

**IN THE DISTRICT COURT HELD IN THE WESTERN REGION ON TUESDAY AT AGONA
NKWANTA ON THE 1ST OF NOVEMBER, 2022 BEFORE HIS WORSHIP SIDNEY BRAIMAH
DISTRICT MAGISTRATE**

COURT CASE: B9/06/2022

THE REPUBLIC

VRS

JOSEPH DADZIE @ K.K

JUDGMENT

The accused person is charged with assault, contrary to sections 84 Criminal and Other Offences Act, 1960. (Act 29) on count one and causing unlawful damage, contrary to section 172 of Act 29 on count two. The accused person pleaded not guilty to the charges preferred against him.

The facts of the case

The families of accused person and the complainant herein are natives of Ewusiejoe and litigants before Ahanta Traditional Council in respect of a chieftaincy stool in Ewusiejoe. In February, 2022, the family of the accused person decided to bury one of their deceased members at the Royal Cemetery and was fiercely resisted by the complainant's family. Despite the protest by complainant's family; accused person and some members of his family dug the grave at the royal cemetery and left for home.

Sometime later in the same day, the grave was filled and covered with sand. The accused person suspected complainant of engaging others to cover the grave; went to the place of business of complainant and accused her of causing the grave to be covered. A confrontation ensued between accused person and complainant and it resulted in accused person picking up a piece of cement block to cause damage to a cement wall valued Gh¢200.00. Accused person, in fury proceeded to assault and subject complainant to severe beatings. In the course of assaulting complainant; accused person used cement block to cause damage to complainant's Techno Spark A1 mobile phone valued Gh¢1,000.00. Subsequently, complainant detected loss of Gh¢7,000.00 in her possession during the course of the assault on her. A complaint was lodged with the police; leading to the arrest of accused person and his arraignment before this court after the close of investigation.

The case for the prosecution

The evidence adduced by the prosecution in support of their case against accused person is that the accused person and members of his family are litigating with complainant and her family for Ewusiejoe Kokwaado Stool before Ahanta Traditional Council at Busua. In the course of the litigation; complainant, PW2 and her family member had notice on 4/3/22 of the impending burial of one Ama Soli, a relative of accused person at the royal cemetery at Ewusiejoe. The family of the complainant organized to resist the burial at the royal cemetery and same resulted in breach of the public peace at the cemetery. According to the prosecution, PW1 called her son, PW2 to inform him of the confrontation between the two families. PW2 rushed to Ewusiejoe to PW1's place of work and handed her his mobile phone and Gh¢7,000.00 cash for safe keeping. At about 2:00pm on the same day; accused person, without provocation by complainant; rushed to the place where complainant sells food; forcibly opened her

shop and causing damage to it. Accused person then used a piece of cement block to hit complainant; held and tightly squeezed the neck of the complainant and threw her on the ground. Accused person thereafter threw cement block at the table on which complainant sells her food; causing damage to exhibit B, her Techno Spark A1 mobile phone valued Gh¢500.00. Subsequently, complainant realized that Gh¢7,000.00 cash she kept in her underwear was missing. PW2 later arrived at the scene and was informed about the damage to his mobile phone and the loss of the money.

PW3, the investigator assigned to the case issued a Medical Form to PW1 to attend hospital for medical treatment and examination. The Medical Form was returned to the investigator duly endorsed by Physician Assistant. Same was admitted and marked exhibit C without objection after the content was read and interpreted to accused person. Photographs of the damage caused by accused person to the wall were also admitted in evidence and marked exhibit A series. In the course of the investigation, PW3 arrested accused person and recorded his investigation cautioned statement. Same was admitted and marked exhibit D1 without objection after same was read and interpreted to him in court. On instruction from his superiors, PW3 charged the accused person with the offences preferred and took her charged cautioned statement. Same was admitted and marked exhibit D2 without objection after it was read and interpreted to him in court. The accused person was subsequently arraigned before this court for trial.

