

GHANA / JUDGMENT

REPUBLIC VRS AMPONSAH (97/2023) [2024] GHACC 287 (19 June 2024)

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IN THE CIRCUIT COURT HELD AT DORMAA AHENKRO ON WEDNESDAY THE 19TH DAY OF JUNE, 2024 BEFORE HER HONOUR, PHILOMINA ANSAAH ASIEDU, CIRCUIT COURT JUDGE. Case No: 97/2023 THE REPUBLIC V MICHAEL TUTU APPIAH AMPONSAH @ GINSEN Accused person – present D/Insp. Emmanuel Asare for the Republic – present J U D G M E N T The accused person herein was charged with the offence of offensive conduct, causing harm and threat of harm contrary to the section 207, 69 and 74 of act 29/60 respectively. The various charges were read to the accused person and he pleaded not guilty to all the three counts.

FACTS

The complainant in this case is a security man residing at Dormaa Ahenkro and the accused person also resides at Dormaa Ahenkro. On the 9th of November 2022 at about 6 30 am the complainant sent his children to a well side in the neighborhood to fetch some water for house chores. The complainant has a personal water puller that the children 1 carries along to fetch water when they go to the well. On this particular day, few minutes after the children went to the well, they came back home and reported to the complainant their father that the accused person has ceased their water puller from them. The complainant then followed up to collect the water puller from the accused person for his children. A confrontation then ensued between them and it was at this point that the accused person beat the complainant mercilessly. He further threatened the complainant with words to wit “you wait this action is small I will kill you”. The complainant after this went to report the matter to the police and the police later in the evening around 4 35 arrested the accused person. The accused person during interrogations did not admit the offence of threat of harm but instead admitted having beaten the complainant. He was subsequently charged after investigation and arraigned before this honorable court. The burden to prove the guilt of the accused person was at this juncture on the prosecution. The prosecution was then supposed to place all his cards at his disposal bear before the court to prove the guilt of the accused person. The prosecution in doing so called 7 prosecution witnesses including an arresting officer and the case investigator. For the purposes of this judgement, I will outline some of the evidence of the prosecution witnesses. THE CASE OF THE PROSECUTION EVIDENCE OF IBRAHIM FUSEINI (PW1) Ibrahim Fuseini, who is a security man and resident at Dormaa Ahenkro is prosecution’s first witness. His testimony was that there is a well situated in his

community which serves the inhabitants in the area and he has a water puller his children always take along to fetch water from the well. He was at home on 9th November, 2022 at about 6:30am, when his children (witnesses in this case) ran to inform him that, the accused person has 2 attacked and ceased their water puller from them. According to PW1, he approached the accused person and collected the puller from the accused person. PW1 says as he took steps away from the well, the accused person attacked him and slapped him twice from behind which took him unaware. PW1 stated that, he turned to prevent the accused person from launching any further attacks on him but the accused person became more aggressive, held his attire and pulled him unto the ground. PW1 then held both hands of the accused person whiles he struggled with him on the ground, of which two young men rushed to the scene and rescued PW1 from the accused person. PW1 continued that after he was rescued, he saw that the accused person has bitten his right armpit and the accused person further threatened him with words to wit: “you wait, this action is small. I will kill you” and other offensive words in the presence of witnesses, without any reasonable cause. EVIDENCE OF NAFISATU (PW2) On 09/11/2022 at around 6:30am to 7am, and whiles in the room, she heard PW1’s son, one Latif saying words to wit: “he has seized my water puller”. PW2 stated that she opened her window louvres and saw the accused person ruined insults against the said Latif and the family in words to wit: “Foolish and filthy people, I won’t sit here for you people to mess around this place”. PW2 again said she saw the complainant (PW1) approached the accused person and collected the water puller from him without saying a word to him. According to PW2, she suddenly saw the accused person followed PW1 ruining insults on him and when PW1 turned his head, the accused person attacked, slapped him and pull him to the ground. That it took the intervention of some two men to rescue PW1 from the accused person. 3 EVIDENCE OF ADDISA FUSEINI (PW3) PW3 is the wife of PW1 and that they live in the same vicinity with the accused person. PW3 avers that there is well within their vicinity where everyone in the area fetches water and that they used to hang their water puller on the well but the accused person would throw it into the well of which she informed PW1 and they stopped hanging their water puller on the well. PW3 continued that on 08/11/2022 at about 3pm, she sent her daughter called Aisha to fetch water from the well but not long after, her daughter ran back to the house empty handed to inform her that the accused person had seized her bucket and the water puller of which he has thrown them into the bush near the well. That she went and retrieve them without uttering a word to the accused person but the accused person ruined insults on PW1 and herself. The next day, i.e. 09/11/2022, his two sons went to the well to fetch water but they later ran home and informed PW1 that the accused person had seized their water puller again and PW 1 approached the accused person and collected the water puller from him. PW3 further stated that, as PW1 took few steps from the well, the accused person followed him, attacked him and beat him up without any reasonable cause. EVIDENCE OF NO. 56088 G/CONST. SAMPSON NDAAGO (PW6) PW6 says he is a police officer stationed at Dormaa Ahenkro. On 9/11/2022, he escorted the case investigator to effect the arrest of the accused person at KDS, Dormaa Ahenkro. PW6 in evidence stated that, PW1 led them to the house of the accused person and pointed the accused person to them as the suspect. PW6 said he suddenly saw the accused person ruined insults on PW1 with words to wit: “you always attack me, only today that I beat you up, you reported me to the Police. You are even lucky. I would have destroyed your nose, foolish

