

IN THE DISTRICT COURT HELD AT SEGE ON
MONDAY THE 6TH DAY OF AUGUST, 2024. BEFORE
HER WORSHIP VICTORIA AKUA GHANSAH ESQ. AS MAGISTRATE.

CC: B1/01/2023

THE REPUBLIC

VRS

- (1) GLADYS KOKOR ADI
- (2) VICTOR TONORH LAWERH
- (3) ATTEH ASAMANGUAH
- (4) TETTEH AKPENKROH
- (5) AMOS MARTEY
- (6) SAMMY APENKU
- (7) EBENEZER ASAMANGUAH
- (8) BUERNOTEY LAWERH
- (9) PROMISE AKLAMA ADIBUER
- (10) TAWIAH PATRICK AGBASHIE
- (11) BERNARD BUERNORTEY ASAMANGUAH

JUDGMENT

This is a part heard case which the court adopted proceedings for continuation on the 5th day of February, 2024.

On 24th day of October, 2022, the Accused persons were arraigned before this court on charge of Conspiracy to commit crime to wit threat of harm contrary to section 23 and threat of Harm contrary to section 74 respectively of the Criminal Offences Act, 1960 (Act 29).

The Accused persons pleaded not guilty to the charges preferred against them. For which reason prosecution assumed the burden of proof and must prove the charges against the Accused persons beyond reasonable doubt in accordance with Section 11(2) of the Evidence Act 1975 NRCD 323 which states that;

“In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind will find the existence of the facts beyond reasonable doubt.”

Section 13(1) of NRCD 323 provides that, the standard of proof is nothing less than proof beyond reasonable doubt no matter the offence charged.

Ampabeng v The Republic [1977] 2 GLR 171.

The complainant in this case Clement Akwerh is a farmer residing at Hwakpo whiles A1, A2, A3, A4, A5, A6, A7, A8, A9, A10 and A11 are all farmers residing within Addokope vicinity. On the 4th day of October, 2022 around 7:00am complainant had information that some people were about plant cassava stick on the land they had ploughed at Hwakpo. Complainant with his three brothers immediately proceeded to the said farm and met A1, A2 and A3 cutting cassava stick on the land. Complainant then warned them to stop work since the land rightfully belong to their family. Suddenly they got angry with complainant's words and there, A1 quickly phoned A4, A5, A6, A7, A8, A9, A10 and A11 who angrily proceeded to complainant house together with A1, A2 and A3 holding cutlasses and shouted complainant name and stated that “we will kill you and burn you like the way charcoal is burnt”. Complainant on hearing the noise quickly hid himself in his room and watched accused persons ranting for several minutes before they left. Out of fear complainant quickly came to Sege police station and lodge complaint. About 10:00am same day, complainant led police to Hwakpo junction where the accused persons were met in a tricycle heading towards Addokope holding their respective

cutlasses, hence their arrest and their cutlasses kept for evidential purpose. Police thereafter proceeded to the scene of crime and photographs taken. Accused persons were duly cautioned and after investigation they were charged with the offences and put before this honourable court.

In proving their case the prosecution called three witnesses and relied heavily on a pendrive containing a CCTV footage of when the accused persons were said to have gone to the complainant's house was admitted in evidence. When the alleged incident occurred, there was a recorded evidence of that threat for court to rely on to determine the case.

PW1 is CLEMENT ACKWERH

In his evidence in chief stated that, he was in his home when he saw all the Accused persons led by A1 holding sticks and cutlasses walking towards his house. He went into hiding in his room. After Accused persons arrived on his compound, he heard them shouting his name "Gator we will kill you and burn you like the way charcoal is burnt. PW1 added he was so afraid that after the accused persons left his compound he reported to the Police.

PW2 corroborated the story of PW1. According to PW2 the Accused persons walked to their compound with sticks and cutlasses shouting the name of PW1" Gator we will kill you and burn you like charcoal.

PW3 Emmanuel Akwerh a witness in the case stated he was outside the house resting when he saw a group of people led by a woman that he cannot identify them passing by his compound. The walked closer to the compound of PW1 and shouted his name "Gator if you are a man come out, we will kill you".

PW4 was NO 9948 PW/L/CPL Avelesi Patience Mawunyo who gave evidence to the fact that on the 14/10/2022 a case of Threat of Harm was referred to her for investigation. PW1 furnished the police with a CCTV footage in evidence. PW4 further stated that, on same day PW1 led the Police to Hwakpo junction where he pointed to the Accused who were holding their cutlasses all in a tricycle heading towards Addokope. Police arrested all accused persons and retrieved the cutlasses from them. Investigative cautioned and charged statement were taken from them were all tendered in evidence. After investigations Accused were charged with the offence of conspiracy to commit crime to wit threat of harm.

