

CORAM: AT THE AMASAMAN DISTRICT COURT" B" ON 27th NOVEMBER, 2024
BEFORE HER WORSHIP ANNETTE SOPHIA ESSEL (MRS.) SITTING AS
MAGISTRATE

CASE NO. CC/4/03/23

THE REPUBLIC

VRS

YAW ADJEI

JUDGEMENT

INTRODUCTION:

The accused person is a fifty-year old transport operator resident at Pokuase in the Ga-West District of the Greater Accra Region of the Republic of Ghana. He was charged with one count of the offence of Assault: contrary to Section 84 of the Criminal Offences Act, 1960 (Act 29). The accused person not guilty to the charge after same was read in English and interpreted to him in Twi language. **Section 84 of the Criminal Offences Act, 1960 (Act 29)** provides as follows:

"Section 84—Assault.

Whoever unlawfully assaults any person is guilty of a misdemeanour."

FACTS OF THE CASE:

The background facts of the case as produced verbatim by prosecution is as follows:

Complainant Samuel Tetteh and accused Yaw Adjei are all transport operators at Pokuase interchange and residents of Ofankor and Pokuase respectively. Sometime now, both station masters who transport passengers from Pokuase to Kumasi have been on each other's throats over who have the right to load passengers at the station which have always ended in a fight and most which are pending in various courts. Accused person Yaw Adjei has always created or formatted most of such troubles. On 02-11-22 at 5:40am, the complainant was at the station as usual and loading a bus bound for Kumasi when the accused Yaw Adjei came to the station to prevent him from loading passengers for a reason that he was the person to be loading passengers at the time. Accused banged the doors of complainant's vehicle on scale and also attempted to close the boot of the vehicle but the complainant prevented the accused person from doing so and the process the accused hit the complainant in the face and tore his dress in the presence of witnesses. Accused after investigation was charged with the offence as indicated on the charge sheet and brought before this honourable court.

ISSUES FOR DETERMINATION BY THE COURT:

The court in view of the charge and evidence led by prosecution and the accused person before the court set down the following issues for determination:

- i. Whether or not the prosecution established a prima-facie case for which the accused person must be called upon to open a defence.
- ii. Whether or not the accused person has a valid defence to the charge against him.

STANDARD & BURDEN OF PROOF:

The accused person is innocent until the prosecution has proven his guilt. [See Article 19(1) (c) of the 1992 Constitution of the Republic of Ghana.].

In establishing the guilt of the accused person in this criminal case, the law of evidence requires, the prosecution to prove the guilt of the accused persons beyond reasonable doubt.

[See Section 10(2) of the Evidence Act, 1975 (NRCD 323). **Section 11(2) of the Evidence Act, 1975 (NRCD 323)** provides that:

“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 reasonable doubt.”

In criminal trials, the burden of proof in the sense of the burden establishing the guilt of the accused person is generally on the prosecution. The failure to discharge burden should lead to the acquittal of the accused person: See *Donkor v. The State* [1964] GLR] 598 SC. [See *Practice and Procedure in the Trial Courts and Tribunals of Ghana*, 2nd Edition, By S. A Brobbey page 139]. **Sections 10 (2) of the Evidence Act, 1975 (NRCD 323)** provides that:

“For the purposes of this Act, the burden of persuasion means the obligation of a party to establish the requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.”

In the case of **Miller v Minister of Pensions 1947 2 ALL ER 372 at 373** Denning J. (as he then was) explaining the nature of the proof that is required of the prosecution stated that:

“Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt as such “... it need not reach certainty”, however “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 admitted fanciful possibilities to deflect the course of justice”

It is trite learning that there is no burden at all on the accused person except to raise reasonable doubt on the case of the prosecution. This means that the accused person depending on the strength of the evidence adduced by the prosecution may have to produce sufficient evidence to create reasonable doubt on the prosecution’s case only when a prima

facie case has been established. For this reason, Section 11(3) of the Evidence Act, 1975 (NRCD 323) provides that:

“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.”

