

GHANA / JUDGMENT

REPUBLIC VRS AGORDO (CC3/06/2023) [2024] GHADC 352 (18 June 2024)

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1 IN THE DISTRICT COURT HELD AT ADIDOME ON WEDNESDAY THE 18TH DAY OF JUNE, 2024. BEFORE HER WORSHIP MOLLY PORTIA ANAFO-SALIA (MRS) THE DISTRICT MAGISTRATE CC3/06/2023 THE REPUBLIC VRS. OBED AGORDO PARTIES 1 . ACCUSED PERSON PRESENT. 2 . DETECTIVE CHIEF INSPECTOR ROBERT FOLI FOR THE REPUBLIC PRESENT. J U D G M E N T

The accused person was arraigned in court and charged with the offence of Threat of Death and Assault Contrary to Section 75 and 84 of the Criminal Offences Act, 1960 (Act 29). The accused person pleaded NOT GUILTY and was admitted to bail thereafter. The brief facts as recounted by Prosecution are that: Complainant Akpene Morfoe and accused person Obed Agordo are farmers and native of Mafi-Odumase. On the 23rd day of April 2023 about 2200 hours, Complainant overheard the accused person telling one Agbesi Ahorne that the complainant stole akple and soup from a funeral ceremony at Alavanyo. On the 25th day of April, 2023 about 2100 hours, Complainant called her father on phone to report the conduct of the accused person to him and in the course of their conversation the 2 accused person overheard her and without any provocation the accused person came to her compound with a BB cartridge and placed same between her breast and threatened in words to wit: “If you don’t kill me then I will kill you”. Complainant then remove the BB cartridge from her breast to place it back into the accused person’s pocket but he became furious and gave her a slap. After the incident the complainant called at the Police station with the BB cartridge and lodged a complaint and she was issued with a police medical form to attend hospital for treatment which she did and returned same duly endorsed by a medical officer. Several attempts made to arrest the accused did not yield any result and several invitations made by Police through their headman, the honourable assembly member as well as phone calls, to the accused person himself all fell on death ears. On the 10th day of August 2023, Police served an accused summons from this honourable court and same was served on the accused to appear before this court. In all criminal cases there is always the burden of establishing the guilt of the accused person and that burden is always on the prosecution. Failure to discharge that burden should lead to the acquittal of the accused person. See *Donkor v. The State* [1964] GLR 598 and the Evidence Act, 1975 (NRCD 323) Section 15 (1): “unless and until it is shifted, the party claiming that a person is guilty of crime or wrongdoing has the burden of persuasion on that issue.” In *Yeboah v. The Republic* [1972] 2 GLR 281, it was held: “the guilt of the accused person must be proved with that degree of certainty required by the law”. 3 It should

be noted that the proof required of the Prosecution in a criminal case is said to be proof beyond a reasonable doubt. Section 11 (2) of the Evidence Act, 1975 (NRCD 323): “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 of the fact beyond a reasonable doubt. Again, Section 13 (1) of the same Act states: “In any civil or criminal action the burden of persuasion as to the commission which is directly in issue requires proof beyond a reasonable doubt. The Prosecution assumed this mandate to prove the guilt of the accused person to secure a conviction, filed three witness statements First Prosecution Witness, Morfoe Akpene, Second Prosecution Witness Zigi Dovi and Third Prosecution Witness, Detective Inspector Bright Quarshie: They tendered in evidence a photograph of the cartridge and Medical Report of first prosecution witness and same admitted and marked as Exhibit A and B. The accused person opened his defence after a prima facie case has been established. He filed four witness statements, DW1, Agordo Michael Mawuena, DW2, Wisdom Agbenu Azanu, DW3, Agbesi Ahorney and DW4, Venunye Dzadza. Accused person did not tender in evidence any Exhibit. First Prosecution Witness, Morfoe Akpene stated in her evidence that on the 20th day of April, 2023 about 2200 hours, she heard the accused person telling one Agbesi Ahorne that she stole soup and Akple at a funeral in Alavanyo. This she informed her father on phone which accused person heard his name and came to their house. He threatened that: “if I don’t kill him, he will kill me” and placed BB 4 cartridge in between her breast without her consent. That she removed same and placed it back in his pocket and accused person slapped her. In the process the cartridge fell down. Second Prosecution Witness picked it and handed it over to the police. She was issued with Medical Form to seek medical care and same complied and returned to the police. 2nd Prosecution Witness, Zigi Dovi evidence was to the effect that, 1st prosecution witness called her father on phone to inform him of the falsehood she heard from accused person that she stole soup and akple and accused person heard it. That accused person came to their house and promised something for PW1. He returned with BB cartridge and placed same in between PW1’s breast and slapped her. People came around and took accused person away. 3rd Prosecution Witness, Detective Inspector Bright Quarshie, the Investigator stated in his evidence that on 26th day of April, 2023 about 1100 hours, 1st prosecution witness came with a BB cartridge to the Police and reported a case of Threat of Death against the accused person and it was referred to him for investigation. He obtained statements from 1st and 2nd prosecution witnesses and proceeded to effect the arrest of the accused person. He met his absence and a message delivered to him to report but he failed to avail himself. Eventually he was brought to court on accused summons. The accused person cross examined all prosecution witnesses and this closed their case. The accused person opened his defence and denied any knowledge of the charges levelled against him. 5 DW1, Agordo Michael Amawuena in his evidence stated that there was misunderstanding between PW1 and accused person and later they were separated. That what caused the misunderstanding had to do with land dispute. DW2, Wisdom Agbenu Azunu stated that he never witnessed the case. DW3, Agbesi Ahorney evidence was on how he had issues with 1st and 2nd Prosecution Witnesses. That though he witnessed the incident but accused person did no wrong and never offended 1st Prosecution Witness. The Prosecution cross examined them after their evidence and this closed accused person’s case. The accused person was arraigned and

