IN THE DISTRICT COURT HOLDING AT DODOWA SHAI OSUDOKU ON MONDAY THE 21ST DAY OF MARCH, 2023 BEFORE HER WORSHIP BRIDGET AKPE AKATTAH

CASE NO. B1/51/18

THE REPUBLIC

VERSUS

1. COLLINS TAWIAH MENSAH

2. REAGAN CHARTEY

JUDGMENT

The Accused persons were arraigned before this Court charged with five counts of Conspiracy to commit crime to wit threat of death, Threat of death, contrary to Sections 23(1) and 75 of the Criminal Offences Act, 1960 (Act 29), Attempt to commit crime to wit causing unlawful damage contrary Section 18 and 69 of Act 29, Conspiracy to commit crime to wit unlawful damage and causing unlawful damage contrary to Sections 23(1) and 172 of the Criminal Offences Act, 1960 (Act 29). They pleaded not guilty to the charges. It was the result of their pleas and the subsequent trial which has culminated in this judgment.

The facts of this case as contained in the charge sheet and as narrated by the Prosecution was that Complainant Paul Adu Anim in this case is a Lecturer/Pensioner residing in Legon, Accra while the Accused persons A1 and A2 are a driver and unemployed

respectively living at Numesi-Dodowa. Complainant has a farm at Apiinya at the back of the Shai Osudoku Government Hospital on which he planted fruit plants including mango, cassava and cocoa trees. Complainant has two caretakers namely Kofi Gyedu and Kofi Katorwu who worked on the farms for him and his family. A1 and A2 came to the land to meet him and the caretakers in the cottage of the land and claimed the land rather belonged to their family and they were sent to weed same by their family members. The Accused persons were sacked from the land and later they entered the land and destroyed the door and its frame worth Gh₵100, they dismantled a kitchen valued Gh₵100, smashed Ecolac suitcase worth Gh₵100 and perforated aluminum coiled sheet worth Gh₵350 with a cutlass.

On another day, the Accused persons brought a bulldozer to the Complainant's land and were busily clearing same when the Complainant stopped them from further bulldozing the land and the Accused persons with the operators left the Complainant's land. On 4/5/2017, however, Complainant and his caretakers were walking to the farm when they were accosted by the Accused persons who were in the farm already around 7am. The Accused persons were armed with single barrel shot gun and a cutlass respectively. The Accused persons then ordered the complainant and his caretakers to stop proceeding onto the land or else they will shoot them. With the Accused persons also laying claim to the ownership of the land, Complainant had to leave the scene to report to the Police and Accused persons also left. Subsequently, the caretakers proceeded to the farm whereupon, the Accused persons tiptoed through the bushes, aimed at Kofi Gyedu and shot at him but missing him in the process. Kofi Gyedu screamed for help. A1 escaped from the crime scene leaving his motorbike with registration number M-16 GR 4931 behind near the crime scene. Complainant returned with the Police to the scene of the crime and the Police found spent BB cartridge and the motorbike of the A1 which were retrieved by the Police.

In proof of these facts, the Prosecution called the Complainant, Paul Adu Anim, PW1, victim of the shooting incident, Kofi Gyedu, as PW2, Kofi Katorwu, PW3 and the Investigator PW4.The case of the Prosecution as evidenced from the four witnesses they called is that Accused persons have been frequenting the farm of the Complainant laying adverse claim to the complainant's family land on which the complainant was farming. The Complainant says apart from the two Accused persons coming to the farm to lay adverse claims to the land as their family land, no other members of the Accused family ever came to lay claim to the land on which he farmed. However, Accused persons in the company of four others claimed their family sent them to the land to work on same and weeded part of the land. Complainant asked them to produce the family members who sent them, they failed to produce them.

On one of the occasions when the caretakers went to the farm, they saw that the door of the building in the farm had been destroyed with some other items including their roofing sheets and an Ecolac were all destroyed. The Accused persons cleared some parts of the Complainant's farm but were stopped by the Complainant. Later, the Accused persons brought a bulldozer to the land and graded part of the land and were again stopped by the Complainant. However, on 4th May, 2017, Complainant in the company of Kofi Gyedu and Kofi Katorwu his caretaker and labourer respectively went to the farm around 7am and saw the Accused persons on the farm. Both of them were carrying guns and they threatened to shoot them if they proceeded onto the farm. Complainant upon seeing danger went to the Dodowa Police Station to report the issue. While at the Police station, Kofi Gyedu called the Complainant to inform him that A1 had shot at him but he missed him as he hid behind a palm tree. The Police went to the scene of crime and retrieved the spent BB cartridge and the motorbike of A1 which he abandoned after the heinous crime.

