

GHANA / JUDGMENT

Republic Vrs Dogba [2023]

GHADC 534 (28 March 2023)

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IN THE DISTRICT COURT, DZODZE HELD ON TUESDAY THE 28TH OF MARCH, 2023 BEFORE HIS WORSHIP NELSON DELASI AWUKU DISTRICT MAGISTRATE. Case No. B3/21/22 THE REPUBLIC VRS LUCKY DOGBA

JUDGMENT

PARTIES COMPLAINANT PRESENT ACCUSED PRESENT REPRESENTATION CHIEF INSPECTOR HAMID MOHAMMED FOR PROSECUTION PRESENT

BACKGROUND

The accused person was arraigned before this Court on 3rd June, 2022 on charges of Conspiracy to commit crime and causing harm contrary to Sections 23(1) and 69 of the Criminal Offences Act, 1960 (Act 29). BRIEF FACTS 1 | P a g e The facts as attached by the Prosecution stated that the complainant William Kpeli Awudi is a 32 years old farmer and a native of Dzodze whilst the accused is a 22 years old commercial motor rider and resides in Kpelikorpe near Dzodze. The Prosecution stated that on the 22nd of September, 2021 the complainant was on his farm at Agbadome, when the accused together with another person named Robert De- Graft Johnson currently at large, visited the farm to confront him on why he assaulted the younger brother of the accused. The Prosecution stated that while explaining the issues to them, the accused got infuriated and removed a metal chain from his pocket which he used to assault the complainant. The prosecution stated that the accused afterwards collected the complainant's cutlass which was then in the possession of A2 and used same to inflict wounds on the complainant. The prosecution stated that later on the same day, the complainant reported at the Weta Police station with cutlass wounds and was issued with a medical form to attend hospital which was later returned by him duly endorsed. The prosecution stated that A1 was later arrested and upon cautioning admitted the offence but stated that it was the complainant who attacked him first with the cutlass before he retaliated. The accused person based on his admission and further investigations was arraigned before the court for prosecution. 2 | P a g e PLEA OF ACCUSED The accused person pleaded not guilty to the offences when the charges and particulars of the offences were read and interpreted to him and was admitted to bail. Witness statements of witnesses of prosecution together with charge statement, investigation caution statement of the

accused person were filed by the prosecution together with a medical report and a photograph evidencing the injured state of the complainant and served on the accused for trial. THE CASE OF PROSECUTION The prosecution called in addition to the complainant, Wisdom Dzotepe (PW2) and the police investigator (PW3) as witnesses to prove his case. In his evidence to the Court, the complainant, first prosecution witness stated that, he was on his farm when he saw two children on his neighbours farm uprooting cocoyam so he flogged and warned them not to come to the farm again. PW1 stated that the following day his mother informed him that a certain woman who came to look for him in his absence identified herself as the mother of the children he punished the previous day and threatened that he will let the father of her son also beat him or if possible butcher him. PW1 stated further that on 22nd September, 2021 at about 5:00am he was in his farm when the accused together with his friend came to confront him on the flogging of his brother. PW1 stated that before he could respond, the accused slapped him and removed a chain from his pocket to hit his right shoulder. 3 | P a g e PW1 stated that he took to his heels upon sensing danger but they pursued him and A2 who is at large crossed him and he fell. PW1 stated further that the accused requested that A2 finds him a stick but since he could not find any gave his own cutlass which was lying on the ground to him and that was used to slash his left arm. In his evidence in support of the case of PW1, PW2 stated that on the day of the incident he was on his farm at about 6:30am when PW1 came to pass and they both exchanged greetings. PW2 stated that, few minutes later he heard someone calling on another person to bring him a catapult but thought it was PW1 who needed it to drive away birds from his farm. PW2 stated that he kept hearing the voices so went to stand at a higher ground on his farm and saw two young men chasing the complainant. PW2 stated that because the place was muddy one of them crossed the complainant and he fell on the ground in between them. PW2 stated that he run to the scene and saw the complainant held tightly to the ground in the mud while the accused called to be given the cutlass of the complainant which was on the ground. PW2 stated that, the accused used the cutlass to cut the left hand of PW1 and upon further raising same to cut his neck the complainant used his right hand to block it. 4 | P a g e PW2 stated that after the accused persons had run away he went to call the family of the complainant and they together with him, sent him to the hospital. PW3 gave evidence as the investigator and tendered in evidence the cautioned and charge statements of the accused which were adopted in evidence as Exhibits A and B. The endorsed medical report of the complainant and a photograph confirming the injury were also adopted in evidence as Exhibits C and D. CASE OF ACCUSED PERSON The accused stated that on the 22nd of September, 2021 he received a phone call from his mother Esi Sallah who informed him that PW1 had subjected his nephew to severe beatings as a result of which he sustained lacerations on his body. The accused stated that he went to his mother's place and was directed to the place of PW1. The accused stated further that he met PW1 on his rice farm and asked him what happened before he subjected his nephew to such beatings and PW1 suddenly used his leg to kick his abdomen. The accused stated that, he also fisted a blow and landed same on him but PW1 quickly run for a cutlass which he used to cut his head and left hand. The accused stated that he felt dizzy and fell on the ground while PW1 held his testicles and pulled same. In her evidence in support of the defence of the accused, his witness, DW2 stated that a day after the assault of her grandson, the accused returned home with cutlass wound on 5 | P a g e his

