

IN THE DISTRICT COURT, NEW EDUBIASE
HELD ON FRIDAY 28TH FEBRUARY, 2025
BEFORE HER WORSHIP ANASTACIA Y.A. KARIMU ESQ.

CC01/2025

THE REPUBLIC

VRS.

RICHARD APPIAH @KOFI NYAME

JUDGMENT

1. On 16th October, 2024 the accused person was arraigned before this court for the offence of threat of death contrary to **section 75 of the Criminal Offences Act, 1960 (Act 29)**. He pleaded not guilty, and the prosecution was called upon to prove its case. At the close of the case of the prosecution this court found a prima facie case had been established against the accused person and called on him to open his defence. He chose to give evidence on oath but did not call any other witness in his defence.
2. The facts of the case as presented by the prosecution are that the accused and the complainant Abena Sakyi were in relationship until the relationship ended in September 2024 because of the accused person's insistence that they could not share the same bedroom with the complainant's four children from a previous relationship. After the breakup, the accused person relocated to his native town of Akim Swedru but returned to Bronikrom after some time and initiated steps to reconcile with the complainant, but she refused to rescind her decision. The accused lured the complainant into a forest, tied her hands and told her to take him back. On 11th October, 2024 the accused person visited the complainant at

home and threatened to kill her if she refused to take him back. Terrified, the complainant reported the matter to the DOVVSU Unit, New Edubiase police station, leading to the arrest of the accused person. In his investigation cautioned statement the accused person admitted visiting the house of the complainant but denied threatening to kill her.

3. The cardinal rule of our criminal jurisprudence is that an accused person is presumed to be innocent until proven guilty by a court of competent jurisdiction. This is enshrined in **Article 19(2)(c) of the Constitution, 1992** as follows: *“(2) a person charged with a criminal offence shall... (c) be presumed innocent until he is proved guilty or has pleaded guilty.”*
4. The presumption of innocence means an accused person does not bear the burden of proving his innocence. It is rather the responsibility of the prosecution to prove his guilt. In the case of **Bruce-Kouah v. The Republic [1967] GLR 611**, the court held that *“...An accused is under no obligation to prove his innocence. The burden of the accused person’s guilt is on the prosecution...”*
5. Thus, the burden of proving the commission of a crime in every criminal trial lies on the prosecution. This burden remains on the prosecution throughout the trial. The only burden the accused would assume is the evidential burden, which shifts from the prosecution to the accused if at the end of the case of the prosecution an explanation is required of him. In the case of **Commissioner of Police v. Isaac Antwi [1961] GLR 408**, the court held thus, *“The fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the accused only if at the end of the case of the prosecution an explanation for circumstances particularly within the knowledge of the accused is called for. The accused is not required to prove anything, if he can merely raise reasonable doubt as to his guilt, he must be acquitted.”*

6. **The Evidence Act, 1975 (NRCD 323)** provides the manner in which the above burden ought to be discharged, and that is by the production of sufficient evidence to establish the guilt of the accused person beyond a reasonable doubt. **Section 11(2) of NRCD 323** provides that *“In a criminal action the burden of producing evidence when 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 could find the existence of the fact beyond a reasonable doubt.”*

7. Sufficient evidence has been defined to mean evidence from which the guilt of the accused can be inferred. Sufficient evidence is not defined by the number of witnesses called by the prosecution, but by the credibility of the evidence adduced. Thus, the evidence of one credible witness is can lead to the conviction of an accused person: **Boakye v. The Republic [1999-2000] 1 GLR 740**. So long as the rules of admissibility in NRCD 323 are complied with, evidence adduced by the prosecution will be deemed sufficient if it meets the standard of proof required by the law.

8. As stated earlier, the standard of proof required in all criminal cases is proof beyond a reasonable doubt. **Section 13(1) of NRCD 323** provides that *“In any civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.”* In the case of **Miller v. Minister of Pension (1947) 2 AER 372** Lord Denning J (as he then was) explained proof beyond reasonable doubt as follows: *“Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is strong against a man as to leave a remote possibility in his favour which can be dismissed with the sentence ‘of course it is possible but not the least probable,’ the case is proved beyond reasonable doubt, but nothing short of that will suffice.”*

9. Reasonable doubt has been defined as the duty of the prosecution to ensure that sufficient evidence has been adduced to establish the ingredients of the offence for which an accused person has been charged so that on the totality of the evidence the court would be satisfied that the accused person has in fact committed the offence with which he has been charged. In the instant case, the prosecution called three witnesses to discharge the evidential burden placed it; the complainant (PW1), the mother of the complainant who was an eyewitness (PW2) to the event, and the police officer who investigated the case (PW3).

