

IN THE CIRCUIT COURT HELD AT DANSOMAN, ACCRA ON
WEDNESDAY, THE 20TH DAY OF JUNE, 2023 BEFORE HER HONOUR
HALIMAH EL-ALAWA ABDUL BAASIT

SUIT NO.: CCD/C7/30/23

THE REPUBLIC

VS

DANIEL ASARE (ALIAS ADADE)

PARTIES:

ACCUSED PERSON – PRESENT

CHIEF INSPECTOR WONDER FOR THE REPUBLIC – PRESENT

COUNSEL:

NO LEGAL REPRESENTATION

**RULING ON WHETHER A PRIMA FACIE CASE HAS BEEN MADE BY
THE PROSECUTION**

Background:

The Accused Person was charged with the following counts;

1. **Stealing:** Contrary to Section 124(1) of the Criminal and Other Offences Act, 1960 (Act 29).
2. **Threat of Harm:** Contrary to Section 74 of the Criminal and Other Offences Act, 1960 (Act 29).

The facts of the matter as incorporated from the Charge Sheet is that on the 3rd of May 2023 at about 10.30 hours, the Accused Person engaged the services of the Complainant from Mallam Junction to Cable and Wireless. Upon reaching his destination, the Accused Person requested for the Complainant's Spark '8' Mobile Phone to make a call to inform the person who would pay for the

transportation. The complainant obliged but when he finished making the call, the Accused Person failed to return the said phone and when the complainant demanded for it, he pulled a knife on the Complainant, alighted from the taxi cab and absconded with the mobile phone despite the alarm raised by the complainant. On the 16th of May, 2023, the Accused Person resurfaced and was arrested of which he gave his Caution Statement to the Police where he denied the offence although witnesses who spotted the Accused Person escaping confirmed the crime. After investigations, the Accused Person was charged with the offences and arraigned before the court.

The Plea

On the 22nd day of May 2023, the Accused Person pleaded not guilty to the offence after same was read and explained to him in the Twi Language. The Prosecution assumed the burden to prove the guilt of the Accused Person beyond reasonable doubt. To prove their case, the Prosecution called Two (2) Witnesses and tendered in evidence the following;

Exhibit "A" - Statement of the Complainant to the Police;

Exhibit "B"- Charge Statement of the Accused Person';

Exhibit "B1"- Further Charge Statement of the Accused person.

At the close of the case of the Prosecution, the Court has to determine whether the Prosecution has established a prima facie case against the Accused Person to require him to open his defence.

Determination

Article 19(2) (c) of the Constitution 1992 provides that '*a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty*'. Apart from strict liability offences, the general rule is that, throughout a

criminal trial, the burden of proving the guilt of the accused person remains on the Prosecution. (See Asante vs. The Republic (1972) 2 GLR 177). An accused is generally not required by law to prove anything, he is only to raise reasonable doubt in the mind of the court as to the commission of the offence to secure an acquittal. (See COP vs Antwi (1961) GLR 408 SC; Bruce Konua vs The Republic (1967) GLR 611).

The Accused Person herein is charged with stealing and Section 125 of Act 29 defines stealing as; *'a person steals who dishonestly appropriates a thing of which that person is not the owner'*. Thus, to secure a conviction of the Accused Person on a charge of stealing, the Prosecution must prove that the Accused Person indeed **dishonestly appropriated the said mobile phone** with the intention of personally depriving the owner of it. The Accused Person has again been charged with Threat of Harm and Section 74 of Act 29 which provides that *'a person who threatens any other person with unlawful harm, with intent to put that person in fear of unlawful harm commits a misdemeanour'*. Thus, to secure a conviction, the Prosecution must show that the Accused person (a) threatened a person (b) with the intent to put fear of harm in that person. The court shall examine the evidence of the Prosecution to establish whether or not a prima facie case has been made out against the Accused Person.

Evidence of Witnesses

The first Prosecution Witness (PW1) was the Complainant, Mr. Enoch Osei Mensah who is a Taxi Driver. On the 15th of June 2023, he testified that at about 10.30 am, he picked a certain young man from Mallam Junction to Darkuman Post Office and upon their arrival, the young man requested for his Techno Spark 8 mobile phone to make a phone call to the person who would pay his fare. He testified further that immediately he handed over the phone to the young man, he pulled a knife on him and quickly opened the door and took to

his heels with the phone. PW 1 says he shouted for help but none of the people around came to his aid and the suspect also took away his Ghc5.00 but some people who spotted the suspect running away informed him that the suspect is a known person in the area. He tendered in Exhibit A which is a Statement he made to the Police on the 3rd of May 2023 in connection with the crime the Accused Person is alleged to have committed.

