronted by A3 on why he did that, he bolted with the bicycle to a nearby house.

A1 stated further that when PW1 knocked him with the bicycle, he sustained an injury and PW1 who was also injured went to the police to make a complaint when he sensed danger and further smeared a reddish substance over himself to create the impression that he had been injured by them.

A1 stated that, he also made a complaint to the police with photographs of the injury caused him by the bicycle and argued further that the claim by PW1 to have lost his phone cannot be true since he has stated that he received a call from one Horvey when he was at the hospital who informed him that the bicycle was in his possession.

The evidence given by A2, A3 and A4 corroborated the account of A1 on the allegation that it was rather PW1 who knocked him with the bicycle and bolted afterwards.

The inconsistencies in the accounts of A3 and A4 is revealed in the fact that both accused persons stated that PW1 returned from the house where they claimed he had earlier run to with a stick to hit A4. The court finds it curious why such a significant occurrence did not find a place in the evidence of A1 and A2.

However, the admission by P3 under cross examination that both A1 and A4 were issued medical forms by the police brings some clarity to their assertion.

The assertion by A1 that the complainant smeared himself with a reddish substance to create the impression that he sustained an injury is unacceptable because A1 admitted that he sustained an injury also and the endorsed medical report confirmed same.

It is also significant to take notice of the holding in the case of **The Republic v Djomoh [1960] 1 GLR 193** that, *“a finding that the accused had told lies in his defence does not absolve the prosecution from the duty of affirmatively proving the guilt of the accused beyond reasonable doubt”*.

The burden is on the prosecution to prove the guilt of the accused persons and in this case beyond reasonable doubt.

FACTS

From the evidence of witnesses for prosecution and the accused, the court finds the following facts as not in dispute;

- a. That both the complainant and accused persons met at a section of the road leading to Dzodze Fiagbedu on the 21st of February, 2019.
- b. That there was an encounter between the parties as a result of which both PW1 alleges that he was assaulted by the accused persons.
- c. That A1 also alleges assault against PW1 on same day.
- d. That PW1 further alleges that A4 caused harm to him in the process by slashing him with a cutlass.

THE LAW

Burden of Proof

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 will find the existence of the facts beyond

reasonable doubt. *See Section 11(2) of the Evidence Act, 1975 (NRCD 323) and the cases of Kingsley Amankwah (a.k.a Spider) v. The Republic [2021] DLSC10793 at pages 25-26 per Dotse JSC and Frimpong alias Iboman v. The Republic [2012] 1 SCGLR 297.*

In the case of **Ali Yussuf Issa (No.2) v. The Republic [2003-2004] SCGLR 174**, it was held that the burden of proof has two components, the duty to lead evidence on any fact required to be proved and the duty to provide sufficient evidence to persuade a reasonable mind as to the existence of any such fact. **See also Kweku Quaye alias Torgbe vs. The Republic [2021] DLSC10794 at page 9-10 per Prof. Mensa Bonsu, JSC.**

The extent of the onus on the accused on the other hand is provided by section 11(3) of the evidence Act 1975 which states;

“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”. See also the case of COP v. Antwi [1961] GLR 408.

Assault

A person who unlawfully assaults any person commits a misdemeanor under section 84 of the Criminal Offences Act, 1960 (Act 29).

Under Section 85(a) of Act 29, the types of assault as stated includes assault and battery.

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 or fear or annoyance to the other person or of exciting him to anger, that person forcibly touches the other person. **Section 86 of the Criminal Offences Act, 1960 (Act 29).**

Causing Harm

Harm within the meaning of Section 1 of the Criminal Offences Act is *“any bodily hurt, disease or disorder whether permanent or temporary”*.

A person who intentionally and unlawfully causes harm to any other person commits a second degree felony. **Section 69 of the Criminal Offences Act, 1960 (Act 29)**.

Under Section 76 of Act 29, harm is stated to be unlawful which is intentionally or negligently caused without any of the justifications mentioned in chapter one of the Act.

With respect to ascertaining the intention of an accused, Section 11 of the Criminal Offences Act provides that, *“a person does an act for the purpose of causing or contributing to cause an event, that person intends to cause that event although in fact, or in the belief of that person or both in fact and also in belief, the act is unlikely to cause or contribute to cause the event”*.

ANALYSIS AND EVALUATION OF EVIDENCE

For the purposes of Count one in respect of the offence of assault and battery, the burden is on the prosecution to prove that without the consent of the complainant, and with the intention of causing harm, pain or fear or annoyance to him or exciting him to anger, the accused persons forcibly touched him.