After calling the above witnesses, the Prosecution intimated that it was closing its case.

After a careful study of the Prosecution's case there was a prima facie case against the Accused persons, hence they were ordered to open their defence.

Accused were then called to open their defence. They elected not to give any evidence. They claimed they do not know what the Prosecution was talking about.

It is interesting to note that the Accused persons did not ask any questions by way of cross examination of all the witnesses of the Prosecution either. They chose also not to open their defence when the opportunity was given them to do so. The Court therefore relied on the evidence of the Prosecution solely to arrive at this judgment herein.

The Prosecution tendered in evidence the caution and charged statements of the Accused persons which had been taken down from them upon their arrest and marked same as Exhibits 'C', 'D', 'E' and 'F' for A1 and A2 respectively. So I write this judgment with contents of the caution and charge statements and all the other documents the Prosecution had relied on.

It is a well settled principle of law that an Accused person is presumed innocent until proven guilty or has pleaded guilty. This is a constitutional injunction provided for by Article 19(2) (c) of the 1992 Constitution of Ghana. The burden of proof in a criminal case therefore is on the Prosecution to establish the guilt of the Accused. It has been held that the failure to discharge that burden should lead to the acquittal of the Accused. And this proof required of the prosecution is said to be proof beyond reasonable doubt. See **Oteng v The State [1966] GLR 352.** In the converse, the Accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt. See **Commissioner of Police v Antwi [1961] GLR 408.** It has also been held that it is not enough for the court to hold that it does not believe the defence of the Accused and then

proceed to convict him. Short of disbelieving the defence, the Court has a duty to consider whether the defence is reasonably true or reasonably probable.

The issues raised for determination in this case are:

1. Whether or not the Accused persons agreed to wit cause unlawful damage to the property of PW1 and PW2 and in furtherance of that broke wooden door in the cottage smashing the roofing sheets and damaging the Ecolac therein?
2. Whether or not the Accused persons attempted to kill PW2?
3. Whether or not the Accused intended to put PW2 in fear of death?
4. Whether or not PW2 was actually put in fear of death?
5. Whether or not the Accused threatened to cause harm to PW1-3?
6. Whether or not the harm was unlawful?
7. Whether or not the Accused intended to put PW2 in fear of unlawful harm?
8. Whether or not the Prosecution was able to prove the charges beyond reasonable doubt?

Now, the first charge was laid against the Accused persons under section 23 (1) of Act 29. The offence of conspiracy is provided for under Section 23(1) of the Criminal Code, 1960 (Act 29) which reads:

(1) *If 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, each of them is guilty of conspiracy to commit or abet that crime, as the case may be.*

Conspiracy is an inchoate offence which connotes the commission of the offence by more than one person. It therefore involves the sharing of criminal ideas. Conspiracy to commit

a criminal offence is by itself a criminal offence, whether the offence contemplated is or is not committed. It follows, therefore, that where there is a specific charge of conspiracy, that is to say in addition to the offence itself, there must be some evidence directed and confined to the facts which constitute or are concerned with the conspiracy.

The constituent elements of the offence, according to **HJAN** Mensah Bonsu in ***"The General Part of Criminal Law" Volume 2,*** are

1. *Plurality of minds i.e. two or more persons*
2. *Agreeing to act together with a common purpose*
3. *Acting together for a common unlawful purpose*

The requirement of two or more minds connotes that one person alone cannot be guilty of conspiracy. As was held in ***Blay v Republic (1968) GLR 1040***, one person cannot conspire with himself therefore where all co-Accused persons except one are acquitted of a charge of conspiracy in a particular trial, the remaining Accused person also has to be discharged as being incapable of conspiring with himself. Conspiracy thus imported an agreement to commit a crime, and where there was no direct evidence of any such agreement, it is inferred from the surrounding circumstances. However, such inference must lead uniquely to the existence of an agreement, that is, to nothing else. If the circumstances merely led to suspicion that there might have been such an agreement the charge of conspiracy was not proved. It is trite law also that once conspiracy is proved, the acts of one co-conspirator in furtherance of the conspiracy are binding on all the others.