forehead and left arm and when she enquired from him about what happened, he told her that he and his friend went to PW1 to find out the reason why he assaulted the son and PW1 without any provocation picked a cutlass and used same to inflict wounds on him.

FACTS

From the evidence of witnesses for prosecution and the accused, the court finds the following as the facts;

- a. That the complainant beat up the nephew of the accused.
- b. That the accused upon hearing the development went to confront the complainant on his farm.
- c. That the complainant claims the accused visited his farm in the company of one other person and caused unlawful harm to him.
- d. That the accused also claims that PW1 assaulted him without any cause when he went to find out why he assaulted his nephew. THE LAW Burden of Proof 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 a reasonable mind will find the existence of the facts beyond reasonable doubt. See Section 11(2) of the Evidence Act, 1975 (NRCD 323) and the cases of Kingsley Amankwah (a.k.a Spider) v. The Republic [2021] DLSC10793 at pages 25-26 per Dotse JSC and Frimpong alias Iboman v. The Republic [2012] 1 SCGLR 297. In the case of Ali Yussuf Issa (No.2) v. The Republic [2003-2004] SCGLR 174, it was held that the burden of proof has two components, the duty to lead evidence on any fact required to be proved and the duty to provide sufficient evidence to persuade a reasonable mind as to the existence of any such fact. See also Kweku Quaye alias Torgbe vs. The Republic [2021] DLSC10794 at page 9-10 per Prof. Mensa Bonsu, JSC. The extent of the onus on the accused on the other hand is provided by section 11(3) of the evidence Act 1975 which states; “In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt”. See also the case of COP v. Antwi [1961] GLR 408. Conspiracy Section 23(1) of the Criminal Offences Act, 1960 (Act 29) in defining the offence of conspiracy states that; “where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet the criminal offence”. In the case of The Republic v Ernest Thompson & Others [2021] DLSC 10174 at page 10174 the court stated that; “under the definition of the offence of conspiracy, a conviction could be secured upon proof of the following ingredients; i. ii. Prior agreement for the commission of a substantive crime; Acting together in the commission of the crime in circumstances which show that there was a common purpose; iii. Previous concert even if there was evidence that there was previous

meeting to carry out the criminal conduct” See also the cases of Francis Yirenkyi v The Republic (2016) 99 GMJ 1 SC and Agyapong v The Republic [2015] 84 GMJ, 142, CA. 7 | Page Same elements were stated in the case of Republic v Baffoe Bonnie & Others (Suit No. CR/904/2017) (Unreported) dated 12th May 2020, where the elements of conspiracy were outlined by the court in the words as follows; “For prosecution to be deemed to have established a prima facie case, the evidence led without more should prove that:

