

IN THE CIRCUIT COURT, MPRAESO, EASTERN REGION, BEFORE HER HONOUR
MRS ADWOA AKYAAMAA OFOSU, CIRCUIT COURT JUDGE ON WEDNESDAY,
THE 14TH OF FEBRUARY, 2024

B3/104/2023

THE REPUBLIC

V

KWASI WIAFE

.....
.....
TIME:10:35

ACCUSED PRESENT

CHIEF INSPECTOR BEATRICE LARBI FOR PROSECUTION PRESENT

ACCUSED SELF-REPRESENTED

JUDGMENT

On the 28th of July, 2023, the accused person herein was arraigned before this court charged with '*threat of death*' contrary to section 75 of the **Criminal Offences Act 1960**,

(Act 29). He pleaded not guilty when the charge was read to him thus putting the facts in dispute and the prosecution assumed the burden to prove his guilt in accordance with the requirement of the law.

The following are the facts that were presented to the court in support of the charge:

The complainant Rosemary Adjei is a trader whilst the accused Akwasi Wiafe also 48 is an electrician. Both are a couple who have been married for almost 15 years and live at their own four bedroom apartment at Nkawkaw Barrier area. On the 27th of June, 2023, the complainant reported to the police that the accused had threatened her life and also caused damage to her properties hence he was arrested for investigations and later arraigned before the District Court at Nkawkaw for prosecution. The Magistrate referred the case to ADR for settlement and also ordered that the accused should stay away from their matrimonial home until the determination of the matter at the court but he refused to comply.

On the 17th of July, 2023, the complainant and the accused met at the ADR but settlement broke down between them and they were asked to report to court on the 27th of July, 2023 as the next court date. On their way home, the accused attacked the complainant without any provocation where the accused again threatened the complainant with words to wit **“I will make sure we are dead before the next court date”** in the presence of a witness. Out of fear, the complainant reported the case to the police leading to the arrest of the accused. He denied knowledge of the offence however after investigations he was charged with the offence as stated in the charge sheet and arraigned before this honourable court.

It is trite that in criminal trials, the burden of proof in the sense of the burden of establishing the guilt of the accused is generally on the prosecution. The failure to discharge that burden should lead to the acquittal of the accused. The standard of proof

placed on the prosecution in order to discharge its burden is proof beyond reasonable doubt. **Section 11(2) of the Evidence Act, 1975 (NRCD 323)** thus provides that:

“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.”

As aforementioned, the plea of the accused person put the facts in issue and therefore the prosecution assumed the burden to prove the guilt of the accused person because, unless an accused person pleads guilty or he is proven guilty, he is presumed to be innocent in terms of **Article 19(2)(C) of the 1992 Constitution** of the Republic of Ghana which provides as follows:

“A person charged with a criminal offence shall be presumed to be innocent until he is proved guilty or has pleaded guilty”

In proving an allegation or an assertion whether in a civil or criminal matter, the **Evidence Act, 1975 (NRCD 323)** provides for the nature of proof and the required standard. In criminal matters Section 11(2) provides for the standard of proof 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.

In explaining the nature and standard of proof required in criminal cases, the Supreme Court in **Asante (No 1) v The Republic (No.1) [2017]-2020] 1 SCGLR 132 at 143**, per Pwamang JSC held that:

“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 was the accused person 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 his commission of the offence and his complicity in it except where he relies on a statutory or special defence”

Lord Denning in the case of **Miller vs. Minister of Pensions (1947) 2 All ER 372** explains the term ‘reasonable doubt’ 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”

In an effort to prove its case against the accused person, the prosecution called two witnesses being the complainant Rosemary Adjei, PW1 and the investigator Detective Inspector Masawudu Tanko Manaf, PW2.

PW1 testified that she is a 48 year old trader and stays at Nkawkaw. That on the 27th of June, 2023, the accused who is her husband to whom she has been married for the past 15 years and with who she has two children threatened to kill her and set her house ablaze. She testified that she reported the matter to the Divisional DOVSSU Nkawkaw where the accused was arrested for investigations. On 7th July, 2023, the police arraigned the accused before the District Court, Nkawkaw and the case was referred to the ADR for settlement and he was granted bail. The court ordered that the accused should stay away from their matrimonial home until the determination of the case but the accused refused to comply.