PW2 is D/C/Inspector John Muno stationed at Darkuman Police Station testified that on 03/05/23, at about 11.20am, PW1 reported at the Station that the Accused Person upon engaging his services stole his Tecno Spark '8' mobile phone and also pulled a knife on the complainant and managed to alight from the taxi cab, absconding with the said mobile phone. He testified further that the case was later referred to him of which he went to the scene of crime behind Darkuman Police Station and during investigations, people were contacted and in the course of interview confirmed that the Accused Person committed the crime. He stated further that on the 16/5/23, the Accused Person resurfaced at the crime scene and was arrested, handed over to him for investigation but in his Caution Statement denied the offences. PW2 concluded his testimony by stating that people who spotted the Accused Person escaping with the mobile phone confirmed the commission of the crime. He tendered in Exhibit 'B' and 'B1' which are the Caution Statement and the Further Caution Statement of the Accused Person both dated 17/5/23.

Analysis

The duty of the court at this stage, is to determine whether the prosecution has been able to establish a prima facie case against the Accused Person. In other words, the Prosecution, per their witnesses and evidence before the court, must establish that the Accused Person indeed committed the offences he has been charged with. Regarding the burden of proof, section 11(2) of the Evidence Act, 1975 (NRCD 323) provides that '*...in 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 a fact beyond reasonable doubt'. Similarly, regarding the standard of proof at this stage, the Supreme Court in the case of **Tsatsu Tsikata vs The Republic** [2003-2004] 1 SCGLR, 1068, stated that '*the standard of proof at this stage, is a prima facie case and not beyond reasonable doubt since the Court has not had the opportunity to hear the defence*'.

In the case of **Kwabena Amaning Alias Tagor and Anor. vs The Republic** (200) 23 MRLG 78, the Court held that: "*prima facie evidence is evidence, which on its face or first appearance, without more, could lead to conviction if the accused fails to give reasonable explanation to rebut it. It is evidence that the Prosecution is obliged to lead if it hopes to secure conviction of the person charged. At this stage, the trial Court is not supposed to make findings of facts since the other side has not yet spoken to determine who is being factual. What the trial Court has to find out at this stage that the Prosecution has closed its case is **whether or not the evidence led has established all the ingredients of the offence charged for which the accused person could be convicted if he failed to offer an explanation to raise doubts in the said evidence***". As such, an important aspect of criminal trials is that it is not enough for the Prosecution to prove that a crime has been committed.

The Prosecution must lead sufficient evidence to link the accused to the commission of the offence in a situation and must prove beyond reasonable doubt that a crime has been committed by the accused person. See **The Republic vs Gyamfi** (2007) 13 MLRG 192 CA, **Sarpong vs The Republic** (1981) GLR 790. In the instant case, the evidence adduced by the Prosecution, on the face of it, appears not to link the Accused Person to the crime. In PW1's short evidence in chief, he started his testimony by describing the one who stole his phone as 'a certain young man' and as such could not identify the person who stole his phone by name. He concluded his testimony with the following

statement; *'... some people who spotted the suspect running away informed me that the suspect is a known person in the area'*. This statement made by PW1 does not sufficiently link the Accused Person to the crime as the PW1 failed to provide a vivid description of the one who stole his phone. The following ensued when the Accused Person cross-examined PW1;

Q. Enoch Osei, in your witness statement you just mention young guy young guy I am Daniel Asare, so who is that young guy you were referring to.

A. The reason I indicated young guy is because I don't know his name.

The answer given by PW1 was not enough to establish that the Accused Person was the one being referred to. Similarly, PW2, in his evidence in chief merely repeated what PW1 narrated to him and concluded his testimony by also stating that *'... people who spotted the Accused Person escaping with the mobile phone confirmed ... the crime being committed by the Accused Person'*. The terse testimony of PW2 failed to show that a thorough investigation was conducted to establish that it was in fact and indeed the Accused Person herein who committed the crime. The following ensued during cross-examination of PW2;

Q: Per paragraph 5 of your Witness Statement, who were the people you interviewed who disclosed my identity to you?

A: Your area people.

The answer given by PW2 shows that he relied on other persons to establish the identity of the Accused Person. This is however not enough to secure the conviction of the Accused Person, Prosecution ought to establish, with a high degree of certainty that the Accused Person indeed committed to offence. In Criminal trials, the identity of an accused person is established when an identification parade is held by Prosecution.

