

**AUGUST  
2023**

**DISTRICT COURT, TWIFU PRASO**

**COURT CASE NUMBER B3/2/2021**

**THE REPUBLIC**

*VS.*

- 1. RICHMOND AMANKWA**
- 2. LYDIA BERWO @ ADWOA WIREDUAA**
- 3. FRANK ODURO @ PAA KWASI SHATTA**

**JUDGMENT**

His Honour Festus Fovi Nukunu  
(Magistrate)

Thursday 3<sup>rd</sup> August, 2023



**IN THE DISTRICT COURT, TWIFU PRASO, SITTING ON  
THURSDAY 3<sup>RD</sup> AUGUST, 2023 BEFORE HIS HONOUR FESTUS  
FOVI NUKUNU, THE ADDITIONAL DISTRICT MAGISTRATE**

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### **JUDGMENT**

The 1<sup>st</sup> accused person herein was brought to court on the charge of resting arrest, contrary to section 226(1) of the Criminal and Other offences Act, 1960 (Act 29), causing unlawful harm, contrary to section 69 of Act 29 and assault, contrary to section 84 of the same Act 29. The 2<sup>nd</sup> accused was charged with harbouring criminal, contrary to section 25 of Act 29 whilst the 3<sup>rd</sup> accused is charged with assault, contrary to section 84 of Act 29.

The accused persons pleaded not guilty to the charges. This placed the burden on the prosecution to adduce credible evidence to establish the guilt of the accused beyond reasonable doubt as required by section 13(1) of the Evidence Act, 1975 (NRCD 323).

The facts of the case are that the complainants are police officers and a community police assistant stationed at Assin Awisem. The 1<sup>st</sup> accused is a small – scale miner, 2<sup>nd</sup> accused is a trader and 3<sup>rd</sup> accused is a trader. 2<sup>nd</sup> accused is the biological mother of the 1<sup>st</sup> and 3<sup>rd</sup> accused. On 12<sup>th</sup> day of July, 2020 at 5:40 pm, the complainants were on their normal patrol duties at Assin Awisem and its environs when they spotted the 1<sup>st</sup> accused riding unregistered Royal Motorbike without helmet. When the 1<sup>st</sup> accused was asked to produce his riding licence for inspection, he could not so do. The motorbike was sent to Assin Awisem police station and impounded after which the 1<sup>st</sup> accused was asked to produce his documents later for inspection. 1<sup>st</sup> accused

was not happy and he started raining insults on the police. 1<sup>st</sup> accused who was furious went home and later came back and started misbehaving again. In the process, the 1<sup>st</sup> accused hit the community police assistant with stick who sat in front of their charge office. When the complainants tried to arrest the 1<sup>st</sup> accused, the 3<sup>rd</sup> accused came from nowhere and hit the community police assistant with stick. In the course of arresting 1<sup>st</sup> accused, he pulled knife and chased G/L Frank Nyadanu who took to his heels to take cover at the charge office but he fell down and 1<sup>st</sup> accused stabbed him at the right flank. The victim was rushed to Assin Awisem Health Post and later referred to St. Francis Xavier Hospital, Assin Fosu for further treatment. After the incident, the 1<sup>st</sup> and 3<sup>rd</sup> accused went into hiding and their whereabouts could not be traced. Complainants went to the 2<sup>nd</sup> accused and warned her to produce the 1<sup>st</sup> and 3<sup>rd</sup> accused persons but 2<sup>nd</sup> accused told the police he did not know the whereabouts of her sons. On 13<sup>th</sup> day of July, 2020, the 2<sup>nd</sup> accused arranged two motorbikes for the 1<sup>st</sup> and 3<sup>rd</sup> accused persons to run away to unknown destination. Upon tip off, the 1<sup>st</sup> and 2<sup>nd</sup> accused were arrested at Twifo Praso toll booth. On 14<sup>th</sup> day of July, 2020, the 3<sup>rd</sup> accused was also arrested.

