

IN THE DISTRICT COURT HELD AT KWASO-ASHANTI ON
TUESDAY THE 24TH DAY OF OCTOBER, 2023 BEFORE HIS
WORSHIP SOLOMON K. ALOMATU DISTRICT MAGISTRATE

In the matter of:

CASE NO .B3/87/23

THE REPUBLIC

v

GIDEON ZIOR

Accused Person - present

C/INSPT. PATRICK ACHEAMPONG for the prosecution present

JUDGEMENT

In this case, the complainant and Accused person were best friends since their primary school days. This ally relationship however turned sour, when both began to outdo each other to win the love of one Maame Adowa. Indeed, something must kill a man.

The accused person is charged with one count of Causing Unlawful Harm. He pleaded not guilty to the charge. This placed the legal burden on the prosecution to prove his guilt beyond reasonable doubt. Section *11(2) of the Evidence Act, 1975(NRCD 323)*. It was to achieve the above that the prosecution called three witnesses to testify in support of her case.

According to **Ezekiel Amankwah (PW1)**, he knows the accused person very well. About six months ago he met accused person insulting a food vendor, who happened to be his mother's friend. He advised accused person against such an act. Accused person got angry and warned him to be careful and that if he got PW1, he would not spare him.

On the 20/05/2023, he was standing by a lady, one Maame Adwoa who he is dating. Accused person came around and asked if she was his lover and he responded in the positive. Accused person then held the lady and pulled her away. On the same date in the night the said lady was inside his room. Accused person sneaked into the house in search of the lady but could not find her. Accused person later on saw him in town and warned that he would deal with him at the appropriate time. He picked a stone and tried to hit his head with it but he managed to dodge same.

Things came to head on when on 21/05/2023 at about 10:00am when he went to Donyina Football Park for a match between Donyina and Kotei Deduako youths. Accused person came and confronted him that they have met and if he dares open his mouth, he would see what would happened. PW1 said Accused person suddenly drew a cutlass belonging to one Isaac Asumadu (PW2), which he hid on his bicycle nearby, and began swinging at him. He took to his heels but accused person chased him the **Cutlass** and finally strike him with the Cutlass deep on his occiput. It took the intervention of others at the park to rescue him.

In confirming the evidence of PW1, Isaac Asumadu who testified as PW2, told the Court the Cutlass belong to him. That he and others decided to weed the football Park to enable a smooth play. He used the Cutlass to weed and thereafter hide beside his bicycle. While the football was in session accused person came to pass in front of the spectators and greeted them, including him. Suddenly Accused person picked the cutlass and began swinging it at the PW1, who kept dodging until accused person finally slashed him on the forehead. PW2 said because the accused person was holding the cutlass the spectators could not approach him for fear of being wounded.

Having butchered the PW1 he then took to his heels.

The last prosecution witness is D/C/Insp. Ibrahim Fuseini (PW3.) said he received a phone call that Accused person had inflicted cutlass wounds on PW1 and was rushed to

Donyina Hospital for treatment. While the town folks chased the accused person in a bid to lynch him. Accused person took refuge in a certain house and was locked and that if the police do not act swiftly, the youth could break in and lynch him. PW3 said the police proceeded to the said house and rescued him to the police station. At the police station, accused person explained that PW1 tried to attack him therefore he butchered PW1 in self defence. He visited the PW1 at Donyina Hospital but the staff told him that PW1's condition was critical therefore he was referred to Komfo Anokye Teaching Hospital (KATH). He then followed up to KATH where PW1 was on admission with police medical form for report. In his Investigation Cautioned statement, accused person admitted the offence but said PW1 was descending on him angrily and that he strikes the PW1 with the cutlass of PW2 out of self defence.

PW3 tendered in evidence the following as exhibits: Investigation cautioned statement (exhibit 'A'), charge Cautioned Statement (exhibit 'B') of the accused person, police medical form of PW1 (exhibit 'C') and photograph (exhibit 'E') of PW1 bandaged Head on admission and finally a Cutlass (exhibit 'D') Accused Person allegedly used to inflict wounds on PW1. The Accused Person did not object to any of the exhibits, hence they were all admitted and marked accordingly.

In cross examining the prosecution witnesses, one important question that accused person asked is, if they did not see the PW1 leading his siblings to attack him as result of which he reacted in self defence. The witnesses denied it.

I now proceed to consider the evidence for the prosecution.

On the whole, it is the case of the prosecution that, Accused Person used a Cutlass to inflict multiple wounds or cuts on the PW1 at Donyina Football Park. This is the piece of evidence that runs throughout the testimony of all the three prosecution witnesses. During cross examination of all the witnesses, they were in unison denied the Accused

person's question that, PW1 led about 4 persons to attack him first, and to defend himself, he used the Cutlass on PW1.

