

**IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI  
ON THE 27<sup>TH</sup> DAY OF JULY, 2023, BEFORE HER LADYSHIP AFIA N. ADU-  
AMANKWA (MRS.) J.**

**SUIT NO: F6/1/23**

**THE REPUBLIC**

**VRS**

**OFORI ELIJAH**

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**JUDGMENT**

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The accused person, Ofori Elijah, was arraigned before this court charged with causing harm contrary to section 69 of the Criminal Offences Act, 1960(Act 29). He pleaded not guilty to the offence.

The relevant facts of the case, as presented by the prosecution, are that prior to the incident leading to the accused person's arrest, the accused person and the deceased, Cecilia Adokatse, were in a concubinage relationship. They lived together in the farm cottage of the accused person until their relationship turned sour in February 2016. The deceased relocated to her farm cottage near Nkwanta, Enchi and threatened to terminate her relationship with the accused person. This did not go down well with the accused person. The accused person went to the deceased's cottage and seized her personal effects to his cottage. On 5<sup>th</sup> March 2016, at about 5:30 pm, the deceased and her two grandchildren went to the accused person's cottage to retrieve her personal effects. When they arrived, they met one Yaw Andoh, who pleaded with the accused person to

release the deceased's personal effects. The accused person obliged his friend and released the deceased's personal effects. At about 6:30 pm, the deceased, her two grandchildren, and Yaw Andoh set off for the deceased's cottage. The accused person also followed them and wielded a gun. When they got to the deceased's cottage, the accused person shot the deceased from behind, hitting her on the left side of her back. The deceased screamed, fell and died instantly. Subsequently, the accused person who bolted after shooting the deceased was arrested and, after investigations, was arraigned before the court for trial.

### **BURDEN OF PROOF**

It is trite that in all criminal cases, the burden of proof is always on the prosecution. This is backed by both statute and case law. In **Frimpong alias Iboman vs. The Republic [2012] 1 SCGLR 297**, the Supreme Court put the burden in this way as follows:

*“The prosecution has a duty to prove the essential ingredients of the offence with which the appellant and the others have been charged beyond any reasonable doubt. The burden of proof remains on the prosecution throughout and it is only after a prima facie case has been established i.e. a story sufficient enough to link the appellant and the others to the commissioning of the offences charged that the appellant, therein accused is called upon to give his side of the story”.*

Now the standard of this proof is proof beyond a reasonable doubt. **Section 13(1) of the Evidence Act, 1975, (NRCD 323)** states that:

*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 reasonable doubt.*

Proof beyond a reasonable doubt does not mean proof of an absolute certainty or proof which is beyond a shadow of a doubt. The Supreme Court, in the unreported case of **Richard Banousin vrs the Republic, (2015) JELR 68931(SC) Supreme Court** explained the phrase “beyond reasonable doubt” as

*“the prosecution must overcome all reasonable inferences favouring innocence of the accused”.*

Under our law, no burden rests on the accused person to prove that he did not commit the offence. His only burden is to raise a reasonable doubt as to his guilt after the prosecution had first discharged its burden to a requisite degree. The doubt, however, created by the accused person must be real and not fanciful. (see **Miller vrs. Minister of Pensions (1947) 1 AER 372 @ 373**).

#### **EVALUATION OF THE EVIDENCE**

The accused is alleged to have caused harm to one Cecilia Adokatse. The particulars of the offence state that:

*“On or about 5<sup>th</sup> March, 2016, at Adokatsi farm cottage at Nkwanta near Enchi in the Western Region of the Republic of Ghana and within the jurisdiction of this court, did intentionally and unlawfully cause harm to Cecilia Adokatsi”.*

**Section 69 of Act 29** states:

*A person who intentionally and unlawfully causes harm to any other person commits a second degree felony.*

By this definition, there are four ingredients the prosecution must prove to succeed on this charge. These four ingredients are:

- i. That harm was caused to the deceased, Cecilia Adokatse.
- ii. That it was the accused person who caused harm to the deceased.
- iii. That the harm the accused person caused was unlawful.