10. According to Abena Sakyi, she is a farmer and a resident of Bronikrom. The accused person is her ex-boyfriend. She has four children from a previous marriage. In early September 2024, the accused person told her he was unhappy with her children sharing the same bedroom as them, so she sent her children to live with her mother Yaa Kyerewaa (PW2) who also lives at Bronikrom. She then informed the accused person that she was no longer interested in the relationship and thus end their relationship. Afterwards, the accused person lured her to the Wangarakru forest, tied her arms with a rope and beat her. Before releasing her, the accused person made her swear she would not reveal her ordeal to any person. The accused person then went to her house, damaged her room and removed the roofing sheets on her bedroom. At about 1:30pm on 11th October, 2024 the accused person came to her house. In the presence of her mother and her children, he threatened to take her to the bush and kill her, said he doesn't fear law enforcement agents, and left her house. After the accused person left, she went to the New Edubiase police station and reported the incident.

11. The evidence of Yaa Kyerewaa is that she is the mother of the complainant. The accused person was in a romantic relationship with her daughter until September 2024 when they separated. On 11th October, 2024 the accused person came to their

house carrying beams. He called her daughter to come closer for a discussion, but she refused and told him to say what he wanted to say from where he was standing. Incensed by her refusal, the accused person told her daughter that if she dares step foot at Bronikrom he would organise boys to beat her. He also said he would kill her. That should they cause his arrest, he would ensure they vacate Wangarakru before his is released from custody. He also said he was not afraid of law enforcement agents.

12. According to D/Pw/Insp. Ernestina Awanu, on 12th October, 2024 a case of threat of death reported by PW1 against the accused person was referred to her for investigation. She took a statement from the complainant and PW2. On the same day, she arrested the accused person for the offence of threat of death and took an investigation cautioned statement from him. After investigations, she was instructed to charge the accused person with the offence of threat of death. Consequently, she took a charge statement from the accused. She tendered the following documents into evidence:

- a. Exhibit A - The investigation cautioned statement of the accused dated 13th October, 2024
- b. Exhibit B - The charge statement of the accused dated 14th October, 2024.

13. The case of the accused person is that he used to be in a relationship with PW1. However, due to her excessive drinking he broke up with her and relocated to Akyem Swedru. After two months, he returned to Adansi Bronikrom. On his return, he was informed by his landlady sister Afia that PW1 came to look for him. He went to her house to find out why he came to his place. When he got there and asked PW1 the reason for her visit during his absence, PW1 asked him who gave him that information. He replied that it was his landlady. PW1 then said she would confront sister Afia to stay out of her business because she was the reason behind

her failed relationship with him. He told PW1 not to confront his landlady because she helped him obtain his current job. Therefore, if PW1 confronts his landlady, she would not have it easy with him. PW1 then threatened to file a complaint against her at the police station for threatening to kill her. He did not threaten to kill her but told her that if she causes him to lose his job, she will not have it easy with him. PW1 reported him to the police because of their break-up and not because he threatened her.

14. **Section 75 of the Criminal Offences Act, 1960 (Act 29)** provides as follows, *“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 this definition, the prosecution is required to prove that the accused person

- a. threatened another person, and
- b. that the threat by the accused person was done with intent to put fear of death in that other person.

15. Commenting on the elements of the offence of threat of death, Osei-Hwere, J. (as he then was) in the case of **Behome v. The Republic [1979] GLR 112** stated thus *“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 consist in the realisation by the offender that his threats will produce that expectation. It matters not, therefore, whether the threats were related to the present or the future.”*

16. PW1 testified that the accused person threatened to kill her in the presence of PW2 and to the hearing of her four children. And because the accused person had earlier lured her to the Wangarakru forest, tied and beaten her, she was afraid for her life and reported the incident to the police. PW2 corroborated the evidence of PW1 that the accused person threatened PW1 in her house and in her presence and told them

that he was not afraid of law enforcement agents. This evidence was vehemently denied by the accused person who says he went to the house of PW1 and PW2 to warn PW1 not to confront his landlady because she helped him to get his current job. Therefore, should PW1 cause him to lose his job, she would not have it easy with him. The evidence before the court is that of the evidence on oath of the prosecution witnesses against that of the accused person.

