

GHANA / JUDGMENT

REPUBLIC VRS KONADU (BR/NK/DC 3/2/2023) [2023] GHADC 1258 (10 October 2023) [2023] GHADC 1258

COURT
District Court

CASE / FILE NUMBER
BR/NK/DC 3/2/2023

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1 IN THE DISTRICT MAGISTRATE COURT HELD AT NKORANZA ON TUESDAY THE 10TH DAY OF OCTOBER, 2023. BEFORE HER WORSHIP YAKUBU HAJIA MEMUNATU JEBUNI. CASE No. BR/NK/DC 3/2/2023 THE REPUBLIC VRS. BELINDA KONADU

JUDGEMENT

The accused was arraigned before this Court for causing harm contrary to Section 69 of The Criminal Offences Act 1960 (Act 29). She pleaded guilty with explanation and after listening to the explanation, the Court realized that she was putting up self-defense and the plea was change to not guilty for the prosecution to lead evidence to prove her guilt. THE FACTS OF THE CASE:- The brief facts of the case as presented by the prosecution are that the complainant KWASI FRANCIS is a farmer while the accused BELINDA KONADU is a hairdresser. Both are residents of Boana near Yefiri. The accused is married to the complainant's junior brother and they both live in the same house as a family. On 21-03-23, at about 5:00pm, accused person was peeling cassava for evening meal when complainant went and requested for a cooking pot to use in preparing his food which the accused person has kept in a room. The accused decided to finish peeling the cassava before she will release the cooking pot to the complainant. When the accused was delaying in releasing the pot, he confronted her and this generated into a misunderstanding between both parties which eventually resulted into a fight. In the process of fighting, accused who alleged she was being strangled by the complainant, butchered complainant head with the cutlass she was using to peel the cassava which made complainant sustain multiple injuries on his head. On 23-03-23 complainant reported the case to the Police for investigation. The complainant was issued with Police medical report form to attend hospital for treatment and report back for further investigation. The complainant returned the Police medical report form dully endorsed by the medical officer. Accused was arrested to assist investigation. Investigation statement was obtained from accused and she admitted the offense. After that investigation, the accused was charged with the offense stated on the charge sheet. THE CASE OF THE

PROSECUTION (PW1):- Per the witness statement of the complainant (PW1) filed on 10-05-23, the accused is his junior brother's wife and they both live in the same house at Boana. That the accused has been putting all the cooking pots in a particular room and lock same with padlock. That on 21-03-23, he was in the house alone with the PW1 and requested for a cooking pot from the room to give to his wife to prepare a meal for him. By then she was peeling cassava with a knife. He alleged she started insulting him that he should go away with his nonsense or else she will stab him with the knife she was using to peel the cassava. He kept on repeating his request for the cooking pot and all of a sudden, accused became offended and butchered his head with the knife she was using to peel the cassava resulting in various degrees of injuries on his head and forehead. He shouted for help and people came to rescue him and collected the knife from her. According to him, he was sent to the hospital for treatment before he went to Yefiri Police Station to lodge complaint. He was issued with Police medical report form for further treatment and endorsement. He later submitted it endorsed and his statement was taken. The second and last witness of the prosecution, No. 47662 D/CPL PHILIP NARH, stationed at Yefri in the Nkoranza North District stated in his witness statement filed on 10/05/23 that on 23-03-23, he was at the station and PW1 came to the station with stitches of wounds on his head and forehead and lodged a case of causing harm against the accused and the case was referred to him for investigation. That he obtained statement from the PW1 and he issued a Police medical form to him to attend hospital for further treatment and endorsement. That he took pictures of PW1'S stitched wounds for evidential purposes. After that, accused was later arrested and investigation caution statement obtained from her. He stated that his investigation disclosed that the accused being married to the PW1'S younger brother, they are living in the same house at Boana, accused keeping their utensils in a particular room under lock, accused peeling cassava on 21-03-23, they being in house alone, PW1 requesting for the cooking pot, accused telling him to wait for her to finish peeling the cassava before releasing the pot to him. That accused was delaying and PW1 confronted accused and it generated into a misunderstanding between them and in the process accused attacked complainant with a knife she was using in peeling the cassava and he sustained injury on his head and forehead. He shouted for help and people around rescued him and sent him to the hospital for treatment. He later came to the Station to report the case and that is when he was issued with the purported Police medical form which he later submitted before the accused was arrested and caution statement obtained from her and she allegedly admitted the offence. The district Police commander allegedly instructed him to charge her with the offence after studying the docket and she was charge and arraigned before the Court on this charge. The following documents or disclosures are attached to prosecution witness statement and were also verified by PW2 and adopted without objection accepted and marked as Exhibit "A" - "F". There are the medical form as "A", two pictures of PW1 head as "B" and "B1", investigation cautioned statement as "C", charge statement as "D", receipts of PW1 attached PW1 report/statement to the Police as "E" and "F" respectively. The demeanour of the accused that day needs much to be desired. She was looking confused and as if she was scared of something. So when she asked to cross-exam the PW2, she stood in dock for a while and said she didn't have questions for him. The Court explained the implication of not asking questions but still stood there without authoring a word. So the prosecution closed its case and the accused was called to open her defence. THE