- iv. That the accused person intentionally caused unlawful harm to the deceased.

The prosecution sought to prove its case by the evidence of three witnesses and the statements of the accused person given to the police.

### **SUMMARY OF EVIDENCE**

PW1, Peter Korsinah testified that he lived at Adokatsekrom with his grandmother, the deceased, his sister Felicia and other relatives. The deceased was the concubine of the accused person who lived in a cottage close to theirs. By virtue of her relationship with the accused person, the deceased moved in to stay with the accused person in his cottage. However, she returned to her cottage due to problems with the accused person. The accused person came for the deceased's personal belongings to his cottage, claiming she owed him and he would only return them upon full payment of the money. Later on, Yaw Andoh, a friend of the accused person, informed the deceased that he had spoken to the accused person, and he had agreed to release the personal effects to her, so she should go for them. On 5<sup>th</sup> March 2016, at about 5 pm, he and his sister accompanied the deceased to the accused person's cottage. On reaching the cottage, they met Yaw Andoh, and they began to calculate the amount owed by the deceased, but they could not conclude, so Yaw Andoh asked the accused person to hand over the items to the deceased. The accused person entered his room and brought out the items which he handed over to the deceased. As they were about to leave the cottage, the accused person went to his room, brought out a gun, and said he was going to the forest. They all set off. He took the lead, followed by his sister, the deceased, Yaw Andoh and the accused person. At a point, he turned to look back and saw the accused person attempting to remove something from his pocket but stopped upon realising he was being watched. He warned the deceased to double her steps. When they reached the cottage, suddenly, he heard a gunshot, and the deceased started screaming and ran

towards Atta Sem but fell. He realised the accused person had fired the gun at the deceased, who died instantly. Yaw Andoh led him and his sister to inform the elders of the community.

Felicia Korsina testified as the 2<sup>nd</sup> prosecution witness. She testified that the deceased was her grandmother and the accused's girlfriend. According to her, a misunderstanding ensued between the deceased and the accused person, whereby the deceased packed out of the accused person's cottage and returned to her cottage. The deceased informed her and her brother to accompany her to retrieve her personal belongings from the accused person, which they did. After they had taken the deceased's personal belongings from the cottage of the accused person and set off towards their cottage, she noticed the accused holding a single-barrel gun and following them. She opened their door when they got to their cottage and heard a gunshot. She quickly turned and realised the accused had fired the gun at her grandmother. The deceased staggered, fell and died instantly. The accused took to his heels and bolted away. She went with Yaw Andoh to the police station, where they reported the incident.

PW3 testified and tendered the investigation caution and charge statements of the accused in evidence as exhibits "C" and "D" respectively. He also tendered the gun he retrieved from the accused person and pictures of the deceased as exhibit "A" and "B" series. He testified that on 5<sup>th</sup> March 2016, a case of murder involving the accused person was referred to him for investigation. On receipt of the complaint, he proceeded to the scene at Adokatse farm cottage, a village near Enchi, in the company of other police officers. At the scene, he found the deceased's body lying supine on the compound with a gunshot wound on the left side of her back with blood oozing from it. After he had taken photos and inspected the scene, he conveyed the body to the Enchi Government Hospital mortuary for preservation. On the same day, the accused person who had bolted after the incident was arrested at Kwahu near Enchi by the townsfolk and handed

to the police. Upon his arrest, the gun he used to kill the deceased was recovered from him.

## **INGREDIENTS OF THE OFFENCE**

### **1. That harm was caused to the deceased, Cecilia Adokatsi.**

The first and foremost element the prosecution is enjoined to prove is the harm caused to the deceased. Where no harm is caused, the charge of causing harm cannot be laid out against an accused person. Section 1 of Act 29 defines harm as a bodily hurt, disease or disorder, whether permanent or temporary. It is the prosecution's case that the deceased suffered harm through a gunshot wound inflicted on her by the accused person resulting in her death. Exhibit "B1" gives a pictorial view of the injury sustained by the deceased. PW1 and PW2 have testified that the accused person shot their grandmother to death. PW3 also testified that at the scene, he found the deceased's body lying supine on the compound with a gunshot wound on the left side of her back with blood oozing from it. The post-mortem report tendered by the accused person as exhibit "2" confirmed that the deceased suffered injuries. According to the report, the deceased sustained penetrative injuries to her chest. Thus, it is not seriously in doubt that the deceased sustained injuries showing that she suffered harm prior to her death.

