

GHANA / JUDGMENT

The Republic Vrs Kamaldeen [2023]

GHADC 508 (12 January 2023)

[2023] GHADC 508

COURT

District Court

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IN THE DISTRICT COURT 2, TAMALE HELD ON THURSDAY 12TH JANUARY, 2023 BEFORE HIS
WORSHIP D. ANNAN ESQ. SUIT NO. B4/6/22 THE REPUBLIC V ZAKARIA MOHAMMED
KAMALDEEN

JUDGMENT

1. In this case, accused is charged with the following offences: COUNT ONE STATEMENT OF OFFENCE Unlawful Entry, contrary to section 152 of the Criminal Offences Act, 1960 (Act 29). PARTICULARS OF OFFENCE Zakaria Mohammed Kamaldeen, Age 39years, Teacher: On the 1st March, 2022 at Salamba, Tamale in the Northern Magisterial District and within the jurisdiction of this Court, you unlawfully entered the room of Issahaku Abdul Samin Jimah
- 1 - with the intention of committing a criminal offence to wit threat of death and assault. COUNT TWO STATEMENT OF OFFENCE Assault, contrary to section 84 of the Criminal Offences Act, 1960 (Act 29). PARTICULARS OF OFFENCE Zakaria Mohammed Kamaldeen, Age 39years, Teacher: On the 1st March, 2022 at Salamba, Tamale in the Northern Magisterial District and within the jurisdiction of this Court, you unlawfully assaulted Issahaku Abdul Samin Jimah. COUNT THREE STATEMENT OF OFFENCE Threat of Death, contrary to section 75 of the Criminal Offences Act, 1960 (Act 29). PARTICULARS OF OFFENCE Zakaria Mohammed Kamaldeen, Age 39years, Teacher: On the 1st March, 2022 at Salamba, Tamale in the Northern Magisterial District and within the jurisdiction of this Court, you threatened one Issahaku Abdul Samin Jimah into the fear of death. FACTS OF THE CASE
2. The facts of the case as tersely given by the prosecution are that on 28th February, 2022 at about 8:30pm complainant, Issahaku Abdul Samin Jimah, was in his room when his light went off. He then called an electrician to look at it. After restoring the light, accused person's mother who is also a tenant confronted the complainant and accused

- 2 - him of engaging in illegal connection. This complainant denied but this escalated into an argument. Accused sister, Jamila Zakaria, then informed accused about the issue. On 1st March, 2022 the complainant was in his room with some friends when accused confronted him with a pistol pointed at his forehead, and demanded to see complainant's senior brother. Complainant, however, hesitated to disclose the whereabouts of his brother. Accused became furious and subjected complainant to severe beatings. Accused then threatened to kill the complainant with the pistol. Complainant, however, managed to escape the room but accused would chase him around with the pistol. Accused not able to lay hands on complainant, returned to the house and caused damage to complainant's glass door, valued at GHS5,000.00 and motorbike also valued at GHS3,500.00. Complainant then reported the matter to the police and accused was arrested. During interrogation, accused admitted to offences and informed the police that he had fixed the damages caused to the door and motorbike. When police demanded for the pistol, accused rather handed over a toy one.

- 3. Accused was arraigned before this court on the above charges but pleaded not guilty.
DEFINITION OF THE OFFENCES

- 4. In explaining what constitutes an unlawful entry, section 153 of Act 29 provides that a person unlawfully enters a building if that person enters otherwise than in the exercise of a lawful right or by the consent of any other other person able to give the consent for the purposes for which that person enters. Act 29 further provides that a person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony, see s. 152.

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- 5. Section 84 of Act 29 provides that a person who unlawfully assaults any person commits a misdemeanour.
- 6. Section 75 of Act 29 also 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. BURDEN OF PROOF
- 7. By a plea of not guilty, the accused puts himself in charge of the court, meaning that his guilt has to be proved beyond reasonable doubt. It is settled law that a person is presumed innocent until the contrary proved, see article 19(2)(c) of the 1992 Constitution. The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that the person was guilty, has been provided for in ss. 11(2), 13(1), 15 and 22 of Evidence Act, 1975 (NRCD 323). In *Gligah & Atiso v The Republic* [2010] SCGLR 870, the Supreme Court, per Dotse JSC re-emphasized this point thus: "...whenever an accused person is arraigned before any court in any criminal trial, it is the duty of the prosecution to prove the essential ingredients of the offence charged against the accused beyond reasonable doubt. The burden is, therefore, on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person is called upon to give his side of the story."

