

IN THE CIRCUIT COURT HELD AT ACHIMOTA, ACCRA ON MONDAY, THE
19TH DAY OF FEBRUARY, 2024 BEFORE HER HONOUR AKOSUA ANOKYEWAA
ADJEPONG (MRS.), CIRCUIT COURT JUDGE

CASE NO.: D2/008/24

THE REPUBLIC

VRS

- 1. ADU APPIAH MANDELA [ALIAS AKOKO]**
- 2. NELSON MOH-KLU [ALIAS AYIGBE]**
- 3. KOFI RAZAK KPENTIE**
- 4. ALHAJI BAWA [AT LARGE]**

1ST ACCUSED PERSON PRESENT

2ND AND 3RD ACCUSED PERSONS ABSENT

4TH ACCUSED PERSON AT LARGE

A.S.P. STEPHEN AHIALE FOR THE REPUBLIC PRESENT

EMMANUEL DANNSA APPIAH FOR 1ST, 2ND AND 3RD ACCUSED PERSONS ABSENT

JUDGMENT

Article 19 (3) of the Constitution of Ghana, 1992 provides as follows

“The trial of a person charged with a criminal offence shall take place in his presence unless;-

(a) he refuses to appear before the court for the trial to be conducted in his presence after he has been duly notified of the trial; or

(b) he conducts himself in such a manner as to render the continuation of the proceedings in his presence impracticable and the court orders him to be removed for the trial to proceed in his absence.”

Having considered Article 19(3) of the 1992 Constitution as provided above, and the fact that the trial was conducted in the presence of the second and third accused persons but they having jumped bail upon being aware of the date for the Court’s judgment; and upon considering the submission made by the prosecutor, the Court shall proceed to deliver its judgment.

THE CHARGES

The first, second and third accused persons were arraigned before this Court on 4th September 2023 on the following charges;

1. Conspiracy to commit crime namely stealing contrary to *Sections 23(1) and 124(1) of the Criminal and Other Offences Act, 1960 (Act 29)*
2. Stealing contrary to *Section 124(1) of the Criminal and Other Offences Act, 1960 (Act 29).*

3. Abetment of Crime to wit Stealing contrary to **sections 20 (1) of the Criminal and Other Offences Act, 1960 (Act 29)**
4. Dishonestly Receiving contrary to **section 146 of the Criminal and Other Offences Act, 1960 (Act 29)**

THE PLEA

They all pleaded not guilty to the charges after same had been read and explained to them in Twi, being their choice of language. The accused persons having pleaded not guilty to the charges, the prosecution assumed the burden to prove the guilt of the accused persons beyond reasonable doubt.

FACTS

The brief facts of the case as presented by the prosecution are that the Complainant Kwaku Mingle is Freight Forwarder and lives at Pantang in the Greater Accra Region. The first accused person Adu Appiah Mandela claims to be a driver and lives at Agbogbloshie. The second accused person Nelson Moh-Klu alias Ayigbe claims to be a mason and lives at Kokomlemle. A3 Kofi Razak also claims to be a trader and lives at Komkomba market near Agbogbloshie and A4 Alhaji Bawa is at large. On 23/03/2023 at about 7:00 pm, complainant was in charge of his Toyota 4Runner vehicle with registration number GT.8775-17 driving from Airport towards Haatso on the GIMPA stretch. On reaching a section of the road, near Chinese yard, complainant was caught up in a vehicular traffic, during which the second accused person walked to the complainant and engaged him in a conversation and got him distracted. The first accused person swiftly picked the complainant's bag on the passenger front seat containing one Smith & Wesson pistol number HFT181-AAY/9754/18, Driver's License, Metro Card, ABSA bank ATM

card, UBA ATM bank card, UK Residential permit card, Samsung smart mobile phone valued GH¢8,000.00 and cash the sum of GH¢6,000.00 and the two ran into a nearby bush. On 29/08/2023, intelligence led to the arrest of the first accused person and during interrogation, he confessed to have committed the offence with the second accused person who was also arrested on 30/08/2023. That the first accused person stated further that he and the second accused person approached A3 with the complainant's pistol and he spoke to A4 who expressed interest to buy the pistol. That the first accused person negotiated with A4 on the phone and agreed on a price of GH¢15,000.00 for the pistol. The said Alhaji Bawa then transferred the money into an MTN Merchant number and A3 went and withdrew it for them. A3 in his investigation caution statement also admitted that the first accused person gave him the complainant's Samsung mobile phone to defray a debt of GH¢400.00 he owed him. After investigation, the three were charged with the offences and arraigned before this honourable court.