The accused person disputes the fact of the deceased's death. He contends that the pictures of the person as seen in exhibits "B" and "B1" is not Cecilia. To the best of his knowledge, Cecilia is at Nkwanta No. 2, seeking treatment. This suggestion is preposterous in light of the overwhelming evidence so far led regarding the deceased's death. PW1 and PW2 testified that they saw their grandmother slump to the ground after the shot and dying. PW3 has also testified that he saw the body at the accident scene and conveyed it to the morgue. In the post-mortem report, the deceased was identified to the examiner as Cecilia

Adokatse. Thus, it cannot be said that she is at Nkwanta seeking medical treatment. If that were so, how come her relatives, PW1 and PW2 in particular, have not heard from her since 2016, when the accused was arrested for killing her? I find as a fact that the deceased suffered harm. The prosecution has led sufficient evidence on this element.

## **2. That it was the accused person who caused harm to the deceased.**

Perhaps, the most important issue here is the identity of the deceased's assailant. In every criminal trial, it is essential that the court satisfies itself that the identity of the accused person has been proved beyond reasonable doubt to avoid convicting an innocent person. It is not enough for the prosecution to prove that an offence has been committed; there must also be evidence to connect the accused person to the commission of the offence. It is the duty of the prosecution to prove beyond reasonable doubt that it was the accused person and none other who inflicted the injuries on the deceased.

PW1 and PW2 have identified the accused person as the one who caused harm to the deceased. Their evidence showed that the accused person shot their grandmother from behind, killing her instantly. They narrated that upon leaving the accused person's cottage to their grandmother's cottage, the accused followed them, wielding a gun. PW1 testified that he took the lead, followed by PW2, the deceased, Yaw Andoh and the accused person. When they got to their grandmother's cottage, he heard a gunshot, and the deceased started screaming. He realised that the accused person had fired the gun at the deceased. According to PW1, the accused person took to his heels and bolted away. These witnesses' accounts place the accused person at the crime scene, which is the deceased's cottage. As stated by Azu Crabbe JSC in the case of **Adu Boahene vrs. The Republic [1972] GLR 70:**

*Where the identity of an accused person is in issue, there can be no better proof of his identity than the evidence of a witness who swears to have seen the accused committing the offence charged.*

From their account, the accused person was the only one wielding a gun, and as such, he could only have been the one who fired the gunshot. Apart from the eyewitness accounts, the prosecution relied heavily on the accused person's investigation caution and charge statements by which he confessed to harming and killing the deceased.

### **CONFESSION STATEMENTS**

Exhibits "C" and "D" are confession statements. A confession statement is a statement by the accused which, when taken together with other facts and circumstances, constitutes an admission of the commission or participation in the commission of an offence. When admitted in evidence, a confession statement will require no further proof of its contents before being relied upon. After all, the words of the accused person himself provided the strongest evidence against him. In the case of **Cpl. Ekow Russel vs. The Republic [2016]DLSC2800**, it was held that:

*"A confession is an acknowledgment in express words, by the accused in a criminal charge of the truth of the main fact charged or of some essential part of it. By its nature such statement if voluntary given by the accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession statement is voluntary and of the accused person's own free will without any fear, intimidation, coercion, promises or favours".*

The accused person objected to the admissibility of his investigation caution and charge statements in evidence on grounds of duress. According to him, he was



subjected to physical harm, assault and threats at the time the statements were taken. A mini trial was conducted to determine the admissibility of the statements in evidence. Under section 120 of the Evidence Act, supra, a confession statement would only be admissible if it was made voluntarily and in the presence of an independent witness.

