IN THE CIRCUIT COURT '5' HELD IN ACCRA TUESDAY THE 17TH DAY OF OCTOBER, 2023 BEFORE HER HONOUR MRS. CHRISTINA EYIAHDONKOR CANN CIRCUIT COURT JUDGE

COURT CASE NO: D21/631/2023

THE REPUBLIC

VRS

JOSHUA ASIEDU A.K.A. KWAME KETEWA

JUDGMENT

INTRODUCTION

"The complainant Samuel Arthur aged 49 is a trader and lives at Odorkor, Accra. The victim Stephanie Arthur aged 19 is a SHS graduate and lives with her mother at Odorkor, Accra. The accused person Joshua Asiedu a.k.a Kwame Ketewa aged 22 is unemployed and lives at Odorkor, Accra.

During the year 2018, the accused person and the victim engaged in illicit relationship and the victim's father got wind of it. Based on that victim told the accused person she was no longer interested in the relationship so she broke up with him. In the year 2021, accused person who was not happy that the victim has broken up with him sent nude pictures of the victim to her friends by name Kaziah and Sika who are at large and they in turn posted the nude pictures of victim at their WhatsApp status for public viewing. After that, the accused person always calls the victim to threaten her with words that he will deal with her and that if she wants to lose her life or she wants her mother to lose her then, she should play with him and that made victim to fell constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery, depressed, inadequate and worthless. The school authorities got wind of that and also noticed that victim was going through some emotional torture as she started behaving weirdly so her parents were invited to the school to meet with the school authorities as a result of the trauma the victim was going through. The services of the school counsellor by

name Rev. Christian Asiedu Danquah was sought by the school authorities to take the victim through counselling and a report was submitted on her after the counselling session. The complainant who was not happy with accused person's behaviour reported the case at DOVVSU/AR on 17/05/2021. Accused person got to hear that police were looking for his whereabouts and so he fled to an unknown destination. On 26th January, 2023 he resurfaced and was arrested. Investigation caution statement was obtained from him and photograph of victim's nude pictures were retrieved from her father's mobile phone and audio of the threatening words were also retrieved from victim's phone for evidential purposes. After investigations, accused person was charged and put before this honourable court."

It is based on the above facts that the accused person Joshua Asiedu a.k.a Kwame Ketewa was charged with the following offences:

i. Non-consensual sharing of intimate image contrary to section 67 of the CyberSecurity Act, 2020 (Act 1038); ii. Threat of death contrary to section 75 of the Criminal Offences Act,

1960 (Act 29); and iii. Emotional abuse contrary to sections 1 (b) (iv) and 3(2) of the

Domestic Violence Act, 2007 (Act 732).

THE CHARGES

The statements and the particulars of the charges that were preferred against the accused person read as follows:

"COUNT ONE

STATEMENT OF OFFENCE

NON-CONSENSUAL SHARING OF INTIMATE IMAGE*: CONTRARY TO SECTION 67 OF CYBERSECURITY ACT, 2020 (ACT 1038)*

PARTICULARS OF OFFENCE

JOSHUA ASIEDU AKA KWAME KETEWA: UNEMPLOYED*: During the year 2021, with the intent to cause serious emotional distress to STEPHANIE ARTHUR, you intentionally distributed her nude pictures to her friends Kaziah and Sika who are at large without her consent and they in turn posted same on their WhatsApp status for public viewing.*

COUNT TWO

STATEMENT OF OFFENCE

THREAT OF DEATH*: CONTRARY TO SECTION 75 OF THE CRIMINAL OFFENCES ACT, 1960 (ACT 29).*

PARTICULARS OF OFFENCE

JOSHUA ASIEDU AKA KWAME KETEWA: UNEMPLOYED*: During the year 2021, you threatened STEPHANIE ARTHUR with words to "I will deal with you, if you want to lose your life or you want your mother to lose you, then joke with me" with intent to put the said STEPHANIE ARTHUR into fear of death.*

COUNT THREE

STATEMENT OF OFFENCE

EMOTIONAL ABUSE*: CONTRARY TO SECTIONS 1 b (iv) AND 3(2) OF THE DOMESTIC VIOLENCE ACT 732/2007.*

PARTICULARS OF OFFENCE

JOSHUA ASIEDU AKA KWAME KETEWA: UNEMPLOYED*: During the 2021, you conducted yourself in a manner that made STEPHANIE ARTHUR feel constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery, depressed, inadequate and worthless when you took her nude pictures and distributed same to her friends Kaziah and Sika after which you sent her some threatening messages to wit: "I will deal with you, if you want to lose your life or you want your mother to lose you, then joke with me"*

THE BURDEN ON THE PROSECUTION AND THE DEFENCE

The accused person pleaded not guilty to the charges preferred against him. Therefore, the prosecution assumed the burden of proving the guilt of the accused person.

Before I proceed to evaluate the evidence led in this case, I will endeavour to set out the burden that the prosecution bears in this trial.

In our criminal jurisprudence, it has always been the duty and obligation of the prosecution, from the outset of the trial, to prove and substantiate the charges levelled against the accused person to the satisfaction of the Court unless in a few exceptions. Under the Evidence Act, 1975 (NRCD 323), the burden of proof is divided into two parts, that is the burden of persuasion or the legal burden and the evidential burden or the burden to produce evidence.

The burden of persuasion is provided for under section 10 (1) of the Evidence Act, 1975 (NRCD 323) as follow:

"10 (1) For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court".

The burden of producing evidence is also provided under section 11(1) of the Evidence Act, 1975 (NRCD 323) thus:

"11 (1). For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him in the issue".

Again, in criminal proceedings, what constitutes the facts in issue depends on any relevant presumptions and the allegations involved. Since the prosecution is asserting these facts constituting the ingredients of the offences, it is incumbent on it to establish that belief of the accused person's guilt in the mind of this Court to the requisite degree prescribed by law. In other words, the prosecution has the burden of persuasion to establish the guilt of the accused person.

When the prosecution had adduced the evidence to establish the essential ingredients which will cumulatively prove the guilt of the accused person of the charges levelled against him, the court at the end of the case of the prosecution will have to decide whether the prosecution has discharged the obligation on it to establish the requisite

degree of belief in the mind of the court that the accused person in fact and indeed is guilty of the offences.

Except in few instances, the measuring rod or the standard of proof for determining that the evidence adduced by the prosecution has attained the requisite degree is provided under sections 10 (2) and 22 of the Evidence Act,

1975 (NRCD 232).

Sections 10 (2) and 22 of the Evidence Act, 1975 (NRCD 323) provide as follows:

"10 (2). The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by the preponderance of the probabilities or by proof beyond reasonable doubt".

