

IN THE DISTRICT COURT AT WASSA AKROPONG HELD ON THURSDAY,
28THOCTOBER, 2022, BEFORE HIS WORSHIP MR. AKOANDE. A. BRIGHT ESQ –
THE DISTRICT MAGISTRATE.

CC NO.115/2022

THE REPUBLIC

VRS.

KWABENA POKU

No Legal Representation for the Accused.

Chief Inspector Veronica Tibson for the Republic.

JUDGMENT

The accused has been charged with threat of death, contrary to section 75 of the Criminal Offences Act, 1960 (Act 29). The accused, having denied the charge, the burden is put on the prosecution to adduce sufficient evidence so that on all the evidence, a reasonable mind will find the existence of the fact of the commission of the offence by the accused beyond a reasonable doubt; see section 11(2) and section 13(1) of the Evidence Act, 1975 (Act 323). The accused for his part only has to introduce evidence which creates a reasonable doubt in the mind of the court regarding the Prosecution's case. The doubt

created by the accused's evidence should be real and not fanciful; see section 11(3) of Act 323.

The offence is threat of death, contrary to section 75 of Act 29. Section 75 of 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 offence of threat of death, the actus reas will consist in the expectation of death which the offender creates in the mind of the person threatened while the mens rea will consist in the realization by the offender that his threat will produce that expectation; see *Behome Vrs. The Republic* [1979] GLR 112. Where one is charged with threat of death, the threat must be of death and nothing else. The facts of the case are set out in the judgment. Suffice to state that the accused person is alleged to have threatened to shoot the complainant dead. The incident allegedly happened at the house of the accused on 16th November, 2021 at Wasa Akropong. The prosecution called three witnesses who testified in proof of the elements of the offence. At the close of the prosecution's case, there was evidence that the accused brought out from his house his licenced pump action gun. He then threatened to shoot dead the accused. In an attempt to execute his intention, he began loading the gun. Pw2 and Pw3 then intervened and restrained the accused. Pw2 collected the gun from the accused. The accused did not deny bringing out his gun. He did not also deny loading it at that material time. The evidence on the record shows that the accused had accused the complainant of selling land belonging to the former, an accusation rejected by the latter. The complainant after the confrontation with the accused, lodged a complaint against the accused at the Wasa Akropong police station. The police investigated the case and retrieved the gun and ammunition from the accused.

Based on the above evidence, the court, at the close of the prosecution's case ruled that the prosecution had made a prima facie case against the accused. Clearly, the conduct of the accused in bringing out his gun and attempting to load it and threatening to shoot the

complainant dead on that fateful day had created an expectation of death in the mind of the complainant. The accused would also have realized that his conduct had created that expectation, see *Behome Vrs. The Republic* (Supra). Based on the foregoing, this court ruled that the prosecution had made a prima facie case against the accused after the close of its case.

The accused subsequently opened his defence. After testifying, the accused did not call a witness. I have examined his evidence very carefully. His defence is that he took his gun at that material time to defend himself. So in short, the accused has raised the defence of self defence. He alleged that the complainant tried to beat him. He also alleged that the complainant took a pistol from his car. The accused, however, failed to lead credible evidence to prove these allegations. I find the accused's allegations as bare and unproved. There is no evidence on the record to suggest that the complainant pulled out a pistol on that fateful day and time. The accused for instance alleged that the complainant took a pistol from his car and so in response, he (the accused) then entered his house and brought out his gun. This piece of evidence given by the accused is false. This is because, the undisputed evidence on the record is that the accused on that fateful day brought out his gun at a time the complainant was not armed. The evidence on the record shows that the complainant did not have pistol at that material time.

The law is settled that a person may, for the prevention of or for personal defence of any other person against a criminal offence, use force or harm which is reasonably necessary; see section 37 of Act 29. Also, see *Nartey Vrs. The Republic* [1982-83] I G L R 788. In the instant case, there is no evidence before me to show that the accused was under attack or came under attack by the complainant. In any case, in a charge of threat of death, the defence of self-defense can not avail the accused.

From all of the foregoing, I find the accused guilty of the offence. I convict him of the offence accordingly. The accused has pleaded for mercy. The prosecution has informed the court that the accused is not known. Taking all the circumstances of the case in to account, I hereby sentence the convict to a fine of three hundred and fifty penalty units or in default ten (10) months imprisonment in hard labour. I have taken notice of the fact that the accused is a local businessman and needs a gun for protection. In view of this, Exhibit 'C' which is the gun, should be released to the convict after he has been thoroughly re-educated by the police on the conditions attached to ownership of a gun.

(SGD)

MR. A. A. BRIGHT
DISTRICT MAGISTRATE