## **MINI TRIAL**

The prosecution called the two independent witnesses and the investigator who took the statements. The investigator, the first prosecution witness, testified that on 6<sup>th</sup> March 2016, he took the investigation caution statement of the accused person in the presence of the independent witness, Samfred Quaidoo of Enchi. The accused gave his statement in Twi, which he recorded in English. He read and explained the contents of the statement to the accused person in the Twi language, after which the independent witness also read and explained the contents to the accused in the Twi language. After the accused was satisfied with the contents, he thumbprinted it, after which he and the independent witness signed. PW1 further testified of taking the charge statement of the accused person on 24<sup>th</sup> November 2016 in the presence of the independent witness, Cpl. Wisdom Dzah of Abor police station. According to him, the accused person proffered the statement in the Twi language, which he recorded in English. He and the independent witness read and explained the contents of the statement to the accused, after which the accused person thumbprinted it, and he and the independent witness signed.

PW2, Samfred Quaidoo testified that he was present when the investigation caution statement of the accused person was taken. The accused person gave his statement in Twi, which the investigator recorded in English. After the investigator read and explained the contents of the statement to the accused person, he also read and explained the contents to the accused person in Twi. Having satisfied himself that the statement reflected what he had told the

investigator, the accused person thumbprinted the statement, and he also signed it.

PW3, Cpl. Wisdom Dzah testified that he was present when the accused person gave his charge statement to the investigator in the Twi language, which the investigator in English recorded. The investigator read over and explained the contents of the statement to the accused person in the Twi language. He also read and explained the contents of the statement to the accused person in the Twi language, after which the accused person signed.

The accused testified that he was arrested by the townsfolk of Kwahu, who subjected him to beatings. They pushed him to the ground and poured something which burned like pepper into his mouth. They handed him over to one Owusu, a police officer, who took him to the Omanpe police station. Owusu washed his face with pure water to wash the blood from his forehead. He also gave him palm oil, after which he vomited a whitish substance. The following day, Owusu took his statement in his office. There were about six people in the room. He was in handcuffs then. The other police officers asked him to tell the truth. He told them he had shot no one. Intermittently, they would hit him, and he would try to protect the injury to his head. He gave a statement in the Twi language, but nobody read and explained its contents to him. After taking his statement, Owusu took him to Enchi police station and handed him to Yeboah. Given his injuries, Yeboah did not take his statement that day. Three days later, Yeboah took his statement at the counter back where they kept their guns. Yeboah said he had been charged with murder and should thumbprint the document. Because he was in handcuffs, he could not thumbprint it. Yeboah held his thumb, dipped it in an ink pad and thumbprinted the sheets. Yeboah then picked a pen to write something on the paper. He asked him to tell the truth but denied shooting the deceased. Yeboah called his colleagues who assaulted him, after which he took him back to the

cells. The accused was emphatic that neither PW2 nor PW3 read and explained the statement to him.

At the end of the trial, I was satisfied that the accused person gave his statements voluntarily to PW1 in the presence of PW2 and PW3, who acted as independent witnesses. The independent witnesses understood the Twi and English languages in which the statements were given and written. PW2 testified that he spoke Twi, Brosa and English languages, whilst PW3 testified that he spoke the English, Ewe and Twi languages and indicated that he could read and write English. I was satisfied that the independent witnesses read and explained the contents of the statements to the accused person, which was evidenced by their certification on the statements before the accused thumbprinted them. The investigator corroborated the evidence of the independent witnesses that he observed no bruises on the accused when his statement was taken. According to PW1, the accused was not assaulted nor pressured to provide a statement. The evidence of the accused was not corroborated. Even if his claim of assault was valid, those injuries were not sustained by the brutality of the police but from the persons who arrested him. At the end of the day, I was convinced by the prosecution's corroborated evidence rather than the accused person's uncorroborated evidence. The investigation caution and charge statements, which complied with the requirements of section 120 of the Evidence Act, *supra*, were admitted in evidence as exhibits "C" and "D" respectively.

