

21: 04: 2023

IN THE DISTRICT MAGISTRATE COURT HELD AT VAKPO ON FRIDAY THE 21ST DAY OF APRIL, 2023 BEFORE HER WORSHIP GIFTY CUDJOE THE MAGISTRATE.

SUIT NO. B3/04/2022

THE REPUBLIC

VERSUS

CHARLES DZROH

JUDGEMENT

Accused was arraigned before this court and charged with Threat of Death Contrary to Section 75 of Criminal offences act, 1960 (Act 29). Accused pleaded not Guilty to the charge. The charge sheet disclosed the following statement and Particulars of the Offence as read, explained and Interpreted to the accused.

Statement of Offence

Threat of Death Contrary to Section 75 of Act 29/60.

Particulars of Offence

Dzroh Charles, Farmer: For that on the 15th September, 2022 at about 4: 30 p.m. at Aveme Danyigba in Volta Magisterial District and within the Jurisdiction of this court did threatened to kill one Michael Gbodza.

The brief facts, as presented by the Prosecution are that both complainant and accused are all natives and resident of Aveme-Danyigba. That on the 17th September 2022 at about 4: 30 p.m. accused met the complainant at home and without any provocation started raining insults on the complainant. Accused then said to the complainant that he had made (13) thirteen attempts to kill him but failed. That he will surely succeed at his next attempt or he will burn down his vehicle in the presence of witnesses. Complainant reported to the Police on 21/09/2022. Accused was cautioned and charged with the offence of Death and put before the Court.

The evidence adduced by the Prosecution against the accused person is that PW (1) the complainant is a good friend but started behaving strangely towards him. That he was charting with someone when accused passed by without greeting them. That accused later called the Person he was charting with and hold him that he (accused) will definitely kill him. The Person informed him about accused person's statement and he informed his parents but that rather worsened the situation as accused traced him into home and threatened again to kill him and burn his vehicle into ashes. The accused personally hold PW (1) that he has made an attempt at killing him (13) thirteen times which all failed. PW (1) then realized the seriousness of his words and reported to Police for assistance.

PW (2) adduced evidence that on the 14th September, 2022 about 3: 30 p.m. he went into home and met PW (1) exchanging words with accused so he stopped and advised PW (1) to go home. Accused then said that he had made (13) thirteen attempts on PW (1)'s life but all failed but he will succeed in killing him or burn his car on the 14th attempt.

That accused seems serious about his utterances and PW (1) was advised to report to the Police for assistance. The Investigator PW (3) stated that PW (1) lodged a complainant with the Police on 21st September, 2022 that accused threatened to kill him on 15/09/2022. PW (3) states that

accused denied the allegation in his cautioned statement but after investigations was charged with the offence arraigned before court.

In defence accused told the Court that he went to the farm with his mother but he gets home before his mother. His mother returned to inform him that PW (1) reported to her that anytime they met the accused threaten him so she (the mother) should inform accused that since he gets to the farm at dawn he will use his vehicle to hit him (PW 1).

Accused stated that he met PW (1) a week later and questioned why he sent that message through his mother. He also asked PW (1)'s friend to question why he wanted to hit him with his car and he could not say anything. In the morning he caused his arrest.

In criminal cases such as this, the Prosecution bears the burden to establish the guilt of accused person and this burden must be discharged beyond all reasonable doubt. (see Section 11 (2) (3) and 15 (1) of The Evidence Act, 1975 (NRCD 323). To secure conviction, the Prosecution must establish all the essential ingredients of the offence preferred against the accused person.

Section 75 of the Criminal offences 1960 (Act 29) reads:

“Whoever threatens any other
 Person with death, with intent
 to put that person in fear of
 death, is guilty of Second
 degree felony”.

The ingredients of the offence the Prosecution must prove are :

- (a) That the accused person made a threat to kill the complainant.
- (b) That the threat was to kill complainant.
- (c) That the threat was made without lawful excuse

(d) That the intention of the accused is to make the complainant fear that the threat will be carried out.

From the evidence adduced, the threat from the accused appear in words. Words spoken personally to the complainant and also through PW (2). From PW (1)'s evidence, accused threatened him through a friend and later personally traced him to the house with the threat.

Cross examination on PW (1) revealed:

Q. When did we meet and I threatened you?

A. You threatened me at Gbodome when I was return from a place.

Q. Do I have an issue with you to threaten you?

A. I have no issue with you that was why I became alarmed.

Q. Why did you tell my mother that you will crash me with a car because I said I visit the farm at dawn?

A. The above is the 1st attempt you made at killing me. I confronted your mother on the issue.

Q. Do you remember you told my mother you will hit me with a car?

A. I did not say so I only reported your conduct to your mother.

The Prosecution has established that accused uttered the threatening words earlier and when complainant reported accused persons conduct to the mother of accused he personally confronted him. PW (2) testified and gave an eye witness account the confrontation between Accused and Pro (1).

In PW (2)'s words accused stated:-

“..... accused said he has made thirteen
(13) attempts on his life but all failed but
he will succeed in killing him or burn his

car on the 14th attempt“.

The evidence of PW (1) and (2) is very consistent on the utterances of accused. From PW (2)'s evidence he advised the complainant to report to the Police based on the seriousness with which accused uttered the word. It is noted that accused did not cross examine PW (2) on the evidence he gave when he was given the opportunity to do so. The effect of accused person's inability to thoroughly cross examine PW (2) on the words he heard him pronounce strengthens prosecution's case of putting complainant in fear thereby occasioning a report at the Police Station.

PW (3) confirmed complainant lodged a complaint on the 15th September, that accused had threatened to kill him.

In the case of:-

Beheme versus The Republic

[1979] GLR 112.

It was stated that in the offence of threat of Death, the actions "actus Rens" would consist in the expectation of death which the offender creates in the mind of the person threatened while the mens rea would also consist in the realization by the offender that his threats would produce that expectation.

On the evidence, it is conclusive that accused threatened complainant with death and before PW (2) also. The court therefore finds him guilty of the offence and convict him accordingly.

Plea in mitigation

1. Accused:- I am pleading with court. I will not repeat it again.
2. BY COURT: Accused convicted and Sentenced to sign a bond to be of good behavior for 12 months or in default 2 weeks imprisonment in H. L.

In sentencing the accused, the court considered his demeanor in court which shows that he regretted his utterances and his plea not to repeat such utterances again.

.....sgd.....

GIFTY CUDJOE
THE MAGISTRATE