From the Investigation Cautioned Statement (exhibit 'A') tendered by PW3, without any objection by Accused Person, states, the Complainant and three siblings holding implements, two out of them were holding cutlasses and the PW1 himself holding stick and began him. He rushed for the Cutlass (exhibit 'D') and cuts PW1. Accused person did so in order to protect himself. This statement clearly showed that Accused person inflicted the wound on PW1 with a cutlass, except to say that he did so in self Defence.

The exhibit 'A' confirms the evidence of all the prosecution witnesses. Exhibit 'C' that is the medical report also confirms exhibit 'A' and the testimony of PW1 and PW2. Furthermore, the Photographs (exhibit 'E') tendered by PW3 showed the PW1 at the hospital receiving treatment with blood trenched singlet or sleeveless dress and Bandaged Head soaked with Blood at the back. This also confirmed exhibit 'A' in which the Accused person stated he used the cutlass to cut PW1 and he began bleeding, as result he ran away to his house.

The Accused person testified in defence that; he and the complainant were school mates. On Saturday 20th May 2023 between the 8:30 to 9:00pm, he was on his way form Donyina Quarters to the Township, when a friend approached him that, he should return home and that complainant was armed with a cutlass looking for him. He replied the said friend that he had no problem with PW1. When he got to the Town, he met PW1 holding a cutlass. PW 1 on seeing him, began pointing the cutlass at him, while saying that he was going to butcher him for coming to his house to fetch his girlfriend. There ensuing a misunderstanding and people around came to separate them. The following day, he went to the Doyina Football Park to watch a football match. While watching the match, a group of five people including the complainant rushed on him and attacked him with cutlasses

and sticks. Accused argued two of them were hitting him the sticks while one Kwabena Otuo used the side of the cutlass to hit him. To defend himself, he turned and saw a Cutlass by the bicycle and reach for same. He began to swing the cutlass to put fear in them so that he can escape from them. The complainant rushed towards him. **The cutlass he was swinging accidentally hit the head of PW1.** He took refuge in a woman's house. His girlfriend reported to the police who came to his rescue having battled the mob and took him to the police station. Accused person concluding by saying that he acted in self defence and the cutlass accidently cut the Pw1 as he was swinging it.

During cross examination, the prosecution challenged him on claim of having acted in self defence. Accused person under cross examination said; among others, PW1 grab him and attempted to wrestle or put him on the ground and as he struggled the cutlass accidently cut him. Accused person denied the PW1 was running away and he perused and inflicted cutlass wounds at the back of the head of the PW1. Furthermore, the accused person under cross examination when challenged on the alleged threat on him life use a cutlass by the complainant, said among others, said the police had closed as the said incident happened about 9:00pm thereabout. He admitted that the Doyina police station is just a stone throw away from the scene of alleged threat of his life. He further said that on the day that he slashed the accused person on the head in self defence, at point of arrest the relatives of the PW1 inflicted cut at the back of his head and when he complained the police asked him to shut up. He claimed the accused tried to wrestle him to the ground and in the ensuing struggle the cutlass cut him at the back of his head. This was his response to the prosecution's question that he chased the complainant and slashed him at the back of his head.

At the close of prosecution's case and that of the Defendant, the following stood out as facts:

- The Complainant and accused person were friends

- Both were at Donyina Football Park to watch a match
- There ensued a misunderstanding between the two
- The end result is that Accused person inflicted cutlass wounds on the PW1

Having concluded the above as facts, the issues in contention which this court is called upon are:

- 1. Whether or not Accused person caused unlawful Harm to PW1**
- 2. Whether or not the Accused person acted in self defence.**

I now proceed to consider the issues as they appeared above. In addressing the first issue, leads me to what is causing unlawful harm? It when a person intentionally or negligently caused harm without any justifications provided under chapter 1 of Act29/60. Section 76 of Ac29/1960

The elements of causing unlawful harm are:

- The Accused person intentional or negligently caused the harm to the victim
- The harm was intentionally caused
- The harm was unlawfully caused
- That the harm cannot be justified under Part ii chapter I of Act 29/60.

These are the ingredients that the prosecution must proof beyond reasonable doubt in order to secure a conviction.

Examining above evidence, there is inconsistence in the evidence in chief of the Accused person that under cross examination. He said, the complainant rushed towards him. **The cutlass he was swinging accidentally hit the head of PW1.**

However, under cross examination, he said, accused person grabs him and attempted to wrestle or put him on the ground, in a struggle the cutlass accidentally hit the head of PW1. In my view, this material inconsistency that makes his evidence unreliable and therefore not a truthful witness. **State v Poku (1966) GLR 262.**

There is also material contradiction in the evidence of Accused person as against his own witness **Isaac Mensah (DW1).**

In cross examining the Accused person, there two important questions that prosecution asked. Firstly, the prosecution put it to the Accused person that, **when the PW1 was running away he perused and slashed him at the back of the head.**

Secondly the spectators at the football chased Accused person because of the wound he inflicted on PW1. All this Accused person vehemently denied.

