

**IN THE DISTRICT COURT HOLDING AT DODOWA SHAI OSUDOKU ON  
FRIDAY THE 27<sup>TH</sup> DAY OF JANUARY, 2023 BEFORE HER WORSHIP BRIDGET  
AKPE AKATTAH**

**CASE NO. B3/1/2021**

**THE REPUBLIC**

**VRS.**

**WILSON KWAKU TAWIAH**

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**JUDGMENT**

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The Accused was arraigned before this Court charged with two counts of Assault contrary to Section 84 of the Criminal Offences Act, 1960 (Act 29). He pleaded not guilty to the charges. The Court referred parties to ADR to attempt settlement but that attempt was not successful. The case was therefore slated for evidence to be taken and which has culminated in this judgment.

The facts of this case as contained in the charge sheet and as narrated by the prosecution was that both complainants one Faustina Tetteh aged 30, a trader and Collins Donkor aged 21, welder and accused person Wilson Kwaku Tawiah aged 73. On 16<sup>th</sup> July, 2020 at about 19:30Hours, accused person's wife and her daughter-in-law had a misunderstanding that attracted neighbours into their home in an attempt to separate them. 1<sup>st</sup> Complainant who was not in talking terms with the accused person and his wife also went to the house with the intent of separating the feuding parties. The accused person upon seeing the 1<sup>st</sup> Complainant in his house asked her to leave the house but she

refused to leave and rather insulted the accused person. The accused person got offended and entered his room and brought a cane and chased the 1<sup>st</sup> Complainant out of the house with it beating her in the process. The 1<sup>st</sup> Complainant run into the 2<sup>nd</sup> Complainant's house to seek refuge. The 2<sup>nd</sup> Complainant upon seeing the accused whipping the 1<sup>st</sup> Complainant in his house with the cane, attempted to collect the cane from the accused to stop him from canning the 1<sup>st</sup> Complainant. 2<sup>nd</sup> Complainant was subjected to beatings mercilessly by the accused person. It took the timely intervention of neighbours around to rescue the complainants from the accused person. On 17<sup>th</sup> July, 2020, complainants lodged a formal complaint at the Police Station, and Police medical forms were issued to them to attend hospital. On 20<sup>th</sup> July, 2020, both complainants returned their Police Medical Forms duly endorsed by a Medical Officer of the Shai Osudoku District Hospital.

In proof of these facts, the prosecution called the victims of the alleged assault, Faustina Tetteh and Collins Donkor as PW1 and PW2 respectively. They also called two other witnesses including the investigator. The case of the prosecution as evidenced from the witnesses they called is that there was a misunderstanding between the wife and daughter-in-law of the accused that attracted neighbours to their home including the 1<sup>st</sup> Complainant (hereinafter referred to as PW1) herein. PW1 who is a friend to the daughter-in-law of the accused person tried to intervene. Accused took offence and picked a cane and subjected PW1 to beatings with it. Later, when the 1<sup>st</sup> Complainant sought refuge in the 2<sup>nd</sup> Complainant's house, the 2<sup>nd</sup> Complainant in an attempt to intervene to stop the accused from whipping the 1<sup>st</sup> complainant was also subjected to severe beatings. I have read the various statements submitted by the witnesses for the prosecution. I do not think it necessary to rehash the whole evidence again. I shall however, make due references to relevant portions in the course of this judgment.

After calling the above witnesses, the prosecution closed its case. Accused was then called upon to open his defence after a prima facie case was made against him. He gave evidence in his defence and called no other witness. The nub of his defence was that he warned the 1<sup>st</sup> complainant to leave his house and she refused to leave. He therefore used to cane on her and he denied ever caning the 2<sup>nd</sup> Complainant.

In his caution statement taken down by the police on the 18<sup>th</sup> day of April 2020, the accused had stated that his daughter-in-law came from Nigeria to visit them and on 16<sup>th</sup> July, 2020, there was a quarrel between her and his wife. People came to separate them including the 1<sup>st</sup> Complainant who is a friend to his daughter-in-law, but not in talking terms with him the accused. Accused indicated that he asked the 1<sup>st</sup> Complainant to leave his house but she rather started saying that it was his foolish wife who was the cause of the quarrel. In an attempt to drive the 1<sup>st</sup> Complainant away, he took a cane and beat her and she run to the 2<sup>nd</sup> Complainant's house. The 2<sup>nd</sup> Complainant in separating the accused from the 1<sup>st</sup> Complainant rather held his hands behind and slapped his jaw and he has pains in his neck. He sent his son to report the case at the Police Station but the Police said accused should come himself.

