

IN THE DISTRICT COURT, DZODZE HELD ON THE 23RD OF NOVEMBER, 2022
BEFORE HIS WORSHIP NELSON DELASI AWUKU DISTRICT MAGISTRATE.

Case No. B4/6/21

THE REPUBLIC

VRS

MAWULI ADZIGBLI

JUDGMENT

PARTIES

COMPLAINANT PRESENT

ACCUSED PRESENT

REPRESENTATION

CHIEF INSPECTOR HAMID MOHAMMED FOR PROSECUTION PRESENT

BACKGROUND

The accused was arraigned before this Court on 29th September, 2020 on a charge of assault contrary to Section 84 of the Criminal Offences Act, 1960 (Act 29).

BRIEF FACTS

The brief facts as attached by the Prosecution states that the complainant Charity Gadri is a trader and resides in Wuti near Tadzewu in the Ketu North Municipality together with the accused person.

The Prosecution stated that on the 21st of February, 2020 when both parties appeared before the court in a pending civil suit, the accused pushed the complainant and was warned to desist from such act.

The Prosecution stated that later on the 13th of March, 2020 the complainant and the accused person attended court and while both were on the way to the house the accused assaulted the complainant by stating to her as follows;

“You think you are a woman who will live on the soil of Wuti. I will show you”.

The Prosecution stated that the complainant reported the matter to the Police and the accused was subsequently arrested.

The Prosecution stated that the accused denied the offence in her investigation caution statement and was arraigned before this Court over a charge of assault.

PLEA OF ACCUSED

The accused pleaded not guilty to the offence when the charge and particulars of the statement of offence was read and interpreted to her and was admitted to bail

The case was referred for settlement considering its nature but settlement failed.

THE CASE OF PROSECUTION

The prosecution called three witnesses including the complainant to prove his case.

PW4 the investigator could not appear to give evidence. His witness statement earlier filed was tendered through the accused.

In her evidence to the Court, the complainant, first prosecution witness stated that she initiated a civil action against the accused and when they both attended court on 21st February, 2020, the accused pushed and assaulted her by stating to her as follows;

“You think you are a woman who will live on Wuti soil. I will show you”.

PW1 stated further that, on the 13th of March, 2020 when they were both in court, the accused person repeated the same words to her and when she brought that to the attention of the court the accused was reprimanded.

PW1 stated that on the same day when they got to their village, the accused walked towards her when she was about to alight from her motor bike and repeated the same words to her.

PW2, Ransford Dadziezor testified as an eye witness and gave evidence in corroboration of the occurrences as narrated by PW1.

PW3, a commercial motor rider gave evidence and stated that he picked PW1 and PW2 from Dzodze to Wuti on his motor bike.

PW3 stated that upon reaching the destination, the accused person was standing in front of her house which is opposite the complainant’s house and she issued the following words against the complainant;

“is it not me that you are facing, you will see”.

PW3 stated further that PW1 requested him to turn and he took her to the Dzodze Police Station.

CASE OF ACCUSED

In his evidence the accused stated that she is a cousin to PW2 husband of the complainant and that they all live in the same neighbourhood.

The accused denied the allegations against her and stated that sometime in 2019 she planted cassava on their family land behind the house of the complainant’s husband.

The accused stated that the complainant’s husband uprooted the cassava and plantain suckers she planted and threw them away.

The accused stated that when she complained, he threatened to beat her so she reported the matter to one Dotsey Agbemazior a Unit Committee member who accompanied him to the scene and saw the damage caused by the Complainant’s husband.

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.*

Section 13(1) of the Evidence Act 1975 (NRCD 323) provides the extent of proof or the burden on the prosecution in a criminal action thus;

“In 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”.

The extent of the onus on the defence on the other hand is provided by section 13(2) of the evidence Act 1975 which states;

“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”. 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 kinds 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.**

ANALYSIS AND EVALUATION OF EVIDENCE

For 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 her or exciting her to anger, the accused did forcibly touch PW1.

The evidence of PW1 which was corroborated by PW2 was that, on the 21st of February, 2020 when they both attended court in respect of the civil action initiated by her, she was pushed by the accused person without any cause.

The defendant simply denied in her evidence-in-chief that, she did not insult or engage in any offensive conduct against the complainant.

For a person to be liable in a criminal offence it must be established beyond reasonable doubt that the incident over which she has been charged actually occurred and same can be attributed to her actions.

The incident on 21st February, 2020 is alleged to have occurred in court and the complainant's witness PW2 who accompanied her to court testified as an eye witness.

The accused denied assaulting the complainant but the duty on her goes beyond the simple denial in her witness statement to raise issues or call evidence to put the assertion of the complainant and her witness in doubt.

The facts of the incident of 13th March, 2020 concerning what the accused is alleged to have said to the complainant do not support the offence of assault as defined in the criminal offences Act.

Considering the evidence of the prosecution against the accused on the events of 21st February, 2020, the court deems the burden of proof to have been sufficiently discharged and the accused is accordingly convicted.

The accused is to enter into a recognizance without sureties to keep the peace and be of good behavior for three months in default of which she is to serve a one month term in prison.

NELSON DELASI AWUKU

MAGISTRATE