The prosecution's case is that on 12/7/2020, at about 5:40 pm, PW1; G/L/Cpl Frank Nyadanu was with G/Sgt Emmanuel Donkor, acting station officer of Assin Awisem police station and CPA Solomon Kumi. Whilst there, the 1<sup>st</sup> accused person came to the police station and without provocation started insulting the station officer over an unregistered Royal Motorbike which was impounded at the station for the 1<sup>st</sup> accused to produce documents covering the motorbike. PW1 said CPA Solomon Kumi crossed the road and the 1<sup>st</sup> accused attacked him with stone. PW1 said having seen things going out of hands, he signalled Solomon Kumi to assist him arrest the 1<sup>st</sup> accused before he harmed them. He said in the process of arresting the 1<sup>st</sup> accused, the 3<sup>rd</sup> accused came from behind and hit CPA Solomon Kumi with stone at the back which made him to fall down. He said the 1<sup>st</sup> accused then pulled out knife and chased him. He said since he was not having any protective item he retreated back to the police station. Whilst he was retreating, he fell down and the accused person stabbed him at the right flank. PW1 said G/Sgt Emmanuel Donkor and CPA Solomon Kumi came to arrest the accused persons but they absconded.

The evidence of PW1 was repeated by the 2<sup>nd</sup> and 3<sup>rd</sup> prosecution witnesses who were General Sergaent Emmanuel Donkor, the acting station officer and Solomon Kumi, a community police assistant.

The fourth prosecution witness was Detective Seargent Benjamin Segbenu. He said a case of resisting arrest, causing harm, assault and harbouring criminal was referred to him. He obtained statement from the complainant and the witnesses. He then obtained investigation cautioned statements from the accused persons. They were admitted as **EXHIBITS 1, 2 AND 3**. PW4 tendered the duly endorsed police medical form as exhibit 4. He also tendered the two photographs of the harm caused to PW1 and a picture of the motorbike which was impounded. He tendered them in evidence as **EXHIBITS 5, 6 AND 7**, respectively. PW4 later had instruction to charge the accused persons. He obtained charged statements from the accused persons, which were tendered as **EXHIBITS 8, 9 AND 10, respectively**.

I must state that after the close of the prosecution's case, the court found that the prosecution has not made a prima facie case against the 2<sup>nd</sup> accused person. She was therefore acquitted and discharged on count 4 i.e. the charge of harbouring criminal. This judgment therefore concerns the 1<sup>st</sup> and 3<sup>rd</sup> accused persons.

The 1<sup>st</sup> and 3<sup>rd</sup> accused persons were called upon to open their defence.

The 1<sup>st</sup> accused testified that he went to a friend to request his motorbike and he gave it to him. He said on his way, he met the police officers who asked him if he had a rider's licence and insurance. He said when he told the police he did not have those documents, there was a misunderstanding. Before he realised, one community police assistant slapped him hard. He said he fell down and he realised the motorbike was taken away. He said he went home and his brother asked why he did not bring the motorbike. He said he went back to the police station. The community police assistant threatened to beat him. According to the 1<sup>st</sup> accused, the community police assistant hit him with stone and then pounced on him to beat him. He further testified that one police called Frank hit him with a stick and was on him when his brother came to the scene to rescue him. He said he went to take scissors on the shield of a khebab seller. The 1<sup>st</sup> accused said he then clashed with the police officer and they both fell down and the scissors hit the police. He said he did not intend to harm the police.

On his part, the 3<sup>rd</sup> accused said when he went to the scene at Okada station at Assin Awisem, PW3 Solomon Kumi was fighting his brother, the 1<sup>st</sup> accused. He said the people around were not separating the fight so he separated the fight by pushing the

person from his brother. He said when he pushed PW3, he fell down and when he got up, he attacked him and slapped him. The 3<sup>rd</sup> accused said he did not come out to fight but to separate the fight.

The first charge against the 1<sup>st</sup> accused was resisting arrest contrary to section 226 (a) of Act 29 which provides that whoever endeavours to resist or prevent the execution of the law by resisting the lawful arrest of himself or of any other person for any cause is guilty of misdemeanour.

For prosecution to sustain conviction on this charge, the prosecution must prove beyond reasonable that there was execution of law i.e. lawful arrest and that the accused person resisted the arrest.

