

GHANA / JUDGMENT

# REPUBLIC VRS OWUSU (B3/25/2023) [2024] GHACC 85 (23 February 2024)

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IN THE CIRCUIT COURT MPRAESO, EASTERN REGION, BEFORE HER HONOUR MRS ADWOA AKYAAMAA OFOSU, CIRCUIT COURT JUDGE ON WEDNESDAY THE 23rd FEBRUARY, 2024

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B3/25/2023 THE REPUBLIC V YAW OWUSU

..... TIME:  
11:15 ACCUSED: PRESENT CHIEF INSPECTOR BEATRICE LARBI FOR THE PROSECUTION  
PRESENT ACCUSED SELF-REPRESENTED

## JUDGMENT

The facts in support of the charge are that the complainant in this case Kwabena Agyekum, 27 years of age is a casual labourer staying at Kwahu Tafo. The accused person Yaw Owusu alias Agenda is a farmer who doubles as a washing boy and is 28 years of age and lives at Kwahu Tafo. On the 1st of December about 7:30 pm the complainant was going to visit his girl-friend at Kwahu Tafo, Atechem when he met the accused person. Page 1 | 14 The accused person confronted the complainant why he has turned to be an informant for the police nowadays. The complainant and the accused person had an altercation which turned into a fight. The accused person who was already armed with knife concealed in a rag stabbed the accused person severally at the head, the shoulder and the abdomen to the extent that some of his intestines came out from his abdomen. A witness in the case strongly warned the accused person to stop his heinous act during the fight but to no avail. The witness then took a wooden plank and hit the accused person to prevent him from further causing harm to the complainant. The complainant bled profusely, became unconscious and was rushed to Kwahu Tafo Clinic and was later transferred to the Kwahu Government hospital, Atibie where he was admitted. The complainant's elder sister reported the case to the Kwahu Tafo police upon intelligence gathered, arrested the accused person from his hide out. After police investigation the accused was arraigned before court. It is a common law rule that a person accused of a criminal offence is presumed guilty until the contrary is proven or he pleads guilty. This common law rule is reinforced by Article 19(2)(C) of the 1992 Constitution of the Republic of Ghana which provides that: "A person charged with a criminal offence shall be presumed to be innocent until he is proved guilty or has pleaded guilty"

Thus in the Republic v District Magistrate Grade II, Osu; Exparte Yahaya [1984-86] 2 GLR 361-365 Brobbey J (as he then was) stated that: "One of the cardinal principles of Criminal Law in this country is that when an accused person pleads not guilty, his conviction must be based on evidence proved beyond reasonable doubt" Therefore in the instant case where the accused person has pleaded not guilty, the onus is on the prosecution that alleges that the accused has committed the offences he is P a g e 2 | 14 charged with to introduce sufficient evidence in proof of the guilt of the accused person beyond reasonable doubt which is the standard of proof in criminal cases. Section 11(2) of the Evidence Act, 1975 (NRCD 323) thus provides as follows: Section 11(2) 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 reasonable mind could find the existence of the existence of the fact beyond reasonable doubt. "Reasonable doubt" has been explained by Lord Denning in the celebrated case of Miller vs. Minister of Pensions (1947) 2 All ER 372 thus: "It needs not reach certainty but 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 it admitted fanciful positions to deflect the course of justice" Pursuant to discharging its burden of proof, the prosecution filed witness statements for four witnesses including the complainant and the investigator. However two of the witnesses did not appear in court. The prosecution thus led evidence through the complainant and the investigator. PW1, Kwabena Agyekum testified that he stays at Kwahu Tafo Zongo and that on the 1st of December, 2022, he went to visit his girl-friend Nafisa Nkansah at Kwahu Tafo Atechem. When he was about to enter his girl-friend's house, the accused person who was passing by told him that he (PW1) was his enemy because he has turned to be an informant to the police and wanted him arrested. He told the accused that he can never be his enemy and that he is not an informant to the police as the accused person claimed. The accused person then told him that "this time I will not wound you but what I will do P a g e 3 | 14 to you will be more than wound". The accused person wanted to fight with him but some people separated them. PW1 further testified that he entered into her girl-friend Nafisa's house and explained to her what had happened between him and the accused person. He and Nafisa then decided to leave the place in order to avoid the accused person but as soon as they came out from the gate, the accused who was then holding something concealed in a rag which he later detected to be a knife was standing around and attacked him. The accused person armed with the small kitchen knife stabbed him multiple times on his shoulder, abdomen and his hand that he used to block the knife from slashing his throat. He continued that he fell unconscious with blood oozing out from the multiple wounds. He said he later on regained consciousness and saw that he was lying on a bed at Kwahu Government Hospital Atibie receiving treatment. PW2, Detective Inspector Emmanuel Kofi Eduku the investigator, told the court that on the 1st of December, 2022, a case of causing harm was referred to him for investigation. He visited PW1 at the Atibie Government hospital where PW1 was receiving treatment and he took pictures of him and he later received pictures from the medical officer who performed a surgery on PW1. PW3 further told the court that on the 5th of December, 2022, an Anti -Robbery police patrol team based in Kwahu Adawso arrested the accused from his hideout in Kwahu Tafo and handed him over to the Kwahu Tafo police for investigation. PW2 further told the court that he obtained cautioned

