IN THE GENDER-BASED VIOLENCE CIRCUIT COURT AT SEKONDI –W/R, HELD ON TUESDAY, 18TH OCTOBER 2022 BEFORE H/H NAA AMERLEY AKOWUAH (MRS.)

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C1/3/2021

THE REPUBLIC

VRS.

1. KWABENA NYAMEKYE

2. NANA KWAMINA KUM (JNR)

3. KOFI KYEREDOM

A1, A2 & A3: PRESENT

PROSECUTION: SGT. E.K.O. AGYEMAN

C/ACCUSED PERSONS: JOHN MERCER, Esq

In its Amended Charge Sheet of 7/09/2020, Prosecution accused the three young men of having conspired together to commit a crime, carrying out the crime of threat of harm against the complainants and which by their actions, also constituted offensive conduct conducive to the breach of the peace contrary to sections 23(1), 74 and 204 of the Criminal (And Other Offences) Act, 1960 (Act 29). A superfluous fourth count of conspiracy was struck out.

A prequel to a case dealt with in this Court involving the same parties, accused persons were alleged to have gone to the bakery of Janet Quayson, wife of Nana Kofi Awuah V, chief of Essaman, and threatened to deal severely with her and her husband should they keep working on a parcel of land in dispute. In the absence of Nana Kofi Awuah V, accused

persons (no specific one mentioned) allegedly uttered the words "*If you and your husband do not stop the extension project at the drinking spot, you will see what will happen to you*" and "*You are lucky we did not meet your husband else he would have seen what we will do to him"* to Janet Quayson while brandishing cutlass and sticks.

Accused persons vehemently denied the facts underpinning the charges and pleaded 'Not Guilty' to the three counts levelled against them. This invoked s. 13(1) of the Evidence Act, 1975 (NRCD 323) which placed the "*burden of persuasion as to the commission by a party of a crime which is directly in issue … beyond a reasonable doubt"* on Prosecution. To discharge this burden on it as expatiated in the case of ***Ali Yusif Issa (No. 2) v The Rep. [2003-2004]1 SCGLR 174@183-184***, Prosecution called four witnesses namely Janet Quayson (Complainant & PW1), Esther Katitinah @ Auntie Mansah (PW2), Nana Kofi Awuah V (Complainant & PW3) and D/Sgt. Solomon Odoi (Investigator & PW4). Together, the witnesses tendered eight (8) exhibits made up of the initial statements of PW1, PW2 & PW3 given to the police, variously dated, admitted and marked as **Exhs. A, B & C,** the Investigation Caution Statements and Charge Statements taken from A1, A2 & A3, admitted as (**Exhs. D, E, F, G, H & J**).

Despite being the first charge on the Charge Sheet, I will defer discussion of the offence of conspiracy it being an inchoate offence, till after I have dealt with the substantive offences in Counts 2 & 3.

COUNT 2 - THREAT OF HARM

The primary law on threat of harm is in s. 74 of Act 29 which states that "*Whoever threatens any other person with unlawful harm, with intent to put that person in fear of unlawful harm, shall be guilty of a misdemeanor".*

Having listened to and read the testimonies of Prosecution's four witnesses, the facts established and the law on threat of harm are as follows:

From PW1's testimony, the alleged threatening words were uttered to only her, not PW3 her husband because he was not at home at the time of the altercation. Secondly, the cause of the altercation between PW1 and accused persons was the latter's address of the former's husband by his alias "Pinkrah". Thirdly, that where the altercation occurred was in PW1's bakery as contained in paragraph 5 of her WS as follows "*… suddenly invaded the bakery shop with cutlass and sticks*"

PW2 attempted to corroborate the allegation that accused persons went to the shop with a cutlass and a stick but this is unsupported by other evidence and facts on record. With reference to paragraph 4 of her WS, it was put on record that at the time of the incident, PW2 was sitting adjacent PW1's bakery and it was from there that she called out to Janet Quayson (PW1) to come and meet accused persons who had asked her whether Janet was indeed at home. Under cross examination, PW2 told the Court that she called to Janet even though she saw accused persons, who she identified, carrying the offensive weapons. She said she was still at her place when she overheard the conversation of the message from their father/grandfather between PW1 and accused persons. I find it incredible the claim that despite seeing accused persons carrying offensive weapons, PW2 called PW1 to come out and went back to her seat from where she overhead the conversation, not mindful of the danger she may have exposed PW1 to. This does not make sense and the logical conclusion to reach is that accused persons spoke with PW2 in a non-threatening way such that she felt PW1 was safe enough to come out and speak with accused persons. As such, I find that accused person did not carry along any offensive weapons when they went to PW1's bakery.