From the evidence on record, the 1<sup>st</sup> accused whilst the 1<sup>st</sup> accused was in charge of a motorbike, the police stopped him for riding without licence and insurance. The evidence shows that his motorbike was taken away to the police station because he did not have rider's licence and an insurance.

What did the 1<sup>st</sup> accused do? He went home and returned to the police station. He started insulting the police without provocation. The 1<sup>st</sup> accused then attacked PW2 with stone. When PW1 realised that things were going out of hands, he signaled PW3 to assist him arrest the 1<sup>st</sup> accused. In the process of arresting the 1<sup>st</sup> accused, the 3<sup>rd</sup> accused came from behind and hit PW3 with stone at the back which made him fall down. The 1<sup>st</sup> accused then pulled out knife and chased PW1 and since he was not having any protective item, he retreated to the police station but fell down and the 1<sup>st</sup> accused stabbed him at his right flank.

The 1<sup>st</sup> accused denied that he resisted the arrest. He also stated that he came to the police station to take his motorbike and there was a misunderstanding between them.

From the record, there is enough evidence that the 1<sup>st</sup> accused resisted arrest when he went back to the police station to take his motorbike. The 1<sup>st</sup> accused did not go to the police station with any document to satisfy the police that he had a rider's licence and an insurance. Clearly the 1<sup>st</sup> accused went to the police station to foment trouble. This caused the police to arrest the 1<sup>st</sup> accused and the 1<sup>st</sup> accused resisted the arrest. The 1<sup>st</sup> accused himself admitted that he went to the police station and he had a misunderstanding with the police. The 1<sup>st</sup> accused failed to raise any doubt in the prosecution's case that he resisted arrest.

From the foregoing, I satisfied that the prosecution has proved beyond reasonable doubt that the 1<sup>st</sup> accused resisted the arrest. I found him guilty of the charge. He is convicted accordingly.

The second charge against the 2<sup>nd</sup> accused is causing unlawful harm which was created under section 69 of Act 29.

It states “Whoever intentionally and unlawfully causes harm to any person shall be guilty of second degree felony.”

**Section 1 of Act 29** defines harm as “any bodily hurt, disease, or disorder, whether permanent or temporary.”

To secure conviction on the count of causing harm, the prosecution must prove the following essential ingredients beyond reasonable doubt:

- i. that the 1<sup>st</sup> accused caused harm to PW1.
- ii. that the harm was caused intentionally and unlawfully.

According to PW1, the 1<sup>st</sup> accused was riding unregistered motorbike. The police upon seeing the 1<sup>st</sup> accused impounded the Royal Motorbike and asked the 1<sup>st</sup> accused to produce documents covering the motorbike.

What did the 1<sup>st</sup> accused do? He came to the police station and insulted the police. When CPA Solomon Kumi crossed the road to buy an item, the 1<sup>st</sup> accused attacked him with stone. PW1, having seen things going out of hand, signaled the PW3 CPA Solomon Kumi to assist him arrest the 1<sup>st</sup> accused before he harmed them.

What happened next? In the process of arresting the 1<sup>st</sup> accused, the 2<sup>nd</sup> accused came from behind and hit CPA Solomon Kumi with stone at the back which made him fall down.

The 1<sup>st</sup> accused then pulled out knife and chased PW1. When he was retreating to the police station, he fell down and the 1<sup>st</sup> accused stabbed him at the right flank. PW2 said G/Sgt Emmanuel Donkor and PW2 CPA Solomon Kumi came to arrest the accused persons but they absconded.

This evidence of PW1 was corroborated by the evidence of PW2 and PW3 who were present when the incident happened. The evidence of PW1 shows that 1<sup>st</sup> accused caused harm to him.