charged with the offence of Threat of Death and Assault contrary to Section 75 and 84 of the Criminal Offences Act, 1960 (Act 29). Section 75: "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. The Prosecution was to prove the essential elements in the offence of Threat of Death as held in *Behome v. The Republic* supra as follows. 6 (1) the actus reus 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. The crux of the matter is about PW1 being accused of stealing akple and soup from a funeral. PW1 claims, she heard accused person telling one Agbesi Ahorney and confronted the said Agbesi but not the accused person and same confirmed by Agbesi Ahorney. A week later, she received a phone call from her father and in the conversation, she told her father about the falsehood. Accused person heard his name mentioned and there, he went for the BB cartridge and placed same in between the breast of PW1 without her consent. The accused person denied any knowledge of the offence proffered against him. DW2, Agbesi Ahorney who should have been a material witness for the prosecution rather testified for the accused person but stated that what he witnessed, accused person did no wrong. Accused person indeed did no wrong yet he sent a message through 2nd prosecution witness, Zigi Dovi to 1st Prosecution Witness that he was going to bring something to be giving to 1st prosecution witness and in 7 no time came with the BB cartridge, Exhibit A and placed same in between PW1's breast. It is placing the BB cartridge in PW1's breast that accused person has been charged with the offence of Threat of Death as well as issuing those words that: "If you don't kill me, then I will kill you." The question then is, will a cartridge cause death as the first ingredient of the offence of threat of death is that there must be evidence of threat to kill issued by the accused person against the life of the victim. A cartridge is not a weapon. A weapon is a thing designed or used for inflicting bodily harm or physical damage. Something (such as a club, knife or gun used to injure, defeat or destroy, a means of contending against another, Merriam-Webster, Com Dictionary. Legal Definition of weapon: "A knife, bludgeon or any other weapon, device, instrument, material, or substance whether animate or inanimate, that, in the manner it is used, or intended to be used, is capable of producing death or serious bodily injury:" The mere sight of any of these objects above creates fear and apprehension. A cartridge according to Cambridge Dictionary is a small tube containing an explosive substance and often a bullet for use in a gun. It is a fact that cartridge alone cannot course death unless it is used in a gun. It can course fear of imminent harm but not death. Again, the threatening words which was stated in PW2's witness statement could put fear of death in 1st prosecution witness. The issuance of those threatening words: "If

you don't kill me, I will kill you" while placing the BB cartridge in PW1's breast is a manifestation of intent to put fear of death in PW1. The determining factor as stated in Section 17 (3) of Act 29 is whether the victim of the crime feared death when the threat was communicated to her. All was exhibited and proved. Prosecution therefore has been able to establish the two main ingredients of threat of death; the utterance or conveyance by the accused person was a threat of death and the accused person has the intent to threaten as espoused in Canadian Supreme Court, see the case of Republic v. McCraw [1991] 3 SC R 72 and Republic v. O'Brien [2013] 1 SC R 7. On count 2, Accused person was charged with the offence of Assault contrary to Section 84 of the Criminal Offences Act, 1960 (Act 29) Section 84: "A person who unlawfully assaults another person commits a misdemeanour". From the facts presented by the Prosecution, the charge of Assault against the accused person is that of Assault and Battery. Section 85 (1) (a) of the Criminal Offences Act, 1960 (Act 29) states: "For the purposes of Section 84, "assault" includes

