

IN THE CIRCUIT COURT HELD AT KPANDO ON WEDNENDAY THE 19TH
DAY OF JULY, 2023, BEFORE HIS HONOUR FRANCIS ASONG OBUAJO
ESQ., THE CIRCUIT COURT JUDGE.

NO. CC/60/2022

THE REPUBLIC

VRS

1. ZIKPUITOR MICHAEL SAKYI
2. LUCY SAKYI

ACCUSED PERSONS: BOTH PRESENT.

PROSECUTOR D/INSPECTOR HENRY ODOI DOKU, PRESENT.

ERNEST DELA AKATEY ESQ. ABSENT.

J U D G M E N T.

Accused persons arraigned before this court with A1 charged with threat of death contrary to section 75 of Criminal offences Act, Act 29 of 1960. A2 was charged with assault contrary to section 84 of Act 29/60.

Then A1 and A2 charged with offensive conduct conducive to the breach of public peace contrary to section 207 of Act 29/60. Accused persons pleaded not guilty to the charges brought against them.

The summary of the facts as presented by the prosecution are that the complainant Selina Agudogo an 84-year-old of Kpando Aziave was on her way to the thanksgiving service of her late daughter Mamaga Diawusie III Queen mother of Azave at about 7:30 am on the 19/12/2021. She met A1 and without any

provocation rained insults on her to wit "Awla yawa a town destroyer, Fodome Woman go to your hometown, and if you refuse go to your hometown, I will make sure I kill you, foolish Woman, stupid thief, you are responsible for all the misfortunes and deaths in Aziave town, an ex-convict" among others. Complainant felt very sad and begun shedding tears. A2 who was in the house at the time overheard the noise and rushed to the scene. As she realized that it was the complainant A1 was insulting, she joined him in the insult to wit "ex-convict, a witch, I will invoke my dead mother's ghost on you, what is this thing that A1 will not kill and throw away". A2 in the process attempted pointing complainant face with her finger and out of fear complainant fell down. Complainant was assisted by some neighbours who came to the scene, carried her from the ground and sent her home. So complainant was not able to attend her late daughter's thanksgiving service. Report was later made to the police and accused persons were arrested and charged to court.

As accused persons pleaded not guilty, the onus now falls on the prosecution to adduce credible evidence at the trial to proof the elements of this offence charge beyond reasonable doubt to secure the conviction of the accused person per section 11.(3) and 13 (1) of the Evidence Act 1975 (NKCD 323).

The prosecution called two (2) witnesses in this case and tendered five (5) document in evidence.

The complainant Selina Agudogo gave evidence under oath as PW1 in her evidence-in-chief that she was on her way to the thanksgiving service of her daughter, Mamaga Diawusie III, Queen mother about 8:00 am on the 19/12/21. She then met A1 at the back gate of his house and without any provocation he started insulting her as a town destroyer, Fodome woman, go to your hometown, stupid thief, you are the one responsible for all the unfortunate deaths in Kpando

Aziave township, an old ex-convict, if you refuse to go to your hometown Fodome, I will kill you before this December ends. PW1 added that A2 who was in her house at that time over heard the noise and rushed to the scene where she saw that it was her brother A1 was raining insults at, she joined him in the insult that she taught her children how to tell lies. A2 later pointed her finger to PW1's face, and out of fear and panic she fell down but was carried from the ground by some neighbours who came to the scene and sent home. That made her not to attend the thanksgiving service.

Under cross examination PW1 denied being the one who first insulted A1 that morning she stated in answer to another question that accused persons were not on talking terms with her due to her opposition and disagreement over A1 being the proper person to be made Zikpuitor after the death of his uncle Kuma, who was the chief of the town and the twin brother to A1's father called Atta. Since then accused persons were not on talking terms with her. So it was A1 who started insulting her before she even got to see that he, was there when she was passing to the thanksgiving service.

The investigator D/PW/INSPT Lilian Ama Simpinye Adri gave evidence as PW2. She said this case was referred to her for investigation on the 17/1/22 and on the 20/1/22 at about 5.52 pm she visited the crime scene to gather information from some witnesses who told her that accused persons insulted, assaulted and threatened the complainant. She took caution and charged statement from the accused persons when they were invited to station after medical report had been given to PW1 to attend hospital. PW2 tendered caution and charge statements of A1 and A2 in evidence as exhibits A and B, C and D in that order. Endorsed police medical form of PW1 admitted into evidence as exhibit E.