17. In such a case, the law is that the trial court must carefully examine the evidence of all the witnesses as well as other evidence on record before deciding which of the two versions of the event is reasonable. In **Lutterodt v. Commissioner of Police [1963] 2 GLR 429**, the court held that, *“Where, as in this case, the decision turns upon the oath of one prosecution witness against that of a witness for the defence, it is incumbent upon the trial court to examine the evidence of each of those two witnesses carefully along with other evidence to the other; and where his preference is for the prosecution he must make it appear from his judgment that his said preference is reasonable, for the principle of law is that if the court could not find reasonable grounds for preferring the evidence of the prosecution witness to contradictory evidence given by a defence witness, the prosecution has failed, because there would, at least, be reasonable doubt as to which of the two conflicting versions of the story is true, and the benefit of that doubt must be given to the defence.”*

18. A court cannot reject the defence of an accused person simply because it does not believe it. It must consider whether or not the defence of the accused is reasonably probable. It is only after consideration of the explanation of the accused that the court can conclude the guilt or otherwise of the accused person. In the case of **Lutterodt v. Commissioner of Police** (supra), the court further held that where a trial court *“... forms the opinion that a prima facie case has been made, the court should examine the case for the defence in three stages:*

- a. *Firstly, it should consider whether the explanation of the defence is acceptable, if it is, that provides complete answer, and the court should acquit the defendant;*
- b. *If the court should find itself unable to accept, or if it should consider the explanation to be not true, it should then proceed to consider whether the explanation is nevertheless reasonably probable, if it should find it to be, the court should acquit the defendant; and*
- c. *Finally, apart from the defendant's explanation or the defence taken by itself, the court should consider the defence such as it is together with the whole case, i.e. prosecution and defence together, and be satisfied of the guilt of the defendant beyond reasonable doubt before it should convict, if not, it should acquit."*

19. A careful look at the evidence on oath of the accused person and that of his statements given to the police reveals contradictory statements in his story. The accused person in his evidence on oath stated that his landlady was the one who told him PW1 came to look for him while he was away. The said landlady is called sister Afia and sister Abena. Sister Abena and sister Afia are not the same person. He stated on oath that he went to PW1's house to find out why she came looking for him in his absence. When he informed her, PW1 became angry and threatened to confront his landlady because she was ruining her relationship with the accused. Why would PW1 threaten to confront sister Afia or sister Abena about a relationship that had ended two months prior, if indeed he was the one who ended their relationship because she was a drunkard and the cause of his downfall?

20. In his evidence on oath, he stated that he went to PW1's house purposely to find out why she came to look for him. Yet in exhibits A and B he stated that he went there to warn PW1 not to come and look for him again because she had caused his downfall. The accused who in Exhibits A and B said he would not forgive PW1 if she destroys his work again, stated in his evidence on oath that he told her she would not have it easy with him if she confronts his landlady. During cross-

examination of PW1 by the accused person, he told the court that on the day of the incident, he did not threaten to kill her but warned her that if she came looking for him again and spoiled his job, he would lodge a complaint with the elders. While he stated in his evidence on oath that PW1 threatened to report him to the police for threatening to kill her after he told her she would not have it easy with him if she confronts his landlady, there is no mention of this in exhibits A and B.

21. During cross-examination by the prosecution, the accused person stated that his relationship with PW1 lasted for eight months. When asked about the best approach to deal with the misunderstanding they had during their relationship, his response was that when he threatened to breakup with PW1, she told him she was pregnant. However, when she was due to deliver, she did not give birth. A normal pregnancy last for nine months. Therefore, if PW1 pretended to be pregnant for nine months, it would have been obvious that she was lying by the fourth or fifth month into the pregnancy. At what point in their relationship did he try to break up with her? If he is claiming to have waited until the full term of pregnancy, then clearly the relationship should have lasted beyond eight months. These inconsistencies are clearly indicative that the accused person is not being truthful to the court. The law is that when an accused person takes refuge in telling lies before a trial court, the only inference of his behaviour is that he has a guilty mind and wants to cover up: **Munkaila v. The Republic [1995-96] 1 GLR 367, S.C.**

22. Taylor, J. (as he then was) held in the case of **Dabla and Others v. the Republic [1980] GLR 501**, that in every criminal case, there are three types of facts,

- a. the facts which the prosecution gives before the commencement of the actual trial, indicating the material they intend to prove by admissible evidence,

- b. the facts which the accused person, may, if he chooses, lead in evidence in his defence, and
- c. the facts which on a consideration of the respective facts of the prosecution and the defence, the presiding judge or magistrate finds as representing in his opinion the actual facts.

23. He held further that *"In a court of law operating under the adversary common law system it is the last specie of facts which can be considered as facts properly called and upon the basis of which the court is entitled to adjudicate or make pronouncements. The other facts are strictly speaking mere allegations, and they are not facts until the judge or magistrate accepts them as such."*

24. Upon a consideration of the entire case, I accept the facts presented by the prosecution as representing the actual facts of the case. I find that the accused person, unhappy with PW1 breaking up with him, threatened to kill her in the presence of PW2 when she refused to take him back. The case against the accused person is proven beyond a reasonable doubt. He is accordingly convicted.

H/W ANASTACIA Y.A. KARIMU ESQ.

[MAGISTRATE]