The 1<sup>st</sup> accused said PW1 hit him with stick and he was on him when his brother went to rescue him. He said he went to a khebab seller’s shield and picked a pair of scissors. That he then clashed with the police officer and they both fell down and the

scissors hit the police. The evidence of the 1<sup>st</sup> accused cannot be accepted. This is because the 1<sup>st</sup> accused in EXHIBIT 1 i.e. his investigation cautioned statement stated that PW1 also came to hold his shirt and started struggling with him. He said they started beating him. He then managed to get to a certain man who was selling 'Kibbab'. The 1<sup>st</sup> accused stated he picked his scissors. The victims started running away to the police station and he followed him. He fell into a gutter. He pounced on him. He did not call any witness to confirm his assertion. To my mind, the 1<sup>st</sup> accused stabbed PW1 and he succeeded in harming him. He pursued him and stabbed him. EXHIBIT 5 and EXHIBIT 6 are pictures which show that PW1 was admitted to a hospital and that the injuries were covered with plasters. The pictures also show that PW1 was soaked in blood. EXHIBIT 4, which is the medical report of PW1 clearly confirmed that the 1<sup>st</sup> accused harmed PW1.

As was said by **Osei Hwere J.** (as he then was) in the case of *Comfort and Anor v. The Republic* [1974] 2 GLR 1 bodily harm," of course, includes, any hurt or injury calculated to interfere with the health or comfort of the victim and, although it need not be permanent, it must be more than merely transient and trifling'.

It is clear that PW1 was stabbed. That act caused a bodily hurt and disorder to PW1's right flank. The stab in the right flank clearly interfered with the health and comfort to PW1. It is not a trifling or transient hurt; it is a permanent one. The scar will be there permanently. Prosecution has thus established the first element of the offence i.e. that the 1<sup>st</sup> accused person caused harm to PW1.

Mere harm alone is however not enough, the prosecution must go on to prove that the harm was caused intentionally by the accused person.

Provisions relating to intention are provided for under *Section 11 of Act 29*. A person is presumed to intend the natural and probable consequences of his actions. Thus if the ultimate occurrence is the natural or probable consequences of the conduct engaged in, it does not lie in the mouth of the accused to assert that he did not intend the achieved result. This test was applied in the case of *Serechi and Another v. The State* [1963] 2 GLR 531.

As a man intends the natural and probable consequences of his actions, his intentions can be deduced by looking at the circumstances of the particular case and

looking at what any reasonable man would intend by engaging in those acts in those circumstances.

From the evidence on record, the 1<sup>st</sup> accused had a confrontation with the police officer. The 1<sup>st</sup> accused went to the police to confront the police who were doing their work. The evidence shows that the 1<sup>st</sup> accused pursued PW1 when he was running to the police station. PW1 fell down and the 1<sup>st</sup> accused pounced on him. I find that the intention of a reasonable man chasing after a police officer and then stabbed him at his right flank was to cause harm to him. Thus his intention was to harm PW1.

Prosecution must finally establish that the harm that was caused was unlawful. Harm according to *Section 76 of Act 29* is “unlawful which is intentionally or negligently caused without any of the justification mentioned in Chapter I of this Part.

Prosecution must finally establish that the harm that was caused was unlawful. Harm according to *Section 76 of Act 29* is “unlawful which is intentionally or negligently caused without any of the justification mentioned in Chapter I of this Part. The justification in this instance would be self - defence.

According to prosecution witnesses, the harm that 1<sup>st</sup> accused caused was unlawful.

From the evidence, the 1<sup>st</sup> accused person stated that he struggled with PW1 and they both fell down. I found in the judgment that the 1<sup>st</sup> accused was the one who confronted the police. He chased PW1 and he fell down. He then stabbed him with the sharp object in his possession. The 1<sup>st</sup> accused had no justification such as self – defence in causing harm to PW1. I therefore hold that the harm caused to PW1 was unlawful.

From the evidence, the 1<sup>st</sup> accused did not raise any doubt in the prosecution’s case. It is from the above that I hold that the prosecution has proved the essential ingredients of the second charge against the 1<sup>st</sup> accused. He is convicted of the charge.

I will now consider charge of assault against the 1<sup>st</sup> and 3<sup>rd</sup> accused persons in count 3 and count 5. The offence of assault was created under section 84 of Criminal and Other Offences Act, 1960 (Act 29) which states:

‘Whoever unlawfully assaults any person is guilty of a misdemeanour’.