In his investigation caution statement, the accused person told the police that the deceased, Cecilia Adorkatse was his fiancée since October 2015. According to the accused, the deceased and her grandchildren, Felicia and Peter, relocated from their cottage to stay with him. At a point in time, the deceased warned him to stop monitoring her or she would divorce him. Since then, he harboured the thought of killing her if she divorced him. By virtue of this, the deceased left his cottage to Nkwanta, leaving her personal belongings at his

cottage. On 4<sup>th</sup> March 2016, the deceased came to his cottage and announced that she could no longer stay with him. His close friend, Yaw Andoh, was informed of the situation. The complainant solicited the assistance of Adams and Asante to resolve the dispute between him and the deceased. The meeting was scheduled to take place on 5<sup>th</sup> March 2016. However, on that day, at about 5:30 pm, the deceased with her grandchildren came to the cottage and informed him that Adams had rescheduled the meeting to the following day. He told her that if she insisted on divorcing him, she would have to refund him GHc880.00, which he had given her as housekeeping money during her stay with him. The complainant asked him to hand over her belongings to her, which he did. Since he had already planned on killing her, he took his single-barreled gun with a fresh cartridge he purchased from one Akua of Amonie ever since he developed the intent to kill her. He loaded the gun with the freshly purchased cartridge. He also filled a paracetamol bottle with DDT to drink if he succeeded in accomplishing his goal of killing the deceased. The deceased and her family left his cottage with the complainant, who decided to take them home. He followed them with his gun. On reaching the deceased's cottage, he aimed his gun at the back of the deceased and fired one shot at her. She shouted that he had killed her. He bolted to a junction along the Boinso road with his gun and joined a taxi. Before joining the taxi, the driver removed the empty shell and threw same in a nearby bush. On reaching Alatakrom, he alighted and walked to Kwahu. He saw a group of young men coming towards him. To avoid their wrath, he drank the DDT with the view to killing himself. He was arrested by the townsfolk and escorted to Omanpe Police station, where he was given palm oil. The next day, he was taken to the Enchi police station.

In his charge statement, the accused stated that the deceased, Cecilia Adorkatsi, was his fiancée who lived with him at his farm cottage at Amonie near Enchi with his friend, Yaw Andoh. They happily stayed together until his friend misinformed him that the deceased planned to divorce him. He was not bothered

about the information as he trusted his fiancée. He realised that Yaw Andoh had lied to him for reasons best known to himself. The accused recounted that on the day of the incident, the deceased, in the company of her two grandchildren, came to his cottage after spending some days at her cottage nursing her rheumatism. At about 5pm, they all set off from his cottage to the deceased's cottage in the company of her grandchildren and Yaw Andoh. He took his single-barrel gun and one cartridge along. As they got to the deceased's cottage, he saw a squirrel hovering on a cocoa tree in the nearby bush. He decided to kill it to use it for soup for the family. He stopped to load the gun whilst the deceased waited for him. He knelt down to shoot at the squirrel and warned the deceased not to move in order not to make noise for the squirrel to escape. As he was not getting a clear shot, he moved behind a banana tree and aimed at the squirrel. Unknowingly, as he changed his position, the deceased also moved position and went behind the bush where the squirrel was located. Immediately, he fired, he heard the deceased shouting, "Agyei". He saw Yaw Andoh rushing on him with a cutlass and stating that he had killed the deceased. As Yaw Andoh was brandishing a cutlass, he left the cottage to inform his son, Agya Kwaw, at Kwahu. On reaching there, the townfolks who had already heard the news arrested him and gave him a poisonous concoction which he suspected was DDT, to drink. He was taken to the Omanpe police station, where he was given palm oil to take and vomited the DDT substance. He further added that his statement that he had aimed at the deceased to kill her was stated at a time when he was traumatised and did not know what he was saying. If he had wanted to kill anyone, it would have been Yaw Andoh who had tried to separate him and the deceased.