In his book, **Criminal Procedure in Ghana**, 3rd Edition, 2021 at page 203, the learned Justice Sir Dennis Adjei stated as follows; *'Where the identity of the person is in dispute, the court may use other relevant evidence such as an **identification parade**, hair identification, bite mark and tool mark to help identify a person'*. At page 212, the learned Justice Dennis Adjei on Identification Parade stated; *'identification parade and other circumstances under which an offence was committed normally assists the prosecution to determine the identity of the accused...in most cases, the suspects run away either in the broad daylight or under cover of darkness. Therefore, where suspects are found and victims and witnesses claim that they would be able to identify the suspect whenever they see that person even in the midst of other people, an identification parade is organized for a victim of crime or a witness to identify the culprit.'*

The evidence adduced by the Prosecution fails to indicate whether an Identification Parade was held or not. This is because during cross-examination, whereas PW1 testified that an identification parade was held, PW2 testified that no identification parade was held. The conflicting and contradictory testimonies of Prosecution Witnesses raises doubt in the mind of the court as to how the identity of the Accused Person was determined by the Prosecution. Yet, the following ensued when PW2 was cross-examined on the identity of the Accused Person;

Q: *Do you have any picture or video that shows I am the one that committed the crime?*

A: *Yes, but at the moment it is not with me here.*

Q: *You said you have a picture what was the color of my dress not the one you snapped at the Police Station?*

A: *I do not have a picture.*

Q: *You do not have a picture in connection with the crime so do you agree you accused me wrongly?*

A: *No my Lady.*

Q: *Please why don't you agree?*

A: *Because the witnesses saw him running away with the phone being described by the complainant and they were even the people who arrested him.*

Q: *Can those people provide pictorial evidence that shows I am the one.*

A: *My Lady, I believe when they are called, they will come and testify.*

Q: ***Was there any identification parade conducted?***

A: ***No, My Lady.***

Q: *So, what shows I am the one who committed the crime since there was not any identification parade conducted?*

A: *My Lady, you are the one because you are well known in the area.*

The narrations above seem to suggest that the Accused Person was arrested and charged based on mere suspicions and upon reliance on statement of persons who claim to have seen the Accused Person running away. However, the Prosecution, regrettably, did not call any other witness to corroborate the testimony of PW1 and PW2. Although the Prosecution has discretion as to which witness to call, the discretion is exercised judicially and sometimes, the failure to call such a witness could be of dire consequences for the case of the Prosecution. Yet, it is not always the case that, the failure to call a particular person as a witness must always mean the failure of the Prosecution's case. In the instant case, the evidence on record shows that there were people who witnessed the commission of the crime, yet the Prosecution failed to call such witnesses to testify in court. In essence, the Prosecution failed to lead evidence to link the Accused Person directly to the instant crime and appears to have charged the Accused Person on mere suspicions. In the case of **State vs Ali Kasena** [1962] 1GLR 144, the court held that; *"it is dangerous in jury cases to leave to the jury evidence which amounts to suspicion only as there is the fear that they may put a multitude of suspicions together and make proof out of it"*.

It must be stated again that the law places the burden of proving the guilt on the Prosecution since it is the Prosecution that is alleging the commission of the offence by the accused. It is not for the accused to prove his innocence. It is accordingly provided by Section 15 (1) of Act 323 (supra) as follows; *“Unless and until it is shifted, the party claiming that a person is guilty of a crime or wrong doing has the burden of persuasion on that issue.”* This position as to the standard and burden of proof is strictly adhered to and our Courts have insisted on the Prosecution meeting this standard with judicial jealousy as part of the courts duty to safeguard the liberty on individuals. The Supreme Court in the case of **Commissioner Of Police V. Isaac Antwi** [1961] GLR 408, held *“the fundamental principles underlying the rule of law are that the burden of proof remains throughout on the Prosecution ... The accused is not required to prove anything; if he can merely raise a reasonable doubt as to his guilt, he must be acquitted.”*

Let me conclude by relying on the case of **G/L/CPL Ekow Russel vs. The Republic** [2016] DLSC 2800 at page 3, where Akamba JSC stated that the basic principles underlying our criminal justice system are as follows; *‘First, is that an accused person is presumed innocent until the Prosecution proves or establishes the contrary and this is a constitutional guarantee provided under article 19(2)(c) of the Constitution 1992. Secondly, throughout the trial of an accused person, the Prosecution has the burden to prove each ingredient of the charge against the accused, beyond reasonable doubt. Failure to meet this high burden in relation to one of the ingredients of a charge must resonate in an acquittal on that particular charge. The Prosecution must produce the evidence to meet the requirements of S. 11 (2) of the Evidence Act, Act 323. **Lastly, our criminal justice system is premised upon the principle that it is better for ninety-nine (99) criminals to go away scot free, than for one innocent person to be wrongly incarcerated or jailed. (Emphasis mine)***

In view of the above, the court is further guided by **Section 173** of the **Criminal and Other Offences (Procedure) Act, 1960 (Act 30)** which provides that *"Where at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."* In the circumstances, the court holds that Prosecution's case is based on probabilities and suspicion which cannot secure a conviction. The Prosecution's failure to adduce cogent evidence left a vacuum in proving the essential element of the offences charged, that is, as to the fact that, the Accused Person was the one who committed the offences as mentioned in the Charge Sheet. The Prosecution's case fails and the Accused Person is accordingly discharged and acquitted.

**H/H HALIMAH EL-ALAWA ABDUL-
BAASIT.
CIRCUIT COURT JUDGE**