CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 4TH JULY, 2023

SUIT NO. D1/32/17

THE REPUBLIC

VRS

JOHN SELASSIE NUTSUGAH
JAMES AFREDZE
FRANCIS @LARGE

JUDGMENT

The accused persons are before this Court on one count of conspiracy to commit crime contrary to ***Section 23 (1) of the Criminal Offences Act, 1960 (Act 29)*** and one count of defrauding by false pretences contrary to section 131 of the same Act.

The particulars of offence are that on the 12th day of November, 2015 at Kasseh Ada in the Ada East District and within the jurisdiction of this Court, they agreed to act together with common purpose to commit the crime to wit defrauding by false pretences.

For count two, the particulars of offence are that on the aforementioned date, time and place, with intent to defraud, they obtained the consent of Akos Maxiluck Afenya to part with 550 bags of cement valued at sixteen thousand, five hundred Ghana cedis (Ghs 16,500) by means of false pretences, to wit by falsely pretending that if the said cement is given to them, they would transfer the equivalent amount to the account of Akos Maxiluck Afenya which statement they well knew at the time of making it to be false.

At their preference, their plea was taken in English and twi respectively and they both pleaded not guilty to both counts.

The accused persons, per their plea of not guilty, stood shielded by the law as per ***Article 19 (2) (c) of the 1992 Constitution***, they are presumed innocent until proven guilty... According to the case of ***Davis v. U.S. 160 U.S 469(1895)*** "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertain a reasonable doubt from the evidence".

They had also by the same plea put in issue all the relevant elements necessary to establish the offence they have been charged with. In the case of ***Domena v. Commissioner of Police [1964] GLR 563 the Supreme Court per Ollenu JSC*** (as he then was) commented on the burden and standard of proof as such: "Our law is that by bringing a person before the court on a criminal charge, the prosecution takes upon themselves the onus of proving all the elements which constitutes the offence to establish the guilt of the defendant beyond reasonable doubt, and that onus never shifts. There is no onus upon an accused person. Except in special cases where the statute creating the offence so provides…"

In the case of ***Richard Banousin v. The Republic, Criminal Appeal No. J3/2/2014*** delivered on 18TH MARCH, 2014**,** The Supreme Court per Dotse JSC noted that "the prosecution has the burden to provide evidence to satisfy all the elements of the offence charged".

That being so, prosecution may lead credible and positive evidence to upset that presumption. A court thus commences a criminal trial where an accused has pleaded

not guilty on the rebuttable presumption that the accused person is innocent until proven guilty.

The onus lies on prosecution to lead evidence to establish a prima facie case against the accused persons by the close of their case. It is only then, that prosecution would be deemed, prima facie to have upset the presumption of innocence in favour of the accused and he would in turn be called upon not to prove his innocence, but to raise a reasonable doubt as to his guilt. Where prosecution fails to establish such a prima facie ca

se, the court must acquit and discharge the accused person.

EVIDENCE OF PW1

According to PW1, she she has a shop in which she sells cement. That on the 10th of September, 2015, accused persons came to her shop and introduced themselves as workers of Star Oil Company Ltd. A1 said he was a manager, A2 said he was a foreman and A3 said he was a worker.

They requested for 1200 bags of cement at a cost of Ghs 36,000 for the purpose of executing a contract and A1 told her the mode of payment would be cash transfer. Upon request, she produced the Ghana Commercial Bank account of her sister. That she had earlier given her rural bank details to A1 but he told her he could not transfer the money to her due to network problems

The next day, she received a call from a lady who said she was calling from Star Oil to confirm if indeed bags of cement were being purchased from her. That the money would be transferred to her her that day.

Later, A2 and A3 came to ask if she could release the cement. They showed her a document indicating that they had made payment. She went to the GCB Kasseh branch with her sister to confirm and was told that an amount of Ghs 36,000 had been paid into the account.

A lady later called her sister and asked her to come for the money at GCB Tema Industrial Area branch. The Kasseh branch confirmed that the money was in the account. The next day, her sister received a call from a different number and the caller introduced herself as the manager of GCB Tema Industrial Area branch and asked her to come for the money.