22. In a criminal action a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond a reasonable doubt, and thereupon, in the case of a rebuttable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact".

If this Court decides that the prosecution has failed to prove each essential ingredients of the offences charged beyond reasonable doubt at the end of the prosecution's case, the accused person will have to be acquitted for he will be deemed to have "no case to answer". But if this Court decides that each essential ingredient of the offences charged has been proved beyond reasonable doubt, then the accused person will have to be called upon to put up his defence, because there will be an established presumption of guilt (*a prima facie* case) which he must rebut, if he does not want the presumption to stay, thus rendering him liable for a conviction. To use the language of section 11 (1) of the Evidence Act, 1975 (NRCD 323), the accused person will have on him the burden of introducing sufficient evidence to avoid a ruling against him that he is guilty of the offence charged. In other words, he has the burden of producing evidence.

The apex court in the case of **Asante No (1) v The Republic [2017-2020] I SCGLR 143-144** explained the burden on the prosecution as follows:

"Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it is the accused who committed it. Apart from specific cases of strict liability offences, the general rule is that throughout a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to the commission of the offence and his complicity in it except where he relies on a statutory or special defence. See ***Sections 11(2) 13(1), 15(1) of the Evidence Act, 1975 (NRCD 323)*** *and* ***COP v Antwi [1961] GLR 408."***

However, proof beyond a reasonable doubt does not mean beyond a shadow of doubt as was stated by Lord Denning in the case of **Miller vs. Minister of Pensions (1974) 2 ALL ER 372 AT 373** thus:

"It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice."

This dictum emphasizes that proof beyond reasonable doubt does not mean proof beyond every shadow of doubt or proof beyond every possibility. Lord Justice of the King's Bench from 1822-1841, Charles Kendal Bushe also explained reasonable doubt thus:

"…the doubt must not be light or capricious, such as timidity or passion prompts, and weakness or corruption readily adopts. It must be such a doubt as upon a calm view of all the

whole evidence a rational understanding will suggest to an honest heart the conscientious hesitation of minds that are not influenced by party; preoccupied by prejudice or subdued by fear."

See also: Osei v. The Republic [2002] 24 MLRG 203, CA

Abodakpi v. The Republic [2008] 2 GMJ33

Republic v. Uyanwune [2001-2002] SCGLR 854

Dexter Johnson v. The Republic [2011] 2 SCGLR 601

Frimpong A.K.A. Iboman v. Republic [2012] 1 SCGLR 297

Again, it must be emphasized that the proof by the prosecution can be direct or indirect. It is direct when the accused person is caught in the act or has confessed to the commission of the offences. Thus, where the accused person was not seen committing the offences, his guilt can still be proved by inference from surrounding circumstances that indeed the accused person committed the said offences.

See: **Logan vs Lavericke [2007-2008] SCGLR 76 Headnote 4**

Dexter Johnson vs The Republic [2011] 2 SCGLR 601 AT 605

State vs Anani Fiadzo (1961) GLR 416 SC

Kamil vs The Republic (2010) 30 GMJ 1 CA

Tamakloe vs The Republic (2000) SCGLR 1 SC

Bosso vs The Republic (2009) SCGLR 470

The guilt of the accused person is sufficiently proved if the tribunal of fact is convinced that he committed the offences though there remains a lingering possibility that he is not guilty.

The above is the general law on the burden of proof on the prosecution as provided for in the Evidence Act, 1975 (NRCD 323).

When the prosecution has established a *prima facie* case against the accused person, the accused person assumes the burden of producing evidence. This burden as indicated is different from the burden of proving the issue, which is on the prosecution. The difference between the burden on the prosecution and the burden on the accused

person is mainly in the standard of proof. Whereas the prosecution has to prove the essential ingredients of the offences to a standard beyond reasonable doubt, the accused person only has the burden of adducing evidence to create a reasonable doubt in the mind of the court regarding the prosecution's case which is deemed *prima facie* to have been established beyond reasonable doubt. Once this doubt had been created, the accused person will be considered as having discharged his burden of producing evidence to the appropriate standard of proof.

Having established the requisite burden that the prosecution ought to discharge and the burden on the accused person, it is very important to note that one fundamental legal principle pertaining to criminal trials in our jurisdiction as contained in paragraph (c) of clause (2) of article 19 of the

Constitution which provides thus:

"19 (2) A person charged with a criminal offence shall-

(c) be presumed to be innocent until he is proven or has pleaded guilty."

The Supreme Court also held on the presumption of innocence in the case of **Okeke vs The Republic [2012] 2 SCGLR 1105 at 1122** *per Akuffo JSC* as

follows:

"…the citizen too is entitled to protection against the state and our law is that a person accused of a crime is presumed innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubt.''

An accused person therefore in a criminal trial or action, is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt, he is entitled to a verdict of not guilty.

Bosso vs The Republic (2009) SCGLR 470

The prosecution sought to discharge the burden placed upon them by calling called three (3) witnesses. The case for the prosecution was presented mainly by the victim Stephanie Arthur as the second prosecution witness (PW2) and supported largely by Samuel Arthur, the father of the victim as the first prosecution witness (PW1) and

Chief Inspector Tchorly Patience stationed at the Accra Regional DOVVSU who investigated the case as the third prosecution (PW3)

The prosecution also tendered in evidence five (5) Exhibits namely:

i. A pendrive containing threatening words the accused person uttered to the victim as Exhibit "A".
ii. The caution statement of the accused person as Exhibit "B' iii. The charged statement of the accused person as Exhibit "C".
iv. A report on counselling services rendered to the victim by the Assin Manso Senior High School, Assin Manso as Exhibit "D".
v. Nude pictures of the victim as Exhibits "E" and "E1".

The accused person also testified on oath, called two witnesses George Kwame Nyarko and Bashiru Yakubu as DW1 and DW2 and also tendered in evidence a pen drive containing a conversation between himself and the victim as Exhibit "1".

ANALYSIS OF THE CHARGE OF NON-CONSENSUAL SHARING OF INTIMATE IMAGE AND THE EVIDENCE TO PROVE SAME

Section 67 of the CyberSecurity Act, 2020 (Act 1038) creates and defines the offence of non-consensual sharing of intimate image as follow:

"*67 (1) A person shall not, with intent to, cause serious emotional distress, intentionally distribute or intentionally cause another person to distribute the intimate image or prohibited visual recording of another identifiable person without the consent of the person depicted in the intimate image and in respect of which, there was a reasonable expectation of privacy both at the time of the creation of the image or visual recording and at the time the offence was committed.*

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a term of imprisonment of not less than one year and not more than three years.

