

GHANA / JUDGMENT

REPUBLIC VRS ATTA (BR/DR/DC/D3/05/2021) [2023] GHADC 1186 (9 November 2023) [2023] GHADC 1186

COURT

District Court

CASE / FILE NUMBER

BR/DR/DC/D3/05/2021

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IN THE DISTRICT COURT, DROBO BONO REGION CASE NO. BR/DR/DC/D3/05/21 THE REPUBLIC
VRS ATTAH KWASI

JUDGMENT

DELIVERED BY H/W LINDA E. NYAHE ESQ. (MAGISTRATE) DATED: 09/11/2023 Page 0 of 7 IN
THE DISTRICT COURT HELD AT DROBO ON THURSDAY, THE 9TH DAY OF NOVEMBER, 2023.
BEFORE HER WORSHIP LINDA E. NYAHE (ESQ) (MAGISTRATE) CASE NO. BR/DR/DC/D3/05/21
THE REPUBLIC VRS ATTA KWASI ACCUSED PERSON – PRESENT G/SGT SEIDU ABDUL RAZAK
FOR PROSECUTION- PRESENT COMPLAINANT: PRESENT

JUDGMENT

The Accused person herein was arraigned before this Court and charged with the offence of Threat of Death: Contrary to section 75 of the Criminal Offences Act (Act 29) of 1960. The accused person pleaded not guilty after the charge had been read out and explained to him in Twi language and by this prosecution assumed the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt. THE CASE OF PROSECUTION The brief facts as presented by prosecution are that the Accused person in this case is a farmer whereas complainant is also farmer and are both residents of Katakryiekrom. Complainant and the accused have a standing litigation over a parcel of land situated at Katakryiekrom which is before the Nananom of Katakryiekrom which is still unresolved. On the 30th day of April, 2021 accused person went to the complainant's house and Page 1 of 7 threatened her with words in the presence of witnesses that any day he will see complainant on the disputed land, he will kill her with cutlass. Complainant then proceeded to Drobo Police and reported the case. Subsequently accused person was arrested and detained. During his cautioned statement accused denied the offence stated in the charge sheet. After investigation, accused person was charged with the offence. The only legal issue to be determined is whether or not accused herein threatened PW1 with death. The general principle of law in every criminal case as stated in the case of Asare Vs.

The Republic [1978] GLR 193-199, per Annin J. A. (as he then was) is that: “There was no burden on the accused to establish his innocence; rather it was the prosecution that was required to prove the guilt of the accused beyond all reasonable doubt”. I now turn to the charge of threat of death which is leveled against accused person. Section 75 of Act 29 provides as follows: “Whoever threatens any other person with death, with intent to put that person in fear of death is guilty of a second degree felony”. From the above provision, the ingredients of the offence of Threat of Death which prosecution must prove beyond reasonable doubt to sustain the charge are that:

- (a) Accused threatened complainant with death.
- (b) Accused intended to put complainant in fear of death. ANALYSIS OF THE EVIDENCE AND APPLICATION OF THE LAW The prosecution in proving its case called three (3) witnesses thus PW1 the complainant herein Abena Kyeraa, PW2, Adobea Suzana and the police investigator; PW3. PW1 testified that she had land issues with the accused. That on the 30th day of April, 2021 at about 7pm, she was in her house when accused entered furiously and threatened with words to wit: “if you think you are a woman, step your foot on the Page 2 of 7 farmland, I will slash you into pieces with cutlass”. Pw1 stated that this happened in the presence of witnesses and that she has not been able to go to farm because of the threat. PW2, the daughter of PW1 also testified that on the 30th day of April, 2021 at 7:00pm, she was in the house with her mother when accused entered furiously with insults and further threatened her mother to wit “If you are still a woman step your foot on the land and you will see, I will kill you”. The last to testify for the prosecution was the police investigator, PW3. He testified that accused and complainant have a long standing litigation over a parcel of land before nananom of Katakyiekrom which is still unresolved. That on the day of the incidence the accused went to the complainant’s house and threatened to kill her with cutlass in the presence of witnesses. The PW3 tendered investigation and charge cautioned statements into evidence and same marked as Exhibits A and B respectively and thereafter prosecution brought its case to a close. Accused admits he has a land dispute with complainant but vehemently denies threatening complainant with death. During the trial, he relied on the plea of alibi to say that he was not around at the said time and day of the alleged incidence. A notice of the alibi was filed and prosecution was given the opportunity to investigate same. Accused testified that he was at church between the hours of 7:00pm to 9:30pm on the day of the alleged incidence. Accused called three (3) witnesses in all. Two (2) of them including the pastor of his Church Apostle Samspon Djuru (DW3) testified and corroborated the accused person’s case that he was in church during the hour and day in question. The prosecution failed to dislodge the defence of alibi put up by the accused person thereby raising a reasonable doubt as to his guilt. Page 3 of 7 That aside, the Court detected inconsistencies in the testimonies of the prosecution’s witnesses during cross-examination. Whereas PW1, complainant under cross- examination told the Court that accused threatened to kill her whiles wielding cutlass when he purportedly came to the house, PW2 and PW3 however told the Court the accused was not carrying cutlass. Excerpts of responses elicited from PW1, PW2 and PW3 during cross examination are as follows; CROSS-EXAMINATION OF PW1 BY ACCUSED PERSON “Q. What have you done to me that

