

IN THE TDC DISTRICT COURT HELD AT TEMA ON THURSDAY, THE
15TH DAY OF DECEMBER 2022 BEFORE HER HONOUR AKOSUA
ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE, SITTING AS
AN ADDITIONAL MAGISTRATE

CASE NO.: B7/32/2019

THE REPUBLIC

VRS

SAMUEL ANTWI

ACCUSED PERSON PRESENT

COMPLAINANT ABSENT

INSPECTOR AGNES KONADU FOR THE REPUBLIC PRESENT

ANTHONY ADU NKETIA, ESQ. HOLDING THE BRIEF OF PRINCE HODO,
ESQ. FOR THE ACCUSED PERSON PRESENT

JUDGMENT

The accused person herein was arraigned before this Court charged with Defrauding by False Pretence contrary to *section 131 of the Criminal and Other Offences Act, 1960 (Act 29)*.

He pleaded not guilty after the charge had been read out and explained to him in a language he understood.

The facts of the case as presented by the prosecution are that, the complainant Ebenezer Osei Oppong is an entrepreneur residing at Coastal Estate on the

Spintex Road, Accra. Accused Samuel Antwi is a clearing agent and resides at Kasoa. During the month of November 2018, complainant received a Chevrolet Spark salon car from his brother in Germany at the Tema Port and needed a clearing agent to clear the vehicle for him. Accused had information that the complainant was looking for a clearing agent. He approached the complainant and assured him that he could clear the vehicle for him. He succeeded in convincing the complainant that he could clear the vehicle from the Tema Port and took initial amount of GH¢16,500.00 from the complainant under the pretext of proceeding with the clearing process. However, accused failed to clear the vehicle as a result the vehicle was later confiscated to the State. On 02/04/2019 complainant made a complaint to that effect against the accused person at the RCID-Tema. On 10/04/2019 accused person was arrested for investigation. After investigation, accused person was accordingly charged and arraigned before this honourable Court.

The prosecution called three witnesses in support of their case.

Evidence of PW1

PW1 (the complainant herein) in his evidence to the Court stated that during the month of November 2018, his brother by name Joseph Amoah Oppong shipped in a Chevrolet Spark car in his name to the Tema Port for him to clear. That the accused person was contacted to clear the car on his behalf and the accused person told him it would cost him an amount of GH¢9,500.00 to clear the car. He continued that his brother made an initial payment of GH¢7,000.00 to the accused person to clear the car but the accused person failed to do so as promised and informed him that he has used the money to solve some problem. That he later made another payment of GH¢9,500.00 through his mobile money

account to the accused person to clear the same car but the accused person again failed to clear the car on the second occasion. That after that anytime he calls the accused person on his cell phone, he does not answer his calls. That he later demanded for the car documents from the accused person to enable another agent clear the car but the accused person failed to give him the documents claiming he has already processed the documents and that the documents are in the system. That he later got in touch with the accused person on his cell phone and when he enquired from him as to whether he has cleared the car, he told him he is unable to clear the car because he has used the money to solve some problem again. According to PW1 he later went to the Port with his friend Samuel Adih to enquire about the car if it was available and still eligible for clearance and they saw the car parked in the yard but he was later told since the car has been at the port for over 60 days, it has been confiscated to the State. Therefore he lodged a complaint against the accused person Police Station at RCID Tema. He tendered in evidence the print out of the mobile money transfer payment made to the accused person as exhibit 'A'.

Evidence of PW2

PW2, gave his name as Samuel Adih and told the Court in his evidence that he works together in the same office with the complainant. That he got to know the accused person when the complainant contracted the accused to clear his car for him. That he was with the complainant during the month of February 2019 when he transferred an amount of GH¢9,500.00 to the accused person through his mobile money for him to clear his car for him at the Tema Port. That thereafter the accused person did not answer the complainant's call when he called him. That he went with the complainant to the Tema Port and saw the car parked in the yard but the complainant later informed him that because the accused person

was unable to clear the car on time it has been confiscated to the State. That he went to the police to give his statement after the complainant had lodged a complaint against the accused person.