To prove their case, the prosecution called two witnesses including the investigator.

EVIDENCE OF PW1

PW1 who is also the complainant gave his name as Kwaku Mingle. That he is a freight forwarder residing at Paatang. He continued that on 23rd March 2023, he was driving his Toyota 4Runner with registration number GT 8775-17 on the GIMPA stretch to his house. On reaching a section of the road near Chinese Yard at about 6:45 pm, there was a slow movement of vehicles on the road, and all of a sudden, the second accused person appeared in the middle of the street and knocked on his vehicle and told him that his back car had deflated. He stretched his neck to see what the second accused person was talking about only for the first accused person, who was all the while standing by the front passenger side of the vehicle picked his bag from the car and took to his heels and

the one who destructed him also joined the first accused person and they disappeared. That the said bag contained his Ghana card, driver's license, his Metro card, Barclays card, UBA card, UK residential permit card, Samsung mobile phone valued GH¢8,000.00, Smith & Wesson pistol with registration number HFT-1841-AAY9754/18 and cash the sum of GH¢6,000.00. That the accused persons were arrested on 29th August 2023 through police intelligence and brought to court. That the police were also able to retrieve his pistol for him.

EVIDENCE OF PW2

PW2, the investigator herein, Detective Inspector Raymond Akaakpab stationed at Airport District CID testified that he knows the three accused persons and the complainant. That on 23rd March 2023, a stealing case was reported by the complainant and same was referred to him for investigation and he commenced investigations immediately. That on 29/08/2023, Police Intelligence led to the arrest of the first accused person, Adu Appiah Mandela. That the first accused person was cautioned and he confessed to having committed the offence with the second accused person, Nelson Moh-Klu. He tendered the first accused person's caution statement in evidence as exhibit 'A'. That on 30/08/2023, the second accused person was also arrested through intelligence and the second accused person was also cautioned and equally admitted the offence in his caution statement. He tendered the second accused person's caution statement in evidence as exhibit 'B'. According to PW2, further investigations revealed that, the complainant Kwaku Mingle was driving his Toyota 4Runner vehicle with registration number GT 8775-17, on the GIMPA stretch of the Haatso road with its windows down. On reaching a section of the road at Chinese Yard, complainant was caught up in vehicular traffic and the second accused person suddenly walked to complainant and the first accused person swiftly picked complainant's bag from the front passenger seat then

both the first accused person and the second accused person run off into a nearby bush. That it was also established that complainant's stolen bag contained Smith & Wesson Pistol number HFT 181-AAY/9754/18, Citizenship (NIA) card, Driver's License, Metro Card, ABSA Bank ATM card, United Kingdom Residence permit, a Samsung Smart mobile phone valued at GH¢8,000.00 and cash the sum of GH¢6,000.00. He continued that, it was established through investigation that the first accused person and the second accused person approached A3 with complainant's pistol and A3 spoke with one Alhaji Bawa who expressed interest in the pistol and eventually bought same. That A3 was arrested and cautioned. He tendered A3's caution statement in evidence as exhibit 'C'. PW2 further stated that the said Alhaji Bawa sent an amount of GH¢15,000.00 to A3 through mobile money and A3 withdrew same and paid for the pistol. A3 then sent the pistol to the said Alhaji Bawa in Kpandai in the Northern region. That it also came to light that the first accused person gave the complainant's stolen mobile phone to A3 to defray an old debt of GH¢400.00. That the Airport Police in collaboration with Kpandai Police were able to retrieve the complainant's pistol. That at the close of investigations, the three accused persons were charged with the various offences, and they volunteered a statement each to that effect. He tendered their charge statements in evidence as exhibits 'D', 'E' and 'F' respectively.

Thereafter, the prosecution closed its case.

After the close of the case of prosecution, the Court examined the evidence of the prosecution witnesses to determine whether a prima facie case had been made by the prosecution to warrant the accused persons herein to open their defence. The Court then ruled that a prima facie case had been made and the accused persons were to raise a reasonable doubt in the case of the prosecution.