It is settled Constitutional law that a person accused of having committed an offence is presumed innocent until proven guilty or he has voluntarily pleaded guilty. This is a constitutional injunction provided for by Article 19(2) (c) of the 1992 Constitution of Ghana. The burden of proof in a criminal case therefore is on the prosecution at all material times to establish the guilt of the accused in respect of the charges levelled against him. It has been held that the failure to discharge that burden should lead to the acquittal of the accused. And this proof required of the prosecution is said to be proof beyond reasonable doubt. See *Oteng v The State [1966] GLR 352*. In the converse, the accused person is not required to prove anything. All that is required of him is to raise a

reasonable doubt as to his guilt. See *Commissioner of Police v Antwi [1961] GLR 408*. It has also been held that it is not enough for the court to hold that it does not believe the defence of the accused and then proceed to convict him. Short of disbelieving the defence, the court has a duty to consider whether the defence is reasonably true or reasonably probable.

The issues raised for determination in this case are:

1. *Whether or not accused touched the body of PW1.*
2. *Whether or not the touch was made with the consent of PW1.*
3. *Whether or not the touch made by the accused was intended to cause harm, pain, or fear, or annoyance to PW1, or to excite her to anger*
4. *Whether or not the prosecution was able to prove the charge of assault beyond reasonable doubt.*

As I stated above, the charge was laid against the accused under section 84 of Act 29. The offence of Assault is provided for under Section 86(1) of the Criminal Code, 1960 (Act 29) which reads:

- (1) 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 the other person to anger, that person forcibly touches the other person.
- (2) (c) any the slightest actual touch suffices for an assault and a battery, if the intention is an intention as is required by this section;  
(d) a person is touched, within the meaning of this section, if the body is touched, or if the clothes or any other thing in contact with the body or with the clothes on the body are or is touched, although the body is not actually touched; and

(e) for the purpose of this section, with respect to intention to cause harm, pain, fear or annoyance, it is immaterial whether the intention is to cause the harm, pain, fear, or annoyance by the force or manner of the touch itself or to forcibly expose the person, or cause that person to be exposed, to harm, pain, fear, or annoyance from any other cause.

From the statement of the law above, the Prosecution have to prove that;

- i. The accused touched the body of PW1
- ii. The touch was made without the consent of the complainant
- iii. The touch was made with intent to cause harm, pain, or fear, or annoyance to the other person, or of exciting the other person to anger.

I would now proceed to resolve the issues together in no particular order. According to the prosecution, there was a misunderstanding between the wife of the accused and the daughter-in-law which resulted in a quarrel and exchange of words. PW1, the 1<sup>st</sup> Complainant herein went to the house of the accused with the intent to separate the feuding parties and was assaulted by the accused person. Accused took offence and picked a cane subjected PW1 to beatings with it. PW2 and PW3 led evidence that PW1 came to seek refuge as the accused continued whipping her in the home of PW2 and it was when PW2 intervened that the accused vent his anger on him and assaulted him. PW3 however indicated that PW2 also slapped the accused back.

This assertion however was not denied by the accused. He rather insisted he caned the PW1 because she came to his house without his consent and authority. Accused person denied assaulting PW2, the 2<sup>nd</sup> Complainant herein and says that it was rather the PW2 who assaulted him.

The evidence given by the PW1 and PW2 was corroborated by the PW3's testimony that accused assaulted the PW2 who also retaliated by slapping he accused person back. Accused did not mount any strong challenge to the evidence given by the PW1 and PW2 against him. He rather chose to argue over whether he used a belt or cane on PW1 which had little or no relevance to the subject under determination. I do not have any ground to doubt the evidence of PW2. He was an eye witness to the whole incident. It was because PW1 came to seek refuge in his house that the accused attacked him in the first place. PW1 tendered Exhibits 'C' to 'C10' pictures of wounds from the cane the accused used on her back in carrying out the assault. I believe her and see her as a credible witness. On the basis of her evidence, I hold that the prosecution proved that the accused touched the person of PW1.