For emphasis, I take one of the questions and answer herein;

Q. All the spectators including the footballers chased you is that correct?

A. It is not correct

However, under cross examination of DW1

Q. I am putting to you that you only saw people chasing Accused Person?

A. Yes

Q. I am putting it to you that the supporters were chasing the accused person because he inflicted cutlass on PW1.

A. Yes

It is important to note that accused person said under cross examination that he did not inflict the cutlass wounds on the PW1 deliberately, and that it is the PW1 who attempted to wrestle him to the ground at the time he was holding the cutlass, in the ensuing struggle the cutlass accidentally cuts the PW1. This position of the accused person sharply contradicts the evidence of DW1. It is my respectful opinion that, if the PW1 had wrestled or made attempt to wrestle the Accused persons DW1 would have said so. The questions and answers above, left me in no doubt, the case of the Defendant lacks merit. It is settled law that where a party's own evidence sharply contradicts that of his own witness as in the present case, no value can be placed on it.

When the prosecution asked the Accused person why he did not report his claim that PW1 had threaten him with a cutlass a day prior to this incident, it is perhaps the last wonders of the world, said **the police had closed as result he could not make a report to the police station at Donyina**. In fact, throughout my life, I never heard of saw a police station closed as all the police officers went home simply because they closed for work for the, as for example a court or a school does. It is also interesting that the police station is just a walking distant from the scene of alleged threat yet accused person deem it fit to report the threat on his life the following day.

Furthermore, the accused person said those who arrested him wound him at the back of the head, his effort to report was met with police hostile attitude, granted that was the case, did the police prevent him from seeking medical attention when granted bail? Throughout his evidence in chief, he never told the court he received medical treatment at any health facilities, yet he wanted the court to believe that he was wounded.

On the second issue above, the question is, did accused person acted in self defence?

Put differently, is the harm accused person justifiable?

From the evidence of the accused person what he seeks to is that admitted having caused the harm to PW1 but contest that, is justifiable harm. It is this position that pushed me examine what is justifiable harm.

It is important to note that, even though, causing harm is generally unlawful and punishable, in found guilty, there are under certain circumstances under a person have caused harm alright but such a harm is allowable by. Among these are:

- Where the allows it
- In executing a sentence or an order made by a Court of law
- The need to preserve the peace
- To arrest and detain an accused person
- The need to defend or prevent the commission of a crime
- For the defence of property or possession or for overcoming an obstacle to exercise lawful right.

For the accused person of self defence or justifiable harm to lie, he must come under of the elements as just stated. Thus in the case of *State v Ampomah [1960]GLR.262, SC.*, the Appellant had been attacked by six men wielding Sticks. The Court held that, a person is entitled to strike in self-defence, unto death. The question does this authority on all force with the present case?

He mounted a spirited defence that he never intentionally slashed the PW1 with the cutlass. Rather the cutlass he was holding accidently cuts the PW1 when he attempted to wrestle him to the ground.

The question is why did he reach for the cutlass, which was at the material time hidden in the bicycle of PW2? How can he be holding a cutlass whilst PW1 wrestle

with him? How come as he claimed, the brothers of PW1 were holding cutlasses and sticks yet they could not overpower him?

It is my view that if the PW1 and his brothers attacked or made an attempt to attack Accused person, as he wanted this court to accept or belief, could not have ran away, as he did when the mob chased him, when he used the cutlass to slash the PW1. He could not have acted in self defence, when he had the time to reach out for a cutlass, in an open football park and when play was going on. In any case I already held in the first issue above that, his evidence is inconsistent and sharply contradicted his own witness and therefore unreliable. It is my respectful view that, the authority in Ampomah cannot inure to the benefit of the Accused person.

On the whole, it is not in doubt that the accused person slashed or wounded the PW1 at the back of the head. His only defence is that he slashed or wounded the PW1 in self defence. Such evidence does not exist.

The prosecution led evidence to establish the guilt of the accused person beyond reasonable doubt. I therefore found him guilty of the offence and convict him accordingly.

In passing sentence on him, take the following into consideration:

- The abhorrence of the whole community against such crime as exhibited members of the community when the chased him in a bid to meet out instant justice to him but for the timely intervention of the police.
- The callous manner which he inflicted multiple wounds on the PW1 even when he was running for rancor
- He could have killed the PW1
- The psychological and deep physical scars left on the PW1

- Accused person is a man to straw therefore had harmed PW1 for nothing and very little the PW1 can get from him by of compensation. He must therefore be mounted in punishment

He is sentence as follows:

- **He is sentenced to 21days imprisonment.**
- In addition, he is sentenced to fine of **250 penalty units in default to serve additional 14 months imprisonment.**

In addition, taking to account the above factors; the trauma and the scars that PW1 had to content with at the young of I award a compensation of **Ghc6,000.00** for the complainant. This is without prejudice to any civil action that he makes against the accused person.

Accused person is reminded of his right to Appeal.

SGD

H/W: SOLOMON K ALOMATU.

DISTRICT MAGISTRATE

24-10-23

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