statement from the accused and PW1 also submitted to the police his police medical form endorsed by one Dr Williams Adu Amponsah Addo of the Kwahu Government Hospital, Atibie. He stated that he visited the scene of crime together with PW1 and the accused person. At the scene, PW1 indicated to the police where the accused stabbed him severally and the accused also P a g e 4 | 14 showed where he was passing before PW1 attacked him. According to PW2, where PW1 was stabbed was in front of Nafisa's house. There was a wooden structure used for drying cocoa at the scene of crime as well as broken cement blocks. Where the accused person alleged PW1 attacked him is at the same spot where PW1 was stabbed. He concluded that on the instructions of the Mpraeso District Command, the accused person was charged for the offence of causing harm. PW3 duly tendered the exhibits. Pursuant to section 174 of the Criminal and other Offences (Procedure) Act, 1960 (Act 30), the accused person was called upon to open his defence at the close of the prosecution's case because it appeared to the court that there was a case for the accused person to answer. In his defence the accused person gave evidence on oath and called two witnesses. The accused testified that on the material date around 7:00 to 8:00pm, he was on his way to ease himself and he heard PW1 saying to him that he should be careful and that he thinks he is an informant for the police so he replied PW1 that if he wants to kill him he should go ahead. Just then, he picked a stick and started hitting him with it. As PW1 was hitting him with the stick, he was blocking it with his hand. He also saw Yaw Owusu with a stick coming to hit him and Bonnet also took a block to come and hit him. He also saw carbon holding a stick with nails on it coming towards him and Mohammed also holding a knife approaching. They all joined PW1 to beat him. Whilst they were beating him, he saw a shiny object on the ground. He didn't even know it was a knife so he used it to stab PW1 in order to free himself. An old woman came to rescue him from the ground. DW1, Yaa Asantewaa testified that the accused person is her husband and that on the day in question around 7:30 to 8:00 pm, the accused told her that he was going to ease himself. When he stepped out, the next thing he heard was "what have I done to you? What have I done to you? If you want to kill me kill me". So she came out and saw PW1 holding a P a g e 5 | 14 stick. According to her at that time she had only a cloth around her so she went back to put on a dress. When she came back four boys had joined PW1. She said that out of the four boys, two of them were holding sticks, one of them was holding cement block and one was holding a knife and they were beating the accused and so she shouted for help. She said that even when people came around they were still beating the accused so he fell down. She did not see PW1 again and a certain old woman assisted her and they carried the accused home. Even when they took him home, the other four boys followed up and insisted they should release the accused to them. DW2, Emmanuel Agyeiba Yorke testified that on the 1st of December, 2022 at about 7:30 to 8:00pm, they heard some noise. They went out and he saw the victim and the accused engaged in a fight. The accused was on the ground while the victim was hitting him with a stick and the accused was saying if you want to kill me, kill me. I have not done anything to you". They attempted to go and separate them but four other people namely Yaw Owusu, Bonnet, carbon and Mohammed joined PW1 to beat the accused. Yaw Owusu was holding a stick and Mohammed was holding a knife, the type used by Fulani people. In the course of the struggle, he heard PW1 shout that "he has stabbed me". A certain girl came and took PW1 to the Saint Joseph hospital. He also told the accused to go and report what had happened to the police but he didn't