PW2 corroborated the finding that it was accused persons' calling PW1's husband as "Pinkrah" in his absence that led to the misunderstanding. PW2 confirmed that the accused persons gave PW1 a message from their grandfather warning them to desist with the expansion of their building project into his adjoining land (reference paragraph 10 of her

WS). Finally, PW2 confirmed that the alleged threatening words "*You are lucky we did not …"* were uttered to PW1, not PW3.

Accordingly, I make a finding of fact that the alleged words "*If you and your husband do not stop the extension project at the drinking spot, you will see what will happen to you"* were not uttered in a threatening manner, if uttered at all. PW2 was emphatic that the core of the statement was uttered as a message from accused persons' father/grandfather. The basis of this finding in law will be discussed later in this judgment. This leaves only the second statement of "*You are lucky we did not meet your husband else he would have seen what we would have done to him*" and its legal effect as the subject of this judgement.

From testimony of PW3 he confirmed that the alleged incident happened in his absence and his wife (PW1) informed him on phone afterwards. His testimony on the assertion that accused persons carried a cutlass and stick when they arrived was hearsay, offending the provisions in s. 116 of NRCD 323 because he was not present, did not have personal knowledge of the said event and only repeated the assertion when he could not speak to it.

From PW4, it was established that PW1 indeed rained insults on accused person for calling her husband by his alias "Pinkrah". Despite being the investigator, I find that he did not conduct independent investigations into whether or not accused persons went to complainants' bakery with offensive weapons. He merely repeated what complainants told him and accused persons' denial of same in their Investigation Caution Statement (ICS) and Charge Statement (CS).

Before I state the position of the law, I must address the matter of accused persons calling PW3 by his alias "Pinkrah". I observe that in a very cultural state like Ghana addressing adults and persons of repute, including chiefs as is PW3, must be prefixed by the appropriate title to show honour and respect, as is right. Failure or refusal to do so may

attract cultural sanctions but this will certainly not amount to a criminal offence or constitute provocation as defined under s. 53 of Act 29.

I couldn't agree more with counsel for accused persons on his accurate observations made at page 4 of his Written Address when he pointed out that the alleged threatening words were directed at PW3, who incidentally was absent, not to PW1 to whom they were actually made. At no point in her testimony did PW1 tell the Court that she felt threatened either by the presence of accused persons, the alleged cutlass and stick they were carrying or the words uttered towards her absent husband. Referencing P.K. Twumasi "*the essence of the offence is that the accused used threatening, insulting and abusive words or behavior in the presence of the person to whom the words or behavior were intended*". In my respectful opinion, the ordinary meaning of the words uttered were neither insulting nor abusive, leaving a determination of whether they were threatening. On the current facts, it begs the question whether a charge of threat of harm, alleged to have been directed at PW3, should have been initiated when it is undisputed that PW3 was several kilometers away from the alleged crime scene. Reporting the words to PW3 on phone, even immediately after the incident does not amount to the requirement of "presence". It cannot be argued that having been told of the incident, PW3 suffered a secondary fear or apprehension for his life such that he felt his life was in danger.

I find the charge of threat of harm unsubstantiated and unproved beyond reasonable doubt.

OFFENSIVE CONDUCT CONDUCIVE TO BREACH OF THE PEACE

S. 207 of Act 29 states that '*Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or where-by a breach of the peace is likely to be occasioned, shall be guilty of a misdemeanour'*. The authorities are clear that for a charge under s. 207 to be maintained, the conduct complained of must have been displayed in a public place.

S. 1 (Interpretation) of Act 29 defines '*public place*' as;

> *"includes any public way and any building, place, or conveyance to which for the time being the public are entitled or permitted to have access, either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meeting or assembly, or as an open Court;*
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> *"public way" includes any highway, market place, lorry park, square, street, bridge, or other way which is lawfully used by the public;*
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> *acts are done "publicly"—*
>
> *(1) if they are so done in any public place as to be likely to be seen by any person, whether such person be or be not in a public place; or*
>
> *(2) if they are so done in any place, not being a public place, as to be likely to be seen by any person in any public place;*

See also the case of ***Gaba v The Rep. [1984-86] 1GLR 694*** where on appeal against the conviction of the accused person, the High Court held that *"the essential ingredient of the offence of offensive conduct conducive to breaches of the peace under section 207 of the Criminal Code, 1960 (Act 29) was that the offence must be committed in a public place. It might happen in a building but then it must be a building to which the public had access. Under the section no offence would be committed by a person whose activities such as in the instant case, took place in a private house to which the public had no right of access or licence thereto"*

Secondly, the conduct complained of must be 'offensive' or 'abusive' in the sense that it has the possibility of causing public unrest or a breach of the public peace. As such, beating the gong-gong in a village and telling people not to pay levies was determined not to constitute offensive behaviour (See ***Kungua & Ors. v The Rep. [1984-86] 2GLR 489.*** Similarly, marrying, having children with and living with a woman, her sister and their mother as co-

wives, in the American version, was not considered offensive (See ***Glah & Anor. v The Rep. [1992] GLR 15)***.