The case for the accused person

The evidence adduced by accused person in his defence is simply that, his aunt Ama Sofi died and that the family decided to bury her in the royal cemetery in Ewusiejoe as of right. Pursuant to the decision of the family, accused person and other family

members were detailed to dig the grave for her burial at the royal cemetery. On notice of the digging of the grave; the complainant; whose family is litigating a chieftaincy dispute with the family of accused person; led thugs to attack them but they intimidated from attacking them. The complainant and her thugs were lingering at the cemetery after the grave was dug whilst accused person and his family members left the cemetery. Accused person and DW1 went back to the cemetery later on to find that the grave dug had been filled with sand. Suspecting the complainant; accused person went to her place of business and confronted her over her conduct. Complainant and accused person were soon engaged in verbal vituperation. In the course of the heated exchanges between them; accused person picked a piece of cement block and used it to cause damage to the wall at the scene. Witnesses to the incident quickly dragged accused person away from the scene. Accused person and his witnesses denied physical assault on complainant or causing damage to the mobile phone in issue.

In criminal trials, the burden of proof solely rests upon the prosecution to prove its case beyond reasonable doubt. The prosecution must produce the evidence to meet the requirements of **Section 11(2) of the Evidence Act, NRCD 323, 1975** which provides that:

“In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, required 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”.

Again **section 13(1)** which provides:-

“In any civil or criminal action, the burden of persuasion as to the commission by the party of a crime which is directly in issue requires proof beyond reasonable doubt as to guilt”.

Section 13(2) however requires the accused person to raise only reasonable doubt as to guilt as follows:-

“(2) 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 or which is essential to guilt requires only that the accused raised a reasonable doubt as to guilt”.(See also section 11(3) of NRCD 323).

The afore-stated rules and principles on the burden of proof has been set out in legion of case including the decision in **COP v Antwi [1961] GLR 408**, the Supreme Court held that:-

“The fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything if he can merely raise a reasonable doubt as to his guilt he must be acquitted”.(See also **Amartey v Republic [1964] GLR 256 at 295 SC**, **COP v Antwi (supra)**, **Gligah & Atiso v The Republic [2010] SCGLR 870 Holding (2)**, **Frimpong alias Iboman v Republic [2012] 1 SCGLR 297 at 313**).

Accordingly; to secure conviction of accused person on a charge preferred absent him, the prosecution is enjoined to establish all the essential ingredients of the offence beyond reasonable doubt.

For brevity and the nature of the evidence on the record; the court shall proceed to determine the charge on preferred in count two.

On count two, section 172(1) of Act 29 states the following in respect of the charge:

“A person who intentionally and unlawfully causes damages to property

- (a) To a value not exceeding One Million cedis, or without pecuniary value, commits a misdemeanor.
- (b) To a value exceeding One Million, commits a second degree felony”.

Accordingly, for the prosecution to secure conviction against the accused person, it must be established beyond reasonable doubt that the accused person caused the damage intentionally and the damage was unlawfully. In determining count two, the court takes notice of the estimated value of the damage to the mobile phone as stated in the particulars of offence and finds that accused person is deemed be charged on section 172(1)(b) of Act 29.

On the record; the accused person was unequivocal that he caused damage to the wall and mitigated his actions by repairing the wall after the incident. The court finds that the evidence adduced by accused person of the alleged provocation by the conduct of complainant cannot afford him a defence to a charge of causing unlawful damage. Provocation is only a defence to a charge of murder. The court does not however discount the mitigating consideration of provocation in sentencing.

The judicial confession and the confession statement contained in exhibit D1 in respect of the damage to the cement wall is admissible as proof against him. Having confessed the offence in exhibit D1 and subsequently in his oral evidence; the court needs no other evidence to prove the charge of causing unlawful damage to the cement wall in absence of any evidence to the contrary.

