

IN THE DISTRICT COURT HELD AT NEW EDUBIASE ON THURSDAY, THE 4<sup>TH</sup>  
DAY OF MARCH, 2024 BEFORE HER WORSHIP LINDA FREMAH ADOM OKYERE,  
ESQ.

SUIT NO. CC02/2023

THE REPUBLIC

V

BEATRICE BAFFOUR AWUAH

ACCUSED PERSON PRESENT

D/C/INSPECTOR ISAAC WAYOE FOR PROSECUTION PRESENT

CHARLES BOATENG ESQ. FOR ACCUSED PERSON PRESENT

---

### JUDGMENT

---

**FACTS:** The undisputed facts of this case are that accused person and complainant are divorced with two children between them. Despite the resolution of the marriage, the parties continue to live together in the same house. Accused person has remarried and has another child, a baby in her new marriage. Complainant is on the verge of getting married to one Margaret Commey. Sometime on 26<sup>th</sup> June, 2023 Margaret visited Complainant at the house and helped him wash his clothes. Due to the rains on that day, Complainant opted to hang the washed clothing in a vacant room in the house. He led Margaret into that vacant room to hang the clothes. At that time, Accused person was cooking *banku* at her side of the house. Accused person got peeved about the fact that Complainant had sent Margaret to the vacant room and thereupon rushed onto the Complainant with the wooden spatula with which she was stirring the *banku* and slapped the cheek of Complainant with the said spatula leaving bits of the *banku* stained in the Complainant's beard. The matter was reported to the police, New Edubiase and Accused person was arrested and put before Court.

**CASE OF THE PROSECUTION:** PW1 was called upon by prosecution to establish their case. He narrated how Accused person caused commotion alleging that she was the one who suffered to build the house with complainant but his fiancée was rather the one enjoying it. According to PW1, Accused person slapped him with the spatula and he managed to snatch the spatula from Accused person and led Margaret away from the scene. PW2 Margaret Commey reiterated the evidence of PW1. PW3 is the investigator in this case. He tendered into evidence the investigation caution statement and charge statement taken from Accused person and same were admitted and marked EXHIBIT A and EXHIBIT B, respectively. He also tendered into evidence the endorsed police medical report, a picture of the wooden spatula and a picture of the Complainant which were admitted and marked as EXHIBIT C, EXHIBIT D and EXHIBIT E, respectively.

Accused person did not ask PW1 and PW2 any questions when she was given the opportunity to cross examine them. She however asked PW3 one question as follows:

*Q. Where did the incident happen*

*A. It happened at the Complainant's house*

**ISSUE:** The issue for determination is whether or not Accused person assaulted the Complainant.

**BURDEN OF PROOF:** As stated in the **1992 Constitution of the Republic of Ghana, Article 19(2)(c)**, *'a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty'*. The import of **Section 11(1) of the Evidence Act, 1975 (Act 323)** is that the burden of producing evidence lies on the party who stands to have a ruling against him if he fails to introduce sufficient evidence in proof of his case.

Generally, in criminal cases, prosecution is the party requesting the court to pronounce the guilt of the accused person on the charges made against him. Therefore, if no sufficient evidence is led, there will be no basis for the court to make that pronouncement in favour of prosecution. The nature of the evidence led should be of such quality so as to convince

the court of the essential elements of the charges. See **Sections 10 and 15 of Act 323**. The proof required of prosecution is proof beyond reasonable doubt. See **Sections 11(2), 13(1) and 22 of Act 323**. See also the case of **Oteng v The State [1966] GLR 352**. It has been held in the case of **Donkor v The State [1964] GLR 598** that the failure of prosecution to discharge the burden of establishing the guilt of the accused person should lead to the acquittal of the accused.

**Section 85 of the Criminal and Other Offences Act, 1960 (Act 29)** states that *"for the purposes of section 84, assault includes*

- a. Assault and battery*
- b. Assault without actual battery, and*
- c. Imprisonment"*

The facts of this case illustrate a situation of assault and battery. **Section 86(1) of Act 29** states that *"a person makes an assault and battery on another person if, without the other person's consent, and without 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"*.

The evidence led by prosecution was not disputed by Accused person and therefore prosecution needed not lead any further evidence in proof of their case; for it is trite learning that it is only unadmitted or denied facts that are in issue and need to be proved. This was the decision in the case of **Fori v Ayirebi [1966] GLR 627 at 647, SC** that *'when a party makes an averment and that averment is not denied, no issue is joined on that averment and that no evidence need be led. Again, when a party gives evidence of a material fact and is not cross examined upon it, he needs not call further evidence of that fact.'*

See also **Western Hardwood Ent. Ltd v West African Ent. Ltd. [1998-99] SCGLR 105**.

It is my view therefore that prosecution has discharged the burden of proof which rested on them and a case of assault has been made out against the Accused person subject to

her ability to raise a reasonable doubt in the case of prosecution. Korsah CJ in the case of **Commissioner of Police v Antwi [1961] GLR 408** sums this up as follows:

*"The law is well settled that there is no burden on the accused. If there is any burden at all on the accused, it is not to prove anything but to raise a reasonable doubt. If the accused can raise a reasonable doubt he must be acquitted"*

See also **Woolmington v Director of Public Prosecution [1935]AC 462**

Even though Accused person denied committing the offence in her investigation caution statement and charge statement given to the police, she subsequently admitted hitting the Complainant with a spatula. Accused person did not lead any evidence to cast doubt on the case of prosecution and she is therefore found guilty of the offence of assault contrary to section 84 of Act 29.

For the foregoing reasons, Accused person is accordingly convicted.

**SENTENCING:** In sentencing the Accused person, I have taken into consideration the fact that she is a first-time offender. She exhibited remorsefulness throughout the course of the trial and was willing to make amends with the Complainant through the use of the court-connected ADR. I have also considered the fact that Accused person is a nursing mother whose child requires her constant attention and care. It is my view that a custodial or prison sentence will not serve any useful purpose. The Accused person ought to be given the kind of punishment that will help reform her and bring some sanity to the house.

Accused person shall therefore bind herself to be of good behaviour for a period of twelve (12) months or in default, nine (9) months imprisonment in hard labour.

SGD

MRS.LINDA FREMAH ADOM OKYERE

DISTRICT MAGISTRATE

04/03/2024