EVIDENCE ADDUCED BY PROSECUTION:

Prosecution in establishing its case called three (3) witnesses. The investigator of this case failed, refused and neglected to appear before the court on the slated date. The evidence of the three prosecution witnesses who testified on the matter and were all cross-examined by the accused persons were as follows: The accused person and the complainant are both drivers operating from different bus stations with the same enclave. According to PW1: Samuel Tetteh a.k.a Obolo and the complainant in this case, he is a driver-station master of the Protoa Transport Union which operates from Pokuase STC station. He sated that he was a resident of Ofankor. On 2nd November, 2022, at about 05.40 hrs he was at the bus station loading vehicles for Kumasi when accused who operates Tiga Station: a bus station which is close to that of the complainant entered the complainant’s station to stop the complainant from loading a vehicle which was on a scale. The complainant claims that in doing this, the accused person banged the car door and tried to close the booth. In the complainant’s bid to stop the accused person from closing the car door, the accused person punched the complainant in the face. Onlookers at the scene advised the complainant not to retaliate. According to the complainant the accused person whist doing this was wielding a machete which same he used to threaten the complainant of harming him till onlookers on the same managed to collect the cutlass from the accused person. PW1 further claimed that, the accused person regularly threatened to kill him thus leaving him living in apprehension and fear.

PW2: Yaw Adofo; a driver at Pokuase STC Station further testified that on that day, he entered the premises to see the complainant a.k.a Obolo; who serves as the station master loading passengers from Pokuase to Kumasi into a Toyota Haize vehicle. PW2 claimed that at about 06.30hrs the accused came unto the premises to enquire about who was loading passengers into the car. When the accused person was informed that it was the doing of the complainant, the accused person lost his temper and slammed the loading car door shut. The accused person further drove away other vehicles on the premises. PW2 claimed that when the complainant enquired from the accused person the reason for his actions, the accused person lost his temper and punched the complainant in the face. This resulted in a brief scuffle between them till other drivers and persons on the premises separated them. PW2 denied any knowledge of frequent threats of death issued by the accused person against the complainant. PW2 failed to appear before the court to be cross-examined on his testimony.

PW3 added that on the said date he visited the Pokuase STC Station at 07.00hrs to meet the complainant loading vehicles with passengers. He claimed that he was present when the accused person came unto the premises to confront the complainant on his action and resisted the complaint from doing his work of loading passengers in his role as station master. PW3 claimed that the accused person "hit Obolo in the face.... He again pound on him and assaulted Obolo." PW3 claimed that he together with other drivers saved the complainant from the grips of the accused person. PW3 however denied any knowledge of threat of death issued by the accused person against the complainant. Under cross-examination, PW3 stated that the incident occurred at 7.30a.m. He claimed that the accused person was not wielding a machete, nor did he have any knowledge of the accused person threatening the complainant of taking his life.

DEFENCE OF ACCUSED:

In the defence of the accused person to the above stated charge, in his Investigation Caution Statement, he stated that on 2nd November, 2022 at about 6.30a.m. he reported for work at his

station and was loading passengers bound for Kumasi into a Toyota Hiase, vehicle when the complainant interrupted his work by driving away the vehicle that the accused person was loading and replacing same with another vehicle. The accused person narrated that he subsequently attempted to drive away the said driver of replacement car which resulted in a scuffle between Accused and Complainant. The accused person narrated that they only fought and that he never threatened the Complainant. He also added that he was injured in the scuffle as the complainant used his keys to punch the forehead of the accused person. The charged statement of Accused was a photocopy of his statement supra.

In his testimony before the court during trial the accused person stated that he was duly licenced to operate his transport station at its present location, however the complainant also lay rival claim of title to operate a same business at that location. Thus, on the said date, at around 06.30hrs he arrived at his workplace to meet a scene much to his chagrin where the complainant had moved his vehicle which was loading at the loading point and replaced same with another vehicle.