(3) For the purpose of this section, "serious emotional distress" includes any intentional conduct that results in mental reactions such as fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation and indignity, as well as physical pain."

The prosecution in order to secure a conviction must establish the following essential ingredients beyond reasonable doubt:

i. That the accused person with intent to cause serious emotional distress, intentionally distributed the intimate image or prohibited visual recording of PW2 without PW1's consent or; ii. That the accused person with intent to cause serious emotional distress, intentionally caused another identifiable person to distributed the intimate image or prohibited visual recording of PW2 without PW2's consent; and iii. That there was a reasonable expectation of privacy between the accused person and PW2 both at the time of the creation of the intimate image or visual recording and at the time the offence was committed.

At this juncture, I will first of all examine the evidence on the record to ascertain as to whether or not the prosecution was able to prove the offence of non-consensual sharing of intimate image contrary to section 67 of the CyberSecurity Act, 2020 (Act 1038) against the accused person.

It is the evidence of PW1 that the victim is his daughter and that sometime ago, the accused person raped her daughter and he reported the matter at the Odorkor Police station and the case was sent to court but he later withdrew the case for settlement at home. It is further the evidence of PW1 that on the 10th May, 2021 his daughter's teacher sent him the nude pictures of his daughter and told him that he would like to see them (the parents) for a discussion so they went to the victim's school where the victim was questioned as to how her nude pictures got to the internet and she stated that it was the accused person who took her nude pictures. According to PW1, the victim was given a counsellor who took her through counselling because she was traumatized.

The second prosecution witness (PW2) was Stephanie Arthur, the victim in this case. It is her evidence that when she was 14 years old, the accused person took advantage of her and had sexual intercourse with her after which he took some nude pictures of her which he showed them to her and she told him to delete them but he didn't and later he claimed that he had deleted them. According to PW2, when she completed Junior High School and proceeded to Senior High School, he did not hear form the accused person until she got to her final year. Few months to writing her WASSCE, the accused person called her and he resumed communication with her and told her that he got her number from one of her friends that she attends school with. It is also the evidence of PW2 that the accused person started pleading with her to date him again but she kept telling him that she does not want to have anything to do with him again so he should stop disturbing her and allow her to focus on her studies but the accused person refused so she blocked him but he kept calling her with different numbers. When her WASSCE was approaching, she and some of her friends decided to organize some classes with some teachers during the vacation. She was still communicating with the accused person during the vacation classes. It got to a time that she told the accused person that her parents brought her to school to learn so he should stop disturbing her. In the course of the vacation classes, one of her friends called the accused person and told him that she is dating one of her teachers. This made the accused mad so he called to threaten and also insult her and hanged up the call. Few minutes after the accused person hanged up the call, her friends started calling her that they have seen her nude pictures on social media. Some of her teachers also saw her nude pictures and they asked her about it. According to PW2, the accused person also sent some of her nude pictures to her friends namely Kaziah and Sika and they also in turn posted same on their WhatsApp status. Her headmaster saw the pictures and she called her parents to inform them about it and also invited them to the school to ascertain things for themselves in the year 2021. The headmaster and some of the teachers together with her parents sat down to discuss the issue after

which the headmaster advised that they make a formal complaint to the Assin Manso Police Station which they did and were given an extract of occurrence to the Odorkor Police Station and then to DOVVSU Accra Regional Office. The police forwarded a wireless message to the Odorkor police station to arrest the accused person but the accused person got wind of it and absconded until December, 2022 when he resurfaced and was arrested.

The third prosecution witness (PW3) was Detective Chief Inspector Patience Tchorly stationed at the Accra Regional DOVVSU. She is the investigator in this case. On the 17th May, 2021 she was the available investigator on duty when cases of non-consensual sharing of intimate image, threat of death and domestic violence to wit: emotional abuse were referred to her for investigations. On the 26th January, 2023 the accused person was arrested and a caution statement obtained from him. On the 27th February, 2023 DOVVSU /AR received a Report from the Assin Manso Senior High School indicating that, in May, 2021 the victim was referred to the Guidance and Counselling Unit of the school headed by Reverend Christian Asiedu Danquah when she was emotionally and psychologically traumatized as a result of the posting of her nude pictures which went viral. After investigations, the accused person was charged with the offences and a charged statement obtained from him.

In this case, after the court had ruled that, a *prima facie* case has been made against the accused person, he exercised his option to open his defence. Indeed, the accused person had the burden of producing evidence, sufficient enough in the light of the totality of the evidence to raise a reasonable doubt as to whether he was the one who with intent to cause serious emotional distress, intentionally distributed the intimate image or prohibited visual recording of PW2 to Kaziah and Sika without PW2's consent knowing very well that there was a reasonable expectation of privacy between himself and PW2 both at the time of the creation of the intimate image or visual recording and at the time the offence was committed in the year 2021 although, he is not required to prove his innocence.

See: **sections 10 (1), 11 (2) and 3 of the Evidence Act, NRCD 323**

See also: **Ali Yusif (No.2) v The Republic [2003-2004] SCGLR 174 holding (2)**

The accused person denied the offence in his evidence-in-chief. He stated that he does not know Kaziah and Sika and he did not admit in Exhibit "A" that he sent the victim's nude pictures of the victim to Kaziah and Sika and that it was a just a prank that he was playing on the victim. He did not angrily accuse the victim in a recording that if he had her nude pictures, he would have sent them to her father for him to know the kind of behaviour that she was exhibiting in the school. It is also not true that he wrote his own charge statement and admitted the offence in same. Initially, when he was arraigned before the court, he was discharge on the previous charges and taken back to the police station. Whilst in custody, PW3 came and said that the judge asked them to do an amendment about the date in the case because the date in the previous charges, he was not yet an adult and that based on that she was going to take another statement from him. When PW3 told him that she was going to take another statement from him, he told her that all that he know about the case is what he had told her already. He also told PW3 that if it is possible, she should call his lawyer so that whatever his lawyer says, they can then take a decision on that. At that instant, PW3 got angry and told him that he is not the one to teach her how to do her job. PW3 took him back to his cells. In the evening of the same day at about 5:30 p.m. to 6:00 p.m., he was in the cell when the leader of the cells said that PW3 was calling him. When he came to the entrance of the cell, all that PW3 told her was that she was in a hurry, she lives at Kasoa and that she had already written the charge statement and she showed her certain portions to sign and that she is in a hurry to send the case to the Juvenile Court. PW3 did not read anything to him or explain anything to him. There was no other person accompanying the investigator to witness the signing of the charge statement. He presented Exhibit "1" to PW3 at the police station but she refused to accept same saying that after listening to it, it was not necessary and it could not be

taken to court. When Exhibit "1" was being played, his brother and mother were present and some other colleagues of PW3 were also present. Some students from the victim's school were calling him because the victim had informed them that he was the one who posted her nude pictures on Facebook. One of the students called Beatrice who is a friend of the victim called him with an unknown number and insulted him and even went ahead to insult his

parents. It is never true that he told one of his friends or relative to apologize on his behalf in respect of this case.