Evidence of PW3

PW3, the investigator (D/L/CPL Wisdom Kenny Dzokoto) stated in his evidence that when the case was reported by the complainant on 02/04/2019 it was referred to him for investigation. That he obtained investigation cautioned statement from the accused person in the presence of an independent witness. PW3 repeated the facts of the case as presented by the prosecution and added that with the evidence gathered coupled with a confession statement given by the accused on 10/04/2019 to the effect that he actually collected GH¢16,500.00 but used same to place adverts in print and electronic media in search for his son who got missing at that time, he found it prudent to charge the accused and arraigned him before Court. He tendered the investigation and charge statements of the accused person in evidence.

Prosecution thereafter closed their case.

After the close of prosecution's case, Counsel for the accused person filed submission of no case on behalf of the accused person and the Court delivered a ruling on same, to the effect that a prima facie case had been made by the prosecution to warrant the accused person to open his defence. That the accused person was to raise a reasonable doubt in the case of the prosecution to enable his acquittal and discharge.

In the case of *The Republic v District Magistrate Grade II, Osu, Ex parte Yahaya*

[1984-86] 2 GLR 361 – 365 Brobbey J (as he then was) stated that:

“...evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused himself has given evidence.”

In view of the above, the Court found that the accused person had a case to answer and was therefore called upon to enter into his defence, after the options available to him as an accused person were explained to him.

OPENING OF DEFENCE / EVIDENCE OF THE ACCUSED PERSON

The accused person stated in his evidence that he is a freight forwarder. That he has known both the complainant and his brother Joseph Amoah Oppong since 2017. That the said Joseph Amoah Oppong directed him to meet someone who happened to be the complainant herein for the documents covering a vehicle he wanted him to clear for him. According to the accused person he had previously dealt with the complainant's brother who further introduced him to the complainant where he cleared a couple of cars for them. He tendered exhibits '1' and '2' to that effect. On the vehicle in issue, the accused person told the court that Joseph Amoah Oppong sent the documents covering the said Chevrolet Spark directly to him without the involvement of PW1 even though the documents were in the name of PW1. That PW1's brother contracted him to clear the vehicle for him without recourse to PW1 who is also the complainant. That he commenced the process of clearing the vehicle and told Joseph Amoah Oppong that the total cost of clearing the vehicle was GH¢9,700.00. The accused person tendered exhibit '4' being copies of the documents for the clearing of the Chevrolet Spark vehicle. He continued that the said Joseph Amoah Oppong informed him that he did not have money but he can raise GH¢7,000.00 and he

requested him to try and raise the difference to add up and clear the vehicle. That he collected the GH¢7,000.00 Joseph Amoah Oppong sent through a third party but he could not raise the difference to add to it to enable him clear the vehicle. That in the course of trying to raise the difference, he used part of the money to work on other clearing jobs he was doing hoping that he will be paid on time to enable him raise the difference to clear the vehicle. That he also spent part of the money on some personal pressing issues that is running adverts in search of his missing son. That his clients disappointed him as they did not pay him on time. He continued that the vehicle had then spent over 60 days and been confiscated to the State because Joseph Amoah Oppong did not bring the Bill of Lading and the money on time so the little delay in raising the rest of the money made the matter worse. That it was at this point that Joseph Amoah Oppong informed him that he had discussed with PW1 to raise further money for him to pay the duty amount and the penalties to be able to clear the vehicle. That PW1 paid to him by instalments a total amount of GH¢9,500 which was still not enough to pay for all the charges and penalties to clear the vehicle. That he caused the company he was then working with, NG Technologies to apply to CEPS to grant approval to pay the duty so that he can clear the vehicle. He tendered the said letter as exhibit '5'. That CEPS did not respond on time so he contacted some CEPS officer who was willing to help but when he informed PW1 and his brother about it, PW1 told him that his uncle says he can facilitate for the vehicle to be cleared so he should meet them to show them where the vehicle had been parked. That he proceeded to meet them and he found out that Joseph Amoah Oppong was part of the team who requested that they go to the police station and he agreed to go with them. That Joseph Amoah Oppong and PW1 subsequently made a complaint at the police station where he was arrested. The accused person further told the court that it is not true that he made any misrepresentation to

PW1 to clear the vehicle for him. That this is not the first time he has been engaged by Joseph Amoah Oppong to clear for him. That it was a civil contract he had with Joseph Amoah Oppong who introduced PW1 upon his brother's instruction.

The accused person did not call witness and thereafter closed his defence.