In respect of the charge of causing unlawful damage to afore –described mobile phone, PW1 stated in his witness statement that the mobile phone in issue was on the table used to sell her food at the time of the incident and that accused person threw a piece of

cement block at the table and caused damage to the mobile phone. It is important to note that PW1 was categorical the piece of the thrown cement block did not strike the mobile phone itself but the table. PW1 however resiled from that evidence under cross-examination to assert that it was rather the damaged wall fell on the table and on the mobile phone. I reproduce the relevant portion.

Q. You alleged I poured your Kenkey and fried fish. Who was present?

A. Many people were present. One Awiaye, Brechie and Osipole were present.

Q. I am putting it to you that hour kenkey and fish did not fall down.

A. They did

Q. Did you take a photograph?

By Court

The witness has refused to answer the question.

Sgd.

Q. Where was the mobile phone at the time of the incident?

A. It was on the table.

Q. Did the wall fall on the table or on the ground?

A. It fell on the table and on the ground.

It is disturbing for PW1 to adduce such material inconsistencies in her evidence regarding the damage to the mobile phone. According to PW1, accused person caused to the wall or her shop when he entered the premise. It was followed by attacking her with cement blocks and proceeding with the squeezing of her neck and the throwing of a piece of cement blocks to hit her table on which the mobile phone was placed. It can therefore be gleaned from the evidence adduced by PW1 in her witness statement that

the mobile phone was damaged by the cement block that was allegedly used to strike her table.

Granted without admitting that the damaged wall fell on the table; complainant's Kenkey and fish for sale and the mobile phone in issue as alleged; would it not be highly probable that the complainant or the investigator would have added the stated items and value of the afore-mentioned items as part of the particulars of offence, facts of the case and in her witness statement filed to support the case against accused person? Would it not also be highly probable that a photograph of the smashed or damaged table would have been taken as an exhibit?

The court also finds it interesting to note that PW2 under cross-examination stated that on arrival to the scene after the incident; PW1 told him that accused person caused damage to her property. The skepticism of the court in the issue adduced by PW1 is reinforced relation to the evidence adduced by PW2 that the mobile phone in issue belongs to him and not PW1. Accordingly, one would have expected PW2 to refer to his damaged mobile phone as his property under cross-examination rather than his emphasis on the damage to PW1's property.

On the same issue; the court examines exhibit B itself. It can be detected that the screen of the mobile phone is shattered with two identifiable and concentrated points of impact. It also can be detected that the battery in the mobile phone is protruding and inflated causing the screen to be elevated out of the phone cover. Again, the back of the mobile phone is indented by three identifiable straight shape lines of concentrated impact made by a sharp metal object like an edge of a cutlass. On the examination of exhibit B, the court finds that such precise and incidence of points of concentrated areas of damage to the screen of mobile phone and at the back of mobile phone could not

have been reasonably caused by cement blocks whether by falling on it or being thrown at it or falling off the table. Granted without admitting that the wall fell on the mobile phone; it does not explain the two identifiable points of damage to the screen. The court finds that a fall of the wall and a single throw of a piece of cement block at the mobile phone are inconsistent with the three straight lines stripes deeply imbedded at the back of the mobile phone and the two concentrated points of impact on the screen. The extent of damage; particularly the concentrated points of damage strongly suggested that the damage were intentionally caused by a sharp object. The court finds that evidence adduced by the prosecution in respect of the damage to exhibit A is deceptive and mala fides. The court therefore disregard the evidence adduced in support of the damage to the mobile phone and convicts accused person of causing unlawful damage; to wit the cement wall; contrary to section 172 of Act 29.

In respect of count one, sections 84 and 86 of Act 29 read as follows:

"Section 84— Assault.

Whoever unlawfully assaults any person is guilty of a misdemeanor.

Section 86— Definition of and Provisions Relating to Assault and Battery.

"(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."

The essentials of the offence of assault and battery that needs to be established by the prosecution is that the accused person herein without the consent of the complainant and with the intention of causing harm, or pain, or fear, or annoyance to the person, or to excite the person to anger, or that person forcibly touches him.

