

GHANA / JUDGMENT

REPUBLIC VRS TORGBADZA (CC3/02/2023) [2024] GHADC 347 (30 April 2024)

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1 IN THE DISTRICT COURT HELD AT ADIDOME ON TUESDAY THE 30TH DAY OF APRIL, 2024. BEFORE HER WORSHIP MOLLY PORTIA ANAFO-SALIA (MRS) THE DISTRICT MAGISTRATE THE REPUBLIC VRS. FRAZER KOFI TORGBADZA CC3/02/2023 1 . ACCUSED PERSON PRESENT. 2 . CHIEF INSPECTOR EMMANUEL DZAKU FOR THE REPUBLIC PRESENT. J U D G M E N T On the 4th day of April, 2023 the Accused Person herein was arraigned in this court and charged with the offence of Threat of Death Contrary to Section 75 of the Criminal Offences Act, 1960 (Act 29). The Accused Person pleaded NOT GUILTY and was thereafter admitted to bail. The brief facts of the case presented by the Prosecution are that, Complainant, Amade Forgive and Accused Person are farmers and reside at Mafi-Zongo. On the 24th day of December, 2022 about 1500 hours, the Accused Person went behind Complainant's house and was cutting her trees which she planted on her boundary. Complainant who was not comfortable with his action went to him to find out why he was felling her trees. This did not go down well with the Accused person so he chased the Complainant with his cutlass and threatened to cause harm to her. The Complainant for fear of her took to her heels 2 and shouted for help. Her sister one Dzifa Amade and Complainant's husband, Samson Ketse heard Complainant's shout for help and rushed to the scene. The Accused Person after he could not reach the Complainant to harm her, rained insults on the Complainant and took all the trees he cut into firewood to his house. The complainant reported the case to the Mafi-Kumase Police station where Accused person was arrested and cautioned to that effect. After investigation, Accused Person was charged with the Offence per the charge sheet and put before this honourble court. In criminal trials, the burden of proof has been specified in the 1992 Constitution, Article 19 (2) which proved that: "19 (2) A person charged with a criminal offence shall – (c) be presumed to be innocent until he is proved or has pleaded guilty." The onus of proving the guilt of the accused person is on the Prosecution as one who initiates criminal prosecution in court on the premise that the accused person committed an offence. The principle that the Prosecution has the burden of proving the guilt of the accused person is codified in some sections of the Evidence Act, 1975 (NRCD 323). The sections include the following: "Section 11 (1): For the purposes of this Decree, the burden of producing evidence means the obligation of a party to produce sufficient evidence to avoid a ruling against him on

that issue.

- (2) 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 could find the existence of the fact beyond a reasonable doubt. 3
- (3) In a criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt". "15 (1): Unless and until it is shifted, the party claiming that a Person is guilty of crime or wrong doing has the burden of persuasion on that issue". The combined effects of Section 11 (2) and 15 (1) and article 19 (2) of the 1992 Constitution are that at the beginning of the trial, the burden of persuasion and the burden of producing evidence on the crime or offence charged lie on the prosecution. The standard burden of proof in criminal trial is proof beyond reasonable doubt. This is codified by the Evidence Act, 1975 (NRCD 323) Sections 11 (2), 13 (1) and 22. The standard required of the prosecution to prove the case beyond reasonable doubt has been explained in some case laws. Denning J. (as he then was) in the case of *Miller v. Minister of Pensions* [1947] 2 ALL ER 372 at 373 held that: "It need not reach certainty but it will carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice." Further that: "If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt." 4 Again, in *Oteng v. The State* [1966] GLR 352 at 354, the Supreme Court took the view that: "One significant aspect in which our criminal Law differs from our civil law is that while in civil law a Plaintiff may win on a balance of probabilities, in a criminal case the prosecution cannot obtain a conviction upon mere probabilities." It further stated at page 355 that: "The citizen too is entitled to protection against the state and that our law is that a person accused of a crime is presumed to be innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubt." From the provision, the prosecution has no choice than to produce sufficient evidence such that the guilt of the accused person is proved beyond reasonable doubt to secure his conviction. They filed witness statements for four to testify, First Prosecution Witness, Amade Forgive, Second Prosecution Witness, Sampson Quashie Ketse, Third Prosecution Witness, Eunice Dzifa Amade and Forth Prosecution Witness, G/L/Cpl Evans Anku and filed some Exhibits in support of their case. The cautioned and charged statements of the accused person, photograph of First Prosecution Witness's trees which accused person cut into firewood and took to his house, photograph of scene of crime, photograph of accused person's cutlass which he used to chase first prosecution witness. These were admitted and marked as Exhibit A, B, C, D and E respectively. Equally, the accused person filed his witness statement and called two witnesses who gave oral evidence. First Defence Witness Sherita Torgbadza and Kwao Ganu. He filed an Exhibit, a photograph

