

CORAM: HIS WORSHIP MR. MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, BOLGATANGA IN THE UPPER EAST REGION OF GHANA, ON MONDAY, THE 22ND DAY OF JANUARY, 2024.

CASE NO: UE/BG/DC/B4/4/2024

THE REPUBLIC

VRS.

SETH AZANGBEW

TIME: 10:32AM

ACCUSED PERSON -PRESENT

INSPECTOR BONIFACE DUVOR FOR THE PROSECUTION - PRESENT

NO LEGAL REPRESENTATION FOR THE ACCUSED PERSON

JUDGMENT

Introduction

1. The accused person herein was brought or arraigned before this court on the 5th September, 2023 and charged 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.

Case of the Prosecution

2. The case of the prosecution as can be gleaned from the brief facts attached to the charge sheet filed on 5th September, 2023 is that Complainant; Diana Anakanbisi and the accused person Seth Azangbe are natives of Pwalugu. The complainant is a trader whilst the accused person is a farmer. On 30/05/2023 at about 0830 hours the complainant whilst on her way to the Pwalugu market to buy porridge, met the accused person at the frontage of his house. The accused person seeing the complainant started pelting stones at her without any cause. The complainant asked the accused person why he was pelting stones at her

but the accused person grew angry and intensified pelting of the stones and in the process injured the complainant. The complainant thereafter lodged a complaint to police and a medical report form was issued to her for treatment. The accused person was later arrested and after investigation he was charged with the offences stated above and arraigned before this Honorable Court.

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 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 and 86(1) 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.”

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.

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 30/05/2023 assaulted the complainant by pelting stones at her and as a result the complainant sustained injuries. Prosecution in bid to prove its case beyond reasonable doubt called three witnesses. The PW1-Diana Nankanbisi testified in her evidence in chief as follows: on 29/05/2023 at about 1930 hours I was in the convoy of the new enskinned chief returning home from the Tongo paramount chief palace. On reaching a section of the road near the old chief palace, a fight suddenly broke between the supporters of the old and the new chiefs and they fought. In the course of the fight, I managed and run to my house. On 30/05/2023 at about 0730am I was on my way to Pwalugu market together with one Cynthia to buy porridge. On reaching a section of the road we met the accused person standing at the frontage of his house. Suddenly the accused person on seeing us started pelting stones at us without any just cause and in the process one of the stones hit my left cheek. We later returned home and informed the chief about what the accused person did to me. After which I lodged a complaint with the Pwalugu police and I was issued with a police medical report form to seek treatment and report. I thereafter went to hospital and I was treated and discharged with the police medical form dully endorsed.”

11. PW2-Cynthia Akanpiisi in her evidence in chief testified as follows: “On 30/5/2023 at about 0730am I was in the company of the complainant to Pwalugu market to buy porridge. On reaching a section of the road we met the accused person standing at the frontage of his house. Suddenly, the accused person on seeing us started pelting stones at us without any just cause and one of the stones hit the complainant left cheek, and she sustained a cut. We later returned home and she informed the chief after which, she lodged a complaint to police.”

12. PW3-No. 11511 PW/CONST Freda Apawor testified that on 02/06/2023 she was the available investigator on duty when an extract of occurrence

an assault case dated 1/06/2023 was brought in from Pwalugu police station and I was asked to investigate. On receipt of the complaint she obtained the necessary statements from the Complainants, her witness and the accused person. She tendered in evidence Investigation cautioned statement as **Exhibit A**, Charge Caution Statement of accused person as **Exhibit B**, and a Medical Report dated 1st June, 2023 as **Exhibit C** and A photograph showing the abrasion complainant sustained during the attack as **Exhibit D**.