During cross examination, PW2 refused to disclose the identities of those she gathered information from at the crime scene area as one of them who filed his witness statement for the complainant later reported to her that, he will not attend court to testify for the prosecution as they were being threatened in that community. PW2 maintained that her investigation shows that accused person insulted, assaulted and A1, threatened to kill PW1 on that day without any provocation. Prosecution closed her case and accused persons were called upon to open their defense.

DEFENCE OF THE ACCUSED PERSONS

Zikpuitor Michael Sakyi (A1) tendered his witness statement into evidence as was led by his counsel. He denied insulting, assaulting and threatening PW1. Adding that on the 19/12/21 he left the house and was going to visit Edzeame and met PW1 on the way and without any provocation she started raining verbal insults on him that he killed her daughter and was trying to prevent her burial. That she is the owner of the stool of which he is the father and that his father stole the stool and so he is a thief. According to A1, PW1 insulted him as a bastard and that he is not the biological son of his father and so he is a 'Kabre man'. Adding further that PW1 was always insulting him at will with these insult even prior to the day of the incident anytime she chanced on him. He became angry on that day and he insulted PW1 back an old ex-convict and taught all her children to lie. It was when A2 heard the exchanges words with PW1 that she also joined to insult PW1.

Under cross examination, A1 said that his house shares common boundary of a fenced wall with the friend Edzeame that he was visiting that fateful morning before he met PW1 but the distance between his house and where he met PW1 was about 30 feet apart.

Evidence of Lucy Sakyi (A2) under oath was that she heard PW1 on that fateful morning exchanging words with her junior brother A1 that he is not the son of my father. She got angry and joined the fray in support of his brother and threatened to invoke the spirit of her dead mother on PW1. She denied assaulting PW1 or pointing her finger at her face.

Under cross examination A2 denied that she was angry with PW1 when she went to join A1 in insulting PW1.

DW1, Edzeame Felix Oscar, of Kpando Aziave gave evidence under oath that he was sitting down in his living room that morning in December 2021 when he started hearing noise from outside. He came out of the room and heard PW1 insulting A1 that he is a 'Kobremán' that his father was a monkey with a tail that was cut off before he became a human being. She then called A1 to keep quiet as PW1 was looking for trouble for him. DW1 added that PW1 further insulting A1 that he was not the son of his father as his mother got his pregnancy from another man. A1 got provoked and also called PW1 an ex-convict and a liar who taught her children how to lie. He then called the wife, Catherine Agyeman, to send A1 to his room.

Under cross examination DW1 told the Court that the incident happened in his house that shares common boundary with A1's house.

Catherine Agyeman, wife of DW1, gave evidence as DW2 that PW1 has notoriety for insulting A1 without provocation prior to the 19/12/21. That she once heard PW1 insulting A1 that his father gave birth to A1 before he was circumcised. On that fateful day she heard PW1 who was in the company of four persons insult A1 as a thief. That he stole the stool that he occupies, a bastard as her mother brought the pregnancy of A1 from another man to his father. At that point, she saw A2 came out to join A1 in the act that their mother was not alive before she was making those allegations against her. So she will invoke the spirit of her dead

mother on PW1. A1 also insulted PW1 as an ex-convict and a liar, before DW1 told her to take A1 to their room.

DW2, under cross examination, maintained that the incident took place in their house and not by the roadside which does not part of their house.

In exhibit 'A', A1 said he will not give a statement to the police except at the Court.

Exhibit 'B' caution statement of A2 taken on 21/1/22 said she was sweeping the back of their house when PW1 was passing and overheard her insulting A1 that his mother was impregnated by another man while in her marital home. So A1 was not the biological son of Attah. So she quickly rushed to the scene and heard PW1 repeat those insulting words that made her angry and so confronted and asked how an ex-convict know how to tell lies, so she will invoke her mother's ghost to haunt PW1 and will sue her for that and then left the scene by which time A1 had already gone to DW1's house.

Exhibit 'C' A1's charged statement taken on the 10/1/22. He said on 19/12/21 at 8.30 am he was going to DW1's house and met PW1 going to church at about 8.30 am when he was going to visit a friend, Oscar Felix Adzeame. PW1 started insulting him as a bastard. The man he was born to is not the biological father. He also told her she is an ex-convict and a liar. When he got to the neighbour's house some people came there with sticks and cutlass to attack him. The people raised alarm and A2 came there. Upon seeing A2 PW1 said the same insult and A2 said she will invoke the spirit of our mother against PW1.

Exhibit D charged statement of A2 dated 10/1/22 that she was in my house on the 19/10/21 when PW1 came to pass at about 8.00 am and started insulting her parents that A1 is not the father's child as they brought the pregnancy from another man to their father. She then asked why is that ex-convict alone tell lies. Adding that she did not touch PW1.