depicting palm trees as Exhibit 'T'. 5 It is the case of First Prosecution Witness, Amade Forgive that on that fateful day, 14th December, 2022 about 1500 hours she was at home and heard someone cutting trees behind her house. She went there and saw accused person felling that the trees first prosecution witness planted on her boundary and also cutting into firewood other trees which first prosecution witness fell by herself. That she approached the accused person as to why he was felling her trees and he said "am I not the one saying I am strong" and chased her with the cutlass in his possession and threatened to cause harm to her and said "whatever I am looking for, I shall get it. "Further that she took to her heels and shouted for help where her sister Eunice Dzifa Amade as well as her husband, Sampson Ketse rushed to place. Accused person rained insults on her after his plan was aborted and she left for her house. She reported the issue to the Mafi-Kumase Police and assisted them effect accused person's arrest. Second Prosecution Witness, Sampson Quarshie Ketse in his evidence stated that on the 14th of December, 2022 about 1500 hours, he was with his wife, First Prosecution Witness in the room and they heard someone cutting something behind PW1's house. First Prosecution Witness went to find out what was going on there and a few minutes. Later, he heard shouts calling his name and came out to meet First Prosecution Witness and the accused person exchanging words with a cutlass in accused person's possession. That he met First Prosecution Witness's sister, Eunice Dzifa Amade standing in between them, so he left while they were still exchanging words. Third Prosecution Witness, Eunice Dzifa Amade stated that on that fateful day, she was taking someone to her and she heard First Prosecution Witness shouting that she is dead continuously. She quickly rushed there and saw first prosecution witness standing near 6 her house asking the accused person why he wants to slash her with his cutlass. That she questioned accused person but he said nothing and was only insulting First Prosecution Witness. Second Prosecution Witness also rushed there. That she saw the accused person fell PW1's boundary trees into firewood and that generated the misunderstanding. Forth Prosecution Witness, the Investigator, G/L/CPL Evans Anku evidence was to the effect that, First Prosecution Witness lodged a complaint against the accused person on the 27th of December, 2022 and same referred to him for investigation. That he obtained statements from First Prosecution Witness, Second Prosecution Witness and Third Prosecution Witness and proceeded to effect the arrest of the accused person. He obtained Investigation Cautioned Statement from him and instructed him to produce the cutlass used to fell the trees and he complied. He visited the scene of crime as part of his investigation and was later instructed to charge the accused person. Forth Prosecution Witness tendered in evidence all Exhibits in his possession. They were all cross examined after their evidence by the accused person. This closed Prosecution's case. The accused person opened his defence and called two witnesses, tendered in evidence a photograph of his coconut trees as Exhibit 'T'. It is the accused person's case that, he cultivated coconut trees on a portion of their family land which he has been harvesting for some time now as a result of its maturity. That some trees have grown among the coconut trees and he has since been harvesting them for firewood without any hindrance. 7 According to him, he shares a common boundary with first prosecution witness on one side and that her house is near his farm. That on the 14th of December, 2022 at about 1500 hours,

he went to the said farm with his children to harvest some firewood for their use.

Surprisingly, first prosecution witness came and stood at a distance and asked him to stop cutting the trees. When he enquired, first prosecution witness could not give any tangible reason and was only shouting at the top of her voice and insulting him. Second Prosecution Witness came out of the room but never said anything and went away. Third Prosecution Witness also came around but stood at a distance and did not approach them. First Defence Witness, Serato Sherita stated that it was in December 2023 at about 1500 hours, when she and her other siblings were with accused person, their father who asked that they followed him to fetch firewood. It was there that First Prosecution Witness came and asked accused person to stop cutting the wood but accused person did not stop. That accused person never chased first prosecution witness with any cutlass. Second Defence Witness, Kwao Ganu stated that accused person planted coconut trees on Adigbli's farmland. That a teacher called Saabi came and was granted a plot to build his house after he made a request. Later, he left the place to his hometown and has since passed on. There were some trees that germinated on the land where accused person planted the coconut trees. Accused person went to cut those trees and it generated into a quarrel. The land granted to Teacher Saabi was Adigbli's land. Prosecution cross examined them after their evidence and this closed accused person's case. The legal issue to be determined. 8