It was late in the day on a Friday and so her sister decided to go the next working day which would be Tuesday the 15th day of September, 2015 as the Monday was a holiday. That this convinced her to allow the accused persons to go with the cement.

That on the 12th and 14th of September, 2015, she released 250 and 300 bags of cement to A2 and A3. That when she went to cash the money on the 15th of September, 2015 she was informed that the cheque paid in could not be cleared as it was a stolen Unibank cheque.

THE EVIDENCE OF PW2

PW2's evidence is that A1 came to him and offered to sell to him some left over bags of cement. A1 said he was a contractor who had finished executing a project hence the left

over cement. A1 demanded for and he paid him Ghs 2,000 as a deposit. This was in August 2015.

That he did not hear from A1 after that and anytime he called him on phone, one James answered and said his boss was busy. That in September, A1 called through his son to inform him that he was bringing the cement. A2 and A3 later accompanied a truck driver to bring 300 bags of cement.

That A1 sold a bag of cement to him at Ghs 28 and so in all, he paid Ghs 8,400 for the 300 bags of cement. After a week, A1 brought 250 bags to him but he told him he was not interested in purchasing same. A2 and A3 later came to load that cement back unto a truck. A1 was with them driving his private car.

THE EVIDENCE OF PW3

PW3 testified as the investigator. He tendered in evidence the investigation caution and charge statement of accused persons as EXHIBIT A, B, C and D respectively. His evidence is that it is one Inusah, the driver of the truck that was used to cart the cement who led police to PW2 and also to arrest A1 and A2. A1 and A2 were arrested at the Ashaiman timber market where they had gone to hire a truck to convey another cement. Prosecution closed its case after this.

CONSIDERATION BY COURT

Section 173 of the Criminal Procedure and Other Offences Procedure Code, 1960 (Act 30) provides that; "If 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."

Thus a court is under a duty at the close of prosecution's case, to find out whether from the evidence on record, prosecution has established a case sufficiently against and accused person that requires him to answer. In deciding whether or not a case is made out against the accused sufficiently to require him to make a defence, the Court must make these considerations;

The first is whether prosecution has led evidence to establish all the requisite elements of the offence. Secondly, whether the evidence has not been so discredited under cross examination, thirdly, whether the evidence is reliable and the court can safely convict on it if the accused person exercises his constitutional right of silence when called upon to open his case and finally, that the evidence on record does not lend itself to two interpretations; one of guilt and one of innocence. Where the evidence is evenly balanced and susceptible to a construction of guilt on one hand and of innocence on the other hand, then the court must arrive at a conclusion that the accused person has no case to answer and thus proceed to acquit and discharge him. See the cases ***Apaloo And Others v. The Republic [1975] 1 GLR 156) Gyabaah v The Republic [1984-86] 461 C.A and Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068).***

On count one, the applicable sections of the ***Criminal Offences Act, 1960 (Act 29) are sections 23 (1) and 131 of Act 29.*** Prosecution must lead credible evidence to establish that the accused persons agreed to act together with a common purpose of defrauding PW1 of her cement.

The ***Criminal Offences Act, 1960 (Act 29) is section 23 (1)***. It provides that "where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.

In the case of ***Agyapong v. The Republic [2013-2015] 2 GLR 518,*** the court of Appeal noted that ''under the old formulation of section 23(1) of Act, 29, the prosecution needed to prove only one of two things. One was that the accused persons agreed to act together in furtherance of the commission of the offence and the other was that even without agreeing to act together, they acted together in furtherance of the crime. But under the new formulation, the prosecution had a duty to prove that there was a prior agreement by the accused persons to act together with a common purpose, before it could secure a conviction for conspiracy''. See also the decision of Marful Sau J.A (as he then was) sitting as an additional High Court Judge in the case of ***Republic v Augustina Abu and others, (Unreported) Criminal Case No. ACC/15/2013***

In ***Commissioner of Police v. Afari and Addo [1962] 1 GLR 483***, it was held by Azu Crabbe JSC that "it is rare in conspiracy cases for there to be direct evidence of the agreement which is the gist of the crime. This usually has to be proved by evidence of subsequent acts, done in concert, and so indicating a previous agreement."