From his statements to the police, the accused admits to causing harm to the deceased by shooting her with his gun. Whereas in exhibit "C", he intended to cause that harm by shooting her, in exhibit "D", he accidentally shot at her when he tried shooting at a squirrel. Once a confession statement meets the test of admissibility, it is sufficient to ground a conviction for the offence admitted by the

accused person. As long as there is corroboration of the confession by the prosecution's introduction of independent evidence, which tends to establish the reliability of the confession or proved the commission of the crime, then the confession statement without more is enough to prove the prosecution's case against the accused person. See the case of **Gyabaah vrs. The Republic [1984-86] 2 GLR 461**.

A mini trial was conducted, which determined that the accused person voluntarily gave exhibits "C" and "D". He was not coerced into giving those statements. It would be noted that these two exhibits bear certain similarities. In both statements, the accused person admits that the deceased was his girlfriend. Also, he admits to shooting the deceased for different reasons. And after the shooting, he fled the scene for different reasons. Quite apart from this, the accused person's narration of events leading to the shooting is consistent with the evidence of PW1 and PW2, who were eyewitnesses to the incident. How they both went to the accused person's cottage and returned to the deceased's cottage was consistent with what the accused person told the police.

Thus, regardless of his explanation of how the deceased was shot, the fact remains of his admission that he shot the deceased either intentionally or accidentally. This admission, coupled with the eyewitness account of PW1 and PW2, leaves me in no doubt that the accused person shot the deceased, thereby causing harm to her.

### **3. THAT THE HARM THE ACCUSED PERSON CAUSED WAS UNLAWFUL.**

It is not enough on the charge of causing harm for the accused to have caused harm to the deceased. The harm in question must be unlawful. There must be evidence on record to show that the accused caused harm to the deceased, which was unlawful. Harm is unlawful, which is intentionally or negligently caused without any of the justifications mentioned in section 31 of Act 29. This means that

harm could be meted out to a person, which may be justified and therefore lawful, for which the perpetrator would not be punished. The presumption is that all harm is unlawful except it can be justified under section 31 of Act 29. Harm may be justified on grounds:

- i. Of express authority given by an enactment; or
- ii. Of authority to execute the lawful sentence or order of a court; or
- iii. Of the authority of an officer to keep the peace or of a Court to preserve order; or
- iv. Of an authority to arrest and detain for felony; or
- v. Of an authority to arrest, detain, or search a person otherwise than for felony; or
- vi. Of a necessity for the prevention of or defence against a criminal offence; or
- vii. Of a necessity for defence of property or possession or for overcoming the obstruction to the exercise of lawful rights; or
- viii. Of a necessity for preserving order on board a vessel; or
- ix. Of an authority to correct a child, servant, or other similar person, for misconduct; or
- x. Of the consent of the person against whom the force is used.

The caveat here is that such force or harm should not exceed the amount and kind of force reasonably necessary for the purpose for which force is permitted to be used.

The prosecution contends that the harm caused to the deceased, which led to her death, does not fall within any of the exceptions listed above. In the absence of any such justification, the harm caused to the deceased was unlawful. In exhibit "C", the accused person stated that he intended to cause the harm because the deceased had evinced her intention of leaving him. However, in exhibit "D", the accused claims that he accidentally shot her when he was

shooting at a squirrel. PW3 has discounted this by saying that the scene of the incident was not a hunting area where people would go hunting but a farm cottage. As such, it was not expected for a squirrel to be seen talk less of killing it. The accused person and the others walked in a linear line, with the accused behind all of them. Yaw Andoh walked behind the deceased and was directly in front of the accused person. Thus, if the accused person accidentally shot at the deceased because he was shooting a squirrel, Yaw Andoh, who was in front of him, should have been shot instead of the deceased. In exhibit "D", the accused person told the police that he loaded his gun whilst the deceased waited and knelt to aim at the squirrel. As he was not getting a clearer shot, he moved behind a banana tree and aimed clearly at the squirrel. Unknown to him, the deceased changed position as he also changed position and went behind the bush where the squirrel was. Thus, he shot her instead when he aimed to shoot at the squirrel. I find this explanation highly improbable because the deceased had initially seen the direction from where the squirrel was and from where he had aimed his gun towards. He had even warned the deceased not to move in order not to make noise for the squirrel to escape. How could the deceased, who knew where the squirrel was, move behind the bushes toward the squirrel to be the subject of the shot? There is no evidence on record supporting the accidental shooting of the deceased. The accused is not telling the truth, more so when he has even denied making those statements in the wake of the evidence of the two independent witnesses who said they witnessed him providing a statement to the police. The eyewitnesses' account is consistent with the account recounted by the accused person in exhibit "C". I take the view that what happened on the date of the incident is what has been recounted by PW1 and PW2 and the accused person in exhibit "C". As the harm cannot be justified under any of the exceptions listed in section 31 of Act 29, the harm is deemed unlawful.