8. Thus, whereas the prosecution carries that burden to prove the guilt of the accused beyond reasonable doubt, there is no such burden on accused to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful, see the cases of *Miller v Minister Of Pensions* [1947] 2 ALL ER 4 - 372 at 374, *COP v Isaac Antwi* [1961] GLR 408 and *Owusu-Ansah v The State* [1964] GLR 558. METHODOLOGY
9. Section 73 of the Courts Act, 1993 (Act 459 as amended) encourages reconciliation in criminal cases. Section 73 provides that: “Any court, with criminal jurisdiction may promote reconciliation, encourage and facilitate a settlement in an amicable manner of any offence not amounting to felony and not aggravated in degree, on payment of compensation or on other terms approved by the court before which the case is tried, and may during the pendency of the negotiations for a settlement stay the proceeding for a reasonable time and in the event of a settlement being effected shall dismiss the case and discharge the accused person.”
10. When the case called, accused was under the impression having repaired the glass door and motorbike, the charges level against him could be settled out of court. In fact, save assault, the other offences, i.e. unlawful entry and threat of death, are second degree offences and could not be settled as per s. 73 of Act 459. Again, to settle, both parties must be submit to settlement. Prosecution, on its part indicated that they are not amenable to settle, on the charge of assault.
11. Accused having pleaded not guilty to the charges, the prosecution must prove the whole of its case including the identity and knowledge of offence(s) against him, see *Owusu-Ansah v The State* (supra).
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12. The prosecution in proving its case against the accused called one witness: No. 54295 G/L/ Cpl. John Ocran (PW1). Prosecution also tendered in evidence the following exhibits: Exhibit A - the investigating cautioned statement Exhibit B - the charge cautioned statement Exhibits C and C1 – the toy pistol and picture of the toy pistol.
- 6 - The Prosecution’s Case
13. PW1 indicated that he was tasked to investigate the matter. He recounted the facts as earlier narrated, without more. The exhibits were also tendered without any objection from the accused. Prosecution emphasised that in Exhibit A, accused admitted to committing the charges. Prosecution referred to the below paragraph where accused stated: “I confronted him (complainant) about the issue my sister told me. Samin and other four guys in the room became angry and Samin said he will beat me and the other guys went behind him and we started fighting. So I said I will kill somebody so I removed a rubber gun from my bag just to frighten(sic) them and they run away. I followed Samin with my rubber gun and when I got to the end of the house, I got back and came and picked a stick and damaged a motorbike

belonging to one of the guys and also damaged their glass door...”

14. At the end of the Prosecution’s case, the court found that a prima facie case had been established against accused and therefore called upon accused to open his defence. Accused Person’s Defence
15. Accused person in his defence stated that he had information that complainant and the brother (Addle Ibrahim) had tempered with the house meter and as a result his mother’s light had gone off. He added that although the problem had been fixed, the complainant and the brother would still quarrel with the mother and sister. He stated that complainant and the brother threatened to kill his mother and sister. So on 1/03/22 he went to the house and enquired from the complainant what happened, but complainant started arguing with him. Accused stated that the complainant’s friends who were also in the room came out and a fight ensued. According to accused, they were five people (including complainant) so he run to his mother’s shop and found a
 - 7 - rubber pistol. He then picked it and rush towards the five people who were by then following him. He chased them back to complainant’s door. Accused indicated that they were separated by bystanders. He then reported the matter at the chief’s palace. Later he received information that complainant’s uncle had called to have the issue settled. Accused added that during the quarrel the complainant’s glass door and motorbike were destroyed, so the chief directed to repair it, which he did. Later, he was arrested and arraigned before this this court on the above charges.
16. Accused indicated that complainant and brother are his cousins. He did not call any witness.
 - 8 - ANALYSIS OF FACTS AND LAW
17. In *Owusu-Ansah v The State* (supra) the court held that, ‘...the prosecution is bound to prove each count separately beyond reasonable doubt and that proof in support of one count cannot be deemed to be proof of the other counts where the evidence in support of the other counts leaves room for doubt.’
18. To establish the offence of unlawful entry, thus count 1, the entry must be made with a purpose or intent to commit crime. It follows that in addition to proving entry, the prosecution, to succeed, must prove that intent to commit a crime in the premises existed at the time of entry and was the purpose for making of the entry. Therefore, if a person entered premises for a lawful purpose, for instance, to visit a friend and while in the room he saw a diamond ring, which he converted and pocketed, he could properly be convicted of theft of the diamond ring, but a conviction for unlawful entry with intent to steal would not accord with the law, see the case of *Kanjara v The State*

[1965] GLR 479 at 482.

