

**IN THE DISTRICT COURT HELD AT ABURI, EASTERN REGION ON THE 17TH DAY
OF NOVEMBER 2023 BEFORE HER WORSHIP RHODA K. DONKOR (MRS)**

COURT CASE NO. B7/13/2023

THE REPUBLIC

VRS

MUSTAPHA ISSAH

JUDGEMENT

The Accused Person stand charged on three counts of:

- (a) Assault Contrary to **Section 84 of the Criminal Offences Act, 1960 (Act 29)**
- (b) Resisting Arrest Contrary to **Section 226 of the Criminal Offences Act, 1960 (Act 29)**
- (c) Assault of a Public Officer contrary to **Section 205, of the criminal offences Act, 1960 (Act 29)**. He pleaded not guilty to all three counts.

The brief facts of the case are that, the Complainant is a gardener and the Accused a trader and resides in Aburi. That the Complainant has a friend who lives in the same house with the Accused. On 24th day of July, 2023 at about 7: 30 am, the Complainant went to his friend in the house and met the Accused. Complainant greeted the Accused but the Accused responded that he should not greet him again. However, the Complainant retorted that he will greet him anytime he sees him. Accused started to insult Complainant amidst abusive words and also Slapped Complainant. That the Accused mother and other tenants in the

house were present. The Complainant then lodged a complaint with the Police and a Police medical form was issued to Complainant to attend hospital which he returned duly endorsed by the medical doctor. That the Accused resisted arrest by General Corporal Isaac Wussah and Detective Constable Emmanuel Asiamah Yeboah when they went to effect his arrest, and in the process, assaulted Detective Constable Emmanuel Asiamah Yeboah. After investigations, Accused was charged with the offences as stated on the charge sheet and arraigned before this court.

The burden is on the Prosecution to prove the guilt of the Accused beyond all reasonable doubt as provided for in **Section 13(1) of Evidence Act, 1975 (NRCD 323)**. The prosecution in discharging this burden led evidence through four (4) witnesses in prove of it's case against the Accused.

The PW1 stated that his friend lives in the same house with the Accused. On the day, he went to visit his friend and met the Accused in the house. He greeted him but he warned him never to greet him again. He however ignored the warning and greeted him again. That Accused did not take kindly to it and slapped him twice. That this happened in the presence of the Accused Person's mother (PW2) and other tenants in the house.

PW2 is the mother of the Accused. She testified for both the prosecution and the Accused as (DW1). She said she was present when the PW1 came into the house and greeted the Accused. She confirmed the exchanges that took place between the Accused and the PW1 when PW1 insisted to greet Accused anytime he sees him. However, she could not confirm the assault on PW1 by the Accused.

PW3 is Detective Constable Emmanuel Asiamah Yeboah. He said he was at the charge office with the PW4, General Corpora Isaac Wussah when the PW1 came to lead them to effect the arrest of the Accused. According to the PW3, they identify themselves as Police Officers to the Accused and informed him of the reason of his arrest. However, the Accused attempted

to escape and he grabbed his hand. That the Accused struggled with him, hit him with a blow, and scratched his neck with his finger nails in his bit to escape the arrest.

The Police PW4 is the investigator. His evidence per his witness statement is that, a case of assault was reported by the PW1 against the Accused. He went with the PW3 to effect the arrest of the Accused but the Accused resisted the arrest and struggled with the PW3 scratching his neck with his fingers. That the Accused also assaulted the PW1 by slapping him when he greeted him. The exhibits tendered included cautioned statement, charged statement, medical report on PW1, and Photograph of assault on PW3.

The Accused testified and also called PW1 as (DW1) at the close of the Prosecution case. He said the PW1 has a friend in their house and anytime he comes to the house, he and his friend will mock him that he shares a room with his mother. According to him, PW1 only tries to be nice to him by greeting him whenever the friend is not around. On the day when the PW1 came to the house and greeted him, he warned him not to greet him again but he ignored the warning and greeted him again. This resulted in some exchanges between them and they wanted to fight but his mother DW1 who is a common witness to the Prosecution and Accused intervened, and he left the house. He reiterated that he did not assault PW1 nor PW3 or resisted arrest. He added that when the PW3 came to arrest him he pleaded with him but before he could finish making the statement, to allow him to follow him to the station, the PW3 held his shirt to his neck. That he could not breathe and in his bit to free himself, his fingers scratched the PW3 neck.