In view of the above, the Court found that the first, second and third accused persons had a case to answer and were therefore called upon to enter into their defence, after their rights and options available to them as accused persons were explained to them by the Court. The Court also reminded the accused persons of the charges against them. The trial was adjourned for the accused persons to decide the option they will exercise. On the next court sitting, all the three accused persons informed the court that they do not have anything to say.

The accused persons did not also call witness.

LEGAL ISSUES

The legal issues to be determined by this court are as follows:

1. *Whether or not the first and second accused persons did agree to act together with common purpose to commit crime to wit: stealing.*
2. *Whether or not the first and second accused persons did dishonestly appropriate Smith & Wesson Pistol Number HFT1841-AAAY9758 /18, Driver's License, Metro Card, ABSA bank ATM card, UBA ATM bank card, UK Residential permit card, Samsung smart mobile phone valued GH¢8,000.00 and cash the sum of GH¢6,000.00 belonging to Kwaku Mingle.*
3. *Whether or not the third accused person did aid and abet Adu Appiah and Nelson Moh-Klu alias Ayigbe to commit crime to wit stealing.*
4. *Whether or not the third accused person did dishonestly receive a Samsung Smart mobile phone valued at GH¢8,000.00, the property of Kwaku Mingle, which he knew to have been obtained or appropriated by means of crime to wit stealing.*

BURDEN AND STANDARD OF PROOF

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 as provided in the *Evidence Act, 1975 (NRCD 323)*, per *sections 11(2), 13(1) and 15*.

Section 11(2) of the Evidence Act, 1975 (NRCD 323) is that:

“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 reasonable doubt”

In the case of *Republic v. Adu-Boahen & Another [1993-94] 2 GLR 324-342*, per Kpegah JSC, the Supreme Court held that:

“A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person... When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt”.

Significantly, whereas the prosecution carries that burden to prove the guilt of the accused person beyond reasonable doubt as per *sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323)*, there is no such burden on the accused persons to prove their innocence. At best they can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful.

ANALYSIS

1. *Whether or not the first and second accused persons did agree to act together with common purpose to commit a crime to wit: stealing.*

Section 23(1) of Act 29 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 law, Conspiracy consists not merely in the intention of two or more persons, but also in the agreement of two or more persons to do an unlawful act or to do a lawful act by an unlawful means. And a person could be charged with conspiracy to commit a crime whether he was involved in the conspiracy before the act (accessory before the fact) or after the act (accessory after the fact). What is material is whether there was a common design by the parties to commit the crime.

The essential ingredients of the offence which the prosecution must prove to succeed on as stated by Kyei Baffour JA sitting as an additional High Court Judge in the case of *Republic v. Eugene Baffoe Bonnie (unreported); Suit No. CR/904/2017 delivered on 12th May, 2020*, are as follows:

- i. That there were at least two or more persons.
- ii. That there was an agreement to act together.
- iii. That the sole purpose of the agreement to act together was for a criminal enterprise.

In the case of *Faisal Mohammed Akilu v. The Republic [2017-2018] SCGLR 444* the Supreme Court per Yaw Appau JSC stated as follows;

“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 the crime"

PW1 in his evidence in chief told the court that on 23rd March 2023, he was driving his Toyota 4Runner with registration number GT 8775-17 on the GIMPA stretch to his house. On reaching a section of the road near Chinese Yard at about 6:45 pm, there was a slow movement of vehicles on the road. All of a sudden, the second accused person appeared in the middle of the street and knocked on his vehicle and told him that his back car had deflated. He stretched his neck to see what the second accused person was talking about only for the first accused person, who was all the while standing by the front passenger side of the vehicle picked his bag from the car and took to his heels; the second accused person who destructed him also joined the first accused person and they disappeared.

From the evidence of PW2, his investigations revealed that, the complainant Kwaku Mingle was driving his Toyota 4Runner vehicle with registration number GT 8775-17, on the GIMPA stretch of the Haatso road with its windows down. On reaching a section of the road at Chinese Yard, complainant was caught up in vehicular traffic and the second accused person suddenly walked to complainant and the first accused person swiftly picked complainant's bag from the front passenger seat then both the first accused person and the second accused person run off into a nearby bush.

PW2 also told the court that the accused persons admitted the offences in their investigation caution statements. PW2 tendered the said caution statements of the first and second accused persons as exhibits 'A' and 'B' respectively.