Exhibit F endorsed medical form of PW1 dated 13/1/22 PW1 attended Margaret Marquart hospital, complaining of body pains after a fall from an assault. She was assessed, managed medically and discharged.

THE LAW AND ANALYSIS

Section 75 of criminal offences Act 1960 Act 29 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.

In the case of BEHOME VRS THE REPUBLIC [1979] GIR 112-128 it was 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 he threatened while the mens rea would also consist in the realization by the offender that his threat would produce that expectation. It mattered not, therefore, whether the threats were related to the present or the future'.

The holding in this decided case, the ingredients of this offence which the prosecutor must lead credible evidence to so establish beyond reasonable doubt are:

- i. There should be threat of death issued by the accused
- ii. That accused intended to put the victim in fear of death.
- iii. That the victim was affected or threatened with the threat of death from the accused.

The evidence of the complainant PW1 in court was that she was on her way to church for thanksgiving services about 8:00 am on the 19/12/2021 she met A1 on the way close to his house and without any provocation started insulting her. That she is a stupid thief and the one responsible for all unfortunate deaths in

Aziave, an ex-convict. If she refused to go to her hometown Fodome he will kill her before the end of December. This piece of evidence was not discredited during cross examination as PW1 explained that A1 and others are not on talking terms with her as she was opposed to A1 being made Zikpuitor in their town. She clarified under cross examination that she never insulted A1 that morning when she was going to church to mourn the death of her daughter, and that she even did not see A1 when she was passing as there was a container covering the view of A1 at his house. Adding further that she was afraid of A1 that he may kill her so she will never insult him and did not do so on that day.

The evidence of PW2 the investigator was that she went to the crime scene area to gather information which lend credence to the evidence of PW1 that A1 threatened and insulted her on the said day but due to the fear of those persons being attacked by A1, refused to disclose their identity. And that the only witness who initially was willing to testify in court against accused persons, came to report to her, he will no longer come to do so due to threat from accuse and his supporters.

I hereby reject the denial of the accused person in defence that it was PW1 who first insulted him that morning as a bastard who stole the stool of which he is the father of and that get him angry and she insulted PW1 back. And that PW1 prior to that incident was always insulting him as a bastard and not the son of his father and so he became angry that morning and also insulted PW1 in return. The evidence of DW1 lent credence to A1's evidence that PW1 was the first to insult A1 with insults before A1 got provoked and insulted PW1 as an ex-convict and liar.

Further evidence of PW2 during cross examination was that the two witnesses who gave their statement to the police in support of this case have been

threatened in the community so they came back to say they will not attend court to give evidence for the prosecution against the accused persons.

This piece of evidence by the investigator was never denied or challenged at the hearing. This evidence came at the back of PW1's answer during cross examination that accused persons hate her for opposing A1 being made Zikpuitor after the death of Kuma who was the chief, and so accused persons are not on talking terms with her. The evidence of the prosecution appear more probable to me than that of the defence. Accused persons especially A1 appears to have a stronger body, stout looking who appear to have a support base in his community.

It is in evidence that A1 refused to give a statement to the police on the 20/12/2021 when he was asked to do so as in exhibit A even through that is his right. A1 on the 10/1/2022 made a statement over the charge contained in exhibit 'C' over two weeks after the incident after he had all the opportunity to carefully think through all that had taken place.

It is my finding of fact at this stage that A1 on the said date 19/12/21 at about 8:30 am while PW1 was on her way to attend the thanksgiving service of her daughter, on getting to an area close to A1's house without any provocation, A1 attacked her with insult as an ex-convict stupid thief who caused at the unfortunate death in Kpando Aziave, and threatened to kill PW1 before the end of December should she refuse to go to her hometown Fodome.

It is my further finding from the trial that, there appear to be underlying misunderstanding between the complainant and the accused persons in the community prior to the day of the incident.

None of the witnesses of the accused including A2 who was present when the incident started between A1 and PW1 on the said 19/12/21. I am therefore inclined to believe the evidence of PW2 that those who witnessed the incident

had been threatened not to testify in Court. Also the evidence of PW1 who is 80 years old per the facts of the prosecution's case should have a genuine fear far A1 who is 51 years old who is aware A1 hates her for opposing his installation as Zikpuitor.

On the basis of the foregoing, I believe and accept the evidence of the prosecution that A1 attacked PW1 on that fateful morning on the 19/12/21 while on her way to church and threatened to kill her should PW1 not go back to Fodome by the end of December. It is also curious why A1 did not deny any of the insults in paragraph 2 of PW1's evidence except the threat of death which came on back of PW1 to go back to Fodome or he will kill her before the end of December.