- (a) assault and battery Section 85 (1) of the Criminal Offences Act, 1960 (Act 29) defines Assault and Battery as follows: "A person makes an assault and battery on another person if, without the other person's consent, and with the intention of causing harm, pain or fear, or annoyance to the other person, or of exciting the other person, forcibly touches the other person." From the provision above, the Prosecution must prove beyond a reasonable doubt each of these 3 elements.
 - 1. Intent to cause harm or fear
 - 2. Fear or apprehension of imminent harm
 - 3. Actual or attempted physical contact: 9 On the first element: Intent to cause harm or fear. It is on record that after the accused person placed the BB cartridge in between PW1's breast, PW1 removed it and put it in accused person's pocket and accused person became angry and slapped PW1. This was witnessed by PW2 and some people who came and took accused person away. This singular act of the accused person caused harm and fear in PW1 and it was intentional. The accused person failed to find out from 1st prosecution witness why he informed the father that he (accused person) said she (PW1) stole akple and soup at a funeral in Alavanyo. He least expected that 1st prosecution witness will hear it as initially he told only DW2, Agbesi Ahorney but 1st prosecution witness heard it. Accused person therefore intended the consequences of his action, Accused person desired to harm her or caused PW1 to be afraid. Secondly, the Prosecution must prove that accused person's action or the assault puts fear or measurable apprehension of imminent in PW1. After the removal of the BB cartridge from her breast and she held accused person's attire to put back the BB cartridge in accused person's pocket, genuinely believed that she was about to be physically harmed considering the acrimony between the two of them. The evidence of all the accused person's witnesses, established that there are issues of farmlands, alleged murder of an Okada rider by accused person etc. Thirdly, that there was actual or attempted physical contact. Physical contact can take many forms. It may include harmful and offensive touching or severe acts that cause bodily harm or injury. Even a slightest touch can constitute assault if it is done with the intent to cause fear or harm. In this instant, the touch

was actual touch on PW1's face as accused person slapped PW1 which resulted in Exhibit 'B', the Medical Report. It read: "on examination is a woman who is not ill-looking, not in any obvious pain nor distress. Vitals read normal. Right tragal tenderness, TM intact, Rhinoscopy shows no abnormality. She was managed on Out Patient Department (OPD) base on account of Otagia 20 alleged Assault". With this overwhelming evidence, there is nowhere that could justify the offence of Assault under Section 31 of Act 29. PW1 did not consent to the assault makes the assault unlawful as stated in the case of *Faulkner v. Tolhot* [1981] 3 ALL ER 440 CA, Lane CJ held: "Assault is an intentional touching of another person without consent of that person and without lawful exercise. It need not necessarily be hostile, or made aggressive, as some of the cases seem to indicate". The accused person refused to avail himself at the police station as required and had to be summoned. The accused person was brought to court by Criminal Summons. It is one of the recognized methods of instituting criminal proceedings, section 60 (1) of Act 30. It states: "Subject to Article 88 of the Constitution, criminal proceedings may be instituted before a District Court,

- (a) by making a complaint and applying for the issue of a warrant or summons in the manner prescribed under section 61, or (b) by bringing a person arrested without a warrant before the court on a charge contained in a charge sheet specifying 11
- (i) the name and occupation of the person charged, (ii) the charge against that person and (iii) the time when and the place where the offence is alleged to have been committed. Criminal summons therefore dispenses off statements required to be taken at the police station which includes the Investigation Cautioned Statement, charged statement inter alia. Hence the court could consider only accused person's evidence on oath at the trial and that of his witnesses to evaluate his total evidence. The principle of the Prosecution having a duty to prove the guilt of an accused person beyond reasonable doubt, was given serious attention by Amissah JA, sitting as an additional High Court Judge in the case of *Darko v. The Republic* [1968] GLR 203 holding 2 as: "(2) The principle that an accused person should be acquitted if his defence was believed or if it was reasonably probable did not call for uniformity of expression by Judges or the use of any particular form of words: The crucial question relevant to the point in any ordinary criminal trial would turn upon whether the judge or tribunal of fact upon consideration of the whole evidence found that the case of the prosecution had been proved beyond reasonable doubt. Where a court convicted only because it took the view that the accused person's defence was not to be believed this would be equivalent to shifting the burden of proof on to the defence. It would in effect amount to saying that he was entitled to be acquitted only if he proved his defence to the satisfaction of the court. By implication the court would then have relieved the prosecution of its duty to prove its case beyond reasonable doubt which it was not entitled to do. A court could not therefore stop short 12 at saying that it was convicting the accused person because it did not believe its story. It must go further and show whether his story did not create a reasonable doubt either". The accused person's defence could not cast a doubt on prosecution's case. His defence too was not reasonably probable to satisfy the court for acquittal. His actions and

conduct has been linked to the offence, Threat of Death and Assault. In my view the prosecution led sufficient evidence to prove the guilt of the accused person. I therefore find as a fact that, the accused person issued those threatening words, "If you don't kill me, I will kill you" to put 1st prosecution witness in the fear of death and also assaulted 1st prosecution witness by slapping her, it was unlawful and intentional. The accused person therefore cannot escape criminal liability. Accused person is hereby found GUILTY of the offence of Threat of Death and Assault contrary to Section 75 and 84 of the Criminal Offences Act, 1960 (Act 29) and he is accordingly CONVICTED. MITIGATION Accused person pleaded for leniency. SENTENCE The court considered the plea in mitigation, the accused person not known in the law and shall consider an option of a fine. Accused person is sentenced to a fine of 200 units, in default 18 months imprisonment on Count 1. On Count 2 he is sentenced to a fine of 100 penalty units, in default 12 months imprisonment. Sentences to run concurrent. 13 H/W MOLLY PORTIA ANAFO-SALIA (MRS) (SGD) (DISTRICT MAGISTRATE) 18TH JUNE, 2024

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