The reverent ***Torkornoo JSC,*** in reading the decision of the Supreme Court in the case of ***Asiamah Vrs Republic (J3 6 of 2020) [2020] GHASC 64 (04 November 2020)*** **held that ''The elements of conspiracy as just stated were outlined in *Republic v. Baffoe Bonnie and 6 Others (Suit No. CR/904/2017) (unreported) dated 12 May 2020 by Kyei Baffour JA* sitting as an additional justice of the High court in these words: 'For prosecution to be deemed to have established a prima facie case, the evidence led without more, should prove that:**

1. That there were at least two or more persons
2. That there was an agreement to act together
3. That sole purpose for the agreement to act together was for a criminal enterprise.

The Supreme Court, through Appau JSC, stated in the case of ***Akilu v. The Republic [2017-2018] SCGLR 444 at 451***: The double- edged definition of conspiracy arises from the undeniable fact that it is almost always difficult if not impossible, to prove previous agreement or concert in conspiracy cases. Conspiracy could therefore be inferred from the mere act of having taken part in the crime where the crime was actually committed. *Where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing'' (emphasis mine).*

In order for prosecution to establish their cases against the accused persons on count one; they must lead positive, cogent and credible evidence to establish that;

1. The three accused persons agreed to act together
2. The agreement to act together was for the common purpose of undertaking the criminal enterprise of defrauding PW1 of 550 bags of cement

On count two**, *Section 132*** defines the offence of defrauding by false pretences to be thus 'a person is guilty of defrauding by false pretences if, by means of any false pretence, or by personation he obtains the consent of another person to part with or transfer the ownership of anything. The prosecution in order to succeed on a charge of defrauding by false pretences in this particular case need to prove that;

- the accused persons made a false pretence
- that by means of the false pretence , the accused persons obtained the consent of the complainant to part with or transfer her ownership or interest in 550 bags of cement
- the accused persons did so with an intention to defraud.

By a false pretence, the prosecution must prove that the accused persons, knowing that a statement or representation they were making was false, made such a false representation to the complainant with the intention that she should rely on the said false statement.

Prosecution must go on to prove that the complainant relied on the false statement to her detriment. This means that she was induced by virtue of her belief in that statement to part with the 550 bags of cement.

On the last element of an intention to defraud, ***section 16 of the Criminal Act, 1960 (Act 29)*** provides that for the purposes of any provision of this Code by which any forgery, falsification, or other unlawful act is punishable if used or done with intent to defraud, *an intent to defraud means an intent to cause, by means of such forgery, falsification, or other unlawful act, any gain capable of being measured in money, or the possibility of any such gain, to any person at the expense or to the loss of any other person.*

I would consider prosecution's evidence for both count one and count two together. Prosecution's evidence on this charge is that the accused persons acted together to defraud PW1. That both A1 and A2 together with A3 who is at large went together to PW1's cement shop. That it was A1 who convinced PW1 that they were working on a contract and took her rural bank account details as well as the G.C.B bank account details of PW1's sister to make payment. That it was A2 and A3 who went to show a document to PW1 indicating that the cost of the cement had been paid into her sister's account. That the said payment was by a cheque which later turned out to have been stolen.

That on the basis of this stolen cheque, PW1 was induced to part away with her cement. That it was A1 and A3 who went to load and cart away the 550 bags of cement. That it

was A1 who negotiated with PW2 to sell the said cement received from PW1 to him. That it was A2 and A3 who together with a truck driver delivered the first 300 bags of cement to PW2 and later delivered 250 bags. That it was A1, A2, and A3 who later returned to cart away the 250 bags of cement which PW2 had rejected. That the said cheque upon maturity turned out to be a stolen cheque and PW1 has since not received any money for the 550 bags of cement.

A2 refused to cross examine PW1 on her evidence and A1's cross examination did not challenge the fact that the cheque supposedly paid into PW1's sister's account later turned out to be false. Although both A1 and A2 had cross examined PW2, their cross examination had not in any way put put a dent in the credibility of PW2's evidence.