From the above, this case seems to boil down to one of oath against oath. The Supreme Court in the case of **Gligah & Atiso v. The Republic [2010] SCGLR 870 at 878** per *Dotse JSC* stated thus:

"The Supreme Court in Amartey v The State (as stated in holding (1) of the headnote to the case) laid down the following test for general application in all criminal cases namely:

Where a question boils down to oath against oath, especially in a criminal case, the trial Judge should first consider the version of the prosecution, applying to it all the test and principles governing credibility of witnesses, when satisfied that the prosecution's witnesses are worthy of belief, consideration should then be given to the credibility of the accused's story, and if the accused's case is disbelieved, [page 879] the judge should consider whether, short of believing it, the accused's story is reasonably probable."

Thus, the law is that a person ought not to be convicted of a charge if in respect of that charge the trial has ended in a situation where the word of the accuser is the only thing standing against the word of the accused person. Where it is one person's word against another person's word as is the case here, there is the need for corroboration of the accuser's word.

I am further enjoined by holding (3) in the case of **Lutterodt v the Commissioner of Police [1964] 2 GLR 429 SC at 480** to examine the defence of the accused person as follows:

"Where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:

(1) Firstly, it should consider whether the explanation of the defence is acceptable, if it is, that provides complete answer, and the court should acquit the defendant;

(2) If the court should find itself unable to accept, or if it should consider the explanation to be not true, it should then proceed to consider whether the explanation is nevertheless reasonably probable, if it should find it to be, the court should acquit the defendant; and

(3) Finally, quite apart from the defendant's explanation or the defence taken by itself, the court should consider the defence such as it is together with the whole case, i.e., prosecution and defence together, and be satisfied of the guilt of the defendant beyond reasonable doubt before it should convict, if not, it should acquit."

I now wish to determine whether the accused person is innocent or liable. I have already indicated that, it is the prosecution that is to prove his guilt.

I will at this juncture point out some contradictions between the accused person's evidence in chief, answers given under cross-examination, caution, and charge statements (Exhibits "B" and "C") given to the police on the 22nd March, 2023 respectively.

Firstly, the accused person stated whilst answering questions under cross examination that the victim was not his girlfriend and that he only lived in the same house with her. Strangely, in his caution (Exhibit "B") the accused person admitted that the victim was his girlfriend.

The accused person answered the following questions under crossexamination:

"Q. How long have you known Stephanie Arthur?

A. My lord, I have known the victim since the year 2018.

Q. What is your relationship with the victim Stephanie Arthur?

A. My lord, because we were living in the same house, she was my friend.

Q. Was the victim your girlfriend or just a friend?

A. My lord, the victim was just my friend.

Q. I am putting it to you that Stephanie Arthur was your girlfriend that you were dating and not just a friend?

A. My lord, that is not true."

The accused person in his caution statement (Exhibit "B") stated in part:

"… The victim Stephanie Arthur is my former girlfriend. During the year 2018, Stephanie and I were dating. That time I was 17 years whilst she was 15 years old. Her father got wind of it and warned us to stop the relationship…" Again, in the first and fourth audios on Exhibit "1", the accused person refers to the victim severally as his girlfriend and even refers to the victim's father as his father-in-law.

Secondly, the accused person stated in his evidence-in-chief and answers given under cross-examination that he did not take the nude pictures of the victim. Surprisingly, in his charge statement (Exhibit "C") he admitted that he took the nude pictures of the victim because the victim told him that she will be travelling and therefore he should take the nude picture so that anytime that he misses her, he will look at it because she does not want him to cheat on her.

In his evidence-in-chief the accused person stated in part:

"Q. The complainant also says that you sent the nude pictures of the said Stephanie Arthur through the friends called Kaziah and Sika, can you tell the court what you know about the said Kaziah and Sika?

A. My lord, I do not know anything about the said Kaziah and Sika. I know their names have been mentioned but I do not know them."

The following dialogue ensued between the prosecutor and the accused person:

"Q. In the course of your relationship with Stephanie Arthur, you took nude pictures of her?

A. My lord, there is no truth in that."

Excerpts from Exhibit "C" are as follows:

" The reason why this picture was taking is Stephanie told me that she will be travelling far away from me so I should take a nude picture of her so if in case anytime I miss her then I take a look at it because she don't want me to be cheating on her that was in the year 2018."

Thirdly, the accused person further sought to create the impression in his evidence-in-chief and answers under cross-examination that he does not know Kaziah and Sika and that he did not send any nude pictures of the victim to them. However, in the fourth audio on Exhibit "1", he stated that he called Sika when he could not reach out to the victim and Sika told him that the victim was around and further admitted in his charge statement (Exhibit

"C") that he sent the nude pictures of the victim to Kaziah and Sika.

Under cross-examination, the accused person stated:

"Q. In your evidence-in-chief, you said that it was not you who sent the nude pictures to Stephanie Arthur's friends by name Kaziah and Sika, is that right?

A. My lord, that is true."

Excerpts from Exhibit "C" are as follows:

"So it got to a time a misunderstanding came between us so I called a friend of her and explained everything to her so that the friend will be talking to her of what she was doing so I send the nude picture to her friends Kaziah and Sika so that when she get a look she will panic and stop what she was doing." Fourthly, the accused person further denied admitting in Exhibit "1" that he sent the nude pictures of PW2 to her friends.

The following dialogue ensued between counsel for the accused person and the accused person:

"Q. Stephanie Arthur also told the honourable court that she made a certain recording against you in which she claimed that you have admitted of sending her nude pictures, what do you say to that?

A. My lord, I did not admit that I was the one who sent her nude pictures. It was just an April fool prank that I was playing with her."

Surprisingly, in the first audio on Exhibit "1", the accused person admitted that he sent the victim's nude pictures of PW2 to her friends to talk to her because on the day that he called PW2 and asked her what she was doing to him, she said she had not done anything to him.

