

CORAM: HIS WORSHIP MR. MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, BOLGATANGA IN THE UPPER EAST REGION OF GHANA, ON MONDAY, THE 28TH DAY OF NOVEMBER, 2022.

CASE NO. UE/BG/DC/4/5/2022.

THE REPUBLIC

VRS.

ABUKARI ANABA

TIME: 10:14AM

ACCUSED PERSON -- PRESENT

INSPECTOR REGINA ALI AGONG FOR THE REPUBLIC PRESENT

RICHARD ADAZABRA, ESQ. FOR THE ACCUSED PERSON PRESENT

JUDGMENT

Introduction

1. The accused person was brought or arraigned before this court on the **20th day of December, 2021** for the offence of Assault contrary to Section 84 of the Criminal and Other Offences Act, 1960 (Act 29) as amended. The accused person pleaded **NOT GUILTY** to the charge against him. On the 21st day February, 2022, the court in consideration of the relationship between the accused person and the complainant as husband and wife with two children referred the case to the court connected

alternative dispute resolution pursuant to section 73 of the Courts Act, 1993 (Act 459) as amended. The said section provides that:

“Any court, with criminal jurisdiction may promote reconciliation, encourage and facilitate a settlement in an amicable manner of any offence not amounting to felony and not aggravated in degree, on payment cases of compensation or on other terms approved by the court before which the case is tried, and may during the pendency of the negotiations for a settlement stay the proceeding for a reasonable time and in the event of a settlement being effected shall dismiss the case and discharge the accused person.”

However, the complainant and the accused person were unable to resolve the matter out of court, so the court proceeded to determine the case on its merit.

Case of the Prosecution

2. The Prosecution case as can be gleaned from the brief facts attached to the charge sheet filed on 20th December 2021 is that the Complainant and the accused person are husband and wife. The complainant and the accused person live together at Winkogo with their two children. On 14/11/2021 at 0800 hours, the accused person received food from his mother and started eating with one of his children leaving the other. The complainant on seeing this confronted the accused person for denying the other child the food and decided to prevent the other from eating with him which led to a heated argument between them. In the cause of the confrontation, the accused person pounced on the complainant and beat her up mercilessly. The complainant sustained some contusions on her face so she bolted and lodged a complaint to the police and a police medical report was issued to her to seek medical treatment at any Government Hospital. The accused person was later arrested to

assist investigation and was thereafter charged with the offence as per the charge sheet.

Case of the Defence/Accused Person

3. Accused person in his defence says that about three weeks before the incident, the complainant had not been preparing food in the house. Accused says on the day of the incident his mother prepared food for the kids but the complainant said the children will not eat the food. Accused says he asked her why they should not eat and the complainant told him he should not bewitch her that it was his mother who cooked and not her. Accused says he picked up the younger child to feed him but the complainant came out and says the child will not eat the food. Accused says as a result of that the elderly child refused to eat the food. Accused says he tried to feed the younger one but the complainant knocked his hand and the food fell. Accused says thereafter he pushed the complainant to go back and she fell. Accused says that when the complainant stood up she slapped him but he did not touch her. Accused says he stood up to enter the room and the complainant kicked the food and it poured on the ground. Accused says the complainant followed him into the room and held his pant together with his penis and testicles and was pulling it. Accused says when his penis was been pulled, it was paining or hurting him, so he was struggling to free himself and his elbow hit the face of the complainant. After that he went out with the kids to a barbering shop and when he returned the complainant left with a motor king thereafter her family members came to the house with a motor bike that their father sent them that they should come with their sister. Accused says the complainant reported the matter to the police and he was arrested but later granted police enquiry bail. Accused says after he was released from police

custody, he realized that his GHC7,500.00 given to him to buy a motor bike got missing after his wife had broken into the room to pick up some items.

Burden of Proof

4. In a criminal case where an accused person pleaded not guilty, it is the duty of the prosecution to prove the guilt of the accused person. Article **19 clause (2)(c) of the 1992 Constitution of Ghana** provides that:

—A person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty.¶

The proof required in a criminal case is proof beyond reasonable doubt. **The Evidence Act, 1975 (NRCD 323)**, outlines this in subsections 11(2) and 13(1) and Section 22 as follows:

11(2) —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 could find the existence of the fact beyond a reasonable doubt.