The evidence in this case shows that the two persons planned to enter the farm of the Complainant which they admitted in the charged statements. The Accused persons

threatened the Complainant and his caretakers on 4th May, 2017. In furtherance of that plot, they entered the land and shot at PW1 but the bullets missed him. Prosecution in proving this incident tendered Exhibits 'L','M','N','P','Q','S','T','U','X' detailing ownership of the land by the Complainant's family, picture of the spent BB cartridge and the motorbike found at the scene of the crime on 4th May, 2017. The A1 rather alleged in his statements to the Police on his arrest that the retrieved motorbike is for him. He alleged that the said motorbike was parked by him in his house in the night and while he was sleeping, the motorbike was stolen and he got to know later that it was in the possession of the Police. Prosecution led evidence that the motorbike belonged to a different person but was in the possession of the A1 with the consent of the owner at the time of the crime.

It is not our law that there should be corroboration before a Court will believe the existence of a fact. A Court can perfectly convict on uncorroborated evidence provided it believes it. Indeed, section 7 of the Evidence Act, 1975 (NRCD 323) has made corroboration non-essential in making a determination. Thus uncorroborated evidence may in proper circumstances be relied upon by the Court as the sole ground to convict an Accused person. But the circumstances of this case do not permit the Court to accept wholesale whatever the Prosecution alleges against the Accused.

A trial Court is enjoined to evaluate all the evidence adduced by the Prosecution and in the end, see if the charge is proved beyond reasonable doubt against an Accused person. If there is any reasonable doubt as to the guilt of the Accused, the charge must fail. It bears repeating the obvious that an innocent man in the eyes of the law should not be convicted of a crime. This principle of criminal jurisprudence is universal. As is often parroted, it is better that 99 offenders shall escape than that one innocent man, be condemned.

The Prosecution thus succeeded in giving details of the roles played by each of the co-conspirators. I hold then that the Prosecution proved the offence of conspiracy against the Accused persons.

As I stated above, the second of the five charges leveled against the Accused persons was threat of Death contrary to section 75 of Act 29. The section reads:

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

From the statement of offence as indicated above, for the offence of threat of death to be made out, the Prosecution has the onus to prove that:

1. There was a threat of death issued by the Accused.
2. The Accused intended to put the other person threatened in fear of death.
3. That other person was in fact put in fear of death by the threats.

In the case of **Behome v The Republic (1979) GLR 112** the Court held that in the offence of threat of death the actus reus will consist in the expectation of death which the offender creates in the mind of the person he threatens whilst the mens rea will also consist in the realisation by the offender that his threats will produce that expectation. The Court further held that once it was proved that there was an issue of a threat, it mattered not whether the threats were related to the present or to the future. The Court continued that a threat which may be carried out upon some contingent event can ground an offence either under section 74 or under section 75 of Act 29.

Having laid down the law relating to the second offence Accused persons have been charged with, I shall move to determine the issues raised in this case with a view to determining the guilt or otherwise of the Accused persons. The first issue to settle relating to the offence of threat of death is whether or not the Accused threatened to kill PW1-3. The A1 is alleged to have said if the PW1-3 proceeded he was going to shoot them. The witnesses called by the Prosecution were of one voice that they heard the Accused persons threaten to kill them PW1-PW3 if they dared proceed. As I stated above, Accused persons denied issuing any threats of any nature against the PW1-3 per their various statements at the Police Station as they failed/refused to lead any evidence in this Court. The fact that the Accused persons never led any evidence to defend themselves does not inure to the benefit of the Prosecution. In fact, the law does not oblige the Accused persons to defend themselves in order not to be convicted of the crimes with which they were charged.

So, were the words allegedly used by the Accused threatening? The words were actually followed by actions as there was a shooting targeted at PW2 who was missed as he hid behind a palm tree in the farm. Taking the words in their plain meaning, I think they were threatening and the action of aiming and shooting were enough threatening to anyone on earth. In his book **"Contemporary Criminal Law in Ghana"** Sir Dennis Adjei stated that in determining whether words uttered were capable of a threatening meaning, the court is required to look at the plain and ordinary meaning of the words first. And where the ordinary meaning of the word uttered constituted threat of death, the court is not required to look for the secondary meaning or any less obvious meaning. So applying the words "I will shoot you" to the test laid down above, it is clear that the words in their plain meaning, are capable of communicating a threat to the recipient. I hold that the words were capable of a threatening meaning.

Accused persons have however denied issuing any threats against PW1-3 only in their caution statements.