It is obvious from the above that the accused person has contradicted his sworn evidence as against his unsworn statements in Exhibits 'B' and 'C'. The law is that a witness whose evidence on oath was contradictory of his previous statement made but him, whether sworn or unsworn was not worthy of credit unless he gave a reasonable explanation.

See: section 76 of the Evidence Act, 1975 (NRCD 323).

Yaro vrs The Republic [1979] GLR 10 where it was stated by the court thus:

"A previous statement which was in distinct conflict with the evidence on oath was always admissible to discredit or contradict him and it would be presumed that the evidence on oath was false unless he gave a satisfactory explanation of his prior inconsistent statement. A witness could not avoid the effect of a prior inconsistent statement by the simple expedient of denial." **See: Bour v The Republic [1965] GLR 1 SC.**

Gyabaah vrs The Republic [1984-86] 2 GLR 461 CA.

State vrs Otchere (supra).

In the case of **Poku vrs The State [1966] GLR 262,** the Supreme Court stated that:

"The principle in the must cited case **R v Harris [1927] 20 Cr. App. R, 144***, is strict but not absolute. In this country it would expose the administration of criminal justice to ridicule if the testimony of the witness on oath were rejected outright because he is alleged to have made a previous unsworn statement which is in conflict with his evidence without carefully considering his account of the circumstances under which any such statement was made."* The court stated further that:

"Since the witness in this case was not cross examined by the prosecution to explain why the two statements differed, his sworn statement should not have been ignored, but should have been accepted."

It is to be noted from the above dialogue that the accused person was crossexamined on the contradictions between his evidence-in-chief, answers given under cross-examination, caution and charge statements given to the police respectively and yet he could not give this court any satisfactory and reasonable explanation. In one breadth, the victim was not his girlfriend and that he only lived in the same house with. In another breadth, the victim was his girlfriend. In one vein, he did not take the nude pictures of the victim. In another vein, he took the nude pictures of the victim because the victim told him that she will be travelling and therefore he should take nude pictures of her so that anytime that he misses her, he will look at it because she does not want him to cheat on her. On one hand, he does not know Kaziah and Sika and that he did not send any nude pictures of the victim to them. On another hand, he sent the nude pictures of the victim to Kaziah and Sika. On one leg, he did not admit in Exhibit "1" that he sent the nude pictures of the victim to her friends and that it was an April fool prank that he was playing with the victim.

The accused person called his brother one George Kwame Nyarko as DW1 whose evidence was to the effect that they gave Exhibit "1" to PW3 in this case and same was played in his presence and that of the accused person and PW3 but PW3 claimed that Exhibit "1" was unimportant.

It is instructive to note that although Exhibit "1" was tendered in evidence without any objection from the prosecution, same is of no probative value to this court because what the victim was saying from the beginning of her conversation with the accused person was not clear and audible.

Although the accused person called DW1 and DW2, DW1 and DW2's testimonies before this court were against the accused person's interest and were in conflict with that of the accused person who called them and I seek to demonstrate why.

Firstly, whilst the accused person denied ever admitting that he angrily accused the victim that if he had her nude pictures, he would have sent them to her father for him

to know the kind of behaviour she was exhibiting in school in his evidence-in-chief, DW1 on the other hand claimed that the accused person told the victim he did not know anything about any nude pictures and indeed, if he had seen them or had them, he would have sent them to the victim's father so that her father could see what she has been doing.

Excerpts from the accused person's evidence-in-chief are as follows:

"*Q. There is another recording in which you were angrily accusing the said Stephanie Arthur that if you have had the nude pictures, you would have even sent them to her father for him to know the kind of behaviour that she was exhibiting in the school, what do you say to that?*

A. My lord, that is true."

The following dialogue ensued between the prosecutor and DW1:

"Q. *So, tell the court what you remember on that recording?*

A. What I can remember is that it was the victim who called the accused person. When she called, she told the accused person to forgive her. The accused person asked the victim what the problem was and she still went ahead to say that the accused person should forgive her. The accused person told the victim that there was no problem between them so he did not understand why the victim was asking for his forgiveness. The victim told the accused person that he should forgive her for the nude pictures. ***The accused person said he did not know anything about***

any nude pictures and indeed, if he had seen them or had them, he would have sent them to the victim's father so that her father could see what she has been doing*."*

Secondly, whilst the accused person stated that the investigator gave him the charge statement and showed him certain portions to sign because she was in a hurry to send the case to the Juvenile court and that she lives at Kasoa, DW2 on the other hand claimed that PW3 told the accused person that she was late and lives at Kasoa after handed over the charged statement to him to sign.

The accused person in his evidence-in-chief stated in part:

"*In the evening of the same day at about 5:30 p.m. to 6:00 p.m., I was in the cell when the leader of the cells said that the investigator was calling me. When I came to the entrance of the cell, all that the investigator told me was that* ***she was in a hurry, she lives at Kasoa*** *and that she had already written the charge statement and showed me certain portions to sign and that* ***she is in a hurry to send the case to Juvenile Court****."*

Excerpts from DW2's evidence-in-chief are also as follows:

"I was there one day at about 5:30 p.m. to 6:00 p.m. at the second gate when the investigator came and asked me to call the accused person for her because they were inside the cell. When the accused person came to the second gate, I noticed that the investigator was talking to the accused person and he gave the accused person a document. I heard the investigator calling it a charge sheet and she asked the accused person to sign it for her ***because she was late and she lives at Kasoa****."*

From the foregoing, I find the evidence of DW1 and DW2 being completely at variance with that of the accused person.

The law is that if one's evidence is at variance with that of his witness then same should not be given any favourable consideration.

In the case of Elizabeth **Asare v Kwabena Ebow [2013] 57 GMJ 152** (holding 1(b)), the law was stated as follows:

"Whenever the testimony of a party on a crucial issue was in conflict with the testimony of his own witness on that issue, it is not open to the trial court to gloss over the conflict and make a specific finding on that issue in favour of the party whose case contained the conflicting evidence on the issue."

DW1 and DW2 stated in their testimonies before this court that the accused person is their brother and cell mate respectively. This Court is therefore of the opinion that they will do anything to defend the accused person, even to the extent of giving false testimony for him, in order to avoid the wrath of justice upon the accused person. Being a brother and cell mate to the accused person, there is no doubt that they will

proffer evidence to advance the course of the accused person and they are therefore not credible witnesses. It would be madness to rely on their testimonies.

Under the Evidence Act, 1975 (NRCD 323) section 80 (2), the court is entitled to consider statements or conducts consistent or inconsistent with the testimony of the witnesses at the trial to prove the credibility of witnesses.