It was held in the head note in BONSU @ BENJILLO VRS THE REPUBLIC (2000) SC GLR 112:

*"The proof of knowledge or **mens rea** is not capable of direct proof but same may be inferred from established facts as stated in Section 18(2) of the Evidence Decree, 1975, NRCD 323. S.18 (2) states as follows: 'An inference is a deduction of fact that may logically and reasonably be drawn from another fact found or otherwise established in the action.'"*

It is therefore my inference from the available evidence of the prosecution that, A1 intended to put the victim (PW1) in fear of death which he succeeded in so doing as the old woman of 80 years was affected with the said threat that fateful morning when A1 attacked her.

See ELLIS TAMAKLOE VRS THE PER [2011]31 GMJI SC at page 25.

It is in evidence that accused person admitted when cross examining PW1 that accused persons are not on talking terms with PW1 which corroborated PW1's evidence at the hearing, who gave the background to why accused persons and A1 in particular is not on talking terms with her. A1 therefore had the intention

to threaten PW1 with death to put her in fear of death and succeeded in doing so on the day of the incident due to that opposition. It is therefore my finding and conclusion that prosecution has established all the elements of this offence as required to secure the conviction of the accused. Accused is hereby found guilty on the offence of threat of death and he is hereby convicted.

Section 84 of Act 29/60 on assault states that:

A person who unlawfully assaults another person commits a misdemeanor.

Section 85 (1) of Act 29/60 on different kinds of assault provides:

“85 (1). For the purposes of section 84 “assault” includes

- (a) Assault and battery.*
- (b) Assault without actual battery, and*
- (c) Imprisonment”*

Section 87 (1) of Act 29/60 on assault without actual battery states:

“87(1) A person makes an assault without battery on another person, if by an act apparently done in commencement of an assault and battery, the person intentionally puts the other person in fear of an instant assault and battery”

Black law dictionary 8th Edition at page 350 define assault as:

“The threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact: the act of putting another person in reasonable fear or apprehensive of an immediate battery by means of an act amounting to an attempt or threat to commit a battery”

From the foregoing provisions of the law and the explanation thereto as what constitute assault and in this particular case, assault without actual battery, the

elements of the offence which must be proven beyond reasonable doubt by the prosecution are:

- (i) That the accused acted in a way that put the other person in reasonable fear of an immediate or offensive contact,
- (ii) That the accused acted that way intentionally that puts the other person in fear of battery,
- (iii) The said act was without the consent of the other person (the victim).

The evidence of PW1 was that, A2 rushed to the scene from her house when she overheard A1 insulting her with the threat and she joined A1 in the insult when she saw her and pointed her finger into her (PW1's) face and out of fear, and panic she fell down and was carried found by neighbors. A2's on her part told the court at the hearing that when she heard the noise and heard that PW1 insulted A1 as a bastard, she got angry and joined her brother A1 in the fray. In her caution statement (exhibit 'B') she rushed to the scene of crime and heard PW1 repeat the insult that A1 is not the son of his father she got angry and confronted PW1 that why was it that an ex-convict knows how to tell lies. A1 equally gave evidence that A2 got angry and joined the fray in insulting PW1.

It is my finding that A2 actually rushed to the crime scene in support of A1 anger. A2 therefore got closer to where PW1 was with A1 at that material time and was close to PW1 just as A1. In exhibit B, A2 said A1 left the crime scene while she was with PW1 and left later. Therefore, A1 may have left the crime scene before the pointing of the finger by A2 towards PW1 took place. I will on that ground reject A1's evidence that A2 did not point her finger to PW1 at the crime scene.

From the evidence of PW1 and A2 at the hearing it is reasonable for me to infer that A2 who rushed to the crime scene in anger in defence of the brother A1 over

the alleged insult from PW1 that A1 is not the biological son of the father equally engaged in insulting PW1. Common with people who are angry and engaged in trading insults, throw their hands towards and in direction of their opponents. A2 who remained at the crime scene with PW1 after A1 had left clearly shows to what extent she was angry and engaged in insulting PW1. Even though A2 did not tell the court that in her anger, she folded her arms at the side or the back when she engaged in the direct insult of PW1, by virtue of her old age, PW1 was weaker in strength. It is my reasonable inference therefore that, A2 who, by all evidence, at the hearing was angry was the aggressor, pointed her finger at PW1's face devoid of touching, caused reasonable fear of immediate battery on PW1. Hence that apprehension of imminent offensive contact that caused her to fall.

