

CORAM: HIS WORSHIP MR. MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, BOLGATANGA IN THE UPPER EAST REGION OF GHANA, ON FRIDAY, THE 5TH DAY OF JANUARY, 2024.

CASE NO. UE/BG/DC/B4/3/2023.

THE REPUBLIC

VRS.

NSORBILA PROSPER

TIME: 09:28AM

ACCUSED PERSON -- PRESENT

**INSPECTOR BONIFACE DUVOR FOR CHIEF INSPECTOR PROSPER
ADABEEN FOR THE REPUBLIC PRESENT**

NO LEGAL REPRESENTATION FOR THE ACCUSED PERSON

JUDGMENT

Introduction

1. The accused person was brought or arraigned before this court on the **23rd day of September, 2022** for the offence of Assault contrary to Section 84 of the Criminal and Other Offences Act, 1960 (Act 29) as amended. The accused person pleaded NOT GUILTY to the charge against him.

On the 23rd day September, 2022, the court in consideration of the relationship between the accused person and the complainant as relatives referred the case to the Court Connected Alternative Dispute Resolution pursuant to section 73 of the Courts Act, 1993 (Act 459) as amended. The said section provides that:

“Any court, with criminal jurisdiction may promote reconciliation, encourage and facilitate a settlement in an amicable manner of any offence not amounting to felony and not aggravated in degree, on payment cases of compensation or on other terms approved by the court before which the case is tried, and may during the pendency of the negotiations for a settlement stay the proceeding for a reasonable time and in the event of a settlement being effected shall dismiss the case and discharge the accused person.”

However, the complainant and the accused person were unable to resolve the matter out of court, so the court proceeded to determine the case on its merit.

Case of the Prosecution

2. The Prosecution's case as can be gleaned from the brief facts attached to the charge sheet filed on 23rd September, 2022 is that on the 26/5/2022, about 6:00pm, the complainant was returning home from town and saw the accused together with his two other family brothers, Charles and Anafo. Because the complainant is not in talking terms with the accused person and Anafo, she called Charles and greeted him but Charles did not respond to the greetings. The complainant then asked Charles whether it was because of the accused he did not respond to her greetings. The accused became offended and started raining insults on the complainant to wit you are HIV carrier among other insults and in the process, pulled out his waist belt and started beating the complainant. Charles and Anafo stopped the accused and rescued the complainant. Later the complainant reported the matter at Regional/DOVVSU and the accused was arrested. He was cautioned to that effect and he admitted the offence. After investigation, the accused was charged with the offence of Assault.

Burden of Proof

3. In a criminal case where an accused person pleaded not guilty, it is the duty of the prosecution to prove the guilt of the accused person. Article **19 clause (2)(c) of the 1992 Constitution of Ghana** provides that:

“A person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty.”

The proof required in a criminal case is proof beyond reasonable doubt. **The Evidence Act, 1975 (NRCD 323)**, outlines this in subsections 11(2) and 13(1) and Section 22 as follows:

11(2) “In a criminal action 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 could find the existence of the fact beyond a reasonable doubt.

13(1) In any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.

Section 22: In a criminal action a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond a reasonable doubt and thereupon in the case of a rebuttable presumption the accused need only raise a reasonable doubt as to the existence of the presumed fact”.

4. The Supreme Court in a unanimous decision in the case of **Abdulai Fuseini v The Republic, reported in [2020] Crim LR, page 331** reiterated and affirmed the basic philosophical principles underpinning criminal prosecution in our courts as follows:-

*“In criminal trials, the burden of proof against an accused person is on the prosecution. The standard of proof is proof beyond reasonable doubt. Proof beyond reasonable doubt actually means “proof of the essential ingredients of the offence charged and not mathematical proof.” **Emphasis supplied***

5. In the case of **Miller Vrs Minister of Pensions [1947] 2 ALL ER 372 at 373** Lord Denning (as he then was) explained proof beyond reasonable doubt as follows:

*“It need not reach certainty but it must carry a high degree of probability, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice ... If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course, it is possible but not in the least probable’, the case is proved beyond reasonable doubt, but nothing short of that will suffice.” **Emphasis supplied***

6. In the case of **Dexter Eddie Johnson Vrs the Republic [2011] SCGLR 601** Dotse JSC discussed the principle of proof beyond reasonable doubt in some detail and cited the case of Woolmington Vrs DPP [1934] AC 462 where Lord Sankey made the following statement:

“Throughout the web of the English Criminal Law, the golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt – if at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner – the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.” See the case of: **Commissioner of Police Vrs Isaac Antwi [1961] GLR 408** where the Woolmington principle was applied.

7. See also the following cases on the burden of proof in criminal cases: Frimpong @Iboman v The Republic [2012] 1 SCGLR 297, Gligah & Anr v The Republic [2010] SCGLR 870, Tetteh v The Republic [2001-2002] SCGLR 854, Francis Yirenkyi v Republic [2017-2020] 1 SCGLR 433 at 457 and 464-466, just to mention a few.