I find also from the evidence that the touch was made without the consent of PW1. I say so because from the evidence, PW1 did not call accused to subject her to the beatings with the cane or belt. If he had voluntarily submitted to the accused's beatings, one would have argued that she consented. But in this case, there is no evidence suggesting that she consented to it. Indeed when accused attacked her in his house, she took to her heels and ran away while accused chased her with a cane to the neighbor's house in the person of PW2. I do not think that if he had consented, she would have taken to her heels.

Now, did the touch by accused carry the criminal intent required by Section 86 of Act 29 to qualify for an assault? As stated above, Section 86 which defines the requisite level of intent demands that the touch must have been accompanied by an intention to cause harm, pain, or fear, or annoyance to the other person, or of exciting the other person to anger. Whether or not a touch is intended to cause these effects is a question of fact to be determined from the circumstances of each case. So in this case, was the touch one accompanied by the requisite intent?

It has been held in a number of judicially decided cases that whether an act is intended to cause a desired effect or not touches on the state of mind of the person who does the act. And whether an accused person has a particular state of mind was essentially a question of fact which has to be decided based on the peculiar circumstances of each case. As a guide, notice is taken of the fact that in some cases, a man's previous intentions are judged by his subsequent conduct. The law therefore takes cognisance of the intention with which an act was done by reference to the subsequent act of the person concerned. Having held that accused touched the person of PW1 and PW2, I wish to put across that the nature or manner of the touch is immaterial to a finding of the intention behind it. Whether it was a soft or hard touch is immaterial. A touch is a touch however gentle or fierce it is.

In this case, accused subjected PW1 to severe beatings with a cane. From the evidence, accused upon seeing the PW1 in his house became offended and he asked her to leave. It was when the PW1 refused to live the premises of the accused that the accused decided to beat her with a cane. From the evidence again, the parties had been separated and PW1 had ran seeking refuge in the house of PW2 but the accused followed her to the said house and continued whipping her. PW2 intervened and then the accused got offended again and vented his anger on the PW2 also. I do not see why accused should proceed assaulting PW1 even by following her to someone else's house to whip her again. What at all did he intend to achieve by beating him with the cane and injuring her in the process? That act by the accused connotes just one agenda; to cause harm, pain, fear, and annoyance to PW1 and PW2. And I think he also intended to cause or excite PW1 and PW2 to anger.

Accused in his denial of any wrong doing claimed that it was rather PW2 who slapped him with his hand. According to him, PW1 refused to listen to him to leave his house. From this beating, she sustained injuries. This was denied by PW1. In answer to questions from prosecution after he had testified on his own behalf, accused claimed that PW1 insulted him, hence he caned her. Accused however never called anyone who was an eye witness to lead any evidence to corroborate his assertions.

From the clear evidence given by the prosecution, the accused assaulted PW1 and PW2 with a cane in a bid to put fear into them. That was uncalled for given that the PW2 was in his house and never did anything wrong against the accused person except that he intervened to separate the accused person from further assaulting the PW1. I hold that the accused intended to cause PW1 and PW2 harm, pain, fear, and annoyance by caning them with a stick.

On the totality of the evidence, the prosecution was able to prove the charge of assault against the accused on PW1 and PW2. The accused is therefore convicted on the charge of Assault contrary to section 84 of Act 29. He is guilty of the offence charged. Even though accused is a first offender and is not known to the court, the assault on the complainants appears from the evidence to have been premeditated. He really thought about it and wanted to put fear into PW1 and PW2. That notwithstanding, I have taken into consideration the fact that both accused and PW1 are from the same neighborhood and may have to reconcile their differences in one way or the other. I do not want this case to draw a wedge between them. I shall therefore be magnanimous upon the accused under the circumstances and sentence accused to a fine of hundred (100) penalty units or in default Six (6) months' imprisonment. He is further ordered to keep his distance from the complainants henceforth and shall sign a bond to be of good behaviour for six months or in default serve three (3) months imprisonment.



**(SGD.)**

**HER WORSHIP BRIDGET AKPE AKATTAH**

**DISTRICT MAGISTRATE**