It bears emphasizing that an Accused is presumed innocent until proven guilty. And the standard of proof of the guilt of an Accused is that beyond reasonable doubt. Therefore, if there is an iota of doubt in the Prosecution's case, the benefit shall be the Accused's. I have read the evidence to some extent. I do think that the Prosecution has proved the allegation against the Accused persons the way and manner they chose to prove it as the witnesses' evidence were corroborated. Evidence given by PW1-3 who were present when the threats were issued and then the action of A1 shooting at PW2 was followed in the absence of the PW1. Indeed, PW1 was at the Police Station when then actual shooting took place. The spent BB cartridge was retrieved from the scene of crime together with the motorbike of A1. A1 only denied in his caution statement that he was not at the scene of crime but that his motorbike was lost and it was found at the scene of crime. A1 claimed he was not present when the threat was allegedly issued.

It is noteworthy that the Accused persons had a lawyer in this case and nowhere did their lawyer file any alibi in this case before this Court.

In the case of **Kwaku Agyem v The Republic,** High Court, Sunyani, 21 December 1976, unreported, Osei-Hwere J. held that a person cannot intend to put another person in fear of death or of unlawful harm if there is no evidence that he threatened that other person with death.

On the strength of the foregoing, I hold that the Prosecution have proved that the Accused threatened to kill PW1-3 and A1 actually shot at PW2. Having proved the threat on the life of PW1-3, the other elements fall as well. The Accused persons are therefore convicted on the charges of conspiracy to commit crime, to wit threat of death and threat of death respectively.

On the third, fourth and fifth counts consisting of attempt to commit crime, conspiracy to commit crime and causing unlawful damage, I shall discuss them together. The ingredients of conspiracy have been discussed supra and it needs not be repeated here. The charge of attempt under section 18(1) and 69 of Act 29 is an inchoate offence. For the avoidance of doubt, the wordings are provided here verbatim:

Section 18— of Act 29: Provisions Relating to Attempts to Commit Crimes.

"(1) A person who attempts to commit a crime by any means shall not be acquitted on the ground that, by reason of the imperfection or other condition of the means, or by reason of the circumstances under which they are used, or by reason of any circumstances affecting the person against whom, or the thing in respect of which the crime is intended to be committed or by reason of the absence of that person or thing, the crime could not be committed to his intent.

(2) Every person who attempts to commit a crime shall, be deemed guilty of an attempt, and shall, except as in this Code otherwise expressly provided, be punishable in the same manner as if the crime had been completed."

Section 172(1) (a) of Act 29 under which the charge was laid against the Accused reads:

> "Whoever intentionally and unlawfully causes damage to any property by any means whatsoever...shall be guilty of a misdemeanour."

There have been a plethora of judicial pronouncement on the ambit and scope of the offence of Causing Unlawful damage. In the case of **Homenya v The Republic [1992] GLR 305** it was held in holding 1 of the report that:

> "An Accused could only be liable on a charge of unlawful damage to property under section 172(1) of the Criminal Code, 1960 (Act 29) where the Prosecution was able to establish not only that the Accused caused the damage intentionally but also that the damage was caused unlawfully".

The ingredients to be proved therefore are that of intention and unlawful damage. Thus both elements of intention to cause the damage and unlawfulness of the damage must be present and proved together before the offence can be made out. From the above statement, the prosecution tasked with proving the charge of unlawful damage as in this case, must establish that:

i. The Accused persons entered onto the land of the Complainants and caused damage to the structure on it.

ii. The damage caused to the structures was intentional and unlawful.

iii. The Accused had no justification in law to have broken the doors, Ecolac and the aluminum roofing sheets on the land. In other words, the Prosecution had to prove that the Accused persons broke the doors, Ecolac and damaged the aluminum roofing sheets in bad faith and without any belief that they were entitled to do so.

The Court in the case of **Okoe v Republic [1979] GLR 137**, summed up the whole law when it stated that:

> "…the appellant's act could only be punishable if it was done intentionally and unlawfully and he did not believe in good faith that he was entitled to demolish the building. To succeed in a prosecution it was necessary to establish that the building was lawfully on the land, for if it was not lawfully there (as in the instant case), removing it would be lawful."

See also **Asante v The Republic [1972] 2 G.L.R. 177.**

The case of the Prosecution on the third, fourth and fifth charges appeared to be built largely on circumstantial evidence. The fact that the Accused persons were on the land on about three occasions and this assertion was admitted by the Accused persons in their charged statement links them to the acts when they laid adverse claims to the complainant's family land. The remainder of the case of the Prosecution stood on an alleged confession uttered by the Accused persons and other witnesses and that contained in their caution and charge statements.