19. Regarding count 2, assault, the law is that the prosecution need not specify the specific assault, i.e. whether assault and battery, assault without actual battery or imprisonment, the nature of the assault may be deduced from the facts of the case, see *Bruce-Konuah v The Republic* [1967] GLR 611. Hence, to sustain a conviction, prosecution must lead evidence to establish beyond reasonable doubt that without the consent of the other person and with the intention of causing harm, pain or fear, or annoyance to the other person, or exciting the other person to anger, the accused forcibly touched that other person or cause any person, animal or matter to touch that other person (in the case of assault and battery) or intentionally putting the victim in fear of an instant assault and battery (in the case of assault without battery). [Emphasis mine]
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20. Lastly regarding threat of death, the prosecution must prove beyond reasonable doubt that accused person threatened the complainant with death and with intent to put the complainant in reasonable fear of death.
21. Prosecution's entire evidence rests on the confession statement of the accused, Exhibit A. Regarding confession statement, section 120(2) of NRCDC 323 provide that:
- (2) Evidence of a hearsay statement shall not be admissible under subsection (1) if the statement was made by the declarant while arrested, restricted or detained by the State unless the statement was made in the presence of an independent witness, who
- (a) can understand the language spoken by accused;
- (b) can read and understand the language in which the statement is made, and where the statement is in writing the independent witness must certify in writing that the statement was made voluntarily in his presence and that the contents were fully understood by the accused." [Emphasis mine]
22. In the case, *Ekow Russel v The Republic* [2016] DLSC 2800 the Supreme Court stated that a confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person's own free will without any fear, intimidation, coercion, promises or favours.
23. Let me rehash what the accused stated in Exhibit:

- 10 - “I confronted him (complainant) about the issue my sister told me. Samin and other four guys in the room became angry and Samin said he will beat me and the other guys went behind him and we started fighting. So I said I will kill somebody so I removed a rubber gun from my bag just to frighten(sic) them and they run away. I followed Samin with my rubber gun and when I got to the end of the house, I got back and came and picked a stick and damaged a motorbike belonging to one of the guys and also damaged their glass door...”
- 24. From the evidence, I find that Exhibit A by its nature, offers a reliable piece of evidence upon which accused can be convicted, see *Ekow Russel v The Republic* (supra). The statement of accused was voluntarily given without any fear, intimidation, coercion, promises or favours from the prosecution. In fact, all the ingredients to be proven in respect of the charges level against accused can be found in the above confession statement. Accused entered the complainant’s room (that is why he could tell the number of friends in there), assaulted complainant verbally, chased him and threatened to kill him. From his defence, I find that accused was unable to raise any reasonable doubt in the case of the prosecution. In fact, I find that he was enraged by what his sister, Jamin, had told him and so sought to teach the complainant and the brother a lesson. When matters got out of hands, he then sought to have the issue settled, since the complainant and the brother are his cousins.
- 25. On totality of the evidence, I have no hesitation at all in concluding that prosecution has been able to lead sufficient evidence beyond reasonable doubt in proof of the aforementioned offences. SENTENCING
- 11 -
- 26. Having heard the accused person and prosecution on pre-sentencing hearing, it is noted that the accused has compensated the complainant, Issahaku Abdul Samin Jimah, for the damage to the glass door and motorbike. I also note that he is a first time offender and a teacher with a family. In effect, I hereby sentence the accused as follows:
 - a. On count 1: I fine the accused 100p.u. (i.e. GHS1,200.00) and in default shall serve a jail term of three (3) months, IHL.
 - b. On count 2: I fine the accused 100p.u (i.e. GHS1,200.00) and in default shall serve a jail term of three (3) months, IHL.
 - c. On count 3: I fine the accused 125p.u (i.e. GHS1,500.00) and in default shall serve a jail term of four (4) months, IHL.
 - d. The sentences to run concurrently. H/W D. ANNAN ESQ. [MAGISTRATE] ACCUSED APPEARED IN PERSON INSP. A. R. DAWUD FOR THE REPUBLIC References:
 - 1. Article 19(2)(c) of the 1992 Constitution
 - 2. ss. 75, 84, 152 and 153 of the Criminal Offences Act, 1960 (Act 29)

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3. ss. 11(2), 13(1), 22, and 120 of the Evidence Act, 1975 (NRCD 323)
 - 12 -
 4. ss. 73 of the Courts Act, 1993 (Act 459)
 5. Gligah & Atiso v The Republic [2010] SCGLR 870
 6. Miller v Minister Of Pensions [1947] 2 ALL ER 372 at 374
 7. COP v Isaac Antwi [1961] GLR 408
 8. Owusu-Ansah v The State [1964] GLR 558
 9. Kanjara v The State [1965] GLR 479 at 482
 10. Bruce-Konuah v The Republic [1967] GLR 611
 11. Ekow Russel v The Republic [2016] DLSC
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Prepared on 25 October 2026 · Esheria