go. The following day, he was arrested by the police. The police interrogated him and he showed them the block that bonnet took from his house to hit the accused. As indicated above, the accused person herein is charged with causing harm contrary to section 69 of Act 29 (supra). The said section provides that: “a person who intentionally and unlawfully causes harm to any other person causes a second degree felony: P a g e 6 | 14 In Tamakloe v the Republic [2011] SCGLR 29 at 46 it was held that: “where a statute creates an offence, it is the duty of the prosecution to prove each and every element of the offence which is sine qua non to securing a conviction unless the same statute places a particular burden on the accused” To secure a conviction on the instant charge therefore, the prosecution is required to prove the following ingredients:

1. That the accused person caused bodily hurt, disease or disorder to the victim
2. The harm was intentional; and
3. The harm was unlawful In the case of Brobbey and the Republic [1982 -83] GLR 608 the court held that: “an essential element for the constitution of the crimes of causing harm contrary to section 69 and causing damage contrary to section 172 of the Criminal Code, 1960 (Act 29), was that the harm or damage must not only be intentional but also unlawful. Mere harm or damage without more was insufficient”. Harm is caused unlawfully if it is without any of the justifications stated under section 31 of the Criminal Offences Act 1960, (Act 29). The said section provides that: “force may be justified in the case and in the manner and subject to the conditions provided for in this chapter on the grounds:
  - (a) of express authority given by an enactment; or
  - (b) of authority to execute the lawful sentence or order of a Court; or
  - (c) of the authority of an officer to keep the peace or of a court to preserve order; or
  - (d) of an authority to arrest and detain for felony; or P a g e 7 | 14
  - (e) of an authority to arrest, detain or search a person otherwise than for felony; or
  - (f) of a necessity for the prevention of or defence against a criminal offence; or
  - (g) of a necessity for defence of property or possession or for overcoming the obstruction to the exercise of lawful right; or
  - (h) of a necessity for preserving order on board a vessel; or
  - (i) of an authority to correct a child, servant, or other similar person, for misconduct; or
  - (j) of the consent of the person against whom the force is used” Here, as indicated above, the accused person pleaded guilty and added an explanation and upon hearing his explanation the court entered a plea of not guilty for him. The evidence indeed established by Exhibit A series that PW1 sustained injuries and indeed the accused person does not deny that he caused the injury to PW1. According to the accused, PW1 attacked him with a stick and four other persons wielding sticks, a cement block and a knife joined PW1 to beat him and so in