The legal issue to be determined is whether or not the accused person herein with intent to defraud did obtain the consent of the complainant to part with the sum of GH¢16,500.00 by means of certain false pretences that if the said amount is given to him, he could clear his Chevrolet Spark salon car from Tema port for him.

The general principle of law in every criminal case as provided under **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 **Asare v The Republic [1978] GLR 193 – 199**, per Anin J. A. reading the Court of Appeal decision is that:

"There was no burden on the accused to establish his innocence, rather it was the prosecution that was required to prove the guilt of the accused beyond all 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 accused person to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful.

Section 132 of Act 29 provides:

“A person defrauds by false pretences if, by means of a false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of a thing.”

From the above, the elements of defrauding by false pretences are as follows:

1. The use of false pretence or personation,
2. To obtain the consent of another person,
3. So that the person parts with or transfers the ownership of something.

Section 133 of Act 29, in defining defrauding by false pretences, lays out the following ingredients:

1. Representing the existence of a state of fact,
2. Either with the knowledge that such representation is false or without the belief that it is true,
3. The representation should be made with the intention to defraud.

The House of Lords, in *Welham v. Director of Public Prosecutions [1961] A.C. 103*, held, as stated in Archbold, Criminal Pleading, Evidence and Practice (36th ed.), para. 2043 at p. 753 that:

“Intent to defraud’ means an intent to practise a fraud on someone and would therefore include an intent to deprive another person of a right, or to cause him to act in any way to his detriment...”

In the case of *Asiedu v. The Republic [1968] GLR 1*, Amisah J.A. stated and I quote:

“An intent to defraud is an essential element of the offence of defrauding by false pretences whether the method of fraud adopted was personation or a false representation”.

Archer J. (as he then was) in the case of *Blay v. The Republic [1968] GLR 1040-1050* stated:

“In a charge of defrauding by false pretences, if the evidence showed that the statements relied on consisted partly of a fraudulent misrepresentation of an existing fact and partly of a promise to do something in future, there was sufficient false pretence on which a conviction could be based”.

After careful examination of the evidence led at the trial, I made the following findings of facts and observations:

It is the prosecution’s case that the accused person collected an amount of GH¢16,500.00 from the complainant under the pretext of clearing his car from the port for him and after he took the said money from the complainant, he failed to clear the vehicle and as a result, the vehicle was later confiscated to the State.

From the evidence of PW1, his brother shipped a Chevrolet Spark car in his name to the Tema Port for him to clear so the accused person was contacted to clear the

car on his behalf. Therefore his brother made an initial payment of GH¢7,000.00 to the accused person to clear the car but he failed to do so as promised and told him he has used the money to solve some problem. According to PW1 he made another payment of GH¢9,500.00 to the accused person for the same purpose but he again failed to clear the car; and also refused to answer his calls. That he later got in touch with the accused person who told him he has used the money to solve some problem again. So he reported the accused person to the police.

From the evidence of PW2, he works together with PW1 in the same office and learnt about this case through PW1. That he went with PW1 to check if the car was available for clearing and they actually saw the car parked in the yard at Tema Port.

PW3 who is the investigator rehashed the brief facts of the case and also told the Court that he found it prudent to charge the accused person based on the evidence he gathered during investigation of the case, in addition to the confession statement given by the accused person that he actually collected GH¢16,500.00 but used same to place advert in search of his missing son at that time.

In the investigation caution statement of the accused person dated 10th April 2019, which was tendered in evidence by PW3 in support of the case of the prosecution against the accused person, he stated as follows:

“Somewhere in the month of February 2019 I took an amount of GH¢9,500 from Ebenezer Osei Yaw to clear Chevrolet Spark for him. I started the process of clearing the car but unfortunately I couldn't finish the process due to some

circumstances. I used 90% of the money to settle a debt I incurred somewhere in last year September till date. On the 6th of September my biological son called Albert Yaw Nyarko Antwi got missing and up till date my son Yaw Nyarko Antwi is nowhere to be found. At the cause of that I spent a lot by borrowing from people to search for my son and by so doing it came to a time where the borrowers were chasing and attacking me for their money. I have nothing to give them so I used Ebenezer Osei Yaw's money to settle my debt thinking and hoping to get money from my debtors and friends to clear the Chevrolet Spark for Ebenezer Osei Yaw."