- (1) whether or not the Threat of Death was issued to First Prosecution Witness with the intention of putting the fear of death in her? The accused person was charged with the offence of Threat of Death Contrary to Section 75 of the Criminal Offences Act, 1960 (Act 29). Section 75 states: "A person who threatens any other person with death, with intent to put that person in fear of death, commits a second degree felony." In *Behome v. The Republic* [1979] GLR 112, the Court asserted that the actus reus in the matter where a threat of death had been issued would involve the expectation of death which the accused person had successfully created in the mind of the complainant. Following this, the mens rea comprises the Complainant coming to the realization that the accused person will up the threat with action that would result in the event of the complainant's death. As held in *Behome v. The Republic* supra, the Prosecution was to prove essential ingredients in the offence of Threat of Death as follows:
 - (1) the actus which would consist in the expectation of death which the accused person creates in the mind of the complainant; and
 - (2) the mens rea which consist in the realization by the accused person that the threat would produce that expectation. Following this, subsection 3 of Section 17 of Act 29 tells us that it does not matter whether the threat will even been carried out by the accused person. This shows that the law looks to the effect of the threat on the victim than it focuses on the intention and consequent actions of the accused person. 9 The accused person went to his family land where he has cultivated coconut trees on a portion of the land. They are now matured and he has been harvesting them for some time now. That some trees grew among the coconut trees and has been harvesting same for firewood without any hindrance from

anybody including the complainant whose house is near the farm until that fateful day, when he went to the said farm with his children to harvest some firewood and the incident occurred. That the complainant came out of her house, stood at a distance and asked him not to cut the trees. Now linking this to accused person's Cautioned Statement, Exhibit 'A' obtained on the 29th of December, 2022: "About three weeks ago, I realized that someone was cutting trees among my coconut trees. Some days after, I went to the place and was cutting the trees into firewood when Forgive Amade came and questioned me as to why I was cutting the trees. I told her the trees belong to me. It became a quarrel among us. I did not chase her with my cutlass." The accused person on the 21st of November, 2023 filed his witness statement as his evidence in chief and nowhere in that statement did he state that a quarrel ensued between them. In his cautioned statement too, he did not state that he went to the farm on that day with two (2) of his children. Meanwhile, First Defence Witness, Sevato Sherita testified that he was present at the farm and witnessed the incident, denied that, the accused person, his father never chased first prosecution witness with any cutlass. Second Defence Witness, Kwao Ganu stated that the land was granted to one teacher Saabi who made a request to them and they gave Adigbli's land to him which accused person has planted coconut trees on. This assertion that First Defence Witness was at the scene was denied by First Prosecution Witness during cross examination, that when she came out from her room to stop him from his act, accused person was 10 there alone was there alone, none of the children were at the scene. Second Prosecution Witness, equally stated that when she heard first Prosecution Witness shout and she came out, she saw accused person holding a cutlass which he used to chase first prosecution witness, she never saw anybody at the scene except the accused person. The contradictions in Exhibit 'A' and accused person's evidence on oath in court could not be explained better for the court to believe the accused person that indeed he was at the farm with First Defence Witness and her sibling and a quarrel ensued between them. This is what ensued under cross examination with the prosecution.

Q: On the 14th December, 2022 you threatened the life of First Prosecution Witness with a cutlass, is that correct? A: It is not correct. Q: I am suggesting to you that you chased her with the cutlass because she stopped you from cutting down her tree which she used as a boundary A: It is not true. She is not having any land there Q: Are you sure of what you have just said? A: Yes I am. Q: In paragraph 8 of your own statement, you stated that the Complainant's house is near my farm land and we share a common boundary on one side, is that correct? A: It is not true because if she has a house near my farm, the plot does not belong to her. Q: So what common boundary did you share with her in your paragraph 8 of your witness statement? 11 A: We do not share any boundary because she has no plot there. Q: I am suggesting to you that she has a portion of land where she has grown trees as boundary A: It is not correct. Flowing from this, accused person departed from his own evidence reference to paragraph 8 of his sworn witness statement. Further: Q: In paragraph 7 of your witness statement you stated that you have been cutting your own trees and the coconut trees without any hindrance, is that correct? A: It is true. Q: I put it to you that nobody disturbed you on your own land, including First Prosecution Witness. A: She has no plot. So she cannot question me. Q: I am putting it to you that, that day you trespassed onto