For the avoidance of doubt I reproduce the relevant part of exhibits 'A' being the caution statement of the first accused person as follows:

“...I went to Dzorwulu with suspect Elorm Ayigbe. While there we took a walk on the shoulders of the road on the GIMPA stretch of the road. While there was vehicular traffic, suspect Elorm Ayigbe distracted him that there was something wrong with rear tyre. The complainant then turned his neck out to see exactly what the problem, I passed the blind side of him and picked his bag in the front seat by the gear and we took to our heels through the tick bush and escaped.”

I further reproduce the relevant part of exhibit ‘B’ which is the caution statement of the second accused person where he stated as follows:

“...while I was waiting he alerted me that the person who owed him was approaching which happened to be the complainant. He then asked me to knock his vehicle and stop him. When I did that all of a sudden I saw him running and branched into the nearby bush so I also followed him...”

From the investigation caution and charge statements of the first and second accused persons which were duly tendered in evidence without any objection from them, it can be gathered that the said accused persons agreed to act together and the purpose of the agreement was for a criminal enterprise. This is because the first and second accused persons met, decided to go to the said GIMPA stretch of the road where there is vehicular traffic to act together for a criminal enterprise.

From the evidence on record, the second accused person knew what he was doing that is why he also ran and followed the first accused person into the bush after the latter successfully took the complainant’s bag from the passenger seat. If the second accused person did not agree with the first accused person to act together to take the complainant’s bag from his car whilst in traffic, he would have stood by to explain to the complainant that he was only asked by the first accused person to knock on his vehicle

as he alleged in exhibit 'B'. From the conduct of the second accused person when he also ran into the bush with the first accused person after taking the complainant's bag, the reasonable inference is that he knew about the whole enterprise and acted his part for the commission of same.

The role each of the first and second persons played in taking the complainant's bag from his car when he was driving in traffic was that, the second accused person distracted the complainant who was driving in traffic on the said road whilst the first accused person took his bag on the passenger seat and thereafter both of them ran into the nearby bush.

From the evidence on record and the authorities above, I find that the prosecution has been able to establish the elements of conspiracy. I accordingly find that the first count has been proven by the prosecution beyond reasonable doubt.

2. *Whether or not the first and second accused persons did dishonestly appropriate Smith & Wesson Pistol Number HFT1841-AA9758 /18, Driver's License, Metro Card, ABSA bank ATM card, UBA ATM bank card, UK Residential permit card, Samsung smart mobile phone valued GH¢8,000.00 and cash the sum of GH¢6,000.00 belonging to Kwaku Mingle.*

Section 124(1) of Act 29 provides that:

"Whoever steals shall be guilty of a second degree felony."

Section 125 of Act 29 defines Stealing as follows:

"A person steals if he dishonestly appropriates a thing of which he is not the owner".

In the case of *Brobby & Others v The Republic* [1982-83] GLR 608-616, Twumasi J. stated as follows:

“Three essential elements of the offence of stealing become obvious and they are:

- 1. That the person charged must have appropriated the thing allegedly stolen.*
- 2. That the appropriation must have been dishonest.*
- 3. That the person charged must not be the owner of the thing allegedly stolen.”*

It is clear from the definition that a person cannot be guilty of stealing unless he is proved to have appropriated a thing in the first place.

Section 122 (2) of Act 29 defines Appropriation as follows:

“An appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that some person may be deprived of the benefit of his ownership, or of the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof”.

PW1 told the court in his evidence that the second accused person appeared in the middle of the street and knocked on his vehicle and told him that his back car had deflated. That he stretched his neck to see what the second accused person was talking about only for the first accused person, who was all the while standing by the front passenger side of the vehicle picked his bag from the car and took to his heels and the second accused person who destructed him also joined the first accused person where they both disappeared. PW1 further told the court that the said bag contained his Ghana card, drivers' license, his Metro card, Barclays card, UBA card, UK residential permit card, Samsung mobile phone valued GH¢8,000.00, Smith & Wesson pistol which is duly registered here in Ghana with registration number HFT-1841-AAY9754/18 and cash the

sum of GH¢6,000.00. That the police were able to retrieve his pistol for him when they arrested the accused persons.