If at all, under cross examination, PW2 had provided further details of the transaction and the fact that all the accused persons particularly A1 and A2 had played a role. A1 did not dispute the evidence that he had gone to PW1 to offer some bags of cement to him for sale on the basis that he was a contractor who had finished a project and had left over cement. He also did not dispute the fact that he had caused A2 and A3 to deliver 300 and 250 bags of cement to PW2 the very same day that they had obtained the said cement from PW1.

Again, A1 does not dispute that he demanded for and received payment from PW2 for the said cement and also the fact that he was present when A2 and A3 were carting away the 250 bags of cement that A1 had rejected.

A2 on his part in cross examining PW2 had admitted that he and another delivered the bags of cement to PW2 at Juapong upon the instructions of A1 and later carted away some of the cement together with A1. What he disputes is that he received any money from PW2 on behalf of A1.

For PW3, he had provided further details as to the bank transaction. Under cross examination by A2 at page 31 of the record of proceedings, he had answered

Q: *So what did the bank confirm to PW1?*

A: She was told there was a transaction but it would take 3 working days for the amount to mature before it would be authenticated but it never went through.

Again, his answers under cross examination had established that A2 was not a worker at Star oil as he represented himself to be. At page 33 of the record of proceedings, he had answered;

Q: Did you go to Star Oil to confirm if I work with them?

A: No.

Q: I put it to you that I do not work with Star Oil and I was an apprentice electrician who lived in 1st accused person's house.

A: And that is why I did not go to Star Oil to confirm.

Although there were some inconsistencies in PW3's answers, I did not find them to be material so as to discredit his evidence. By the close of prosecution's case, I found that they had established that the accused persons acted together in going to PW1's cement shop and introducing themselves as workers of Star Oil Company Ltd who were working on a project. That they were not staff of the said company as A2 himself put to PW3. Also that A1 introduced himself as a contractor when he was not.

That the accused persons paid a cheque which later turned out to be stolen into an account of PW1's sister and without waiting for the cheque to be cleared, convinced PW1 to release 550 bags of cement to them which they in turn sold to PW2 at Juapong.

The fact that the accused persons rather than use the cement for a project promptly sold same to PW2 who himself sells cement is indicative of their false pretence.

That PW1 had indeed relied on the said misrepresentation to her detriment and to the benefit of the accused persons is not in dispute. She handed 550 bags of cement to the accused persons to her detriment and the accused persons gained Ghs 8,400 from PW2 for 300 out of the 550 bags of cement.

At the close of prosecution's case, I determined that prosecution has established all the relevant elements of the two counts against the accused persons, the evidence on record has not been so discredited under cross-examination, the evidence is not manifestly unreliable such that the court cannot rely on it to convict, and the evidence on record is susceptible to only one construction, the prima facie guilt of the accused persons. Accordingly, they are hereby called upon to open their defence if they so desire.

Denning J (as he then was) in the celebrated case of ***Miller v. Minister of Pensions [1947] 1 All ER 372 at 373*** held that. "The constitutional presumption of innocence of an accused person is that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes a prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt." See also the dictum of Dennis Adjei JA in the Court of Appeal case of ***Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J 32.***

An accused person when called upon to open his defence does not have a duty to prove his innocence. His only duty if at all at this stage is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the

prosecution. See the dictum of Korsah CJ in the case of ***Commissioner of Police v. Antwi (1961) GLR 408.*** If the accused person is able to raise a reasonable doubt in the mind of the court, he must be acquitted and discharged. See ***Bruce-Konuah v. The Republic [1967] GLR 611*** and ***Section 11(2) and (3) of NRCD 323***.

In arriving at whether an accused has raised a reasonable doubt, the court may either believe or accept the explanation given by the accused or find that although it disbelieves the explanation, it is reasonably probable. In both instances, the court must acquit and discharge the accused. Thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. If quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case of ***Brempong II v. The Republic [1997-98] 1 GLR 467 and Tsatsu Tsikata v. The Republic [2003- 2004] SCGLR 1068***

THE EVIDENCE OF A1

According to A1, he is a sub civil contractor and sometime in August, 2015, A3 told him that he wanted to award a contract to him to build a Star oil filling station between Sege and Kasseh. That per their agreement, the company was supposed to supply him with all building materials.