13(1) In any 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.

Section 22: 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

thereupon in the case of a rebuttable presumption the accused need only raise a reasonable doubt as to the existence of the presumed fact||.

5. The Supreme Court in a unanimous decision in the case of *Abdulai Fuseini v The Republic*, reported in [2020] Crim LR, page 331 reiterated and affirmed the basic philosophical principles underpinning criminal prosecution in our courts as follows:-

—In criminal trials, the burden of proof against an accused person is on the prosecution. The standard of proof is proof beyond reasonable doubt. Proof beyond reasonable doubt actually means —proof of the essential ingredients of the offence charged and not mathematical proof.|| **Emphasis supplied**

6. In the case of *Miller Vrs Minister of Pensions* [1947] 2 ALL ER 372 at 373 Lord Denning (as he then was) explained proof beyond reasonable doubt as follows:

“It need not reach certainty but it must carry a high degree of probability, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice ... If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the 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.|| **Emphasis supplied**

7. In the case of *Dexter Eddie Johnson Vrs the Republic* [2011] SCGLR 601 Dotse JSC discussed the principle of proof beyond reasonable doubt in some detail and cited

the case of *Woolmington Vrs DPP* [1934] AC 462 where Lord Sankey made the following statement:

—Throughout the web of the English Criminal Law, the golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt – if at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner – the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.|| See the case of: ***Commissioner of Police Vrs Isaac Antwi*** [1961] GLR 408 where the Woolmington principle was applied.

8. In the case of *Lutterodt vrs C. O. P.* [1963] 2GLR 429 holding 3 sets out 3 stages that a court must use to examine the case of the defence in criminal cases, as follows:

(3) *—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. This is often referred to as the three tier test.*

9. See also the following cases on the burden of proof in criminal cases: Frimpong @Iboman v The Republic [2012] 1 SCGLR 297, Gligah & Anr v The Republic [2010] SCGLR 870, Tetteh v The Republic [2001-2002] SCGLR 854, Francis Yirenkyi v Republic [2017-2020] 1 SCGLR 433 at 457 and 464-466, just to mention a few.

The Ingredients of the Offence of Assault, Evaluation of Evidence and Legal Analysis

10. Offence of Assault is governed by sections 84 to 88 of Act 29. Section 84 creates the offence of Assault and makes it a misdemeanor. Section 85 makes provision for different kinds of Assault while sections 86 to 88 provide for the definitions of the different kinds of Assault. Section 84, 85 and 86(1) of Act 29 provides as follows:

Section 84- —A person who unlawfully assaults another person commits a misdemeanor”.

*Section 85- (1) "Assault" includes—(a) **assault and battery**; (b) assault without actual battery; and (c) imprisonment. (2) Every assault is unlawful unless it is justified on one of the grounds mentioned in Chapter 1 of this Part.*

Section 86(1)- —A person makes an assault and battery upon 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, he forcibly touches the other person, or causes any person, animal, or matter to forcibly touch him.||

In the case of **Asante vrs. The Republic [1972] 2 GLR 177**, it was held that Proof of the assault must be established by evidence of conduct of the accused as falling within one or other of the definitions of assault in sections 86, 87 and 88 of Act 29.

From the provisions of the law on assault stated above, the following elements of the offence must be established

Wrongful Act/ Actus Reus

- a)** The wrongful act or prohibited physical act is unpermitted contact without consent.

In other words, once the contact is unpermitted, there is notional forcibility. The requirement of “forcible touching” in section 86(1) does not mean that the contact should have been done vigorously or violently.

“Forcible touching” looks to the lack of consent.

- b)** Proof of consent may undermine the actus reus – the reason is that if the contact is permitted then more likely than not, nothing wrong has been done.

Mental Element/Mens Rea

- a)** The required mental element, mens rea, is intentional conduct. In the case of assault of battery, the intentional conduct must be with the intention of causing harm, pain, or fear, or annoyance to the person assaulted or exciting him to anger. The intentional conduct was done without the consent of the complainant.

- b) There should be the intention to do the conduct (that is the physical act) complained about and there should be the intention for the conduct complained about to cause harm, pain, fear, or annoyance to the person.