PW1 further testified that on the 17th of July, 2023, at about 2:30pm, the ADR sat on the case at the District Court Nkawkaw and attempted settlement but it failed and it was adjourned to 27th July, 2023. On the same day at about 3:00pm, she went to her sister by name Oforiwaa Dora at Nkawkaw old lorry station and on reaching there, she met the accused having a conversation with her. According to PW1, without any provocation, the accused threatened her with words to wit "I will not attend court the next day and I will make sure we both are dead before the next court date" in the presence of Oforiwaa Dora her sister.

PW2's evidence was as narrated to him by PW1 when she lodged the complaint against the accused person. He further told the court that he went to the old lorry station where he met Dora Oforiwaa and she confirmed the incident to him. On the 27th of July, 2023, he went to the District Court Nkawkaw and arrested the accused person to the police station. He obtained a cautioned statement from the accused wherein he denied the offence. However after investigations, he was instructed to charge the accused person with the offence.

PW2 duly tendered the said cautioned statement and the charge statement of the accused person in evidence and they were marked as Exhibits A and B. Thereafter the prosecution closed its case. At the close of the case for the prosecution, it appeared to the court that the prosecution had established a prima facie case against the accused person and so he was called upon to open his defence in accordance with section 174 of the **Criminal and other Offences (Procedure) Act 1960, (Act 30)**

The accused gave evidence on oath and he did not call any witness. In his terse evidence to the court, the accused person said the complainant is his wife and they have been married for 15 years and they have two children a male and a female aged 12 years and 9 years. He told the court that he denies the charge against him and that it is a total fabrication by the complainant and her family. He testified that he has never intended to kill the complainant and never had any issues with anybody.

Section 75 of Act 29 supra under which the accused is charged provides that:

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

The learned jurist Dennis Dominic Adjei in his book **Contemporary Criminal Law at page 185** states that the first ingredient of threat of death is that there must be evidence of threat to kill issued by the suspect against the life of the victim. The second ingredient of the offence is the intent to put the victim in fear of death.

Also in his book **Criminal Law in Ghana at page 235** the learned author P.K. Twumasi states that:

“In proving the offence therefore, it is not necessary to establish that the accused at the time he uttered the threat actually had in his hands or possession some visible means of carrying out his threat such as holding a cutlass, a gun or a knife. Mere words are sufficient provided the other

ingredients of the offence are present. The next important element constituting the offence is the intent on the part of the threatener to put the other person in fear of death, that is, in fear of being murdered. The accused must have exhibited a real or wicked intention to put the other person in fear of death. Whether the victim of the threat was actually put in fear of death is immaterial. It is the intention to put him in fear of death by means of the threat that matters”.

Furthermore in the case of **The Republic v Amadu Bello**(14/08.2007 Case number **F16/7/07** the court held that:

“In a charge under section 75 of Act 29, therefore the prosecution must prove that the accused person said or did something which put the other person in immediate fear of being killed: threat of death means threat of murder”.

Here the words allegedly uttered by the accused are *“I will make sure we are both dead before the next court date”*

The learned author Dennis Dominic Adjei in his book supra at page 186 stated that:

“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 word constituted threat of death, the court is not required to look for the secondary meaning or any less obvious meaning”

To say that *“I will make sure we are both dead before the next court date”* certainly means without any ambiguity that a person will be killed or murdered. The words the accused person uttered therefore constitutes threat of death. The accused person however denies that he uttered those words. The evidence of PW1 is that the accused initially threatened to kill her and set her house ablaze and she reported the matter to the police and the accused was arrested and arraigned before the District

Court Nkawkaw. According to her, the case was referred to ADR but they were unable to settle and the case was referred back to court. Before the next court date however, the accused person threatened her in the presence of her sister that, she will kill her before the next court date. Even though PW1 mentioned that the said statement was made in the presence of her sister, her said sister did not appear at the trial to testify. I concede that the corroborative evidence of PW1's sister would have further strengthened the case of the prosecution, however that is not fatal to the prosecution's case in the absence of any evidence to the contrary because the position of the law as per section 7(3) of NRCD 323 supra provides that:

"Unless otherwise provided by this or any other enactment corroboration of admitted evidence is not necessary to sustain any finding of fact or any verdict".