man” and he threatened PW1 with words to wit “you wait you will see when I return from the police station” and other offensive words. 4 EVIDENCE OF NO. 51897 G/CPL J. ASANTE(PW7) The investigator of the case testified as the seventh prosecution witness (PW7) and a case of assault was referred to him for investigation. PW7 says he obtained statement from PW 1, took photograph of him for evidential purpose and issued a medical form to him to attend hospital for treatment. According to PW7, PW1 returned the medical form duly endorsed by a medical officer of the Dormaa Ahenkro Presbyterian Hospital. Thereafter, PW1 led himself and PW6 to the house of the accused person, pointed him out and accused person was arrested. PW7 avers that, he heard the accused person saying words to wit: you always attack me, only today that I beat you up, you reported me to the Police. You are even lucky. I would have destroyed your nose, foolish man” and also threatened PW1 with words to wit “you wait, you will see when I return from the police station” and other offensive words in the presence of the witnesses. That the accused person volunteered to write his own statement and did so in the presence of an independent witness. PW7 said the accused person led the police to the scene and his area to identify his witness in this case but all the persons he led the police to denied witnessing the matter. COUNT ONE The Section 207 of Act 29 offensive conduct conducive to the breach of peace states that any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behavior with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned shall be guilty of a misdemeanor. From the above provision it is required by the prosecution to establish the following elements in proving offensive conduct against an accused person. They are

1. the accused person used threatening, abusive, insulting words or behavior
 2. the accused person and not any other person committed the act 5
 3. the accused persons conduct aforementioned was intended to provoke the breach of peace or likely to occasion such a breach
 4. and the conduct as well was done in a public place or at any public meeting The court will now have to see if the prosecution was able to do justice to the above listed element
1. Whether the accused person used threatening, abusive or insulting behavior. The Court held in the case of Quansah v the Republic [1980] GLR 263 that the words threatening, abusive or insulting words or behavior in Section 207 of Act 29 must be giving their ordinary meaning so as to avoid the danger of enlarging what parliament had enacted in relation to the offence. The prosecutor stated these words in Count 1 as “you foolish man, foolish people. I would not sit here for you people to mess around this place” as the abusive or insulting words used by the accused person. The Black Law Dictionary 7th Edition defines “Abuse” as to depart from reasonable or legal use in dealing with a person or thing, to insult to injure physically or mentally. Insulting behavior also means behavior which affronted other people and evidenced disrespect or contempt for their rights and which reasonable persons would foresee as likely to cause resentment or protest. The Court judiciously take notice of the fact that the word “foolish” similarly connotes silly. Stupid, idiotic, brainless, senseless and

mindless. To tell a fully grown man to be foolish in this our Ghanaian community ordinarily is an insult and evidence disrespect to a person. 6 The prosecution again stated that the accused person also said “foolish people, I will not sit here for you people to mess around this place.” It is clear from the trial that the accused person who had earlier on ceased a water puller from the complainant’s children was referring to the complainant and his family that they are all senseless people. No wonder this instigated the complainant as a man of the house to confront the accused person. From the above submissions, the Court therefore concludes that the above statement by the accused person is insulting and an abusive words or behavior.

2. Did the accused person and not any other person commit this offence. The accused and not any other person altered these words to the complainant and his children in the presence of witnesses. The accused person did not challenge this allegation by the prosecution during the trial. His whole attention was on whether he fought the accused person or the accused fought him
3. Was the accused person’s conduct intended to breach the peace of the community. In the case of Solomon Kojo Cobbinah and others v Accra Metropolitan Assembly & ors (2017) JELR 69 JOIG, the Court considered what breach of peace is by referring to the case of Ruitovell (1982) QB 410 @ 427 where Watkins L. J. observed as follows: “we are embodied to say that there is a breach of the peace where harm is actually done or is likely to be done a person or in his presence his property or a person is in fear of being so harmed through an assault or affray, a riot, unlawful assembly or other disturbances.” Inferring from this case means any statement that is likely to cause confrontation or a statement likely to cause the breach of peace. The insulting words used by the accused person is one that requires a confrontation from the complainant and same is likely to 7 cause the breach of peace. Any person who exhibits any of the above attitudes has intentions of tempering with the peace of the people. The prosecution proved that the accused person ceased PW 1 s water puller and also caused harm to the him and such act will definitely obstruct the peace.
4. Was the place a public place or a meeting place A public place is defined by Act 29, Section 1 to include a public way and a building, place or conveyance to which the public are entitled or permitted to have access without a condition of making a payment or on condition of making a payment, and a building or place which is used for a public or religious meeting or assembly, or as an open Court; and acts are done “publicly”
 - (a) if they are done in a public place as are likely to be seen by a person, whether that person is or is not in a public place; or
 - (b) if they are done in a place, which is not a public place, but are likely to be seen by a person in a public place. In Cawley v Frost (1977) cr App R 20, DC Lord Widgery CJ at page 24 indicated that a public place is a place where you have an establishment which is set up to provide for the public. By an extension to the case herein, the incident happened at a well in the vicinity where the public fetches water from and this well serves the whole