In his charge statement taken on the same day, the accused person repeated what is in his investigation caution statement as reproduced above.

From the investigation caution and charge statements of the accused person which were duly tendered in evidence without any objection from Counsel for the accused person, these are confession statements from the accused person.

These statements were taken from the accused person in compliance with all the relevant provisions of *Section 120 of the Evidence Act, 1975 (NRCD 323)* applicable to the taking of confession statements and which was designed to protect accused persons. As noted above, Counsel for the accused person did not raise any objection to these investigation caution and charge statements and the prosecution tendered them as exhibits successfully. The confession statements made by the accused person is not too different from the testimony of PW1 and PW3.

It is important to note that the amount in exhibit 'A' is not GH¢9,500.00 as PW1 claimed in his evidence but rather GH¢8,500.00; however the accused person admitted in his investigation caution and charge statements that he took GH¢9,500.00 from PW1. Whatever the amount may be, prosecution has been able to adduce evidence that the accused person took money from the complainant and promised him that he would clear his car for him with that money when he knew he was not going to use the money for that purpose even though he claims he started the process of clearing the car but could not finish due to some circumstances.

The House of Lords, in *Welham v. Director of Public Prosecutions [1961] A.C. 103*, held, as stated in Archbold, Criminal Pleading, Evidence and Practice (36th ed.), paragraph 2043 at page 753 that:

'Intent to defraud' means an intent to practice a fraud on someone and would therefore include an intent to deprive another person of a right, or to cause him to act in any way to his detriment ...'

In the case of *Asiedu v. The Republic [1968] GLR 1-8*, Amisshah J.A. stated thus:

"An intent to defraud is an essential element of the offence of defrauding by false pretences whether the method of fraud adopted was personation or a false representation".

In the instant case, the accused person did not misrepresent the fact that he is a clearing agent but rather he falsely represented what he told the complainant and his brother about what was going to be the purpose for their money. On the question of false representation, it is apparent from the evidence adduced by PW1 and PW3 that the accused person convinced the complainant and his

brother Joseph Amoah Oppong that he was going to clear the said car being the reason why they gave him the said money. As a result of this, they gave the said money to the accused person who used the money to clear his debt instead of the said car for which reason the money was given to him.

From the evidence adduced by the prosecution witnesses, the accused person used his position as a clearing agent to obtain the money from the complainant to solve his personal problem by making false representation that he will use the money to clear the said Chevrolet Spark salon car.

The accused person made false representation as to what he was going to use the complainant's money for because from his caution and charge statements he used 10% to start the clearing process and willingly decided to use 90% of complainant's and his brother's money to settle his personal debt when he knew that was not the purpose for which the money was given to him.

From the evidence before this Court the prosecution has been able to lead sufficient evidence to establish that the accused person indeed made false representation that he would use the money he took from the complainant and his brother to clear the said car with the intention to defraud the complainant being an essential element in the crime he has been charged with, because he had earlier incurred debt as a result of his missing son and his debtors were chasing and attacking him so he decided not to use the money for the purpose he collected same but rather to settle his personal debt as the evidence before the Court indicates.

The accused person in his defence told the Court that the complainant's brother who he dealt with, initially gave him GH¢7,000.00 and requested him to top up

with his money to make the GH¢9,700.00 he needed to clear the said vehicle. That after he took the GH¢7,000.00 he could not raise the difference to top up and in the course of trying to raise the difference, he used part of the money to work on other clearing jobs he was doing and also spent part of the money to run advert in search of his missing son.

From the above evidence by the accused person, he ought to have returned the money to the complainant's brother when he knew he could not raise the difference to top up to clear the said vehicle, rather he used the GH¢7,000.00 that was given to him to clear the vehicle, for his personal purpose to the detriment of the owner of the car for which reason the money was given to him. The accused person in his defence did not explain what he used the second amount of GH¢9,500.00 for, which was given to him by the complainant to clear the same car after he used the GH¢7,000.00 complainant's brother gave to him in relation to the same car in issue. All the accused person said was that it was still not enough to pay for all the charges and penalties to clear the vehicle but he did not tell the court what exactly he used that money for as it was given to him to clear the car, apart from saying that he paid GH¢600.00 to some officer to fast track the response from CEPS. Nevertheless, the accused person had earlier stated in his caution statement that he used the said money to settle his personal debt he incurred as a result of his missing son.