Section 23(1) and 74 of Act 29/60 respectively.

EVIDENCE OF THE ACCUSED PERSONS.

All Accused persons denied the offences of conspiracy to commit crime to wit threat of harm and threat of Harm preferred against them. That the Accused persons went to Hwakpo to report to the chief that PW1 and his brothers came to attack them on their farm.

The first Accused was Gladys Adi Korkor, a farmer at Addokope. A1 denied that she has never conspired with any of the accused persons to threaten PW1 at Hwakpo. They only had issue on a disputed land and the Accused persons agreed to report to the chief of Hwakpo.

A2 is Torno Laweh Victor a farmer from Addokope. He also denied threatening PW1 at Hwakpo and that at Hwakpo he did not see PW1 anywhere to threaten him.

A3 is Aterh Asamanguah, a carpenter at Addokope he denied to have conspired with the Accused persons but admitted saying that whilst we were going out of the Hwakpo

Township he shouted “Gator so you came and beat us like how they burn charcoal”. A3 stated he did not threaten PW1.

A4 is Tetteh Apenkro, a farmer and a tractor operator. On the day in question he did not conspire with anyone to threaten the Complainant. I did not see him anywhere.

A5 is Amos Martey a farmer at Addokope.

A5 in his evidence in chief admitted he went to Hwakpo town to meet the chief and never conspired with any of the Accused persons to threaten the Complainant. The whole day he did not come into contact with the complainant.

A6 A7 A8 A9 A10 A11 who went to Hwakpo in a tricycle all denied the charge preferred against them in their evidence in chief. It was their case that it was the Complainant who pointed to the Police at Hwakpo junction that they went to his house to threaten him which was never the case. The police arrested them to the Sege police station and took a statement from all the Accused persons.

I will accordingly discuss what the elements of the offences are and then determine whether on the evidence as adduced by the prosecution as well as on the competing facts, the respective charges have been established or proven against the accused person.

In doing that, the court has distilled from the whole of the evidence, the following as the main issues for determination in this judgment;

1. *Whether or not the Accused persons conspired with each other to threaten the Complainant.*
2. *Whether or not the accused person together threatened to harm the complainant?*

The first issue is whether the accused persons conspired to threaten the complainant with harm?

The offence of conspiracy is provided for under section 23 (1) of Act 29/1960 as amended by the *Statute Law Review Commissioner per the Revised Edition Act, 1998, Act 562*, as follows;

“Where two or more persons agree to act together with a common purpose for or in abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence”. See also the case of Republic v Augustina Abu and Others, (Unreported) Criminal Case No. ACC/15/2013; per Marful-Sau J.A, (as he then was).

This new definition is different from the old definition of conspiracy which was defined in section 23(1) of the old Criminal Code 1960 (Act 29) as follows:

“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 might be.”

From the above definition conspiracy is therefore held to be an intentional conduct. Observing that under the new formulation, a person could no longer be guilty of conspiracy in the absence of any prior agreement. So that the mere acting together of two or more persons in a criminal enterprise is not enough to sustain conviction. Beyond that, there must be proof that the accused person agreed to act together to commit the crime with at least another person as stated in the case of *Francis Yirenkyi v The Republic, (Unreported) Criminal Appeal No. J3/7/2015. Comparing the old law to the new law on*

conspiracy; this law does not consist only in the criminal agreement between two minds but also acting together in furtherance of a common criminal objective.

Therefore, the prosecution in order to prove the guilt of the accused persons before the court on the allegation that the Accused persons conspired or agreed to threaten PW1 in his house. This would only succeed if there is evidence of not only that they acted together but more importantly evidence that prior to acting together, they had an agreement to threaten PW1 with harm.

The prevailing position of the law is thus that a charge of conspiracy without proving that the accused persons involved agreed to act together to commit the offence shall fail. It is however not a defence for an accused person who is charged for conspiracy to state that he did not have prior or previous concert or deliberation with the other accused persons to commit the offence where there is evidence that they agreed to act together to commit the offence, even if just before the commission of the substantive offences as espoused his book *“Contemporary Criminal Law in Ghana” at page 89 by Dennis Dominic Adjei.*

The law further states that, where they agreed or acted together to commit the substantive offence, the law still required separate and independent evidence of conspiracy which constituted and concerned with conspiracy from the main and actual substantive offence in question.