See: **In State v Otchere [1963]2 GLR 463.**

Bour v The State [1965] GLR 1

Egbetorwokpor v The Republic [1975] 1 GLR 585, CA.

In the case of **Kyiafi v Wono [1967] GLR 463 at 467 C.A** the court per Ollennu J.A. said that:

"It must be observed that the questions of impressiveness or convincingness are products of credibility and veracity; a court becomes convinced or unconvinced, impressed or unimpressed with oral evidence according to the opinion it forms of the veracity of witnesses."

The accused person's stated in his evidence in–chief that he did not confess to the commission of the offence of non-consensual sharing of intimate image and that PW3 told him that she had already written the charge statement and showed him certain portions to sign without reading or explaining anything to him and that there was no independent witness present at the time he signed his charge statement.

It is instructive to note that although, the accused person was represented by a counsel who was well versed in all criminal law procedures and their intricacies failed to object to the confession statement (Exhibit "C") going in evidence and thereby inviting an adjudication by the court on the issue of admissibility, he nevertheless had the opportunity to cross-examine the third prosecution witness (the investigator) in respect of the confession statement or to lead evidence to establish circumstances which violate the fundamental requirements of the admissibility of a confession statement as stated in the case of **State v Otchere and Others (1963) 2 GLR 463** thus:

"Where counsel for the accused person is instructed that a confession has been obtained in circumstances which violate the fundamental requirements of admissibility, it is the duty of the

counsel to object to the confession going in evidence and thereby invite an adjudication by the court on the issue of admissibility. If he fails to object to its reception, he may nevertheless crossexamine prosecution witness in respect of the confession statement or lead evidence to establish circumstances which violate the fundamental requirements and if he succeeds in establishing such circumstances, the evidential value or weight of the confessions although already admitted in evidence, will be negligible…"

Interestingly, the defence failed to lead evidence to establish that there were circumstances which violated the fundamental requirements pertaining to the admissibility of the confession statement (Exhibit "C") or prove that the taking of the confession statement sinned against section 120 of the Evidence Act, 1975 (NRCD 323) so as to render the evidential value or weight of same negligible.

On a thorough perusal of the evidence led by the prosecution and the defence witnesses together with the exhibits and the applicable laws as enunciated above, this court finds as a fact the following:

i. That the accused person was informed in a language that he understands, of the reason for his arrest.
ii. That the accused was reminded of his right to a lawyer of his choice.
iii. That the accused person wrote his charge statement himself.
iv. That there was an independent witness by Naomi Essilfie on the day that the accused person volunteered his charge statement.
v. That the independent witness could read, write and understand the language spoken by the accused person.
vi. That the independent witness interpreted the charged statement to the accused person and wrote on the statement a certificate to the effect that the statement was interpreted to the accused in his presence and that the accused understood it before signing. vii. That the accused person was not induced to make the charged statement by being subjected to any cruel or

inhumane conditions, or by the infliction of physical suffering upon him by PW3 or any police officers at the Ministries Police station.

viii. That the accused person was not induced to make the statement by a threat or promise which was likely to cause him to make such a statement falsely.

ix. That the accused person volunteered his charged statement and signed same out of his own free will.

x. That the accused person confessed to the commission of the offence of non-consensual sharing of intimate image.

As stated supra under the Evidence Act, 1975 (NRCD 323) section 80 (2), the court is entitled to consider statements or conducts consistent or inconsistent with the testimony of the witnesses at the trial to prove the credibility of witnesses.

See: **In State v Otchere [1963]2 GLR 463**

Bour v The State [1965] GLR 1

Egbetorwokpor v The Republic [1975] 1 GLR 585, CA

In the case of **Kyiafi v Wono [1967] GLR 463 at 467 C.A** the court per Ollennu J.A. said that:

"It must be observed that the questions of impressiveness or convincingness are products of credibility and veracity; a court becomes convinced or unconvinced, impressed or unimpressed with oral evidence according to the opinion it forms of the veracity of witnesses."

A court has to test its impression as to the veracity or truthfulness of oral testimony of a witness against the whole of the evidence of that witness and other evidence on record.

See: **Ackom v Republic [1975] GLR 419**

This court also formed an impression of the behaviour of the accused person in the witness box. From the way the accused person reacted to questions and how he answered questions showed that he was not a witness of truth. He pretended not to hear and understand questions for the purpose of gaining time to consider the effect of his answers. Forgetting facts which he knew will implicate him or would be open

to contradictions, minutely remembering others which he knew cannot be disputed and replying evasively. The accused person was very economical with the truth he is therefore not a credible witness. It would be madness to rely on his evidence.

The accused person's assertions that:

i. he did not confess to the commission of the offence of nonconsensual sharing of intimate image; ii. he did not write his own charged statement; iii. PW3 told him that she had already written the charge statement and showed him certain portions to sign without reading or explaining anything to him and that there was no independent witness present are all afterthoughts calculated to throw dust into the eyes of this court and to avoid the wrath of justice upon him and they are rejected by this court.

The excerpts from Exhibit "C" are confession statements admissible against the accused person because they were voluntary, direct, positive and satisfactorily proved and they sufficed to warrant a conviction without corroborative evidence.

The accused person confessed to the commission of the offence of nonconsensual sharing of intimate image. And the law is that, once the said confession was voluntarily made, direct, positive and satisfactorily proved, it is sufficient to warrant conviction without corroborative evidence

See: Ayobi vs The Republic (1992 -93) PT 2GBR 769 CA

Billah Moshie vs The Republic (1972) 2 GLR 318 CA Ofori vs The Republic (1963) 2 GLR 452 SC.

The accused person's denial of the offence of non-consensual sharing of intimate image in the witness box is therefore an afterthought calculated to throw dust into the eyes of this court and to avoid the wrath of justice upon him and same will be taken with a pinch of salt.

Granted without admitting that the accused person did not volunteer any charge statement in which he confessed to the commission of the offence of non-consensual sharing of intimate image, there is enough evidence on Exhibit "A" to support the

charge of non-consensual sharing of intimate image because the accused person stated in the first audio on Exhibit "A" that he sent the nude pictures of the victim to her friends to talk to her.

The accused person's evidence is therefore not credit worthy to be relied on and therefore he is not a credible witness of belief. The accused person's defence is not satisfactory and not reasonable probable.

From the totality of the evidence led by the prosecution witnesses and the defence together with the exhibits and the applicable laws, this court finds as a fact the following:

- That during the year 2018, the accused person and PW2 engaged in illicit relationship and the victim's father got wind of it.
- That in the course of that illicit relationship, the accused person took the nude pictures of PW2.
- That PW2 told the accused person she was no longer interested in the relationship so she broke up with him.
- That in the year 2021, accused person who was not happy that the victim has broken up with him sent nude pictures of PW2 to her friends by name Kaziah and Sika who are at large and they in turn posted same on their WhatsApp status for public viewing.