The accused person narrated that he confronted PW1 which resulted in an exchange of fisticuffs between them. He further narrated that in their brawl, PW1 bit a section his forehead and he in retaliation also tore the clothes of PW1. He narrated that he bled profusely from the bite-wound and subsequently reported the incident to the Amasaman Police Station in the first instance and subsequently the Pokuase Police Station. Accused tendered coloured images of the wounds sustained and also the medical attention given to his injury as exhibits. Accused was not cross examined on his testimony as he failed to appear before the court on the slated date. In addition to his evidence, the accused person called one witness whose testimony did not go in any way to assist him as same was no more than hearsay evidence.

At the close of the case of prosecution, with a prima-facie case established by prosecution, the accused person was called upon to open his defence and was cross-examined on same.

ANALYSIS:

In addressing Count One which is the charge of Assault, Section 84 of the Criminal Offences Act, 1960 (Act 29) provides that it is a misdemeanour for any person to commit assault against another person. For the charge of assault with which the accused persons have been charged prosecution must prove that:

- i. the accused person forcibly touched or caused person, animal or matter to forcibly touch the complainant
- ii. without his consent
- iii. and with the intention of causing harm, or fear of annoyance to the other person or exciting him to anger.

In the case of **Tsatsu-Tsikata v The Republic [2003-2004] SCGLR 1068 (holding 5)** the court held that the decision as to whether or not the prosecution has proved its case beyond reasonable doubt should be made after the end of the trial, i.e. after consideration of the prosecution's case and that of the defence. [See Trial Courts and Tribunals of Ghana, 2nd Edition by S. A. Brobbey Page 126, Paragraph 276].

In the case of **The State v. Banful [1965] GLR 433 @ 444** the court held that:

"Where the prosecution, intend to rely on a confession statement it is their duty to prove affirmatively that the admissions were voluntarily made and not induced by any promise or favour or advantage or by the use of fear or threats or pressure by a person in authority."

The case mentioned supra further held that:

"It is a question of fact whether a statement is voluntary or not and the determination of that fact is for the judge."

Also, in the case of **The Republic v. Agyiri @ Otabil [1982-83] 251** the court held that:

"There was a well-established principle of law that a voluntary confession by an accused person to the commission of the crime charged was sufficient to support conviction of the accused."

Therefore, the onus lay on the prosecution to prove that the confession was voluntary; the prosecution should prove that there was no inducement by threat or duress or promise held out to the accused by a person in authority. In the instant case, since A claimed that he was forced to thumb-print a fabricated story and also that there was no independent witness present at the time the statement was made, the onus shifted on to the prosecution to substantiate their case."

The combined effect of Exhibits "A" and "B" is that the prosecution appeared to have satisfied the requirements of **Section 120 (1) (2) (3) & (4) of the Evidence Act, 1975 (NRCD 323)** and its subsections which provides as follows:

"(1) In a criminal action, evidence of a hearsay statement made by an accused admitting a matter which

(a) constitutes, or

(b) forms an essential part of, or

(c) taken together with other information already disclosed by the accused is a basis for an inference of, the commission of a crime for which the accused is being tried in the action is not admissible against the accused unless the statement was made voluntarily.

(2) Evidence of a hearsay statement is not admissible under subsection (1) if the statement was made by the declarant while arrested, restricted or detained by the State unless the statement was made in the presence of an independent witness,² who

(a) can understand the language spoken by the accused,

(b) can read and understand the language in which the statement is made,

and where the statement is in writing the independent witness shall certify in writing that the statement was made voluntarily in the presence of the independent witness and that the contents were fully understood by the accused.

(3) Where the accused is blind or illiterate, the independent witness

(a) shall carefully read over and explain to the accused the contents of the statement before it is signed or marked by the accused, and

(b) shall certify in writing on the statement that the independent witness had so read over and explained its contents to the accused and that the accused appeared perfectly to understand it before it was signed or marked.