I hereby reject the contradictory evidence of A2 at the hearing where in her evidence in-chief she was angry and went to insult PW1, but turned around to deny that evidence during cross examination.

It was held in BRUCE-KONUAH VRS THE REP [1967] GLR 611

*'Where, during a quarrel between the appellant and a neighbor, he chased her in an effort to beat her up. He was convicted of assault. He appealed, contending that he had not touched her. **It was held that** the mere act of chasing her with the intention of committing a battery on her and thus causing an apprehension in her was sufficient for the purposes of proving assault.'*

Pursuant to principle laid down in this case, it is my finding and conclusion per evidence available at the hearing that A2 went to the crime scene angry and engaged in insult of PW1, pointed her finger towards the face of PW1 that causing an imminent apprehension of battery to her that led to her fall.

I hereby found A2 guilty of the offence of assault without actual battery and convict her accordingly.

Section 207 of Act 29/60 on offensive conduct conducive to the breaches of the peace provides:

“207. A person who in a public place or a public meeting uses threatening, abusive or insulting words or behavior with intent to provoke a breach of the peace is likely to be occasioned, commits a misdemeanor”.

Section 1 of Act 29/60 on interpretation states:

*“**public place**” includes a public way and a building place, on conveyance to which the public are entitled or permitted to have access, without a condition of a payment or on condition of making a payment, and a building or place which is used for a public or religious meeting or assembly or as an open Court, and acts are done “Public way”*

(a) If they are done in a public place as are likely to be seen by a person , whether that person is or not in a public place; or

(b) If they are done in a public place, which is not a public place, but are likely to be seen by a person in a public place.

*“**Public way**” includes a highway, market place, lorry park, square, street, bridge or any other way which is lawfully used by the public.*

It was held in GABA VRS THE REPUBLIC [1984-86] 1 GLR 694 that:

“An essential element of the offence under section 207 is that it must be committed in a public place. No offence is committed in a private house to which the public has no right of access. Thus a quarrel in a house is not sufficient to support prosecution under the section because a private house is not a public place”

Pursuant to the provision of the law and the clarity brought out on same from the decided case, the elements of this offence that must be proven beyond reasonable doubt are:

- (i) That the accused person used threatening, abusive or insulting words or behavior that is offensive*

- (ii) That the place where those offensive words were used by accused person was accessible to the public*

The evidence of PW1 at the hearing was that she was on her way to thanksgiving service that morning and met A1 at the back gate of his house. Without any provocation A1 started insulting her and threatened to kill her. The Prosecution did not throw more light on the way or the road on which PW1 was walking on at the time. The back gate of A1's house as stated in PW1's evidence at the hearing, appears to be very close to A1's house.

On his part A1 said he was going to visit his neighbour DW1 whom he shares just a fence wall with when he met PW1 that fateful morning. A1 further explained under cross examination that the distance from his house to where he met PW1 was about 30 feet.

From the foregoing evidence at the hearing, it is my finding that the exact location and place where the incident took place was more close to A1's house. PW1 said she met A1 at the back gate of his house without more. This description of the

locus of the offence appears to be too vague to constitute and satisfy the definition of a public place.

It was held in QUANSAH VRS. THE REP [1930] GLR 263, where the evidence about the locus of an alleged offence took place in the frontage of the head of family's house, that:

"The frontage of a house was too vague to satisfy the definition of public place."

From the decision of this case as compared with the description of PW'1 that she met A1 at the back gate of his house without more, same is not clear enough, in my candid view, to satisfy the definition of a public place.

It is my finding and conclusion therefore that the back gate of A1's house where the incident took place that morning does not constitute a public place requirement of this offence to secure the conviction of the accused person. Accused persons are therefore acquitted and discharged on this offence.

BY COURT:- Do you have anything to say before sentence is passed on counts one and two in which you were found guilty and convicted.

A1 prayed for the mercy of the court.

A2 also prayed for the mercy of the court. I am on my bended knee.

BY COURT:-In sentencing A1 over the threat of death, the Court has taken into consideration the plea on mitigation and the provisions of section 296 (2) of Act 30/60. A1 hereby is sentenced to prison for two (2) years as a deterrent to threat of death cases that abound in this jurisdiction.

In passing sentence on A2, the Court has taken her plea on mitigation into consideration and section 296 (4) of Act 30/60 A2 is sentenced to prison for two (2) weeks.

SGD.

FRANCIS ASONG OBUAJO

CIRCUIT JUDGE.

14/7/2023