Section 11(2) of the Evidence Act, 1975 (NRCD323) and reiterated in the case of **Frimpong alias Iboman V Republic (2012)1 SCGLR 297** is that, in criminal actions 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 evidence on the facts beyond reasonable doubt. The Accused

on his part is required only to introduce evidence which creates reasonable doubt as to his guilt in the mind of the court regarding the prosecution's case.

Section 84 of Act 29 provides that, "a person who unlawfully assaults another person commit a misdemeanour."

Section 86 of the Act further states that "a person makes an assault and buttry on another, if without the other person's consent and with the intention of causing harm, pain or fear or annoyance to the other person or exciting the other person to anger, that person forcibly touches the other person"

To maintain a charge of assault, the prosecution must 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 forcibly touched the PW1.

Prosecution's case is that, the accused slapped the PW1 twice when he greeted him. The mother of the accused who was present and is a common witness to both prosecution and the accused, could not confirm the assault on PW1 by the Accused.

CROSS EXAMINATION OF PW2 BY ACCUSED

Q. You said you were there, did you see me slap PW1 twice?

A. No

CROSS EXAMINATION OF DW1 BY PROSECUTION

Q. In your evidence to this court you said you were present during the argument between the accused and PW1

A. Yes I was there

Q. In your witness statement to the court as PW2, you said that the accused slapped PW1 twice is that correct?

A. Not true I didn't say that

The Prosecution by their evidence could not corroborate the assault on PW1 by Accused. Again the medical report did not confirm that the assault was as a result of the bodily pains the PW1 complained of, but an impression made by the medical doctor, which this Court finds difficult to base a conviction on.

Count two pertains to Resting Arrest and Rescue contrary to **Section 226(1)(a) of Act 29** which states that, "a person commits a misdemeanour who endeavors to resist or prevent the execution of the law by resting the lawful arrest or lawful arrest by other person."

Section 3 of Act 30 provides the mode of arrest. That the Police Officer or any person making the arrest shall actually touch or confine the body of the accused person to be arrested unless there is a submission to the custody verbally or by conduct.

Prosecution case was that the PW3 touched the accused and informed him that a case has been lodged against him and he was wanted at the Police Station, but he attempted to escape and he grabbed him.

On the part of the Accused, he said when the PW3 told him that a case has been reported against him and he had come to arrest him, he pleaded with him to allow him follow him to the Police Station but before he could finish making the statement, the PW3 held his shirt to his neck and he couldn't breathe.

The PW4 who was present said in the process of arresting the accused he became furious and resisted to follow them to the Police station but did not by evidence tell the court how the arrest was effected on the Accused.

Thus, a mere verbal statement to the Accused that he was wanted at the police station could not have made him furious to resist to follow the Police to the Station. The only conclusion one can draw is that the accused attempted to free his neck from the grip of the PW3 and did not resist the arrest. For this reason, I did not find the accused guilty of the offence of resisting the arrest.

On the charge of Assault of Public Officer, **Section 205 of Act 29** provides that “a person commits a misdemeanour who assaults, obstructs, molest or resist or aids, incites any other person to assault, obstruct or molest or resist a public or peace officer or person acting or proceeding to act in the execution of a warrant or legal process.”

For Prosecution to secure a conviction on a charge of assault of a public officer, it must prove as stated in the case of “**ASANTE VRS THE REPUBLIC**” (1972) 2 GLR 177 that the assault and molestation took place in the course of the performance of public duty.

In this case, I have carefully examined the evidence of PW3 and PW4 as well as the Accused, and is of the opinion that, PW3 held the neck of the Accused in his attempt to effect his arrest which mode of arrest to this court is not supported by **Section 3 of Act 30**, since the Accused by his evidence on record submitted to the custody verbally by stating that he should be allowed to follow PW3 to the station.

The conclusion one can draw is that, there was a struggle when the Accused attempted to free his neck from grasp of the PW3. This being the case, I am therefore unable to find on the evidence that the Accused intentionally assaulted and molested the PW3, on the said day. I hold on the evidence that, the prosecution did not lead sufficient evidence to establish the elements of the offence of assault on public officer on count three (3).

For all the foregoing reasons, I do not find the Accused guilty of the offences charged as stated on the charge sheet before this Court. He is acquitted and discharged on all three (3) counts.

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H/W MRS. RHODA K. DONKOR
DISTRICT MAGISTRATE
17TH NOVEMBER, 2023