However, section 85 of Act 29 classifies the kinds of assault whilst sections 86, 87 and 88 of the same Act 29 defines them.

Section 85 states: It states: “assault includes (a) assault and battery; (b) assault without actual battery; and (c) imprisonment.”

The prosecution’s case was that the 1<sup>st</sup> accused person used stone to hit PW3, Solomon Kumi. It was also the case of the prosecution that the 3<sup>rd</sup> accused hit the PW3 from the back with stone. To my mind, the kind of assault in this instant case as per count 3 and 4 was assault and battery.

Now section 86 (1) of Act 29 defines what assault and battery mean. It states:

*‘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’.*

To sustain conviction in assault and battery against the 1<sup>st</sup> accused, the prosecution must prove the following ingredients beyond reasonable doubt:

- i. That the 1<sup>st</sup> accused forcibly touched PW3, Solomon Kumi.
- ii. That PW3 did not consent to it.
- iii. That the 1<sup>st</sup> accused had an intention of causing harm, pain, or fear or annoyance to PW3 or exciting her to anger.

And to sustain the conviction of the 3<sup>rd</sup> accused, the prosecution must prove beyond reasonable doubt:

- iv. That the 3<sup>rd</sup> accused forcibly touched PW3, Solomon Kumi.
- v. That PW3 did not consent to it.
- vi. That the 3<sup>rd</sup> accused had an intention of causing harm, pain, or fear or annoyance to PW3 or exciting her to anger.

It was the case of the prosecution that 1<sup>st</sup> accused person and 2<sup>nd</sup> accused assaulted PW3. To prove its case, prosecution called four witnesses in support of their case.

The first witness (PW1) was G/L/CPL Frank Nyadanu. According to PW1, the 1<sup>st</sup> accused was riding unregistered motorbike. The police upon seeing the accused impounded the Royal Motorbike and asked the accused to produce documents covering the motorbike.

What did the 1<sup>st</sup> accused do? He came to the police station and insulted the police. When CPA Solomon Kumi crossed the road to buy, the 1<sup>st</sup> accused attacked him with stone. PW1, having seen things going out of hand, signaled the PW3 CPA Solomon Kumi to assist him arrest the 1<sup>st</sup> accused before he harmed them.

What happened next? In the process of arresting the 1<sup>st</sup> accused, the 2<sup>nd</sup> accused came from behind and hit CPA Solomon Kumi with stone at the back which made him fall down. These pieces of evidence was repeated by the PW2, PW3 and PW4. The 1<sup>st</sup> accused denied hitting PW3 with stone.

From the evidence on record, the prosecution witnesses especially PW1 and PW3 who were present when present when the incident happened were forthright in their evidence. It was the 1<sup>st</sup> accused who first attacked PW3. To my mind, if he had not attacked PW3, this case would not have arisen in the first place. I am satisfied that the 1<sup>st</sup> accused assaulted PW3 with stone and his intention was to cause harm or pain to him. The assault on PW3 was unlawful. He had no justification for assaulting PW3. I found him guilty of the offence of assaulting PW3. He is convicted accordingly.

In respect of assault charge against the 3<sup>rd</sup> accused, prosecution's case was that the 3<sup>rd</sup> accused assaulted PW3. According to PW1 and PW3, when they were in the process of arresting the 1<sup>st</sup> accused, the 3<sup>rd</sup> accused came from behind and hit CPA Solomon Kumi with stone at the back which made him fall down.

On his part, the 3<sup>rd</sup> accused said when he went to the scene at Okada station at Assin Awisem, PW3 Solomon Kumi was fighting his brother the 1<sup>st</sup> accused and that the people around were not separating the fight so he separated the fight by pushing the person from his brother. That when he pushed PW2, he fell down and when he got up, he attached him and slapped him. He said he came to separate a fight and not to fight.

From the evidence, the 3<sup>rd</sup> accused did not deny that he pushed PW3 from the 1<sup>st</sup> accused. To my mind he had forcibly touched PW3 without his consent.