neighborhood. The place is therefore a public place. By virtue of the above submission, it is obvious that the prosecution has proved their case beyond reasonable doubt and the accused person failed to raise a doubt herein. 8 COUNT 2 The section 69 of act 29 causing harm states “Whoever intentionally and unlawfully causes harm to any person shall be guilty of a second degree felony.” This means that at the end of the trial the prosecution should be able to prove that

1. the harm was intentionally caused;
 2. The harm was unlawful;
 3. The harm was caused by the accused person and not another The failure of the prosecution to prove any of the above listed element will mean that the prosecution has failed to prove his case beyond reasonable doubt.
1. I will analyse the points 1 and 3 together i.e. Was the harm caused by the accused person and was the harm intentionally caused. Even though, the accused person’s case is that, it was the complainant who first hit him before he retaliated, same is not corroborated by any of the witnesses on record. The accused person continued to say in his evidence in chief that “so the two of us fell and I could not move him and he also could not hit me again because at that time, I had held him very tight on the ground. So some passersby came to separate us.” It is also the case of the arresting officer, PW6 G/Cons. Sampson Ndaago that when they went to arrest the accused person, the accused person said to the complainant that, “you always attack me, only today that I beat you up, you reported me to the 9 police. You are even lucky, I would have destroyed your nose, foolish man”. This evidence was also corroborated by the case investigator. There is no doubt from the above submission that, the accused person planned it all out to fight the complainant because he was only looking for an opportunity to avenge the complainant, per his own utterances. The prosecution in proving their case also tendered a medical report endorsed by Dr. Mensah Gabriel, which is Exhibit ‘C’ and the doctor concluded after his examination that the left ponorbisul swelling and left conjunctiva hemorrhage. The prosecution again tendered exhibits E and F, been photograph of the complainant showing bodily harm and injuries as the evidence in support of the medical report. This is enough evidence of harm and I would say same was intentionally caused by the accused person.
 2. Was the harm unlawful According to Section 76 of Act 29/60, harm is unlawful which is intentionally or negligently caused without any of the justification in chapter one of Act 29. The accused person during the trial failed to raise any justification for causing the aforementioned injury or harm to the accused person. The prosecution did justice to this offence when all the elements of causing unlawful harm was also proven. COUNT 3 The Section 74 of act 29 Whoever threatens any person with unlawful harm with intent to put that person in fear of unlawful harm, shall be guilty of a misdemeanor. 10 In the case of BEHOME V THE REPUBLIC 1979 GLR 112, where one is charged with threat of harm, the threat must be of harm and nothing else. With this charge, I will be brief since it is a straight

forward one. The charge against the accused person was that the accused person threatened the complainant with words to wit: "I will kill you" with intention to put the complainant into fear of harm. There was a total deviation by the prosecution in this regard. The threatening words "I will kill you" seems to be what the prosecution relied on as words that constitute the threat of harm. This is because the words aforementioned was seen in the prosecution witnesses statement of PW1 in support of their case. If the prosecution wanted to charge the accused for threat of death under section 75 of act 29, then same should have properly been done. The evidence of threat of death was not also corroborated by any of the prosecution witnesses. Therefore, prosecution failed to prove the threat of death as well. Moreover, the court will have to proceed to see if the offence of threat of harm was also successfully proven by the prosecution. The charge of the offence of threat of harm seems to be what the prosecution led evidence on. This can be inferred from the evidence of PW6 and PW7 after they came to arrest the accused person and the accused person said in front of them to PW1 that "you wait; you will see when I return from the police station" The obvious follow up question here in proving the offence of threat of harm is that did this threat put the accused into a state of fear of his life. I do not think so because at the time the accused was making this statement he was already in the grips of police officers and any reasonable man at this point will not be afraid of such threats in the presence of police officers affecting arrest. Therefore, the issue of the accused being afraid or feeling insecure for his life due to the said threat will not suffice here. Even though the 11 prosecution attempted to prove the guilt of the accused for the offence of threat of harm notwithstanding the fact that their particulars of offence represented threat of death, the prove of same too failed. I do not have any option than to conclude that the prosecution has failed to prove their count 3 Accordingly, the accused person is acquitted and discharged on Count 3 but convicted on counts 1 and 2. (SGD) H/H PHILOMINA ANSAAH ASIEDU 19/06/2024 12

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