

GHANA / JUDGMENT

REPUBLIC VRS ADELA (B3/23/2023) [2024] GHADC 309 (25 March 2024)

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IN THE DISTRICT COURT HELD AT SEGE ON MONDAY THE 25TH DAY OF MARCH, 2024.
BEFORE HER WORSHIP VICTORIA AKUA GHANSAH ESQ. AS MAGISTRATE. CASE NO.
B3/23/2023 THE REPUBLIC VRS DOE AKWETAY ADELA

JUDGMENT

This was a part heard case which the Court adopted for continuation after prosecution had close their case. The accused person herein has been arraigned before this Court on the 22/05/23 charged with the offence of threat of Harm contrary to section 74 of the Criminal & Other Offences Act, 1960 (Act 29). Accused pleaded Not Guilty to all the charge. With a plea of Not Guilty the accused has in effect disputed the offense charged and it's the duty of the court to determine whether the prosecution has succeeded by their evidence in proving beyond reasonable doubt the offences in which the accused has been charged 1 BRIEF FACTS OF THE CASE The brief facts of the case were that Complainant and the Accused in this case are farmers and both resides at Otenkope near Dawa. On 26/04 /23 at about 7.30am, the Complainant reached his farm at Otenkope to inspect whether it rained but there was no sign of the rain. The complainant on his return joined a witness in this case at adjoining farmland to assist transplanting tomatoes seedlings. Shortly, the Accused arrived at the said farmland on a motor bike in an offensive manner. The accused then alighted and confronted the complainant for allegedly engaging a wheel loader operator to win sand on his father's land but the complainant did not utter a word consequently the accused threatened the complainant to wit "I mean you already, I will deal with you at all cost after which he sped off on his motor bike. Later, complainant and accused made counter reports at the Dawa Police station for investigations. During investigations their statements were collected where upon both parties were advised to produce witnesses to substantiate their respective cases. However, witnesses from the complainant corroborated the assertion against the Accused person who could not produce any witness. Subsequently, the Accused was cautioned to that effect. Accused told Police that he only confronted the Complainant for questioning. After investigation, the accused was charged before this court. In his cautioned statement accused stated that he did not threaten the complainant but only confronted the Complainant for questioning but not threatened to harm him. After investigation accused was charged with the offence stated on the charge sheet. In proving its case, the

Prosecution called four (4) witnesses including the Investigator. PW1 (TETTEH KWEITSU DANIEL@ AWUDU) A FARMER 2 In essence PW1 testified to the effect that on the 2/04/23 day in question, he went to help Raphael on the farm. While on the farm they saw a motorbike ridden by the Accused pass by on the other side of the farm. Later we saw a grader machine on the other side of the town. Accused rode the motor bike to where they were working. He started insulting me to wit "your mother's vagina", "does your father Tetteh Kumi has a parcel of land here? "Don't you know that I have meanted you for a long time now? The Accused came closer and continued to insult me. Raphael shouted at Accused to leave the farm. It was the case of complainant that they were 12 people on the farm on the said day. At the end of the story of PW1 he was cross examined by Accused and duly discharged. PW2 RAPHEAL KWETHEY A FARMER PW2 corroborated the story of PW1 that the Accused uttered the words "I have meanted you for a long time. I will teach you a lesson" PW2 was also cross examined and discharged at the close of his case. PW3 is Manasseh Tetteh in his evidence in chief added that the Accused came to the farm and issued the following words "I have meanted you, I would show you something. I would deal with you, I have been looking for you for so long but the complainant did not respond. PW2 hooted at Accused and he left. PW4 is NO. 56011G/CONSTABLE ERNEST OWUSU ANSAH PW4 evidence was to the effect that he was on duty on 26th of April, 2023 when both the Complainant and Accused reported cases of threat of Harm which was referred to him for investigation. They were both requested to produce their evidence for further interrogation. The accused could not produce any witness or evidence to buttress his case. 3 He was therefore re-arrested and charged with the offence. After the close of the case of PW4 accused did not cross examine him. PW4 was therefore discharged. The Prosecution brought its case to a close. Accused was called to open his defence. BY ACCUSED In opening his defense, after he has cross examined all five (5) prosecution witnesses, Accused maintained his plea of Not Guilty and his Counsel filed witness statement for Accused on 20/2/24. He gave evidence all supporting his plea of Not Guilty in court. In his witness statement Accused contended that; On the day in question he came to his farm at Otenkope, Dawa to plant tomatoes and saw a Wheel Loader winning sand at my late father's farm land of which he was not privy to it. He went to the scene and saw one Awudu (PW1) alighting from the wheel loader and he passed by him and went to the operator. The Operator who told him it was one Ibrahim and PW1 who engaged his services for the sand winning. He decided to question PW1 but whilst getting closer to him Accused met Tetteyko, Mannaseh and two others who were transplanting tomatoes seedlings on the farm. PW1 refused to respond when he questioned him about the sand winning and Tetteyko started hooting at him. Accused added that he reported the matter to the Police. The Police advised him to take a civil action and also bring his witness in the criminal matter. It was the case of Accused that he was there alone so did not have any witness The legal issue that fall for determination after the end of the trial are as follows: Whether or not the acts of the accused person amounted to threat of harm. The cardinal rule in all criminal proceedings is that the burden of establishing the guilt of the accused person is on the prosecution; and the standard of proof required by the prosecution should be proof beyond reasonable doubt. 4 The Evidence Act, 1975 (NRCD 323), formulates this proposition under sections 11(2) as follows "In criminal action, the burden of producing evidence when it is on the prosecution as to any facts which is essential to guilt, requires the prosecution to produce