In proving any intentional and unlawful act against the accused persons, prosecution needed to adduce evidence to bring the act within the provisions under section 11 of the Criminal Offences Act and to also establish that the act was done without any justification recognized under the law.

Next to the above in relation to the offence of causing harm under section 69, is to prove that the act of the accused caused bodily hurt, disease or disorder whether permanent or temporary to the victim.

The prosecution in its effort to establish his case called as his witness PW3. PW3 stated in his evidence that on the 21st of February, 2019 at 8:45pm he was on duty as the available investigator when a case of assault and causing harm was referred to him involving the complainant and the accused persons.

PW3 stated that, he visited the scene of the incident with PW1 and A1 where PW1 pointed at a stick and his abandoned pair of slippers in a house and stated it was the stick A3 and A4 used to assault him.

The documents however tendered in evidence by PW3 were the investigation caution statements of the accused persons which were adopted and marked Exhibits A,A1,A2 and A3, Charge statements marked as Exhibits B, B1,B2 and B3, an endorsed medical form of PW1 marked Exhibit C and a photograph of PW1 marked EXHIBIT D.

The evidence submitted to the court did not include a cutlass. Under cross examination on 1st February, 2022 when A4 asked PW1 about what is the prove that he slashed him with a cutlass, PW1 responded as follows;

Q. Do you remember you told this Court that I slashed you with a cutlass?

A. Yes you slashed me

Q. What is the prove that I slashed you

A. I have a photograph of the incident and injury

The medical report tendered in evidence by prosecution is endorsed by the medical doctor as follows;

“ Patient reported to our facility on 22/2/19. He complained of general body pains and physical assault. On examination, he was clinically stable. Had multiple abrasions on the lips, back and extremities. He was managed as a case of multiple abrasions and musculoskeletal injury following physical assault”.

The medical report together with the photographs submitted confirmed the bodily injury sustained by PW1 but did not contain any leads to substantiate that what he had was a cutlass wound and nothing about the photographs linked the accused persons to the offence in terms of causation.

Had the element that the fourth accused person slashed the complaint with a cutlass been established, that would have amounted to an offence rather under section 70 of the Criminal Offences Act.

Under Section 70 of Act 29, *“a person who intentionally and unlawfully causes harm to any other person by the use of an offensive weapon shall be guilty of first degree felony”*.

The prosecution had a burden to go beyond establishing the injury sustained to linking it to the specific actions of the accused persons.

The only way to satisfy this threshold in the face of the denial by the accused persons will be by calling witnesses or adducing enough evidence which under circumstances will lead to the conclusion that the accused persons were responsible.

The prosecution was only successful in calling the police investigator as a witness. But the evidence given by the investigator shows that he solely relied on the complaint made by PW1.

In his witness statement filed on 13th June, 2019, PW1 stated in paragraph 9 that there was at the scene one man named tortoise and a certain woman known as Yevu who rescued him from further assault by the accused persons.

These two material witnesses were not called to testify and nothing was contained in the evidence of the investigator in indication of efforts made to reach them.

The decision as to which witnesses to call is that of the prosecution but it is also a general rule that, the prosecution have a duty to call all material witnesses, failing which the prosecution may not succeed. **See the cases of Owusu v. Tabiri and Another [1987-88] 1 GLR 287 and Tetteh v. The State [1965] GLR 670, SC.**

It is worthy of note that PW2, Horvey who is stated to have returned the bicycle to PW1 filed a witness statement but same could not be tendered when the case commenced de-novo because he could not come to court to give evidence.

In the untendered witness statement filed by Torvor Horve on 13th June, 2019, he confirmed that he did not witness the incident of assault but arrived at the scene later and took the bicycle from a certain woman whose name he did not know but can identify if he sees him.

The court is tempted to believe that, the woman referred to in the statement could be the Yevu referred to in the evidence of PW1 who prosecution could not call as a witness.

CONCLUSION

To secure conviction both under section 69 and 84 of the criminal offences Act, it is necessary for prosecution to adduce sufficient evidence or call witnesses to prove causation by the accused persons.

In a criminal action, the threshold for the prosecution as established in Section 11(2) of the Evidence Act (supra) is a prove beyond reasonable doubt as to the guilt of the accused.

In this particular case, the prosecution failed to call the material witnesses and the evidence put before the court failed to meet the standard to warrant conviction of the accused persons.

In the circumstance, the accused persons are acquitted and accordingly discharged.

(sgd.)

NELSON DELASI AWUKU

MAGISTRATE