This court further finds as a fact that at the time that the accused person took the nude pictures of PW2 and sent them to Kaziah and Sika without PW2's consent, there was a reasonable expectation of privacy between the accused person and the victim both at the time of the creation of the nude pictures and at the time the offence was committed.

On Exhibit "A", specifically the fifth audio, the accused person stated emphatically that that he will do something to PW2 that will make her sad and will also never forget because she called to insult him that she was dating a teacher and the teacher has sexual intercourse with her every day.

From the proven facts on the record together with the fifth audio on Exhibit "A", and Exhibit "C", the intention of the accused person in distributing the nude pictures of PW2 to Kaziah and Sika who in turn posted same on their WhatsApp statuses for public viewing was to cause serious emotional distress to PW2.

Consequently, the prosecution has succeeded in proving the offence of nonconsensual sharing of intimate image contrary to section 67 of the Cyber Security Act, 2020 (Act 1038) against the accused person beyond all reasonable doubt.

On a thorough perusal of the evidence on the record together and on a full and careful consideration of the charge, the exhibits and the applicable laws, this Court finds the accused person guilty of the offence of non-consensual sharing of intimate image contrary to section 67 of the CyberSecurity Act, 2020 (Act 1038) and convicts him accordingly.

ANALYSIS OF THE CHARGE OF THREAT OF DEATH AND DOMESTIC VIOLENCE TO WIT: EMOTIONAL ABUSE THE EVIDENCE TO PROVE SAME

Section 75 of the Criminal and Other Offences Act, 1960 (Act 29) provides as follow:

"*A person who threatens any other person with death, with intent to put that person in fear of death, commits a second degree felony.*"

In the case of **Behome v. The Republic [1979] GLR 112** the Court held that:

"In the offence of threat of death the actus reus would consist in the expectation of death which the offender creates in the mind of the person threatened whilst the mens rea would also consist in the realization by the offender that his threats will produce that expectation."

The prosecution is required by law to prove that:

i. The accused person threatened PW2 with death; and ii. That at the time of the threat, the accused person had the intent to put

PW2 in fear of death.

To determine whether the words uttered constitute a threat of death, the court is required to look at the plain and ordinary meaning of the words uttered. Where the

ordinary meaning of the words uttered constitute threat of death, the court is not required to look for the secondary meaning. And the test to be used to determine whether the words spoken or written by the accused person constitute threat of death is how a reasonable person will perceive it within the context and the circumstances in which they were uttered. The test is an objective one.

Sections 1 (b) (iv), and 3(2) of the Domestic Violence Act, 2007 (Act 732) provide as follows:

"1. Domestic violence means engaging in the following within the context of a previous or existing domestic relationship:

(b) specific acts, threats to commit, or acts likely to result in

(iv) emotional, verbal or psychological abuse namely any conduct that makes another person feel constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery or depressed or to feel inadequate or worthless."

"3. Prohibition of domestic violence

(2) A person in a domestic relationship who engages in domestic violence commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than two years or to both."

Domestic relationship is defined under section 2 (1) of the Domestic Violence Act, (Act 732) as follows:

2. (1) *A domestic relationship means a family relationship, a relationship akin to family relationship or a relationship in a domestic situation that exists or has existed between a complainant and a respondent and includes a relationship where the complainant*

a) *is or has been married to the respondent;*
b) *lives with the respondent in a relationship in the nature of a marriage even if they are not or were not married to each other or could not or cannot be married to each other;*
c) *is engaged to the respondent, courting the respondent or is in an actual or perceived romantic, intimate, or cordial relationship not necessarily including a sexual relationship with the respondent;*

d) and respondent are parents of a child, are expecting a child together or are foster parents of a child;

e) and respondent are family members related by consanguinity, affinity or adoption, or would be so related if they were married either customarily or under an enactment or were able to be married or if they were living together as spouses although they are not married;

f) and respondent share or shared the same residence or are co-tenants;

g) is a parent, an elderly blood relation or is an elderly person who is by law a relation of the respondent;

h) is a house help in the household of the respondent; or

i) is in a relationship determined by the court to be a domestic relationship."

The court in determining whether there is a domestic relationship between the complainant and the respondent may have regard to:

a. the amount of time the persons spend together,

b. the place where that time is ordinarily spent,

c. the manner in which that time is spent, and

d. the duration of the relationship.

See: Domestic Violence Act, 2007 (Act 732), section 2(1).

A person is said to be in domestic relationship where:

a) the person is providing refuge to a complainant whom a respondent seeks to attack, or

b) the person is acting as an agent of the respondent or encourages the respondent.

See also Domestic Violence Act, 2007 (Act 732), section 2(2).

A person cannot be said to have committed the offence of domestic violence where there has never been a previous domestic relationship or an existing domestic relationship between the complainant and the offender.

In order to ground a conviction, the prosecution would have to prove beyond reasonable doubts the following:

1. *That there was a previous or existing domestic relationship between PW2 and the accused person.*
2. *That the accused person in the year 2021 emotionally abused PW2 by distributing her nude pictures to her friends Kaziah and Sika after which you sent her some threatening messages to wit: "I will deal with you, if you want to lose your life or you want your mother to lose you, then joke with me"*

PW2 stated in her evidence-in-chief that in the course of the vacation classes, one of her friends called the accused person and told him that she is dating one of her teachers. This made the accused mad so he called to threaten and also insult her and hanged up the call. PW2 who claimed that the accused person threatened and insulted her, did not tell this court in her evidence-inchief whether the threat was that of threat of harm or threat of death.

Per the particulars of offence in respect of the first count, the accused person is accused of threatening PW2 with words to wit: *"I will deal with you, if you want to lose your life or you want your mother to lose you, then joke with me*" with intent to put the said STEPHANIE ARTHUR into fear of death. Surprisingly, PW2 could not even tell this court, the exact threatening words that the accused person uttered to her in her evidence-in-chief and answers given under cross-examination.

Furthermore, in respect of count three, the accused person is accused of conducting himself in a manner that made PW2 feel constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery, depressed, inadequate and worthless when he took her nude pictures and distributed same to her friends Kaziah and Sika after which he sent her some threatening messages to wit: "I will deal with you, if you want to lose your life or you want your mother to lose you, then joke with me". Interesting, in the statement given to the police by PW2 on the 27th January, 2023 and in PW2's evidence-in chief, PW2 who is the victim in this case did not testify to the effect that as a result of her nude pictures distributed to her friends Kaziah and Sika by the accused person, she

felt constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery, depressed, inadequate and worthless.