#### **4. That the accused person intentionally caused the unlawful harm.**

It is not enough for the prosecution to prove that the harm the accused caused was unlawful. It must also be proved that he intended to cause that unlawful harm.

Section 11 of Act 29 deals with intention. Section 11(3), in particular, states that:

*“A person who does an act of a kind or in a manner that, if reasonable caution and observation had been used, it would appear to that person*

- a. That the act would probably cause or contribute to cause an event, or*
- b. That there would be great risk of the act causing or contributing to cause an event,*

*intends, for the purpose of this section, to cause that event until it is shown that that person believed that the act would probably not cause or contribute to cause the event, or that there was not an intention to cause or contribute to it.”*

The law presumes that an accused person intended to cause harm if it would appear to any reasonable person that if he did not use reasonable caution and observation, there would be great risk of his act causing or contributing to cause harm.

The proof of mens rea or intention is not capable of direct proof, but same may be inferred from established facts as stated in section 18(2) of the Evidence Act, supra. Thus, an intention to cause harm may be inferred from the implement that caused the harm and the brutality of the injuries resulting from the unlawful harm.

The implement used was a gun. A gun by all standards, is a very dangerous and offensive weapon whose injuries are usually fatal and usually result in death. In this case, the injuries from the gun resulted in the deceased's death. By shooting the deceased with a gun, the accused evinced a clear intention to cause harm which harm led to her death. The brutality of the injuries suffered by the deceased

is testament to the fact that the accused intended to cause harm to her. In describing the extent of injuries in exhibit "2", the doctor stated that there was a "complete destruction of the left chest wall". In exhibit "C", the accused had decided to kill the deceased and therefore took his gun, loaded it with the cartridge he had bought for that purpose and shot the deceased. On the whole, an intention to cause harm can be inferred from the actions of the accused.

On the whole, the prosecution has succeeded in proving the offence of intentionally and unlawfully causing harm against the accused person beyond a reasonable doubt.

### **DEFENCE OF THE ACCUSED**

In this judgment, it is essential that full consideration be given to the defence of the accused person. His duty is not to prove his innocence but to raise a reasonable doubt concerning his guilt. The degree of proof on the accused person is to merely raise a doubt in the prosecution's case. For as Sankey LC noted in the case of **Woolmington vrs. Director of Public Prosecutions [1935] AC 462 at 481**

*...while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the Prisoner to prove his innocence, and it is sufficient for him to raise a doubt as to his guilt; he is not to satisfy the jury of his innocence.*

The defence of the accused person was a complete denial of the offence. His case was that he was a cocoa farmer and was in a concubinage relationship with the deceased, Cecilia Adokatse. His cocoa was ready for harvesting. Cecilia would usually gather the cocoa when it was harvested. However, she said she was experiencing pains in her leg and, therefore, sought medical attention at Nkwanta, a nearby village. When Cecilia left, he decided to seek his nephew's assistance at Boiso to help him gather the cocoa upon its harvest. He had to walk

to the place, having waited for a while with no car coming. When he got to a nearby village called Kwahu, he was attacked by the people. They put him on the ground and beat him up. They also poured a whitish substance into his mouth, which stung like pepper. They used something to cut his forehead, and blood oozed out of it. They then put him in a taxi cab to the Omanpe police station, where he was handed over to CID Owusu. Mr. Owusu washed his face to remove the blood oozing from his forehead so he could see properly. The following day, Owusu said he wanted to take his statement. Owusu told him he had killed his wife, which he denied. Owusu and one other slapped him severally. He was taken to the Enchi police station and handed over to CID Yeboah. Given the injury to his forehead and the assault meted to him, he thought Yeboah would take him to the hospital, but he did not. Yeboah took a statement from him. In that statement, he told Yeboah that he was on his way to Boisan to go for his nephew to help him on his farm. On reaching Kwahu, he was attacked and taken to Omanpe police station. From Enchi police station, he was brought to the Tarkwa prisons, then to Sekondi prisons.