That it was A3 who took him and A2 to PW1's shop and requested for 1200 bags of cement. That A3 and PW3 entered into an agreement for the said cement to be paid by bank transfer only.

Further that Francis came to him with a UT bank transfer slip indicating payment to PW1. Earlier that same day, PW1 had informed him that a lady from Star oil had called her to confirm the bank details.

That A3 and A2 went to PW1 to confirm payment and PW1 told them that she had not received confirmation from the bank even though they showed her the slip. That later that same day, PW1 called to tell him that she had received a call from the branch manager of GCB Kasseh branch that an amount of Ghs 36,000 had been deposited in her account.

That PW1 later gave them 550 bags of cement. However, A3 told him that the project would not come off again and asked him to sell the 550 bags of cement to pay off his workers. It is those 550 bags of cement that were sold to PW2.

In A1's investigation caution statement which is marked as EXHIBIT A, he said he, A2 and one Francis engaged in business with PW1. That they paid her by bank transfer and PW1 confirmed that she had information from the bank that the amount had been paid but that same could not be withdrawn immediately. That PW1 gave them 520 bags of cement. He later learnt through A3 that the transaction did not go through and he ordered that they should stop and sincerely pay PW1 for the 520 bags of cement.

He then wrote his charge statement on the 13th day of January, 2016 and said that PW1 gave him the cement based on the false representation made to her by the GCB bank Ada branch. That he had information that PW1 also used someone else's account details and so he is of the view that it is a purely technical problem. That the truck driver has shown the person who dishonestly received the goods at Juapong and he had hopes that the police would retrieve the bags of cement and hand it back to PW1. That there was a need to pay PW1 cash equivalent of the bags or cement or return the 520 bags of cement to her.

EVIDENCE OF A2

In his evidence in chief, A2 said that he had no knowledge of the offence. That it was A1 who asked him to accompany him and A3 to Ada Kasseh. That upon reaching Ada, A3 sent them to PW1's shop. He did not hear their discussion.

A1 again called him the next day to meet him at Sege and he did. That he met A3 with A1. That A1 later went with him to PW1's shop to show her a document indicating that payment had been made but PW1 rejected it.

PW1 went to check from the bank and told them upon return that she was unable to get the money and so could not release the cement to them. That the next day, he was instructed by A1 to accompany A3 to PW1's shop and he did.

PW1 released 250 bags of cement to them and same was loaded and sent to Juapong. That in the course of their loading of the cement, he overheard PW1 telling Francis that the bank had confirmed payment of the money. That the next day, they again went for 300 bags of cement from PW1's shop.

In A2's investigation caution statement i.e. EXHIBIT C, he said he runs errands for A1. That he specifically hires trucks upon the orders of A1. That he would then go to a shop and load cement. His first trip was to Ho where he loaded 300 bags of cement which was brought to Juapong. His second trip was to go with a truck somewhere on the Koforidua road and again load cement which he delivered to a shop at Juapong. His third trip was at Ada. He brought a truck and loaded about 520 bags of cement discharged same at Juapong. It was whilst arranging a truck to take to East Legon to take cement upon the instructions of A1 that he was arrested. That he stays in the same house with A1.

In his charge statement, he maintained that he only runs errands for A1 and that is why he goes wherever A1 asks him to go.

ANALYSIS

A1's investigation caution statement is different from his evidence in chief before this court. I take note that he wrote his investigation caution statement and charge statement by himself and did not dispute it. Although under cross examination, he had answered that he hurriedly wrote something down, I find his claim to be an afterthought. He wrote that statement on the 23rd day of December, 2015. He then wrote his charge statement on the 13th day of January, 2016 and again gave a conflicting statement.