I have earlier found that the incident complained of occurred in/at the entrance of the bakery of Janet Quayson, which by any stretch of imagination cannot be described as a public place. Prosecution pushed the argument that due to the altercation ongoing between PW1 and accused persons, a small crowd gathered. This fact was not supported by evidence and I reject same. Indeed, a handful of persons gathering in a shop adjacent to a residence cannot change the nature of a private space into a "public place".

To determine whether a behaviour is offensive, the test applicable was laid down in the case of ***Quansah v The Rep. [1980] GLR 263*** as the concept of the reasonable man being applicable to whether the act was done '*with intent to provoke a breach of the peace'* and not whether the persons likely to be provoked were the proverbial reasonable man. In other words, the test is not whether the act complained of will offend the senses of the reasonable man but whether it was done with the intent to lead to a breach of the peace. According to Prosecution, accused persons, whether in unison or individually, uttered the words in contention to Janet. However, the established fact is that PW1 was more offended by the reference to her husband as "Pinkrah" and the request for her to deliver the message from Abusuapanyin Kum to him, not the words "*You are lucky we did not meet …"* which I have determined not to be insulting, abusive or threatening uttered in PW3's absence. In fact, her taking offense at the use of PW3's private name is irrelevant. What is relevant is whether the contentious words may have invoked a breach of the peace.

With the legal background of the authorities cited, I cannot find that the words uttered were offensive within the context of s. 207, although perhaps abusive towards the person of PW3.

CONSPIRACY

Sections 23 (1) & 24 of Act 29 defines conspiracy as instances where "*two or more persons agree or act together with a common purpose for or in committing or abetting a crime, whether with or without any previous concert or deliberation"*. Should any of the instances in s. 23(1) of Act 29 be proved, each of the persons/conspirators is guilty of conspiracy to commit or abet that crime, as the case may be. The essence of a charge of conspiracy against a person with named or unnamed persons under the new Act 29, as Marful-Sau JSC explained in ***Republic v Augustina Abu [AC] 2010 delivered on 23/12/2010*** was that *"the persons must not only agree or act, but must agree to act together for common purposes. This to my mind raises the degree and standard of proof for the offence of conspiracy, since by the Criminal Offences Act, the prosecution must establish that the persons agreed to act, rather than just agreeing or acting"*. Conspiracy may be proved by direct or circumstantial evidence, but in the absence of direct evidence, which is rare, "*the circumstances establishing the facts from which conspiracy is to be inferred must lead uniquely to an inference of the existence of an agreement*" as was noted in ***Ayareba v. The Rep. [2016] 97 GMJ@ 125 and Nyarko vrs The Rep. [2015] 89 GMJ @ 27***. In the Augustina Abu case (*supra*) the Supreme Court noted that where circumstantial evidence is being relied on "*the circumstance establishing the facts from which conspiracy is to be inferred must lead uniquely to an inference of the existence of an agreement*". However, *"If the circumstances merely lead to suspicion that there might have been such an agreement, the charge of conspiracy is not proved*".

In the instant case, Prosecution virtually abandoned the charge of conspiracy. No evidence was led as to any prior agreement that accused persons may have entered into. The closest that may be likened to a prior agreement was perhaps the conversation with their grandfather when he gave them the message to be delivered to Nana Kofi Awuah but this does not qualify as a prior agreement. Could conspiracy be inferred from the altercation between PW1 and the accused persons? Prosecution made no such inference or put forward

express evidence to support the charge and it is not the duty of this Court to do so on its behalf.

DEFENCE

The defences of accused persons were flat denials of the charges and identical to the last phrases as seen in their WS. With Prosecution failing to prove the offences beyond reasonable doubt and with no burden on accused persons to prove their innocence, merely raise a reasonable doubt as to their guilt as stated in s. 13(2) of NRCD 323, I find it superfluous to discuss their denials, without more.

In conclusion, I find that Prosecution failed to prove the essential ingredients of the offences threat of harm, offensive conduct conducive to the breach of the peace and conspiracy. I must also state that the initiation of this case was obviously misconceived with Prosecution engaging itself with private and family matters because it allowed itself to be swayed by the station of the second complainant, a rather unfortunate use of the Court's time to pursue an agenda not in the public interest.

DECISION

Accused persons are hereby acquitted of the offences of conspiracy, threat of harm and offensive conduct conducive to the breach of the peace contrary to sections 23(1), 74 and 204 of the Criminal (And Other Offences) Act, 1960 (Act 29).

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H/H NAA AMERLEY AKOWUAH (MRS.)