13. Upon the close of prosecution's case the court found that there was a *prima facie* or sufficient case against the accused person for him to be called upon to open his Defence. Accused person however chose to make a statement rather than testifying on oath. He stated as follows: "*There is a chieftaincy dispute which this matter is associated with. We have a new chief that was enskinned and there are people on the side of the old one and the new one. I am on the side of the old chief and the complainant is on the side of the new chief. The new chief went to the Tongraana to pay homage to him and on their way back there was confusion. The new chief created a new road from his house that passes through the Pwalugu station to the main road. They used that road when they were going to Tongo but on their way back they used that road that passes through the frontage of the old chief's house. I learnt they were passing bad comments when passing by. This brought about confrontation. On the following day, a group of men and women from the new chief's side went to the house of our family head and threw stones there, that resulted to damage caused to the roof of that house. They went to the market and later came to the front of our family house and both families started pelting stones at each other. But I was not there on that date. So maybe she was hit with a stone when the two families were stoning each other, and she is now putting the blame on me. That is what I have to say.*"

14. It is a settled principle in criminal law that an accused person has a choice to either testify or to remain dumb. No matter which way he

chooses, it is still incumbent on the prosecution to prove any charge levelled against him beyond reasonable doubt. That assessment could only be made by considering both the factual and legal substance of case led by the prosecution without necessarily looking at what the defence or accused had said or intends to say. See the case of **Kwabena Amaning @ Tagor v. The Republic [2009] 23 MLRG 78 at 130.** Considering both the factual and legal substance of the case led by the prosecution in the instant case without looking at what the defence or accused had said, can it be concluded that the prosecution has succeeded in proving the guilt of the accused person? From the evidence, the accused person denied pelting stones at the complainant. He stated that he was not part of the people who were stoning each other. It is interesting to note that during cross examination of the PW1 and PW2, the accused person asked them where they were going to buy the porridge on the day of the incident. He did not challenge them that he was not around on that date or did not meet the complainant on the day of the incident.

15. The accused person claims on the day of the incident he learnt that two families were pelting stones at each other but he was not there on that day, so may be the complainant was hit with a stone when the two families were stoning each other. However, in his Caution Statement (Exhibit A) he gave to the police on 05/07/2023 and which he relied on in his Charge Statement (Exhibit B) he stated that *“on 30/05/2023 about 1800 hours I was returning from the farm when I met the complainant by the road but I did not attack and assault her neither did I pelt stones at her as she alleges. When I met the complainant I did not even greet her but bypassed her to my house.”*

16. There is a clear contradiction between the Accused statement in Exhibits A and B as well as Accused evidence or statement in court. Under **section 80 of the Evidence Act, 1975 (NRCD 323)**, matters which

the court may take into consideration in determining the credibility of a witness include a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial. The law is well settled that a person whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit. Thus, in the case of **Odupong v Republic [1992-93] GBR 1038** the Court of Appeal held on this principle as follows:-

“The law was well settled that a person whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence would be of no probative value unless he gave a reasonable explanation for the contradiction.” See also Gyabaah v Republic [1984-86] 2 GLR 416 and Kuo-den alias Sobti v Republic [1989-90] 2 GLR 203 SC were referred to

17.The inconsistencies in Exhibits A, B and the statement made by Accused in court lead to the irresistible conclusion that he is not a credible person and his statement is to be taken with a pinch of salt. The court finds the explanation of the defence unacceptable or not reasonably probable and holds that the accused person pelted or threw stones at the complainant, one of the stones hit the complainant and she sustained abrasion or injury on his left cheek.

18.The inference that can be made is that the pelting of the stones at the complainant which hit her left cheek 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 pelting or throwing stones at the complainant in the instant case is intended to cause harm, pain, or fear, or annoyance to the complainant or exciting her to anger. In other words, the accused by his conduct unlawfully assaulted the complainant. Accordingly, the prosecution has proved to the satisfaction of this court or beyond reasonable doubt 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 Sixty(60) Penalty Units (GHC720.00) and in default three (3) months imprisonment with hard labour.

(SGD.)

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