Conduct complained about should be Unjustifiable under law.

11. Section 85 (2) provides that

“An assault is unlawful unless it is justified on one of the grounds mentioned in Chapter One of this part”

From this provision or section 85 (2) of Act 29 the prosecution ought to adduce evidence to establish that the conduct of the accused person is not justified under law. The forcible touching complained about should be unlawful in the sense that the conduct did not fall within one of the grounds recognized under the law as justifying the use of force. The chapter one referred in **section 85 (2)** is made up of **Section 30 to Section 45** as the grounds for the justification of the use of force. **See the case of Asante v. The Republic [1972] 2 GLR 177.**

Sections 31 and 38 of Chapter one of Part two of Act 29 provides as follows:

“31. Grounds on which force or harm is justified- Force may be justified in the case and in the manner, and subject to the conditions, provided for in this Chapter, on the grounds (a) of express authority given by an enactment; or (b) of authority to execute the lawful sentence or order of a Court; or (c) of the authority of an officer to keep the peace or of a Court to preserve order; or (d) of an authority to arrest and detain for felony; or (e) of an authority to arrest, detain, or search a person otherwise

than for felony; or (f) of a necessity for the prevention of or defence against a criminal offence; or (g) of a necessity for defence of property or possession or for overcoming the obstruction to the exercise of lawful rights; or (h) of a necessity for preserving order on board a vessel; or (i) of an authority to correct a child, servant, or other similar person, for misconduct; or (j) of the consent of the person against whom the force is used.

38. Unlawful fights- (1) A force used in an unlawful fight cannot be justified under a provision of this Act. (2) A fight is an unlawful fight in which a person engages, or maintains, otherwise than solely in pursuance of a matter of justification specified in this Chapter.

12. In the instant case, Prosecution testified and called three witnesses, thus Atanga Akulka and D/CPL Wisdom Bansah. The evidence of the prosecution is to the effect that Accused person's mother prepared food and served the Accused person. The accused person was eating the food with one child leaving the other. As a result the complainant asked the accused not to feed the child since he denied the second child. The complainant therefore picked up the child to prevent him from eating the food. The accused person pounced on the complainant and beat her for preventing the child from eating the food. As a result of the beating the complainant sustained injuries. In support of its case, the prosecution tendered in evidence Caution Statement of the accused as **Exhibit A** and Charge Statement as **Exhibit B**. The Medical Report was also tendered in evidence as **Exhibit C**.

In the accused person's Caution Statement (**Exhibit A**) dated 15/11/ 2021, the Accused person stated as follows:

"On 14/11/2021 at about 8:30am, my mother prepared food so I decided to eat the food with my children so as I try to feed my child, the complainant hit my hand and the food poured on the ground. She repeated this about three times. Suddenly she slapped me without any cause so I got angry and pushed her to the ground, so the complainant got up and held my trouser and further held my penis so I slapped her and she fell down."

Also, in the accused person's Charged Statement (Exhibit B) dated 26/11/2021, the Accused person stated as follows:

"On 14/11/2022 at about 8:30am my mother prepared food and served me so I decided to eat with my children but as I try to feed them, the complainant hit my hand and the food fell down. She did this severally and lastly slap me without any cause. Due to the complainant's action, I was angered, got up and pushed so she also held my trousers and penis, so due to the intense pain, I slapped her and she fell down."

13. On the other hand, the accused person testified himself and called two witnesses. Accused in his defence testified that he was feeding the younger child with the food prepared by his mother but the complainant knocked his hand and the food fell. Accused says thereafter he pushed the complainant to go back and she fell. Accused says that when the complainant stood up she slapped her but he did not touch her. Accused says he stood up to enter the room and the complainant kicked

the food and it poured on the ground. Accused says the complainant followed him into the room and held his pant together with his penis and testicles and was pulling it. Accused says when his penis was been pulled, it was painning or hurting him, so he was struggling to free himself and his elbow hit the face of the complainant. The two witnesses called by the accused confirmed that the accused the complainant fought on 14th November, 2021. They testified that the complainant held the penis and testicles of the accused but they did not see the accused person slapping or beating the complainant.