- a. there were at least two or more persons
- b. there was an agreement to act together c. the sole purpose for the agreement to act together was for a criminal enterprise”. The effect of the principles in the above authorities is that, persons accused of conspiracy must not only be established to have agreed to act but there must be an agreement to act together for a common purpose to commit crime. It is also significant to note that, under the new formulation of the law on conspiracy as defined by the Supreme Court, a person could no longer be guilty of conspiracy in the absence of the evidence of any prior agreement. See KINGSLEY AMANKWA (a.k.a SPIDER) vs. THE REPUBLIC [2021] DLSC 10793 @ page 28 per Dotse JSC. Causing Harm Harm within the meaning of Section 1 of the Criminal Offences Act is “any bodily hurt, disease or disorder whether permanent or temporary”. A person who intentionally and unlawfully causes harm to any other person commits a second degree felony. Section 69 of the Criminal Offences Act, 1960 (Act 29). 8 | Page Under Section 76 of Act 29, harm is stated to be unlawful which is intentionally or negligently caused without any of the justifications mentioned in chapter one of the Act. With respect to ascertaining the intention of an accused, Section 11 of the Criminal Offences Act provides that, “a person does an act for the purpose of causing or contributing to cause an event, that person intends to cause that event although in fact, or in the belief of that person or both in fact and also in belief, the act is unlikely to cause or contribute to cause the event”. ANALYSIS AND EVALUATION OF EVIDENCE For the purposes of Count one in respect of the offence of conspiracy, the prosecution per the elements required as established in the cases of The Republic v. Ernest Thompson & Ors and Republic vs. Baffoe-Bonnie(Supra) had a duty to adduce evidence to establish the fact of a prior agreement between the accused person and another or with any other party to act in common purpose towards the commission of the substantive offence or any other offence. The prosecution failed to prove the elements of conspiracy through the witnesses called and the evidence put before the court. The evidence by the witness for the accused that the accused informed her that he went to the farm of the complainant with a friend is consistent with the evidence given by PW2 that he saw two people in the farm of the complainant on the said date. Although the accused did not deny going to the farm of the complainant or going there with a friend, the facts and evidence does not establish a prior agreement between them to go and commit an offence. 9 | Page It may be suspected that they may have gone to the farm of the complainant with an intention but the suspicion alone cannot be a ground for conviction on count one since it is also possible that some other development may have triggered the events that happened on the farm on the day. In relation to the offence of causing harm under section 69, the prosecution bears the burden

to prove that the accused intentionally and unlawfully caused bodily hurt to the victim. In proving any intentional and unlawful act against the accused person, prosecution needed to adduce evidence to bring the act within the provisions under section 11 of the Criminal Offences Act and to also establish that the act was done without any justification recognized under the law. The prosecution in its effort to establish his case called as his witness PW2 who stated in his evidence that he saw the accused and another person on the farm of the victim and that it was the accused who requested for a cutlass from his colleague and used same to inflict the cut on him. The accused did not deny going to the farm on the said date and did not also dispute the fact that he had a physical engagement with the victim on his farm on the said date. Exhibit C and D tendered by PW3 confirmed severe injury sustained by the victim. The endorsed medical report by Dr. Emmanuel Yaw Adjei of the St. Anthony's Hospital in Dzodze revealed that the victim reported at the hospital on 22nd September, 2021 with multiple lacerations on the left elbow and right shoulder, open fracture of the right radius and ruptured extensor tendons in the right forearm. 10 | P a g e The evidence further confirmed that the victim underwent two separate operations on 24th September, 2021 and 3rd November, 2021 during which metal plates and screws were used to correct the fracture. After having made such damning allegation against the accused in his testimony, the accused when granted the opportunity to cross examine the second witness of prosecution refused to ask him any question. He simply stated that he has no question for the witness because the witness was not present on the day even though parts of the evidence given by the witness corresponded with some of the facts stated by the accused and his witness. At the close of their case, the prosecution through its witnesses and the evidence tendered established that harm had been caused to the complainant, that the injury was sustained on the day the accused visited the farm and that it can be attributed to a confrontation the accused had with the complainant. The burden on the accused per section 11(3) of the evidence Act 1975 therefore required him to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt. See also the case of COP v. Antwi (supra). . The testimony of the accused with regard to what actually happened is captured in paragraphs 3, 4, 5, 6 7, 8, 9, 10 and 11 of his witness statement filed on 16th June, 2022 which was adopted by the court as his evidence in chief and same reproduced below; “3.I proceeded to my mother’s place and they directed me to the complainant’s place.