The evidence of the accused person is a complete departure from the statements he gave to the police. In his statements to the police, he shot the deceased, but in his evidence in court, he did not. In one breath, he intended to kill the deceased; in another, he accidentally shot at the deceased, and yet in another, he never shot the deceased. It is clear from these statements that the accused person is not a person of truth. Under cross-examination, the accused stated that he had never quarrelled or fought with the deceased throughout the entire period of their relationship. How does the accused expect the court to believe that two persons, and for that matter lovers, can stay in one space for five months and over without having any disagreements or disputes? That romantic and idealistic picture he attempted to paint of his relationship with the deceased is not consistent with human behaviour. He further stated that when he was leaving for Boinsu, he had on him a bag only and left his gun at home. Meanwhile,

all the prosecution witnesses stated that he wielded a gun that day. On the date of his arrest, the gun was retrieved from him and handed over to PW3 for further investigations. PW3 testified that during his investigations, the accused person identified the gun to him as belonging to him. PW3 tendered the gun in evidence as exhibit "A", whilst the accused person tendered the ballistics report in evidence as exhibit "3". The report showed that the gun had recently been fired. It makes sense that the gun was retrieved from him because soon after shooting the deceased, he absconded with the gun. PW3 testified that the ballistics expert could not determine whether the pellets were fired from the exhibit gun as the empty shells were never retrieved. In exhibit "C", the accused stated that upon joining a taxi, the driver took the gun, removed the empty shell and threw it in a nearby bush. That explains why the test could not be carried out. The fact that the driver threw the shell away was information peculiarly within the accused person's knowledge. The driver was not found and until proffering this information, the police did not know that the shell was thrown away. Thus, the accused was telling a lie when he said that he did not take his gun along with him. He further lied to the court when he alleged that the deceased was still alive when he knew for a fact that he had shot her to death.

There is also ample evidence to support the prosecution's case that the accused person proffered exhibits "C" and "D". Two witnesses have testified that they were present when the accused gave those statements to PW3. The accused person could not be telling the truth if he denies the fact that he gave those statements. These statements are not consistent with his evidence on oath, and it is apparent that the accused is telling lies and trying to cover up. Exhibit "C" was taken on 6<sup>th</sup> March 2016, a day after the accused person was arrested and when the events were presumably fresh in his mind and he had had no time to strategise on what to say.

In **Republic vrs. Munkaila [1995-1996] 1 GLR 367**, the court held that:

*“Where an accused person takes refuge in telling lies before a trial court, the only inference of his behaviour is that he has a guilty mind and he wants to cover up.*

In the case of **State vrs Otchere [1963] 2 GLR 463**, it was also held that:

*A witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn is not worthy of credit and his evidence cannot therefore be regarded as being of any importance in the light of his previous contradictory statement unless he is able to give a reasonable explanation for the contradictions.*

The accused person's denial of giving exhibits “C” and “D” is not reasonable explanation for his contradictions, given the testimony of the independent witnesses that he gave those statements in their presence and that of the investigator.

The accused person has not succeeded in raising a reasonable doubt in the case of the prosecution. The case of the prosecution is proved beyond a reasonable doubt. I declare the accused guilty of the offence charged. He is accordingly convicted of the charge.

**(SGD.)**

**H/L AFIA N. ADU-AMANKWA (MRS.)  
JUSTICE OF THE HIGH COURT.**

**COUNSELS**

Mabel Araba Aikins (ASA) appears for the Republic.

Amy Bondzie-Hanson appears for the Accused Person.