CASE OF THE DEFENCE (ACCUSED) The accused a hairdresser stated that she lives at Techiman and visited her father and mother-in-laws at Boana and spent about two months with them and during the period, this incident occurred. She confirmed that PW1 is her brother-in-law. That she returned from the farm on the day in question in the evening and it was getting late and she was peeling cassava to cook the evening food with it and PW1 asked for a cooking pot and he told him to be patient because it was allegedly left with a small piece of cassava for her to finish peeling the cassava and they were the two of them alone in the house. That PW1 passed behind her and she thought he was going to open the door to take the pot. That they usually use a cutlass to open the door. That he suddenly pushed her down and held her neck. She alleged that she told him to leave her and he replied that he will kill her and she used the knife she was holding to hit him. After he was cut, he then left her. According to her, she remarked that has he seen that because he held her neck and she couldn't breathe, the knife has cut him. That she didn't intend to use the knife to cut him. That he went to the hospital and after three days the Police arrested her and her in-laws pleaded with their son (PW1) to let them settle the case at home but he refused. That while the case was pending in Court the family members realized that it was a mistake and they have settled the case and they told her to pay the hospital bills PW1 incurred when he went to the hospital for treatment. So she has paid the GH¢500.00 to him. The accused person said she didn't have a witness and closed her case. The issues for determination are;

- (1) Whether or not the prosecution has been able to prove the guilt of the accused person beyond reasonable doubt to secure conviction.
- (2) Whether or not the accused can benefit under the self-defense when she alleged that PW1 had held her neck and it was difficult for her to breath and she had to use the knife to cut him which was already in her hand before the alleged attack by PW1. According to the criminal offences Act of Ghana, Act 29/60, Section 69 states that, "A person who intentionally and unlawfully causes harm to any other person commits a second degree felony" Section 76 of the same Act mentioned (supra) states that; "Harm is unlawful which is intentionally or negligently caused without any of justifications mentioned in chapter one of this part" In criminal matters, the prosecution have to prove the guilt of the accused person beyond reasonable doubt. See the case of Ackah vrs. Pergah Transport Ltd And others [2010] S. C G. L. R. 728 At 736. According to the Evidence Act, 1975 (NRCD 323) Sections 10 (1) and (2) and 11 (1) and (4), i.e the prosecution have to prove the case or accused guilt beyond reasonable doubt. Failure to discharge that burden should lead to the acquittal of the accused person. Also see the case of Donkor vrs. The State [1964] G. L. R. 598 Supreme Court. EVALUATION OF THE EVIDENCE:- According to PW1, he asked the accused to give him a cooking pot to give to his wife to cook food, and accused insulted him "to go away with his nonsense or else she will stab him with the knife she was using to peel cassava". He repeated his request and accused suddenly became offended and used the knife she was using to peel the cassava to butcher his head with it. He shouted for help and people came to rescue him and collected the knife from the accused. Accused on the other hand said she returned from farm after 5pm and it was getting late and she was peeling cassava to use in preparing the evening meal when PW1 came to ask for the cooking pot. She alleged it was left with a piece of cassava to