4. I met the complainant at a rice farm. 11 | P a g e
5. I asked him what happened before he subjected my nephew to severe beatings and he has sustained lacerations on his body.
6. the complainant suddenly used his leg to kick my abdomen.
7. I also fisted a blow and landed same on him.
8. He quickly run for a cutlass and used same to cut my head and my left hand.

9. I sustained wounds and blood started oozing from me.
10. I felt dizzy and fell on the ground.
11. He held my testicle and started pulling same". The court however observes that in his cautioned statement to the police dated 4th March, 2022 which was adopted in evidence as Exhibit A, the accused did not state that he felt dizzy and fell on the ground and also that the complainant held his testicle and pulled same. Portions of the cautioned statement the accused gave to the police are paraphrased below; "I went to my mother's place to check or find out what happened. Later I was directed to the complainant's farm. I was in a company of a friend. On reaching there I asked the complainant in a friendly manner about the reason why he assaulted my son. He took offence of it and kicked my abdomen. I also fisted a blow and hit him. Suddenly he picked his cutlass and used same to inflict wounds on my forehead and my left arm. I also collected the cutlass from him and also used same to inflict wound on him". 12 | P a g e The facts narrated by the accused if proven would have raised issues of provocation and self defence or suggestions that the parties engaged in an unlawful fight. However, as already indicated the onus lied on him to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to his guilt. It is difficult to comprehend why the complainant without any cause will hit the accused when he has stated himself that he approached him in a friendly manner. The evidence given by the witnesses for prosecution and Exhibits submitted does not suggest that and the case of the accused was further weakened by the failure to call his friend as a material witness. The fact that his friend who accompanied him to the scene will rather not show up to give evidence on the actual development but rather choose to be on the run as stated by the prosecution did not help the case of the accused.

CONCLUSION

In a criminal action, the threshold for the prosecution as established in Section 11(2) of the Evidence Act (supra) is a prove beyond reasonable doubt as to the guilt of the accused. To secure conviction under section 23(1) of Act 29, the prosecution should have established that the accused had a prior agreement with another to commit a criminal offence. The burden in respect of count one was not sufficiently discharged. The accused is accordingly acquitted and discharged on that count. 13 | P a g e In respect of count two, the evidence before the court was sufficient for a determination that the accused caused harm to the complainant. The defence given by him failed to cast a reasonable doubt on the case of prosecution. In the circumstance, the accused person is convicted on count two. In the opinion of the court, the accused failed to exercise reasonable discretion in the decision to go and confront the complainant on his farm over the assault of his nephew when there are several other lawful avenues available to seek redress if that was the case. The accused is therefore sentenced to a fine of fifty (50) penalty units and in default to six

- (6) months imprisonment. Accused is to also compensate the complainant with an amount of Two thousand Ghana cedis (GH¢2,000.00) to offset his medical expenses. NELSON DELASI AWUKU MAGISTRATE 14 | P a g e

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