The Ingredients of the Offence of Assault, Evaluation of Evidence and Legal Analysis

8. Offence of Assault is governed by sections 84 to 88 of Act 29. Section 84 creates the offence of Assault and makes it a misdemeanor. Section 85 makes provision for different kinds of Assault while sections 86 to 88 provide for the definitions of the different kinds of Assault. Section 84, 85 86(1) and 87 of Act 29 provides as follows:

*Section 84- “A **person who unlawfully assaults another person commits a misdemeanor**”.*

*Section 85- (1) "Assault" includes—(a) **assault and battery**; (b) **assault without actual battery**; and (c) imprisonment. (2) Every assault is unlawful unless it is justified on one of the grounds mentioned in Chapter 1 of this Part.*

Section 86(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.”

87. Assault without actual battery

*(1) A **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.** (2) The application of subsection (1) is subject to the following provisions; (a) it is not necessary that an actual assault and battery should be intended, or that the instruments or means by which the assault and battery is apparently intended to be made should be, or should by the person using them be believed to be, of a kind or in a condition that an assault and battery could be made by means of them; (b) a person can make an assault, within the meaning of this section, by moving, or causing a person, an animal, or a matter to move, towards another person, although that person or the other person, animal, or matter, is not yet within a distance from the other person that an assault and battery can be made; and (c) an*

assault can be made on a person, within the meaning of this section, although that person can avoid actual assault and battery by retreating, or by consenting to do, or to abstain from doing, an act.

In the case of **Asante vrs. The Republic [1972] 2 GLR 177**, it was held that Proof of the assault must be established by evidence of conduct of the accused as falling within one or other of the definitions of assault in sections 86, 87 and 88 of Act 29.

From the above-mentioned authorities on assault, the following elements of the offence must be established:

- a. **Wrongful Act/ Actus Reus** -The wrongful act or prohibited physical act is unpermitted contact without consent. In other words, once the contact is unpermitted, there is notional forcibility. The requirement of “forcible touching” in section 86(1) does not mean that the contact should have been done vigorously or violently. “Forcible touching” looks to the lack of consent.
- b. **Mental Element/Mens Rea**- The required mental element, mens rea, is intentional conduct. In the case of assault of battery, the conduct must be with the intention of causing harm, pain, or fear, or annoyance to the person assaulted or exciting him to anger. Thus, the intentional conduct was done without the consent of the complainant.
- c. A person makes an assault without actual battery on another person, 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.

Conduct complained about should be Unjustifiable under law.

9. Section 85 (2) provides that

“An assault is unlawful unless it is justified on one of the grounds mentioned in Chapter One of this part”

From this provision or section 85 (2) of Act 29 the prosecution ought to adduce evidence to establish that the conduct of the accused person is not justified under law. The forcible touching complained about should be unlawful in the sense that the conduct did not fall within one of the grounds recognized under the law as justifying the use of force. The chapter one referred in **section 85 (2)** is made up of **Section 30 to Section 45** as the grounds for the justification of the use of force. **See the case of Asante v. The Republic [1972] 2 GLR 177.**

10. In the instant case, it is the prosecution's case that the accused person on 27/05/2022 assaulted the complainant by beating her. Prosecution in bid to prove its case beyond reasonable doubt called two witnesses-thus, the Complainant and the Investigator herein. PW1-Apusko Mary testified in her evidence in chief as follows “on the 26th day of May 2022, I was returning from Bolga Town, on reaching a section of the road I met the accused person and two other family members. I mentioned one person by name Charles who was part of the three and greeted him. Charles did not respond to my greeting. Accused person who was part of the three persons started insulting me. He insulted me that I am an HIV CARRIER. He removed his belt and moved closer to me to beat me up. It was Charles who rescued me from the beating. This conduct including several insults made me angry and I reported the matter to police.”
11. **PW2-** D/PW Inspector Beatrice Azekaroa testified in her evidence in chief to the effect that as the investigated in the case she obtained the necessary statements from the accused person. She stated that she visited scene of crime and investigations revealed that complainant was actually attacked by the accused person. She tendered in evidence the Caution Statement of the accused person as **Exhibit A** and his Charge Statement as **Exhibit B**.

12. At the close of prosecution's case the court in accordance with sections 173 and 174 of Act 30 found that there was *prima facie* or sufficient case against the accused and he was called to open his defence. The duty of the accused at this juncture is to raise a reasonable doubt in the minds of this court. Sections 11(3) and 13(2) of the Evidence Act 1975, (NRCD 323) provides as follows

"Section 11(3) In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt.

Section 13(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 of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt."