allegedly made me to issue a death threat to you? A. You came to my house and warned me that I have cultivated on your land, therefore if I go unto your land again, you will kill me. Q. I am putting to you that I have not come to your house with cutlass and issue any threat of death rather you wanted to take my land that is why you are falsely accusing me of threat of death? A. That is not correct you came to my house with cutlass and indicated to me that the matter is before nananom that if I do not allow nananom to settle the matter and I go unto the land again you will slash me with cutlass.” CROSS-EXAMINATION OF PW2 BY ACCUSED

“Q. When and what time did I go to your mother’s house with cutlass to threaten her? A. That day was a Wednesday and it was between 5-6pm when we were pounding fufu. Q. Who and who did I come to meet in the house? A. You came to meet myself, complainant and our landlady. Q. What kind of cutlass did I bring to your house? A. You did not come with cutlass you only threatened by word of mouth when you dared complainant to go to the farm and I asked you what you will do to her, will you kill her or you will cast a spell on her. Page 4 of 7 CROSS-EXAMINATION OF PW3 BY ACCUSED Q. At what time did I go to the complainant’s house to threaten her? A. About 7:00pm Q. What evidence do you have to prove that I went to Complainant’s house with cutlass? A. You did not go there with cutlass but you rather threatened her to kill her with cutlass. Q. It is in PW1’s evidence –in-chief that I went to her house with cutlass. What do you say to that? A. Per our investigation and other witnesses in the case it is not correct that you went to PW1’s house with cutlass. The inconsistencies are so glaring from the relevant portions extracted during cross- examination of prosecution’s witnesses above. In the case of Republic Vs Adamu [1960] GLR 91 at page 95, CA it was held that where the evidence of the prosecution is so inconsistent as to “contain the seeds of its own destruction”, the accused cannot be convicted. In the course of the trial, prosecution made a prayer to subpoena the landlady of PW1 whom prosecution claim was present and witnessed the said incident. The landlady who would have been a material and preferred witness was not called since prosecution abandoned that course for reasons best known to it alone. As it stands there is no proof that the accused issued out a threat of death to complainant in the light of contradictory testimonies and insufficient evidence. In the case of Behome Vs The Republic [1979] GLR 112-128 the learned trial judge observed 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 or, as the case may be, with harm, and that where the appellant is, therefore, charged with threat of harm the threat must be of harm and of nothing else”. Page 5 of 7 Since there is no evidence of a threat which is the first essential ingredient of this offence, the second ingredient which is the intention doesn’t also arise. In conclusion, Akamba JSC in the unreported case of Ekow Russel Vs. The Republic, suit No. J3/5/2014 dated 13th July, 2016 stated the following as one of the basic principles of criminal justice: “... our criminal justice system is premised upon the principle that it is better for ninety-nine criminals to go away scot free, than for one innocent person to be wrongly incarcerated and jailed”. On this note, I find that prosecution failed to discharge the burden of proving the guilt of accused beyond reasonable doubt. Accordingly, I hereby acquit and discharge accused on the charge. SGD..... H/ W LINDA ENYONAM NYAHE (ESQ.) MAGISTRATE Page 6 of 7

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