A1 has thus written two statements to the police which are at variance and in this court, has provided another conflicting statement by way of his evidence in chief. The same applies to A2. His investigation caution statement is different from his evidence in chief. In his investigation caution statement, he did not mention A3. He had also provided details of how he had met A1 and the fact that he had been engaging in the business of hiring trucks to cart cement from shops in Ho, Koforidua and Ada to Juapong all upon the instructions of A1. In his evidence in chief before this Court, he gave a totally conflicting statement.

The law is settled that where an accused person gives evidence which conflicts with his earlier statement, the court is bound to treat him with suspicion as to the veracity of his evidence.

In the case of ***Odupong v Republic [1992-93] GBA 1038*****,** the Court of Appeal, coram Amuah, Brobbey JJA's as they were then, and Forster JA held on this principle as follows: *"The law was well settled that a person whose evidence on oath was contradictory of a*

previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence would be of no probative value unless he gave a reasonable explanation for the contradiction."

Upon this basis, I find that the accused persons are not credible witnesses and I do not believe their evidence.

Furthermore, A1 wants this court to believe that he had been dealing with PW1 without an intention to defraud her. That after taking delivery of the cement, A3 told him that the project would not come off again and asked him to sell the 550 bags of cement to pay off his workers and it is those 550 bags of cement that he sold to PW2.

The question that any reasonable man would ask is ''why travel all the way from Ada Kasseh to Juapong to sell the cement? I take judicial notice that the travel distance between Ada and Juapong is about one hour via a vehicle. Whereas Ada is part of Greater Accra Region, Juapong is in the Eastern Region.

Is it A1's case that as a reasonable man, he decided to incur extra cost to hire a truck to cart 550 bags of cement from Ada to Juapong when he could have just offered same back to PW1 or resold same to any other cement vendor at Ada Kasseh? Particularly in the circumstances where he himself says that he needed money to pay his workers?

Again, A1 did not dispute the evidence of PW2 that it was on 24th August, 2015 that he had come to him and offered to sell him cement. That he had demanded for and received an amount of Ghs 2,000 as deposit and issued a receipt to him. As A1 had been silent on these matters in his cross examination of PW2, it is deemed that he accepts the veracity of the evidence.

Per that evidence, even before he obtained the cement from PW1 on the 12th of September, he had entered into an agreement with PW2 to sell the said cement to him under a false representation that they were left over cement from his work as a contractor. The cement that was sent to PW2 was not a mere coincidence. It was a well planned criminal enterprise. Based on these, I do not believe A1's evidence and neither do I find it to be reasonably probable.

With regard to A2, I do not find his evidence in chief to be reasonably probable. Indeed, his evidence is that PW1 released 250 bags of cement to them; same was loaded and sent to Juapong. That means that the cement was not offloaded anywhere but in Juapong. It leads to an inference that at the time of loading, he knew that the cement was headed to Juapong and had indeed taken it there immediately.

This piece of evidence further contradicts A1's evidence in chief that the decision to sell was made after Francis called off the project. The cement being sent to Juapong immediately after loading means A2 had prior knowledge of where the cement would be taken. In any case, the question would be why were the cement taken and sold specifically to PW2?

If it was simply about selling it off, it could have been resold to PW1 or any other cement vendor at Ada…why hire a truck to cart it all the way to Juapong? I infer that it is because as PW2 had said in his evidence in chief, A1 had come to him as far back as August to offer cement to him for sale and received a deposit of Ghs 2,000. Thus from the evidence, A1 was clear in his mind that he would send the cement to PW2 immediately upon taking delivery of same from PW1 and A2 had done exactly as instructed and taken the cement to PW2.

A2 is silent in his evidence in chief as to why he had sent the cement to Juapong immediately after loading same. He was categorical in his evidence in chief as to the dates that A1 had called him and what he was directed to do. Yet, when it got to how the cement had been loaded and taken to Juapong, he does not indicate why it is so? Did he do it on his own volition? Was he directed to do so by A1 as he said in his investigation caution statement? A2's silence on this appears to be an attempt to cover up something or someone. From the abundant evidence on record, it appears that someone is A1. That he had decided to be economical with the truth before this court is evidence of his guilt.

Both accused persons had set out to lie to this court and this is amply evidenced by their conflicting statements, inconsistencies and omissions in their evidence in chief and their answers under cross examination by prosecution.