Circumstantial evidence by itself is not a fatal means of proving the guilt of an Accused. Undeniably, most criminals are not arrested in the act nor is there always the direct evidence of eye witnesses available to the prosecution. Most crimes are unearthed by tying together several pieces of evidence which in the end tell the story of a crime committed by no other than the Accused. There can be no "ifs" in circumstantial evidence. The evidence must point to only the Accused person and no other. The evidence must not be susceptible to alternative explanations that may exculpate the Accused. If the conclusion arrived under circumstantial evidence can be explained away

in a manner that may indicate the innocence of the Accused, it cannot found a conviction; see the **State v. Brobbey and Nipah [1962] 2 GLR 101 at page 103.**

The Prosecution did not fail in its venture because it sought to rely on circumstantial evidence. The Prosecution relied primarily on the fact that the Accused persons admitted going to the land because, to them, the land is their family property which the Complainant is taking away from their family. Their principal piece of evidence being the motor bike of the 1st Accused found at the scene of crime on the 4th May, 2017 and the admission by the Accused persons in their various statements that the Police Station which is in evidence herein did tie in with other pieces of evidence on the record to form an unbreakable chain of evidence against the Accused persons. A shadow was not cast on the credibility of Exhibit 'C', 'D', 'E' and 'F' herein.

The Court trusts that the motorbike with registration no. M-16 GR 4031 was in the possession of A1 as he claimed, and its discovery at the scene of the crime was subject to a plausible explanation.

On the totality of the evidence, the Prosecution proves the charge of conspiracy to commit crime to wit threat of death and threat of death against the Accused persons beyond reasonable doubt.

Both Accused persons claimed they were not at the scene of crime on the 4th May, 2017, but with their lawyer Mr. Richard Larsey at the inception of the case could have pleaded an alibi which they failed to do.

When a prima facie case was established against the Accused persons and they were called to open their defence, they declined.

The fact that the Accused persons refused to open their defence does not inure to the benefit of the prosecution as the Accused is not obliged to defend himself. The burden is on the prosecution to prove the guilt or otherwise of the Accused persons herein. But the authorities are trite once a prima facie case has been established against an Accused, then he was to raise a reasonable doubt. The Accused Persons failed to lead evidence to raise any reasonable doubts in the Prosecution's case. Again, in the case of **Osei Adjei and Another v. The Republic [2010-2012] 2 GLR 754 at page 763**, His Lordship Appau JA noted that if a Court rules that a prima facie case has been established against an Accused Person on a particular charge but the Accused Person refuses to say anything to raise reasonable doubts in the case put forward against him, the trial Court has no option but to proceed to convict him accordingly on that particular charge or offence. I find the Accused guilty of the five charges proffered against them and convict them accordingly.

Sentencing

In sentencing the Accused Persons, I have considered the mitigating factors such as the fact that they are first-time offenders. I have also considered the nature of the offences for which Accused persons have been charged with, which includes a second-degree felony attracting a punishment of up to 25 years' imprisonment. I have considered the modus operandi A1 used in actually shooting the PW2 without any care or concern for the life of a human being. If the PW2 had died, that would have amounted to the charge of murder against the Accused persons. A deterrent sentence ought to be imposed to discourage both the Accused Person as well as other like-minded persons who would want to follow Accused's stead from ever dreaming of engaging in such criminal conduct.

Having balanced all these factors and having duly cautioned myself as to this Court's jurisdiction in terms of the limits in the sentence it can impose, I sentence the Accused Persons on the charges as follows:

On Count 1, A1 and A2 are sentenced to twenty (20) months imprisonment each.

On count 2, A1 and A2 are sentenced to a term of twenty (20) months imprisonment each.

On count 3, A1 and A2 are sentenced to six (6) months imprisonment each.

On count 4, A1 and A2 are sentenced to eight (8) months imprisonment.

On count 5, A1 and A2 are sentenced to ten (10) months imprisonment.

Sentences on all counts shall run concurrently.

The Accused Persons are also advised of their right of appeal if dissatisfied with the Court's judgment. They have a period of one month to appeal should they be aggrieved with the Court's decision.

(SGD)

HER WORSHIP BRIDGET AKPE AKATTAH

DISTRICT MAGISTRATE