In application of the law on conspiracy to the present case, prosecution failed to prove where the Accused persons conspired to threaten PW1 at his house at Hwakpo. During cross examination of the accused persons all that the prosecution said was

“you and the other Accused persons conspired to threaten PW1 with the words.

You Gator we will burn you like charcoal. Again, the CCTV footage which was admitted in evidence by court and heavily relied on to prosecute the Accused did not show any act of conspiracy or the intention to commit the offence of conspiracy in the evidence of the Prosecution witnesses”.

There were a group of people chanting on a footpath which was a public walkway. Their faces were not captured except A3 who was visibly seen in the footage. The court could not conclude that those people were the Accused persons even though A3 never walked alone. The place was footpath did not show the house of the Complainant. The Accused claimed they went to the house of the chief and the stool father which was around the house of PW1 to lodge complaint. In the evidence of Prosecution, the Accused persons actually went to the house of the stool father and he advised them not to take the law into their own hands. This does not mean the Accused persons did not conspire to threaten the Complainant. They may not have agreed to act but there could be evidence that they actually went to his house to threaten him which was not captured by the CCTV footage. Mere suspicion....

In the case of *The State v Agyekum and Amofa [1962] 1 GLR 442*, the court in acquitting and discharging the accused persons on the conspiracy charge held that;

“.... 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...”.

Prosecution failed to prove that there was an agreement to threaten the Complainant in this case.

Whether or not Accused persons threatened PW1 with harm.

Section 74 of the Criminal and the other offences Act 1960 [Act 29] states;

“a person who threatens any other person with harm with intent to put that person in fear of unlawful harm commits a misdemeanor”.

In order to succeed in a conviction, the prosecution would have to establish that:

- The accused threatened the Complainant with harm.
- The threat was with the intention of putting the complainant in fear of impending harm.

Threat is defined by the JC Smith in his book Criminal law, international student edition (10h Edition) page 767 paragraph 3 writing on threatening, abusive or insulting said among others.

“The words threatening abusive or insulting are to be given their ordinary meaning. It is not helpful to seek to explain them by the use of synonyms or dictionary definitions because an ordinary sensible person knows an insult when he sees or hears it and whether a particular conduct is threatening or not is a question of fact”.

The threat to commit harm to another person may be enough as long as it is made to overcome resistance. The threat can be made orally, in writing or by actions as provided in section 17(3) and (4) of Act 29. Naturally the threat of harm must occasion a reasonable apprehension of danger.

The case in point is **Behome v The Republic** the accused caught the wife in harmony with another man and seized them. He assaulted them and threaten to kill the man. He was convicted for conspiracy to commit unlawful entry, robbery and threat of death contrary to section 75. The court in relation to the conspiracy **held**

“where one was charged with the threat of harm the threat must be harm and nothing else”.

These offences will lie in situations where there is a reasonable expectation of the conduct of the threat.

PW1 was not present when the alleged threats were issued in his presence. In the CCTV Footage played in court the group of people captured in the video walking on a path way chanting songs which the meaning was not clear. The court could neither identify them as the Accused persons except A. From the facts presented, the court is certain that A3 was seen and heard in the footage as the one who uttered the threatening words in Dangme.

“ mo Gator ma wo mo han“ meaning “I will burn you like charcoal” and “I will spoil your life” in English language”

This is a verbal threat of harm. it is criminalized and defined in section 74 of Act 29. The punishment is one of a misdemeanor. In his evidence he stated the Accused persons were in his house but the evidence was not captured because the lights were off. The court is convinced in its mind that PW1 was threatened by A3 with the words *“mo Gator ma wo mo han.” meaning “I will burn you like charcoal” and “I will spoil your life”.* it is specific and genuine as A3 has the means and motivation to burn PW1 as charcoal. From that time PW1 now feels nervous and affects his quality of life and even more evidence that this verbal threat is also criminal. In the CCTV footage PW1 was heard in voice shouting for help in an apprehension of eminent fear of attack. A3 succeeded in threatening the life of PW1 with fear of harm.

In conclusion and from the totality of the evidence, all 11 Accused persons are hereby acquitted and discharged on count one.

A3 is found guilty on count two and convict accordingly.

MITIGATION

Counsel for A3 pleaded with the court to deal leniently with him and award a minimal sentence

BY COURT:

The court hereby imposes the following sentence on the accused person (A3). In sentencing the accused person, the court takes into consideration the plea in mitigation made by his Counsel and also the fact that he is a first-time offender. I hereby sentence A3 to three (3) months prison terms without the option of a fine to serve as deterrent to other prospective offenders.

**(SGD) H/W VICTORIA AKUA GHANSAH
MAGISTRATE**