Indeed the accused person admitted in his evidence to the Court that he used the money that was given to him to clear the car for his personal matters. Whether the accused person was disappointed by another person to give him money to replace the complainant's and his brother's money so that he will be able to clear the car, or not is immaterial because the said money was not given to him to

settle his personal issues to the detriment of the complainant and his brother who gave him the said money.

The accused person ought to have returned the complainant's and his brother's money to them when he realized that the money was not enough to clear the car but he did not and decided to use the said money to settle his personal debts.

From the evidence before this court it is obvious that the accused person defrauded the complainant and his brother by false pretenses that he was using the money to clear the car for them but it was not enough then he rather used the said money for his own purpose.

The intentions of a person is always determined by their conduct. *Section 11 of Act 29* explains *intent* and in summary provides that a person intends the natural consequence of his or her actions. The conduct and actions of the accused person lead to the suggestion that he intended to defraud the complainant and his brother irrespective of how long he has known them or dealt with them, otherwise he would have returned their money to them when he claimed the money they gave him was not enough to clear the car instead of using it for his own benefit.

In the case of *Blay v. The Republic (supra)*, the court stated that:

"If a man makes statements of fact which he knows to be untrue, and makes them for the purpose of inducing persons to deposit with him money which he knows they would not deposit but for their belief in the truth of his statements, and if he intends to use the money thus obtained for purposes different from those for which he knows the depositors understand from his statements that he intends to use it, then, although he may intend to repay the money if he can, and although he may

honestly believe, and may even have good reason to believe, that he will be able to repay it, he has an intent to defraud."

In the instant case not only was the representation to the complainant and his brother by the accused person that he was going to use their money to clear the said car for them false, because as at the time he took the money the car was not in the position to be cleared, but also the accused person took advantage of the deceit due to his position as a freight forwarder, and used the said money to settle his personal debt. Relying on the above authority, although the accused may intend to repay the said money he took for the purpose of clearing the said car, the accused person had the intent to defraud the complainant and his brother regardless of the length of time he has dealt with them.

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.”

For the accused person to have been called upon to open his defence it implies that the prosecution was able to make a prima facie case against him and all that was required of him was to raise reasonable doubt in the case of the prosecution to enable his acquittal and discharge. Unfortunately, the evidence of the accused person before this Court could not raise any reasonable doubt as to his guilt.

From the evidence of the accused person, I find that the accused person does not have a reasonable defence to the charge against him since he could not raise any reasonable doubt as to his guilt; and I do find that the prosecution has been able to prove that the accused person is guilty of the offence for which he has been charged. This is because the case of the prosecution has been consistent and been able to establish beyond reasonable doubt that the accused person defrauded the complainant and his brother.

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* 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.”

Apaloo JA (as he then was) in the case of *Asare & Others v. The Republic (No. 3)* [1968] GLR 804 stated:

“The offence of fraud by false pretences seeks to punish anyone who deceives another to his detriment and which deceit operated to the material advantage of the deceiver”.

For the foregoing reasons, I find the accused person herein, *Samuel Antwi* guilty of the offence of defrauding by false pretence and convict him accordingly.

Court: Any plea in mitigation before sentence is passed?

Counsel for accused: The accused person is a first time offender. He is a young man married with kids. We pray that the Court deals leniently with the accused person by letting us pay a fine. It will also serve as a deterrent to the accused person and his future dealings. The accused person is a bread winner and if he is taken away it will have effect on his family.

Court: Is the accused person known?

Prosecutor: No.

By Court:

In sentencing the accused person, the Court takes into consideration the fact that he is a first time offender and also considers the plea in mitigation by counsel for

accused person. The Court hereby imposes the following sentence on the accused person:

The accused person is sentenced to a prison term of (12) months IHL. In addition he shall pay a fine of Two Hundred (200) Penalty Units or in default serve six (6) months prison term IHL.

Final Orders:

The accused person is ordered to pay the amount of GH¢16,500.00 to the complainant herein and his brother, Joseph Amoah Oppong in the proportion they gave him the said amount.

.....
H/H AKOSUA A. ADJEPONG (MRS)
CIRCUIT COURT JUDGE
15TH DECEMBER 2022