be peeled and she told him to be patient for her to just finish peeling the piece of cassava she was peeling and give him the pot. But PW1 went behind her as if he was going to open the door to the room and pick the pot, instead he allegedly held her neck and she was strangled. So she used the knife she was already holding to hit him resulting in the injury and PW1 left accused person's neck too. It is PW1'S word against the accused person's word. The facts of the case and evidence of the parties and investigator (PW2) has it that they were alone in the house. A vital question is, if they (PW1 and accused) alone were in the house, where was the PW1 sending, the cooking pot to his wife to use as he alleged, if she was not in the house at the time of the incident? If his wife lives in the same house and was in the house waiting for cooking pot which was the reason why PW1 didn't have the patient to wait for the accused to finish peeling the last piece of cassava and give him the pot, then there was no need putting pressure on the accused to stop the peeling of the last cassava and to go and pick the pot for him. The facts of the case also has it that there was misunderstanding between them which resulted in a fight. Fighting is unlawful and one person can not be accused of a harm that results from an unlawful act like fighting. Meanwhile, PW2 who allegedly investigated the case and prepared the charge sheet with the facts and his witness statement, omitted the fighting aspect of the case in his witness statement later. For this witness, he knew nothing about the case until PW1 appeared in their office and the case was referred to him. He just sat at his office at Yefri where he was instructed to charge the accused for Court after he took statements from PW1 and accused. He never visited the scene of the crime nor contacted the people PW1 alleged they came to his rescue. After issuing Police medical form to PW1 to attend hospital and after returning the form endorsed, he went ahead to arrest the accused and obtained her caution statement and was later instructed to charge the accused with crime without any form of investigation. An accused person is presumed to be innocent until he has proven guilty of an offence. As a general rule, there is no burden on the accused to establish his innocence unless otherwise provided by law. See the case of *Asare vrs. The Republic* [1978] GLR. According to the Evidence Act of Ghana (Supra) Section 13 (1) state that; "In criminal action, the burden of persuasion as to commission by a person (party) of a crime which is directly in issue requires proof beyond reasonable doubt" See the case of *The Republic vrs. Francis Ike Uyanwune* (2013) 58 GMJ 162 of 181-182 in which Adjei JA also confirmed this assertion of the law. In the instant case, the accused admitted hitting the complainant with the knife she was already holding when the complainant went behind her and held her neck and she was finding it difficult to breath, so she used the knife to hit his head and he then left her neck. That is a plea of self-defence at common law, the defence of self-defence operates in three spheres; it allows a person to use reasonable force to;

- (a) Defend himself from an attack;
- (b) Prevent an attack on another person e.g. *R vrs. Rose* [1884] 15 Cox 540, where the defendant who had shot dead his father whilst the latter was launching a murderous attack on the defendant's mother was acquitted of murder on the ground of self-defence. and

- (c) Defend his property. It is trite law that; “A person may use such force as is reasonable in the circumstance in the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders of persons unlawfully at large” The general principle is that the law allows only reasonable force to be used in the circumstance and what is reasonable is to be judged in the light of the circumstances as the accused believed them to be (whether reasonable or not). In the case of *Palmer v. R.*

[1071] Ac 814, Lord Morris felt that a jury should be directed to look at the particulars facts and the circumstances of the case. In the instant case the accused had a knife in her hand at the time of the alleged attack by PW1 and she alleged PW1 held her neck and she was finding it difficult to breath and she hit PW1 in self-defence. She could have done that without realizing that she still held the knife. In such circumstances the accused reasonably re-acted immediately and without thinking of the harm it is likely to cause to him. That is, a person who is attacked should not be expected to “weigh” to a nicety the exact measure of his/her necessary defensive action”. The inference made by the bench is that the complainant was the aggressor and attacked the accused when she told him to wait for her to peel the last piece of cassava that was left for her to finish before she goes to pick the cooking for him. Her intention was not to just harm him, but to free herself from being strangled. She didn’t go to pick the knife to hit him. It was already in her hand. She could have stabbed him, but she just hit his head with it which resulted in the cuts on the forehead and on top of the head as seen in the pictures i.e. Exhibits “B” and “B1” attached to PW2’s witness statement. There was nothing she could do in the circumstances than to use the knife she was holding already to hit him to prevent him from strangling her. See the cases of *Nartey V. The Republic* [1982-83] GLR, 788. C. A. and *R V Julien* [1969] 1 WLR 839, on self-defence. It is worth mentioning that the accused was very timid and afraid of being victimized. She feels guilty because of the cuts the complainant sustained and was not feeling free during the trial of the case. After the PW2’s evidence-in-chief, she was looking at the people in Court room when she was asked to cross-examine him, as if she was afraid of somebody in the Court room, and she said she didn’t have questions for him. In conclusion therefore, I find as a fact that the prosecution has woefully failed to prove the guilt of the accused person beyond reasonable doubt because the alleged harm was not intentionally caused by the accused. It is trite law that the prosecution succeeds on the strength of its case and not on the weakness of the defence. She is therefore found innocent, acquitted and discharge of the crime preferred against her. PW1 did not deserve the GH¢500.00 accused allegedly paid him and it should be refunded to the accused person. (SGD) HER WORSHIP YAKUBU H. MEMUNATU JEBUNI Accused ----- Present Complainant ----- Absent Prosecution ----- Present 10

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