PW2 who is the investigator repeated the above evidence of PW1, when he gave evidence and told the court about what his investigations revealed. Moreover, in exhibit 'A' the first accused person stated that when they later opened the bag, a Samsung mobile phone Galaxy S8+ and a foreign pistol were inside whilst the second accused person stated in exhibit 'B' that the first accused person told him that he found a mobile phone inside the said bag which he has sold same and gave him GH¢200.00 as proceeds from the sale of the phone.

From the evidence above, it can be established that first and second accused persons dishonestly appropriated the complainant's bag from his vehicle however the assertion by the prosecution that the said bag which belongs to the complainant contained Smith & Wesson Pistol Number HFT1841-AA9758 /18, Driver's License, Metro Card, ABSA bank ATM card, UBA ATM bank card, UK Residential permit card, Samsung smart mobile phone valued GH¢8,000.00 and cash the sum of GH¢6,000.00 has not been sufficiently substantiated after the accused persons denied the charges. The prosecution could not adduce cogent evidence to establish that all those items mentioned under count two together with the said amount of money were in the complainant's bag. From exhibits 'A' and 'B', the prosecution was able to prove that the first accused person found a Samsung mobile phone Galaxy S8+ and a foreign pistol from the complainant's bag but there's no evidence on record that they also found the other items and money stated above, in the complainant's bag.

In view of the above, I find from the evidence on record that the first and second accused persons herein did dishonestly appropriate the complainant's bag containing Smith & Wesson Pistol Number HFT1841-AA9758 /18 and Samsung smart mobile phone valued

GH¢8,000.00. I therefore find that prosecution has been able to prove the offence of stealing against the first and second accused persons beyond reasonable doubt as the evidence on record establishes appropriation of the said bag, the fact that the appropriation was dishonest and that the accused persons charged are not the owner of the said bag they conspired to take from the complainant's vehicle.

3. *Whether or not the third accused person did aid and abet Adu Appiah and Nelson Moh-Klu alias Ayigbe to commit crime to wit stealing.*

Section 20(1) of Act 29 on abetment provides as follows:

"A person who directly or indirectly instigates, commands, counsels, procures, solicits or in any other manner purposely aids, facilitates, encourages, or promotes, whether by a personal act or presence or otherwise and a person who does an act for the purpose of aiding, facilitating, encouraging or promoting the commission of a criminal offence by any other person, whether known or unknown, certain or uncertain, commits the criminal offence of abetting that criminal offence, and of abetting the other person in respect of that criminal offence".

Subsection 2 provides that:

"A person who abets a criminal offence shall, if the criminal offence is actually committed in pursuance of, or during the continuance of, the abetment, be deemed to have committed that criminal offence".

From the evidence on record, PW2 told the court that, it was established through investigation that the first and second accused persons approached the third accused person with complainant's pistol and the third accused person spoke with one Alhaji

Bawa who expressed interest in the pistol and eventually bought same. PW2 further gave evidence that said Alhaji Bawa sent an amount of GH¢15,000.00 to the third accused person through mobile money which he withdrew same and paid for the pistol. The third accused person then sent the pistol to the said Alhaji Bawa in Kpandai in the Northern region. That the first accused person gave the complainant's stolen mobile phone to the third accused person to defray an old debt of GH¢400.00.

The above evidence is the only evidence on record in relation to the third accused person in addition to the caution and charge statements he gave to the police.

From the evidence on record the prosecution were not able to establish the offence of abetment of crime against the third accused person.

From the definition of the offence of as provided above *"A person who directly or indirectly instigates, commands, counsels, procures, solicits or in any other manner purposely aids, facilitates, encourages, or promotes, whether by a personal act or presence or otherwise and a person who does an act for the purpose of aiding, facilitating, encouraging or promoting the commission of a criminal offence by any other person, whether known or unknown, certain or uncertain, commits the criminal offence of abetting that criminal offence, and of abetting the other person in respect of that criminal offence". [emphasis provided]*

From the above, the offence of abetment of a crime is to the effect that the third accused person should have aided, facilitated, encouraged or promoted the commission of the offence by the first and second accused persons before or during the commission of the offence of stealing. However the evidence on record indicates that the third accused person was approached by the first accused person and another person on the sale of the

complainant's pistol after same had been stolen. Therefore it was after the commission of the offence of stealing and not before or during the commission.