In cross examining PW1 and PW3, A1 had never confronted them with a claim of bribery and of friendship. Yet in his defence to this court, he wants the Court to believe that he and PW1 (the complainant) have become steadfast friends to the extent that she visits him in prison and gave money to PW3 for his release. That PW1 is more concerned about his release from custody so that she can get her money.

Apart from the fact that he did not put these things to either her or PW3 when they were in the witness box and he cross examined them, I find his claim to be strange. This is because he insists that PW1 had been duly paid for the 550 bags of cement and the money is in the account of her own sister. If that is so, then which money would he be paying to her upon his release?

I found A2 to be particularly adept at lying as he even went as far as saying certain things had happened in Court when they clearly had not happened. For instance, PW3 had only read out his written evidence in chief and not the EXHIBITS which included the investigation caution statement of both accused persons.

The investigation caution statements were handed over to the accused persons as part of the disclosures and witness statements filed by prosecution. At C.M.C, same were marked without any objection. In the course of the trial, PW3 tendered them in evidence again without any objection from either of the accused persons.

A1 has always spoken English in Court as his preferred language and so could read. He did not object. A2 was clear that the disclosures and witness statements had been read and explained to him even before C.M.C. He had no objections.

There was thus clearly no need for PW3 to read out the contents of the EXHIBITS and same were not read out loud in Court. Yet A2 insists that same were read out in this court and he had objected to it and his objection had not been heard.

Also, although A2 himself had indicated when called upon to open his defence that he would testify viva voce and later changed this to file a witness statement, he insists that the Court had ordered no less than the prosecutor- who is ''an opponent'' in this case to assist him to write his witness statement.

Again, although A2's explanation as to his guilty with explanation is almost the same as his statement in his investigation caution statement and at a point in the proceedings was emphatic that he was guilty and would not even cross examine, he suddenly

changed tunes to deny these under cross examination. It appeared that A2 wanted to call into existence different proceedings.

I found both of them to be complete liars. I accept the principle in the case of ***Munkaila v. The Republic [1995-96] 1 GLR 367,*** in which AIKINS JSC reading the judgment of the court held that 'when an accused person took refuge in telling lies before a trial court, the only inference of his behaviour was that he had a guilty mind and wanted to cover up''.

I thus find at the close of the case of accused persons that they have failed to raise a reasonable doubt in my mind. I neither accept their explanation, nor find it to be reasonably probable. I have combed through the entire evidence on record and it does not raise any defence in favour of the accused person.

Consequently, at the close of the trial and after a careful examination of the evidence on record, I hereby find that prosecution has proven the guilt of the accused person beyond reasonable doubt and hereby convict them on both counts.

PRE-SENTENCE HEARING

According to prosecution, the convicts is not known to the law. Recovery of cement/money?

The offence of defrauding by false pretences falls under the 2nd degree felony offences that carry a maximum imprisonment term of 25 years. A conviction on a charge of conspiracy to defraud also carries with it the same sentence as the substantive offence.

Convicts had shown no remorse for their crime and taken prosecution through a full trial to establish their guilt. Indeed, it appeared that A2 at the initial stages knew of his

guilt as he appeared to be on a threshold between guilty and not guilty. Yet, he chose to take prosecution through a full trial.

The value of the cement is also on the high side. As at the time of committing the offence, the 550 bags of cement cost Ghs 36,000. It is trite that the prices of building materials including cement have been on an astronomical rise in this country and the value of the same quantity of cement as at now according to prosecution is Ghs 52,250.00.

The complainant has not received any of the cement or the value thereof and so she has suffered not only a loss of the value of the cement but also the time and resources expended in appearing in this court during this trial.

In mitigation is the fact that A1 is quite aged at 57 years.

I have taken into account the time spent by the convicts in custody during trial.

On count one, both A1 and A2 are sentenced to a five (5) year term of imprisonment. On count two, they are each sentenced to a six (6) year term of imprisonment. The terms are to run concurrently.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

D.S.P. JACOB ASAMANI FOR THE REPUBLIC