However, 3<sup>rd</sup> accused made it clear that when he came to the scene, his intention was to separate a fight.

This is an extract of cross – examination of PW3 and 3<sup>rd</sup> accused:

*Q. I am putting it to you that when I came, you were busily struggling with 1<sup>st</sup> accused.*

*A. It is true. Your brother was chasing PW1 with knife.*

*Q. Do you see that 1<sup>st</sup> accused became weak and PW1 pushed him down and told him if you are a man struggle with me?*

*A. It is not true.*

*Q. Do you recall that as a result of struggle between you, 1<sup>st</sup> accused and PW1, that was why I pushed you from the 1<sup>st</sup> accused.*

*A. Before I realised I went down. When I fell down, 1<sup>st</sup> accused had access to harm PW1, Frank Nyadanu.*

From the cross – examination, it is obvious that the 3<sup>rd</sup> accused was there to a fight between his brother, on one side and PW1 and PW3, on the other side. To my mind, any reasonable brother would have acted the same way when his brother was under similar attack by two people. There is no evidence that the 1<sup>st</sup> accused used stone to hit PW3 from the back.

Section 53 (1) (d) of Act 29 provides that one could be freed of murder if he killed someone who committed violent assault and battery on his wife, husband, or child or parent or any other person who is in the presence and in the charge or care of the accused person.

From the evidence, though the 3<sup>rd</sup> accused pushed PW3 to the ground, his intention was to save his brother from violent assault and battery from PW1 and PW3. This explained why he did not continue to attack PW3. In view of this. I found the 3<sup>rd</sup> accused not guilty of assaulting PW3. He is acquitted and discharged.

**Sentencing:** In punishing the 1<sup>st</sup> accused person, the Court will consider the mitigating and aggravating factors espoused in the cases of **Quarshie v The Republic**

(2018) JELR 66200 (CA) and **Frimpong alias Iboman v. the Republic Criminal Appeal No. J 3/5/2010 delivered on 18<sup>th</sup> January 2012**. In **FRIMPONG ALIAS IBOMAN VRS THE REPUBLIC [2012] 1 SCGLR 297 at 328**, the first and young offenders are to be given the second opportunity to reform and play their role in society as useful and law-abiding citizens. They are normally treated leniently compared to second or habitual offenders. See also the dictum of *Kpegah J.* (as he then was) in the case of *Impraim v. The Republic [1991] 2 GLR 39-47* in which he stated that in considering the sentence to be given to an accused either upon first trial or during appeal, the courts had to take into consideration 'the gravity of the offence taking into account all the circumstances of the offence. In this wise, regard must be had to such matters as the age of the offender, his health, his circumstances in life, the prevalence of the offence, the manner or mode of commission of the offence — whether deliberately planned and executed — and other like matters.'

I must state that the 1<sup>st</sup> accused person was 20 years when the crime was committed. He is now 25 years of age. This is his first brush with the law.

Notwithstanding these mitigating factors, I am of the view that the 1<sup>st</sup> accused on the day of the incident went to the police station to foment trouble. He went purposely to attack the police. Causing harm to a police at his police station is grievous. In the circumstance, I decided to impose a lenient custodial sentence on the 1<sup>st</sup> accused. That would give him a chance at reformation and an opportunity to reform and come back as a good citizen. I would also deter people in the community who are nursing plans to attack the police.

I sentence him to three months' imprisonment in hard labour on count 1 and a fine of fifty penalty units on Count 1 and Count 3. In default of payment of fine in Count 1 and Count 3, the 1<sup>st</sup> accused shall serve additional three months' imprisonment.

In respect of Count 2, I sentence the 1<sup>st</sup> accused to six months imprisonment and a fine of two hundred penalty units or in default, the 1<sup>st</sup> accused shall serve additional six months' term of imprisonment in hard labour. The sentences are to run concurrently.

**Compensation:** The 1<sup>st</sup> accused is ordered pay compensation of Two Thousand Cedis to the victim of the harm, PW1.

**SGD**

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**H/H FESTUS FOVI NUKUNU  
(CIRCUIT COURT JUDGE)**