In the Supreme Court case of Commissioner Of Police v. Sarpey And Nyamekye [1961] GLR 756-760, Sarkodee-Adoo JSC held that:

"In order to convict a person of aiding and abetting it is incumbent on the prosecution to prove that the accused did any one of the acts mentioned in subsection (1) of section 20. Under subsection (2) a person who abets a crime shall be guilty if the crime is actually committed (a) in pursuance of abetment, that is to say, before the commission and in the presence or absence of the abettor and (b) during the continuance of the abetment, that is to say, the abetment must be contemporaneous in place, time and circumstance with the commission of the offence. In our view, an act constituting an abetment in law must precede or it must be done at the very time when the offence is committed".

From the evidence on record, the third accused person was not part of the first and second accused persons before the commission of the offence of stealing neither was he part of them during the commission of the said stealing. There is no evidence before this court to indicate what he did to aid, facilitate, encourage, or promote the commission of the offence of stealing by the first and second accused persons before or during the commission of the said crime. I consequently find that the evidence on record does not establish that the third accused person aided and abetted the first and second accused persons to commit crime namely, stealing. As a result, the charge of abetment of crime to wit stealing against the third accused person cannot be sustained based on the evidence of the prosecution before this court and same is accordingly dismissed.

4. *Whether or not the third accused person did dishonestly receive a Samsung Smart mobile phone valued at GH¢8,000.00, the property of Kwaku Mingle, which he knew to have been obtained or appropriated by means of crime to wit stealing.*

Section 146 of Act 29 on dishonestly receiving property provides that:

“A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this Chapter, commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence.”

Section 147(1) of Act 29 also provides that:

“A person commits the criminal offence of dishonestly receiving property which that person knows to have been obtained or appropriated by a criminal offence, if that person receives, buys, or assists in the disposal of the property otherwise than with a purpose to restore it to the owner.”

Section 148(1) of Act 29 on possession of stolen property provides that:

“Where a person charged with dishonestly receiving is proved to have had in possession or under control, anything which is reasonably suspected of having been stolen or unlawfully obtained, and that person does not give an account, to the satisfaction of the Court, as to the possession or control, the Court may presume that the thing has been stolen or unlawfully obtained, and that person may be convicted of dishonestly receiving in the absence of evidence to the contrary.”

From the evidence of PW2, the first accused person gave the complainant’s stolen mobile phone to the third accused person to defray an old debt of GH¢400.00.

In the instant case and from the analysis above, it has been found that the first and second accused persons conspired to dishonestly appropriate the complainant's bag which contained his pistol and Samsung smart mobile phone valued GH¢8,000.00.

From the evidence on record the first accused person also stated in exhibit 'B' that he gave the complainant's mobile phone to Kofi Razak (third accused person herein) to defray a GH¢400.00 debt he owed him. In exhibit 'C' being the caution statement of the third accused person, this is what he said on the above issue: "*Suspect Adu Appiah Mandela alias Akoko later gave me a Samsung Galaxy mobile phone to defray a debt of GH¢400.00 that he owed me.*"

In the case of *Lee v Taylor & Gill (1912) 77 J.P. 66*, it was held that in proving the offence of dishonestly receiving the prosecution shall prove intent or knowledge or malice that the accused person knew that the property in question was acquired through proceeds of crime. The test which is used to determine whether the accused knew that the property was obtained from proceeds of crime is one of subjective test.

Applying the law to the instant case, the third accused person received the said phone knowing or ought to have known that it was obtained or appropriated by a criminal offence because it was not reasonable to have offset a debt of GH¢400.00 with the said phone given its market price of GH¢8,000.00 which is way above the said GH¢400.00. The debt of GH¢400.00 is disproportionate to the price of the phone being GH¢8,000.00 that was used to offset that debt. Therefore the third accused person is presumed to have known that the said phone was a stolen property. The third accused person received the said phone for his debt of GH¢400.00 owed by the first accused person other than with a purpose to restore it to the owner or even report to the police.

The third accused person was proved to have received the stolen phone belonging to the complainant but he did not give any account, to the satisfaction of the Court, as to the receipt of the said phone. In view of that I find that the third accused person dishonestly received the said phone in the absence of evidence to the contrary.

In the case of Commissioner of Police v. Isaac Antwi [1961] GLR 408-412, it was held that the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt.