her land to cut the tree? A: It is not true. Q: In paragraph 11 you stated that when you were cutting the wood, she came out, is that correct? A: Yes it is. Q: That at a distance she started questioning you, is that correct? A: Yes but the tree is not for her. Q: In paragraph 13 you stated that Kechi Sampson later came to the scene, First Prosecution Witness's husband, is that correct? A: Yes it is. 12 Q: In paragraph 14, that first prosecution witness's sister Dzifa Amade also came to the scene, later on? A: Yes it is. Q: I am suggesting to you that these two (2) people came there after they heard the screams of first prosecution witness A: It is not true. Q: So if it is not true, why did they come there? A: They came there to spy. That first prosecution witness is claiming ownership of the land. Q: I am suggesting to you that they came there to rescue her when you chased her with a cutlass? A: I am telling the truth. Q: Look at Exhibit 'E', the photograph of the cutlass, I am suggesting to you that, that was the cutlass you used in chasing first prosecution witness? A: It is not true. Q: Look at Exhibit 'C', that photograph depicts PW1's wood which you cut. It belongs to first prosecution witness that is why she came to stop you A: It is not for her. Q: Look at Exhibit 'T', your own land which First Prosecution Witness is not claiming? A: It is where I cut the tree. It is for me. Q: I suggest to you that the land where you exhibited is different from First Prosecution Witness's land 13 A: It is not true. She has no land. Q: You have a witness statement of Sherita Torgbadza? A: Yes I have. Q: I put it to you she was not at the scene A: She was there. From the dialogue, Exhibit 'T' and Exhibit 'C' are different. In Exhibit 'T' there is no sign that indeed the trees were cut from there though the farm may be for the accused person. Exhibit 'E', the cutlass and the object used in the commission of crime and which same was retrieved from accused person belongs to the accused person. The accused person's assertion that First Prosecution Witness's husband and her sister, second prosecution witness came out of their rooms to spy cannot be true, especially when their attention was drawn as a result of the shouts from first prosecution witness. Indeed, the cutlass seen in the possession of the accused person with shouts from first prosecution witness puts the fear of death in First Prosecution Witness. It is a notorious fact that the use of cutlass on a person can cause death. So holding a cutlass not for cutting tress but used in chasing first prosecution witness as stated poses imminent danger to life. The first ingredient of the offence of threat of death is that there must be evidence of threat to kill. The second ingredient of the offence is the intent to put the victim in fear of death. All these were exhibited and proved. First Prosecution Witness feared death as the accused person chased her with the cutlass and shouted for people to come to her aid. All this while, the accused person's children never said anything seeing their father chase first prosecution witness with the cutlass, that is why the court doubt their presence at the scene especially when they were never invited to the scene of crime when 14 the investigator visited the scene with the parties and not even at the Police Station to offer a statement in defence of the accused person, their father. This pieces of evidence strengthen the presence of an intention of Threat of Death. This therefore creates doubt in the mind of the court. Accused person's behaviour of chasing first prosecution witness with the cutlass is not an acceptable behaviour and conduct. The accused person failed to explain to the court the contradictions in his evidence on oath and his cautioned statement, Exhibit 'A' and answers under cross examination. This makes him

culpable as evidence on record support the offence preferred against him. The Law is that the prosecution must prove all the ingredients of the offence charged in accordance with the standard burden of proof, that is to say the prosecution must establish a prima facie case and the burden of proof would be shifted to accused person to open his defence and in so doing he may run a risk of non-production of evidence and or non-persuasion to the required degree of belief else he may be convicted of the offence. The accused person must give evidence if prima facie case is established else he may be convicted and if he opens his defence the court is required to satisfy itself that the explanation of the accused person is either acceptable or not. If it is acceptable the accused person should be acquitted and if it is not acceptable the court should probe further to see if it is reasonably probable, the accused person should be acquitted but if it is not and the court is satisfied that in considering the entire evidence on record the accused is guilty of the offence the court must convict him”, the case of the Republic v. Uyanwume [2013] 58 GMJ 162. On the strength of the above case, the evidence adduced by the accused person could not cast doubt on the case of the prosecution thereby 15 inviting the court to rule in his favour. The accused person’s evidence not considered reasonably probable to warrant an acquittal. In the prevailing circumstances, the court finds as a fact that prosecution has been able to discharge the standard burden of proof beyond reasonable doubt as enshrined in statute and case laws, the Evidence Act, 1975 (NRCD 323) Sections 11 (2) and 13 (1) supra. Accused person is hereby GUILTY of the offence of Threat of Death contrary to Section 75 of the Criminal Offences Act, 1960 (Act 29). Accordingly, accused person is CONVICTED. MITIGATION Accused person pleaded for leniency. SENTENCE The court considered accused person’s plea in mitigation, age, a breadwinner and a first offender, accused person is sentenced to a fine of hundred penalty units, in default 12 months imprisonment. In addition, accused person shall sign a bond to be of good behaviour for 6 months in default 12 months imprisonment. H/W MOLLY PORTIA ANAFO-SALIA (MRS) (SGD) (DISTRICT MAGISTRATE) 30TH APRIL, 2024

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