the process he found a shiny object on the ground and he stabbed PW1 with it. The narration by the accused therefore shows the stabbing of PW1 was not accidental but a deliberate effort on the part of the accused in order to free himself. Thus there is no question about the fact that it was the accused who caused the harm to PW1 and that it was done intentionally. The question therefore is whether or not the accused was justified in causing harm to PW1. It is the case of PW1 that on the day in question when he was about to enter the gate of his girl-friend's house, the accused was passing by and told him that he (PW1) was his enemy because he was an informant to the police and wanted him to be arrested. It is also the case of the accused that PW1 accused him of being an informant to the police and warned him to be careful. PW1 then picked a stick and started hitting him with it. PW2, who investigated the case was not able to tell the court what triggered the fight between the accused and PW1. That issue then turns on the oath of PW1 against the accused and the position of the law is that in such circumstances if the court is unable to give reasons P a g e 8 | 14 for preferring the version of the prosecution witness then that means there is a reasonable doubt and the benefit must inure to the accused. See: *Lutterodt v. Commissioner of Police* [1963] 2 GLR 429). *Gligah v Atiso v. The Republic* [2010] SCGLR 870 In the instant case, I find no basis to prefer PW1's evidence to that of the accused person and therefore I conclude that it was PW1 who accused the accused person of being an informant to the police and that brought the misunderstanding leading to the unfortunate incident. It is also clear from the evidence that, the accused person did not set out to go and cause harm to PW1 because from the evidence, PW1 does not live at where the incident occurred and per PW1's own evidence, the accused was passing by when he accused him of being an informant to the police and so it is not the case that as soon as the accused saw PW1 he stabbed him with a knife. According to PW1, the accused wanted to fight him but some people around separated them. PW1 was not able to mention the names of those who separated them and there was no evidence to corroborate that assertion. PW1 again said that he entered his girl-friend's house and told her what had happened between him and the accused and so they decided to leave the place to avoid the accused but as soon as they came out, the accused was holding something concealed in a rag which he later got to know was a knife and attacked him. Even though per the evidence, PW1's girlfriend was an eye witness and for that matter in the view of the court a material witness, she failed or refused to come to court to testify though she filed a witness statement. As to why a girl friend who supposedly witnessed an incident would refuse to come and testify in support of her boyfriend's case leaves so P a g e 9 | 14 much to be desired. A material witness has been defined in the case of *Adam v The Republic* [1992] 2 GLR 150 per holding 6 thus: "In a criminal prosecution, a "material witness" was one whose evidence would help the court decide on the ingredients of the charge before it or whose evidence would help remove any doubt that might exist in the prosecution's case or whose evidence would help displace any reasonably probable defence that the accused might have. Accordingly, a material witness was necessarily a witness for the prosecution and not the defence since the prosecution and not the defence assumed the burden of proving guilt See: *Tetteh v. The Republic* [2001-2002] SCGLR 848 *Gligah v The Republic* [2010] SCGLR 870 *Frimpong alias Ibo Man v. The Republic*

[2012] 1 SCGLR 297 In the instant case, in the absence PW1's girlfriend's evidence and any other credible evidence, PW1's evidence to the effect that the accused person just attacked him as soon as he stepped out from his girlfriend's house with his girlfriend therefore stood uncorroborated. On the other hand, the accused person also claims that it was PW1 who accused him of being an informant to the police and he attacked him with a stick. It is the case of the accused that while PW1 was hitting him with the stick, four other people joined PW1 to beat him. He identified these four persons as Yaw Owusu who was holding a stick, Bonnet who was holding a cement block, Carbon who was holding a stick and Mohammed who was holding a knife. It must be placed on record that the said Bonnet filed a witness statement but failed to appear in court. This evidence of the accused was corroborated to the hilt by DW2 who the court found as a credible witness and who said he witnessed the incident. DW1 also told the court that she witnessed the event but unlike P a g e 10 | 14 DW2, she did not mention the names of the four persons but said that she saw for persons, two of them were holding sticks, one was holding a cement block and the other was holding a knife as stated by both the accused and DW1. Furthermore, PW2 also told the court that when they visited the crime scene there were broken cement blocks. From the evidence adduced therefore, I find that on the day of the incident, the accused did not attack PW1 with a knife immediately he met him and that it was PW1 who first hit the accused with a stick and further that four other persons wielding sticks cement block and a knife joined PW1 and they together beat the accused person. It is the case of the accused person that in the course of the beating, he found a knife on the ground and in order to defend himself, he stabbed PW1 with it. As to how the knife found its way to the scene, PW1 states that prior to the incident, the accused had something concealed in a rag which he later got to know was a knife. This evidence of PW1 however stood uncorroborated and further to that it is my view that if the accused had a knife on him when he met PW1 and had conceived the idea of stabbing PW1, he would have immediately stabbed PW1 even before any other persons joined the fight. The established fact is that one of the four persons who joined PW1 in the fight wielded a fulani knife. It is therefore probable in the absence of any evidence to the contrary that the accused person found the knife on the ground at the scene of the incident and used same to stab PW1. Section 37 of Act 29 provides that: P a g e 11 | 14 "For the prevention of or for the defence of himself or any other person against any crime or for the suppression or dispersion of a riotous or unlawful Assembly , a person may justify any force or harm which is reasonably necessary extending in case of extreme necessity even to killing" It is said that self-preservation is the first law of nature and the law recognises that every free person in the society has the right to protect his person and life against any attack, harm or injury by another person. He is entitled to do this with the aid of his own body, e.g. his hand or foot or head or with any object such as a stick, cudgel, a cutlass or even a gun or any other means to repel any assailant See: Criminal Law in Ghana by P.K. Twumasi at pages 200 and 201 In the case of *Palmer v R* [1971] AC 814 which was approved in *R v. McInnes* 55 Cr-APP. R 551 Lord Morris delivering the judgment of the court said: " it is both good law and good sense that a man who is attacked may defend himself. It is both good law and common sense that he may do, that is reasonably necessary. But everything