14. From the evidence of the prosecution and the defence on record, this court finds as a fact as follows: The Complainant and the Accused person are husband and wife with two children. That on 14th November 2021, the accused person mother prepared food and the Accused was feeding the children with the food. That the complainant prevented the children from eating the food and this led to a misunderstanding between the complainant and the accused person. The complainant and the accused person fought and the complainant sustained some injuries. In other words, the court finds as a fact that the complainant and the accused person engaged in unlawful fight.

15. It must be noted that the court finds the conduct of complainant in preventing the accused person from feeding the children with the food prepared by her mother in law unreasonable. However, this does empower the accused to assault or beat the complainant. The misunderstanding between the accused and the

complainant could have been resolved without a fight. The accused admitted pushing the complainant and she fell. He also admitted slapping the complainant. This was obviously done without the consent of the complainant and the complainant in turn allegedly slapped the accused well as held his trouser with the penis. This court is unable to believe the accused person's story that the complainant held his penis and testicles and in his attempt to free himself his elbow hit the face of the complainant. On the contrary, the accused stated categorically in his Caution Statement and Caution Statement (**thus, Exhibits A and B respectively**) as quoted above that he pushed the complainant and she fell down. He also stated in the said statements that he slapped the complainant. The Caution Statement and the Charge Statement were admitted in evidence without objection from the Counsel for the Accused person.

16. The inference that can be made is that the pushing and the slapping were done intentionally without consent of the complainant. The law is that a person who without the consent of another person and with the intention of causing harm, pain or fear or annoyance to the person or exciting the person to anger or that person forcibly touches the other person commits an assault and battery. See section 86(1) of Act 29. The least touch of a person in anger to cause pain, harm, fear, or annoyance to that person or of exciting the other person to anger that person forcibly touches the person amounts to Assault and battery. The conduct of Accused person in pushing and slapping or beating the complainant in the instant case is intended to cause harm, pain, or fear, or annoyance to the

complainant or exciting her to anger. In other words, the accused by his conduct unlawfully assaulted the complainant.

17. Besides, it is noteworthy that the Accused and the Complainant were engaged in unlawful fight. The law is that a force used in an unlawful fight cannot be justified under the provisions of Act 29. See section 38 of Act 29 *supra*. Also the explanation of the accused person do not falls within the grounds on which force or harm is justified as provided for under Act 29. Accordingly, the prosecution has proved to the satisfaction of this court that the accused person assaulted the complainant without her consent or any justification in law.

Conclusion

18. Having examined the whole evidence of the prosecution and Defence on record, this court is of the considered opinion that the prosecution has discharged its burden of proof beyond reasonable doubt regarding the charge of Assault against the accused person. Thus, the ingredients of the offence of Assault were proved beyond reasonable doubt. In other words, apart from the defence's explanation, this court is satisfied on a consideration of the whole evidence that the accused is guilty of unlawfully assaulting the complainant. Accordingly, the accused person is hereby found guilty of Assault contrary to section 84 of the Criminal and Other Offences Act, 1960 (Act 29). The accused person is convicted for the crime of Assault contrary to section 84 of Act 29.

Mitigation of sentence

19. Counsel for the Accused Person pleaded for leniency for the Accused person and that the court should temper justice with mercy. Counsel submitted that the accused person is a first time offender and that he was feeding his children when the incident occurred. Counsel submitted that the court should exercise its discretion and impose a non-custodian sentence or caution and discharge the accused person so that the accused can continue his good works.

Sentence

20. The practice where men beat or assault their wives or women when there is a misunderstanding between them should not be countenanced. So a punishment that will deter other likeminded men in engaging in similar act or conduct must be imposed. And now therefore, considering the submission by the learned counsel for the accused person for mercy or leniency, the fact that the accused person is a first time offender as well as the fact that the accused person wasted the time of this court, the Accused person is hereby sentenced to seven (7) days imprisonment. In addition, the accused is sentenced to pay a fine of fifty (50) penalty units (GHC600.00) and in default six months imprisonment with hard labour. It is further ordered that the accused person shall pay the sum of GHC2,000.00 to the complainant as a compensation for the injury the complainant sustained.

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HIS WORSHIP MAWUKOENYA NUTEKPOR
(DISTRICT MAGISTRATE)