sufficient evidence on all the evidence a reasonable mind could find the existence of facts beyond reasonable doubt. In this instant case the ingredient of the offence for which prosecution is expected to prove per the above yardstick would be considered as follows: Whether or not the acts of the Accused person amounted to threat of harm to the complainant. Section 74 of Act 29 provides as follows: “A person who threatens any other person with unlawful harm with intent to put that person in fear of unlawful harm any other person commits a misdemeanor.” Before I determine the scope of the offence of threat of harm, I must first discuss what constitutes threat, and for this we go to the definition of threat under section 17 of Act 29 to include any criminal force or harm. The law under 17(3) of Act 29 notes that it is immaterial whether a threat would be executed by the person issuing it or not. Threat of harm is an intentional offence. The prosecution is required by law to prove that the accused person threatened the victim; at the time of threat the accused person had intent to put that person in fear of harm. In the case of *BEHOME v. THE REP* [1970] GLR 112 “Where one is charged with threat of harm the threat must be one of harm and nothing else” PW1 adduced evidence to the fact that the accused issued words of threat when he came to the farm.” Don’t you know that I have meant you for a long time.” Accused did not deny ever going to meet PW1 and others on farm. Accused however admitted the assertion that he only confronted PW1 in the presence of the other witnesses. The I 5 meant you cannot be held to mean a threat of harm and nothing else as held in *BEHOME v. THE REP* supra. Excerpts from cross examination of the Accused by prosecution. Q: I am putting it to you that on that 20th April 2023 you threatened the Complainant with words to wit “I seriously mean you I will deal with you and what will happen will be greater than what has happened”. A: I never said that. Q: I seriously mean you I will deal with you and what will happen will be greater than what has happened are your words? A: I confronted him but I did not say that. What surprises this court was that none of the witnesses in court specifically stated the intended harm. Accused threatened the complainant in the current case. Where the words or intention is not established the conduct of Accused should be on that is possible to execute the intended threat of harm. “PW1 in his evidence in chief said they were 12 persons on the farm” Accused had intended indeed to threaten PW1 to put her in fear of harm. The law says the harm need not be executed but to put the victim in anticipation of fear or harm. The words of harm must have been uttered. During the trial the Accused contended that it was not threat of harm but he gave warning to PW1 to desist from interfering in his father’s land. Granted without admitting that it was warnings. The question the Court would like to ask is, what were the nature of these warnings by the accused? Can that exculpate him from the offence under consideration? It rather suggested to Court there was no gravity of the words “I meant you” PW1 must have not suffered due to the words of Accused as confirmed by the Prosecution witness because the words does not mean any exact or specific harm which he can subsequently carry out as was intended. 6 In all the prevailing circumstances Court finds as fact that Prosecution has not been able to discharge the standard burden of proof which is proof beyond reasonable doubt. From the evidence adduced before the Court and the relevant law explained above, the Court is satisfied that the guilt of the Accused has not been proved by Prosecution beyond reasonable doubt. Accordingly, I acquit and discharge the Accused on the offence of Threat of Harm contrary to S74 of Act 29/60s. (SGD) H/W VICTORIA AKUA GHANSAH MAGISTRATE 7

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