will depend upon the particular facts and circumstances of these a jury can decide. It may in some cases be only sensible and dearly possible to make some simple avoiding action. Some attacks may be serious and dangerous but others may not be. If there is some relatively minor attack, it would not be common sense to permit some act of retaliation which was wholly out of proportion to the necessities of the situation. If an attack is serious so that it puts someone in immediate peril, then immediate defensive action may be necessary.” Here the question that arises is whether the force used was reasonably necessary given the circumstances of the case. As already established, the corroborated evidence is that the accused was attacked by five people including PW1 who were all holding different objects capable of being used to cause harm including a Fulani knife. It is my view that the accused person at that point in time found himself in real danger and needed to P a g e 12 | 14 defend himself. There being no evidence to contradict the accused person’s claim that he found the knife on the ground at the time he was being attacked, I form the opinion that given the circumstances the accused person found himself where his life was in danger, the force he applied was reasonable in self-defence as there was no other perceivable means of defending himself. In the case of *Richard Kwabena Asiamah v. The Republic* [2019] JELR 67945 (CA), the Court of Appeal held that: “Under section 13(1) of the Evidence Act 1975 NRCD 323 and Article 19(2)(c) of the 1992 constitution, a criminal offence requires proof beyond a reasonable doubt. The burden is on the prosecution to prove all the ingredients of the offence charged. Failure to discharge this duty shall lead to the acquittal and discharge of the accused person. However, when this duty is discharged and a prima facie case is made, then an accused person may have to give an answer or explanation which raises a reasonable doubt as to his guilt. See sections 11(3), 13(2) of the Evidence Act 1975 (NRCD 323) See also: *Ali Yusuf Issa (No.2) v. The Republic* [2003-2004] SCGLR 174 Self-defence is a plea of justification as opposed to provocation which is a plea in mitigation, and therefore questions of intention or other state of mind may not arise at all and an accused person who successfully puts up a plea of self-defence as in the instant case, is entitled to an acquittal. See: *Criminal Law in Ghana* supra at page 201 On the basis of this principle and having regard to the entire evidence adduced, it is my view that the accused has raised a reasonable doubt as to his guilt. This means that the prosecution failed to prove the guilt of the accused beyond reasonable doubt as it is required to do. In the result, the accused person is thus acquitted and discharged. P a g e 13 | 14 H/H ADWOA AKYAAMAA OFOSU CIRCUIT COURT JUDGE P a g e 14 | 14

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