In the instant case, the admitted evidence is that the parties had a misunderstanding and the accused threatened PW1 to kill her and same was reported by PW1 to the police and the accused was arrested, charged and put before the District Court, Nkawkaw. The evidence is that at the District Court, the accused was ordered to stay away from the matrimonial home until the determination of the matter. This evidence was never challenged by the accused person. The further evidence is that in respect of the case at the District Court, the parties were referred to ADR but were unable to settle. Subsequently on the same day after the ADR proceedings, the accused threatened PW1 that he will make sure that the two of them are dead before the next court date. The accused denied the charge in his cautioned statement Exhibit A and also simply denied same in court. In Exhibit A however, he stated that;

". Meanwhile, during the ADR settlement, on that day my wife informed the officers that I forcibly had sexual intercourse with her after the last adjourned date even though the court made an order for me to stop coming to our matrimonial home until the determination of the case but I failed to

comply. I was not satisfied with that statement made by my wife so at about 12:00pm I went to one Akosua Oforiwaaa at Nkawkaw old lorry station and informed her. The said woman is a sister to my wife that was why I went to expressed [sic] my displeasure to her. In the process of that, my wife also emerged. I did not threaten to kill my wife at that particular drinking spot but what I said was that, "what if I died before the next date then everything will be over".

From the evidence, I infer from the accused person's own statement which was given to the police when the events were quite fresh in his memory that he indeed went to PW1's sister and uttered some words. It can further be inferred from the accused person's statement that he was displeased with whatever PW1 said at the ADR and so the accused person's mood on seeing PW1 at her sister's place would definitely not be a friendly one. I therefore have no doubt from the evidence that the accused uttered the words complained of particularly as he is standing trial in another court for allegedly threatening PW1. The admitted fact is that the accused was asked by the magistrate to stay away from the matrimonial home until the final determination of the matter. This suggests to me that the charge before him had to do with a threat to PW1's life. From the evidence on record therefore I find and hold that the accused person indeed threatened to kill PW1.

The second ingredient of the offence of threat of death is the intention on the part of the accused to put the other person in fear of death.

The general principle of our law is that intention, like many other states of mind, is incapable of direct proof; it is always inferred from proven facts. This is a principle of English common Law which has been accepted as an important principle of our criminal law.

See: **Bruce v Commissioner of Police [1963] 1GLR**

State v. Baba Gariba [1963] GLR

From all the circumstances of the case, it is obvious that the accused intended to put the fear of death in PW1 to prevent her from standing up to him.

It is trite learning that in criminal trials, it is the prosecution that has the burden to prove the guilt of the accused person beyond a reasonable doubt. This burden never shifts. However when the prosecution is able to establish a prima facie case against the accused then he may be called upon to offer an explanation in his defence. Thus 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**

Here, the accused person merely denied the charge without offering any reasonable explanation. His mere denial of the charge in the light of the positive evidence led by the prosecution in my view did not raise a reasonable doubt in in the case of the prosecution.

Consequently the accused is pronounced guilty and convicted accordingly.

SENTENCING

In sentencing the accused, the court takes into account his plea of mitigation and the fact that he is a first time offender. However the accused person pleaded not guilty when he knew that he had committed the offence. I have further considered the relationship between the parties, the fact that they have children who are all minors and need the support of their father in all aspects of their lives at this crucial stages of their lives. I sentence the accused to a fine of 400 penalty units in default three years imprisonment. The accused shall also sign a bond to be of good behaviour for twelve months in default 12 months imprisonment.

H/H ADWOA AKYAAMAA OFOSU (MRS)

CIRCUIT COURT JUDGE