In evaluating count one; the court takes cognizance of the solitary evidence adduced by PW1 of battery inflicted on her by accused person. The prosecution supports that assertion with Police Medical Form endorsed by a Physician Assistant. The reliance of the court on content of exhibit A is further grounded in criminal procedure, where the content of the Medical officer's report in respect of the extent of injuries or the nature of injuries sustained is **admissible as fact** in a District Court: I refer to section 121(2) of Criminal Procedure Code, 1960 [Act 30].

"Any document purporting to be an original report under the hand of a qualified medical practitioner relating to the nature or extent of the injuries of any person certified to have been examined by the practitioner, may, if it is directed to the court or is produced by any police officer to whom it is addressed or by someone acting on his behalf, **be admitted as evidence of the fact therein stated in any trial before a District Court.**"

In the instant case; the Medical Report was not endorsed by a certified Medical Officer and therefore the content of the Medical Report cannot be **admitted as evidence of facts**. Indeed, the rules of evidence and procedure do not afford Physician Assistant the capacity under section 121(2) of Act 30 to endorse medical form as Medical Officer. Although, it may be admissible as bare evidence relating to alleged injuries sustained by PW1, it attracted little or no weight evidence that it is hearsay evidence by a declarant who is available as a witness but failed to appear in court as a witness for the prosecution. (See Sections 118(1) (b) (1) and 124 of the Evidence Act, NRCD 323.

Again, the court finds that the alleged assault is capable of positive prove given the alleged independent and material witnesses to the incident mentioned by PW1 and yet prosecution elected to rely on PW2 who was not present at scene at the time of the

incident. The reliance by the prosecution on sole evidence of a discredited witness to establish assault with battery was untenable and less credible.

The court however takes notice of the evidence on record adduced by accused person in his investigation caution statement that bind accused person to count one. The court reproduces a portion of exhibit D1 in extensor for effect.

“I suspected the complainant and her thugs to have filled the grave with sand so I went straight to Kenkey selling place at Ewusiejoe and met her selling her Kenkey. I told her that we are ready to remove the sand they used in filling the grave because it was easy task for us and she started to insult me. I insulted her back and it degenerated into exchange of insults between complainant and I. In the course of exchange of insults; I became furious and picked a piece of cement block from the scene. I used the piece of cement block to cause damage to the wall at complainant’s selling place”.

From the tenor of the statement volunteered by accused person; it can be conclusively inferred that accused person was incensed by the filling in of the grave and that fuelled his suspicion of the hand of complainant in the intransigence resulting in the ensued confrontation between accused person and complainant. The accused person cannot expect the court to believe that he went to PW1’s place of business in a calm, deliberative or somber manner to inquire whether PW1 was responsible for the filling of the grave. By his own account, he made a rushed; excited and angry entry to complainant’s place of business with the intention of accusing her or give her his piece of mind. The entry of accused person to complainant’s place of business was intended to cause fear or annoyance to complainant or excites her to anger. Indeed, by his previous statement to the police quoted above; complainant became angry by the accusation of accused person at the scene and it resulted in the exchanges of insults between them and that he was restrained from rushing of complainant. Without more,

the conducts of accused person suffice for assault without battery contrary to **sections 85(b) and 87 of Act 29. I refer to section 87(1) of Act 29:**

“87. Assault without actual battery

“87(1) person makes an assault without actual battery on another person, if by an act apparently done in commencement of an assault and battery; the person intentionally puts the other person in fear of an instant assault and battery”.

Accordingly, the prosecution is not required to further establish that accused person forcibly touched complainant without her consent. In **Bruce-Konduah v The Republic [1967] GLR 611** the court threw out the defence raised by the accused person on appeal to his conviction to a charge of assault on the grounds that he did not touch the victim in the act. The court held that the bare act of chasing another person in a quarrel with an intention of committing battery or causing another to be apprehensive was sufficient to constitute assault. The court therefore convicts accused person on count one; to wit, assault; contrary to section 84 of Act 29.

(SGD.)

H/W SIDNEY BRAIMAH

(MAGISTRATE)