This is further emphasized by *sections 11(3) and 13(2) of the Evidence Act, 1975 (NRCD 323)*. *Section 11(3)* provides that:

“In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt.”

Section 13(2) provides that:

“Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.”

All that the accused persons herein needed to do was to raise a reasonable doubt in the case of the prosecution against them but they could not do so.

I support my decision with the dictum of Denning J. (as he then was) in the case of Miller v. Minister of Pensions [1947] 2 All E.R. 372 at p. 373 where he said:

"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. 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, but nothing short of that will suffice."

CONCLUSION

For the foregoing reasons, I find that the prosecution could not prove the charge of abetment of crime to wit stealing against the third accused person beyond reasonable doubt; therefore the third accused person is acquitted and discharged on count three.

On the other hand, I find that the prosecution has been able to establish beyond reasonable doubt that, indeed the first and second accused persons committed the offences under counts one and two. Consequently, I pronounce the first and second accused persons herein guilty on counts one and two being the offences of conspiracy to commit stealing, and stealing; and I accordingly convict the first and second accused persons herein on both counts one and two.

I further find that the prosecution has been able to prove beyond reasonable doubt that the third accused person dishonestly received the complainant's Samsung mobile phone. I therefore pronounce the third accused person guilty on count four being the offence of dishonestly receiving. I accordingly convict the third accused person herein on count four.

Pre-Sentencing hearing

Court: Any plea in mitigation before sentence is passed?

A1: I plead with the court that my fingers are hurting and that I will not commit that offence again.

Court: Are the accused persons known?

Prosecutor: No, they are first time offenders.

SENTENCING

In sentencing the accused persons herein, the court takes into consideration their plea in mitigation, the fact that they are first time offenders and their youthful ages of 32 years, 41 years and 31 years respectively. In accordance with Article *14(6) of the 1992 Constitution*, time spent in custody pending trial before some of them were able to execute their bail conditions is considered. The court also takes into consideration the fact that the complainant's pistol was retrieved by the police. However, the court has equally considered the entire evidence on record and the role the first and second accused persons played in committing the said offences, and the fact that the complainant's Samsung mobile phone was not retrieved by the police. The court also takes into consideration the prevalence of the offence of stealing from people's vehicles moving in traffic on that stretch of road by similar *modus operandi*. The court is of the view that there is a need to impose a deterrent sentence to send a signal to the accused persons and other people with similar criminal tendency to curb the spate of stealing from people's vehicles moving in traffic within the community for people to drive in traffic peacefully and in secured environment. I consequently sentence the accused persons as follows:

Count 1: The first and second accused persons are sentenced to serve a term of imprisonment of forty-eight (48) months each in hard labour (I.H.L.). In addition the first and second accused persons shall each pay a fine of two hundred (250) penalty units. In

default of the fine, each of them shall serve a term of imprisonment of twelve (12) months in hard labour (I.H.L.)

Count 2: The first and second accused persons are sentenced to serve a term of imprisonment of forty-eight (48) months each in hard labour (I.H.L.). In addition the first and second accused persons shall each pay a fine of two hundred (250) penalty units. In default of the fine, each of them shall serve a term of imprisonment of twelve (12) months in hard labour (I.H.L.)

Count 3: The third accused person is acquitted and discharged.

Count 4: The third accused person is sentenced to serve a term of imprisonment of twenty (20) months in hard labour (I.H.L.). In addition the third accused person shall pay a fine of two hundred (250) penalty units. In default of the fine, he shall serve a term of imprisonment of twelve (12) months in hard labour (I.H.L.)

The sentences on counts one and two shall run concurrently.

Restitution Order

The accused persons are ordered to pay the amount of GH¢8,000.00 to the complainant being the value of the complainant's Samsung mobile phone they dishonestly appropriated and received respectively.

The complainant shall enforce this order through civil means.

In relation to the second and third accused persons who have jumped bail and did not appear before the Court for judgment, the police shall obtain commitment warrant which will authorize the apprehension of the convicted persons for the purpose of carrying out the sentence.

The person effecting such apprehension shall endorse the date thereof on the back of the warrant, and the sentence of imprisonment imposed on the second and third accused persons apprehended on such warrant, shall commence from the date of their apprehension.

H/H AKOSUA A. ADJEPONG (MRS)
(CIRCUIT COURT JUDGE)