

GHANA / JUDGMENT

The Republic Vrs Nyeville [2023]

GHADC 151 (8 June 2023)

[2023] GHADC 151

COURT

District Court

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IN THE DISTRICT COURT HELD AT NKROFUL ON THURSDAY 8TH DAY OF JUNE 2023, BEFORE HER WORSHIP AWO AMISSAH FRENCH ESQ. AS MAGISTRATE. CC: NO. B4/04/23 THE REPUBLIC VRS. JOSHUA NYEVILE ACCUSED PERSON PRESENT DETECTIVE CHIEF INSPECTOR FREDERICK OPOKU FOR PROSECUTION NO LEGAL REPRESENTATION FOR ACCUSED PERSON J U D G E M E N T Accused was charged with two counts of Assault under section 84 of the Criminal Offences Act, 1960 (Act 29) and pleaded not guilty respectively to the offenses, for which reason the prosecution assumed the burden of proof and must prove beyond reasonable doubt the charges against the accused person. In the case of ASARE v. THE REPUBLIC (1978) GLR 193 – 199 the court in holding

(2) held: “(2) As a general rule, there was no burden on the accused to establish his innocence rather it was the prosecution that was required to prove the guilt of the accused beyond all reasonable doubt.” See also Section 11(2) of the Evidence Act, 1975 (NRCD 323). I will deal with the two counts of Assault together. Section 84 of the Criminal Offences Act 29/60 states: “A person who unlawfully assaults another person commits a misdemeanour.” From the facts of the case as given by the prosecution, the charge of assault against the accused is that of assault and battery. See Section 85 (1a) of the Criminal Offences Act 29, (1960). Section 86 (1) of Act 29/60 defines assault and battery thus: “A person makes an assault and battery on 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 the other person to anger, that person forcibly touches the other person. To constitute assault and battery, it is sufficient if the prosecution proves that without the consent of the other person, and with the intention of causing harm, pain, or fear or annoyance to the other person or exciting him to anger the accused forcibly touched him or caused any person, animal or matter to forcibly touch him. See Criminal Law in Ghana, p265 and section 87 (2)(b) of Act 29/60. Consequently, in order to ground a conviction, the prosecution would have to prove beyond reasonable doubt that:

1. The accused forcibly touched the complainant.

2. The touch was without the consent of the complainant.
3. That the touch or assault was intentional.
4. The touch or assault was unlawful. Lane LCJ quoted in the case of *Faulkner v. Tolbot* (1981) 3 All ER 440 CA: “An assault is an intentional touching of another person without the consent of that person and without lawful excuse. It need not necessarily be hostile, or rude, or aggressive, as some of the cases seem to indicate.” From the evidence on the record, also noting the endorsements of the medical reports issued to the complainant and her granddaughter (Exhibits A and B) I find as a fact and hold that accused did assault the complainant and her granddaughter and that the accused intended to cause pain, or fear or annoyance or to incite the victims to anger. I therefore hold that the prosecution led sufficient evidence beyond reasonable doubt to prove that the accused intended to cause pain, or fear or annoyance to the com. The last ingredient for the prosecution to prove is whether or not the assault was unlawful. Section 85(2) of Act 29/60 states: “An assault is unlawful unless it is justified on one of the grounds mentioned in Chapter one of this part.” Can the justification for the use of force under section 31 of Act 29/60 avail the accused person? Section 31—Grounds on which Force or Harm May be Justified. Force may be justified in the cases and manner, subject to the conditions, hereinafter in this Chapter mentioned, on the ground of any of the following matters, namely—
 - (a) express authority given by an enactment; or
 - (b) authority to execute the lawful sentence or order of a Court; or
 - (c) the authority of an officer to keep the peace or of a Court to preserve order; or
 - (d) authority to arrest and detain for felony; or
 - (e) authority to arrest, detain, or search a person otherwise than for felony; or
 - (f) necessity for prevention of or defence against crime; or
 - (g) necessity for defence of property or possession or for overcoming the obstruction to the exercise of lawful rights; or
 - (h) necessity for preserving order on board a vessel; or
 - (i) authority to correct a child, servant, or other similar person, for misconduct; or
 - (j) the consent of the person against whom the force is used. From the evidence on the record, none of the grounds above can be gleaned from the record. Complainant’s granddaughter simply asked the reason for which accused flashed the light in her face, causing her to lose her balance which resulted accused assaulting her. The grandmother also simply came to the scene and approached complainant to enquire the reason for his misconduct which also was met with the assault meted on her by the accused. Be that as it may the reaction and the force used by the accused on both victims was unjustified. The test question is the reasonableness or necessity of the reaction of the accused. As already established the

reaction of the accused towards the victims in the circumstance was excessive. The accused therefore failed the test of reasonableness and necessity and I hold that the assault on complainant and her granddaughter by accused was unlawful. I have considered the evidenced adduced by both the prosecution and defence and the applicable law and I am satisfied that the prosecution per the evidence led proved beyond reasonable doubt the offense of Assault against the accused person. Accused has anger issues. I therefore find the accused guilty of the offense of Assault and is convicted and sentenced to a fine of one hundred penalty units in default seven months IHL to both counts of assault. Sentences are to run consecutively and accused is ordered to compensate complainants/victims with and amount of One Thousand Ghana Cedis. SGD H/W: AWO AMISSAH FRENCH DISTRICT MAGISTRATE, NKROFUL 8TH JUNE, 2023 6

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