Also, in the case of **Lutterodt vrs Commissioner of Police (C. O. P.) [1963] 2GLR 429-440**, holding 3, the Supreme Court per OLLENNU J.S.C. set out 3 stages that a court must use to examine the case of the defence in criminal cases, as follows:

(3) *"In all criminal cases where the determ*

ination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:

- a. *If the explanation of the defence is acceptable, then the accused should be acquitted,*
- b. *If the explanation is not acceptable but is reasonably probable, the accused should be acquitted.*

c. *If quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty it must convict.*”

13. The court will now proceed to examine the case for the defence. Accused person in his defence testified himself and called two witnesses. Accused testified in his evidence in chief as follows: “A few months ago, I was sitting together with one Charles and one Anafo having a discussion about politics. The complainant was passing by and greeted Charles three times but he did not respond. Then the complainant said because of these useless people (myself and Anafo) that was why Charles refused to respond to her greetings. Charles however explained the reason why he did not respond to the greetings. Thereafter the complainant came closer to me pointing fingers at me. Charles advised me not to react. I was going to pick up my motor and the complainant pushed the motor down. Charles and Anafo came to separate us or calm the situation, I then took my motor and left. Two days later, I was arrested after the complainant reported me. I was granted bail but the police delayed for six months before they brought me to court.”

The accused person in his statement to the police on 30th May, 2022 (**Exhibit A**) which he relied on in Exhibit B, he stated as follows:

*“...there I said to the complainant why do you always like fighting and coming closer with her rubber bag and phone down, started insulting me that my mother and that I am nobody; **there that I removed my belt to beat her and Charles and Anafo held me ...**”*

14. **DW1**-Emmanuel Anafo Atiah testified in his evidence in chief that “Myself, Accused and Charles were sitting together talking about politics, and the complainant was passing by. She greeted three times but no one responded. Complainant said how come he greeted Charles but no response. Charles explained the reason for not responding. Complainant started insulting me and the Accused Person. Accused said she should not insult them. She moved closer to the Accused Person but we advised Accused not to do anything to her. Complainant pushed Accused Person's motor down

and it created a scene and people gathered. We calm down the situation and departed.”

The evidence of DW2 in effect corroborated the evidence of Accused and DW1.

15. From the evidence of the prosecution and the defence on record, this court finds as a fact as follows: That on the day of the incident this case, there was a misunderstanding between the complainant and the accused person. The complainant and the accused person exchanged words or insulted each other and in the process the accused touched or attempted to beat the complainant with his belt but they were separated by DW1 and DW2.
16. The inference that can be made from facts found is that the touching of the complainant was done intentionally without consent of the complainant. The law is that a person who without the consent of another person and with the intention of causing harm, pain or fear or annoyance to the person or exciting the person to anger or that person forcibly touches the other person commits an assault and battery. **See section 86(1) of Act 29.** The least touch of a person in anger to cause pain, harm, fear, or annoyance to that person or of exciting the other person to anger that person forcibly touches the person amounts to Assault and battery. The conduct of Accused person in touching the complainant in the instant case is intended to cause harm, pain, or fear, or annoyance to the complainant or exciting her to anger.
17. In addition, the law is that a person makes an assault without actual battery on another person, 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. **See section 87 of Act 29.** In instant case, the accused stated that when the complainant was insulting him he removed his belt to beat her but Charles and Anafo held him or separated them. See **Exhibits A and B.** So, the accused by his conduct of removing his belt in an attempt to beat the complainant intentionally put the complainant in fear of instant assault and battery.

18. The court therefore finds the explanation of the defence unacceptable and holds that the accused person assaulted the complainant by touching her or putting her in fear of instant assault and battery. Accordingly, the prosecution has proved to the satisfaction of this court that the accused person assaulted the complainant without her consent or any justification in law.

Conclusion

19. Having examined the whole evidence of the prosecution and Defence on record, this court is of the considered opinion that the prosecution has discharged its burden of proof beyond reasonable doubt regarding the charge of Assault against the accused person. Thus, the ingredients of the offence of Assault were proved beyond reasonable doubt. In other words, apart from the defence's explanation, this court is satisfied on a consideration of the whole evidence that the accused is guilty of unlawfully assaulting the complainant. Accordingly, the accused person is hereby found guilty of Assault contrary to section 84 of the Criminal and Other Offences Act, 1960 (Act 29). The accused person is convicted for the crime of Assault contrary to section 84 of Act 29.

Mitigation of Sentence and Sentence

20. The Accused Person pleaded for leniency and that the court should temper justice with mercy. He submitted that he is a first time offender.
21. Considering the nature or facts of this case, the plea of the accused person for mercy or leniency, the fact that the accused person is a first time offender, the Accused person is hereby sentenced to pay a fine of Fifty (50) Penalty Units (GHC600.00) and in default three (3) months imprisonment with hard labour.

(SGD.)

**H/W MAWUKOENYA NUTEKPOR
(DISTRICT MAGISTRATE)**