(4) For the purposes of this section, a statement that was not made voluntarily includes, but is not limited to a statement made by the accused if

(a) the accused when making the statement was not capable because of a physical or mental condition of understanding what the accused said or did; or

(b) the accused was induced to make the statement by being subjected to cruel or inhuman conditions, or by the infliction of physical suffering upon the accused by a public officer or by a person who has a direct interest in the outcome of the action, or by a person acting at the request or direction of a public officer or that interested person; or

(c) the accused was induced to make the statement by a threat or promise which was likely to cause the accused to make the statement falsely, and the person making the threat or promise was a public officer, or a person who has a direct interest in the outcome of the action, or a person acting at the request or direction of a public officer or the interested person."

This is because following the passage of the Criminal (Procedure) Amendment Code, 1979 (SMCD 237), the main test for admissibility of confession statement as with any other statements of the accused is whether or not it was voluntarily made. A confession statement will be admissible if found to be voluntarily made [See Practice and Procedure in The Trial Courts and Tribunals of Ghana 2nd Edition by S. A. Brobbey, paragraph 235 at page 108-109, *Otabil v. The Republic* [1987-88] 1 GLR 58 CA *Duah v. The Republic* [1987-88] 1 GLR 343, CA].

A confession statement is admissible hearsay evidence, which does not require further proof so long as that confession statement satisfies the requirements of the law. [See Section 120 (1) (2) (3) of the Evidence Act, 1975 (NRCD 323). The statutory provisions on confessions as set

out in the Evidence Act, 1975 (NRCD 323) provides the basis under which evidence of a confession, which constitutes a hearsay statement, will not be admissible. It also sets out the conditions under which a hearsay statement shall be made admissible and that is where the statement was made voluntarily and in the presence of an independent witness. Further that the independent witness must be a person who can understand the language spoken by the accused, who can read and understand the language in which the statement is made and where the statement is in writing the independent witness must certify that the statement was made voluntarily by in his presence and the contents were fully understood by the accused person.

In this case, there is overwhelming evidence that accused made the said confessions voluntarily without any form of duress. In addition, by his statement in Exhibit "B" accused clearly indicated his intention to continue relying on Exhibit "A." The witness statement of the accused person also supports same. For this reason, the court itself would have rejected the investigation caution statement of the accused herein if it found that the accused person gave his caution statement while under any form of duress or other conditions under the Evidence Act, 1975 (NRCD 323). However, not only did the accused person fail to raise any objection to the tendering of his investigation caution statement or Exhibit "D" but there is no evidence on the record indicating that at any point in time during the prosecution of this case, the accused person was put under duress or that his statement was involuntarily submitted.

For this reason, the court is satisfied that the charge against the accused person does not require further proof owing to the fact that accused had already confessed to the crime per Exhibit "A & B" and also his own Exhibit 1. Therefore, the court is satisfied that the charge against accused is proved based on his own confession. I therefore find accused person guilty of the charge of Assault; contrary to Section 84 of the Criminal Offences Act, 1960 (Act 29).

FINDINGS & CONVICTION:

The evidence of the prosecution and defence put together led to the following findings:

- i. That prosecution has proved its case.
- ii. That the accused person is guilty of the offence of assault as charged.

The court accordingly convicts the accused person as such.

SENTENCE:

In conclusion, this court having considered all the circumstances of the accused person, the fact that he is not known to the law, albeit the need to serve as a deterrent thereby sentences the accused person to:

1. Pay to the Republic a fine of seventy (70) penalty units or in default serve a term of two (2) months imprisonment.
2. Sign a bond to be of good behaviour for five (5) months or in default serve a term of one (1) months imprisonment.

Accused is hereby informed of his right to appeal this sentence within one (1) month from the date of this judgment.

H/W ANNETTE SOPHIA ESSEL (MRS.)

MAGISTRATE