The prosecution who had the burden to prove that the accused person in the year 2021 threatened PW2 with words to wit *"I will deal with you, if you want to lose your life or you want your mother to lose you, then joke with me*" with intent to put PW2 into fear of death and also that the accused person conducted himself in a manner that made PW2 feel constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery, depressed, inadequate and worthless when he took her nude pictures and distributed same to her friends Kaziah and Sika after which he sent her some threatening messages to wit: *"I will deal with you, if you want to lose your life or you want your mother to lose you, then joke with me*" failed to prove same in accordance with section 13 of the Evidence Act, 1975 (NRCD 323) which provides as follow as follow:

"In a civil action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt."

In the case of **Sabbah v The Republic [2009] SCGLR 728**, the Supreme Court in applying sections 11 and 13 of the Evidence Act, Act 323; the burden of producing evidence and proof of crime respectively held that a valid conviction shall be premised on grounds that the guilt of the accused person has been proved beyond reasonable doubt and where there is a doubt it shall be resolved in favour of the accused person. The law as decided in **Miller v Minister of Pension [1947] 2 AER 373** and now a trite law is that proof beyond reasonable doubt does not amount to proof beyond a shadow of doubt.

This court therefore finds and holds that there is no scintilla of evidence on the record to prove that the accused person in the year 2021 threatened PW2 with words to wit: *"I will deal with you, if you want to lose your life or you want your mother to lose you, then joke with me*" with intent to put PW2 into fear of death and also that the accused person conducted himself in a manner that made PW2 feel constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery, depressed, inadequate and worthless when he

took her nude pictures and distributed same to her friends Kaziah and Sika after which he sent her some threatening messages to wit: *"I will deal with you, if you want to lose your life or you want your mother to lose you, then joke with me*"

For prosecution to succeed on such charges against the accused person, it is incumbent on prosecution to prove all the essential ingredients of the offence of threat of death and domestic violence to wit emotional abuse but prosecution failed woefully to do so.

On a full and careful consideration of the charges, facts and after hearing the witness of the prosecution, together with the exhibits, the analysis and laws enunciated above, this Court is of the considered view that:

i. the charge of threat of death and domestic violence to wit :emotional abuse cannot be supported by the evidence on record; ii. the evidence adduced by the prosecution failed to take the case out of the realm of conjecture and speculation and the evidence on record is best described as insufficient.

Since the prosecution could not make a *prima facie* case against the accused person in respect of the offence of threat of death and domestic violence to wit: emotional abuse, the prosecution failed to meet the constitutional requirement imposed on it by paragraph (c) of clause (2) of article 19 of the Constitution which provides thus:

"*2. A person charged with a criminal offence shall*

(c) be presumed to be innocent until he is proved or had pleaded guilty." This Court finds solace in the maxim:

"Let hundred guilty be acquitted but one innocent should not be convicted."

The accused person is accordingly acquitted and discharged of the following offences:

1. Threat of death contrary to section 75 of the Criminal Offences Act, 1960 (Act 29) and
2. Domestic violence to wit: emotional abuse contrary to section 1 (b) (iv) and 3(2) of the Domestic Violence Act, 2007 (Act 732).

In imposing the appropriate sentence, in respect of the first count, that is non-consensual sharing of intimate image contrary to section 67 of the CyberSecurity Act, 2020 (Act 1038), this court considered the following aggravating factors:

i. The intrinsic seriousness of the offence charged; ii. The gravity of the offence charged; iii. The degree of revulsion felt by the law abiding citizens of this country for the crime committed;

iv. The premeditation with which the criminal plan was executed;

v. The prevalence of the crime within the Accra Metropolitan Assembly and the country generally; vi. The sudden increase in the incidence of these crime; vii. The trauma and the emotional distress the victim is going through in a society where counseling for victims of such criminal acts is almost non-existent, and viii. The accused person's lack of show of remorse.

This court also took into consideration in imposing the appropriate sentence, the following mitigating factors:

i. The fact that the accused person has had no brush with the law; and ii. The six (6) months and nine (9) days that the accused person spent in lawful custody due to his inability to meet his bail conditions in accordance with clause (6) of article 14 of the Constitution of Ghana, 1992.

See the following cases:

Frimpong @ Iboman v The Republic [2012] 1 SCGLR 297.

Kamil v The Republic [2011] 1 SCGLR 300.

Gligah & Atiso v The Republic [2010] SCGLR 870

Kwashie and Another v The Republic (1971)1 GLR 488 CA.

Asaah Alias Asi vrs The Republic (1978) GLR 1.

Courts worldwide frown upon cybercrimes. Ghana's legislature has taken a serious view of cybercrimes and its effects on the victims by domesticating it into our laws. Specifically the making and sharing of intimate image which conduct takes place without the consent of the person in the image and violates their sexual privacy,

autonomy and freedom, their bodily privacy and their dignity. And all efforts by governments, human rights activists and international organizations to curb this menace have not yielded any positive result.

The sudden increase in non-consensual sharing of intimate images is far too frequent nowadays and it is the duty of all courts in this country to do all they can to ensure that the wrongdoer does not gain an advantage by his or her wrongdoing. The court shows its zeal to curb such menace and its revulsion for such offence by imposing a harsh sentence to serve as a deterrent to likeminded persons.

The accused person is hereby sentenced to a prison term of three (3) years with hard labour (I.H.L) on the charge of non-consensual sharing of intimate image contrary to section 67 (1) and (2) of the Cyber Security Act, 2020 (Act 1038).

The accused person is further ordered to compensate the complainant Stephanie Arthur with cash the sum of Ten Thousand Ghana cedis (GH¢10,000.00) for her trauma and emotional stress.

CONCLUSION

The accused person is sentenced to a prison term of three (3) years with hard labour (I.H.L) on the charge of non-consensual sharing of intimate image contrary to section 67 (1) and (2) of the Cyber Security Act, 2020 (Act 1038).

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2. Domestic violence to wit: emotional abuse contrary to section 1 (b) (iv) and 3(2) of the Domestic Violence Act, 2007 (Act 732).

CHIEF INSPECTOR OPOKU ANIAGYE FOR THE REPUBLIC PRESENT

NANA ADDO ASIRIFI FOR THE ACCUSED PERSON PRESENT

(SGD)

H/H CHRISTINA EYIAH-DONKOR CANN (MRS.)

(CIRCUIT COURT JUDGE)