

18: 05: 2023

IN THE DISTRICT MAGISTRATE COURT HELD AT VAKPO ON FRIDAY THE 18TH DAY OF
MAY,
2023 BEFORE HER WORSHIP GIFTY CUDJOE THE MAGISTRATE

SUIT NO. B7/09/2022

THE REPUBLIC

VERSUS

CHARLES DZROH

JUDGEMENT

The accused person was arraigned before the court and charged with Stealing Contrary to Section 124 (1) of the Criminal Offences Act, 1960 (Act 29).

The accused person pleaded "Not Guilty" the Charge.

Prosecution presented the facts as that the complainants are one Alice Wukupo Diana Domey and Joiceb Akah respectively. That on 14/09/2022 at about 7: 00 p.m. The

1st and 2nd complainants returned from church only to find their phones missing from their rooms. Within the same period the 3rd complainant who also kept his phone on his fathers bed moved to a different apartment to give a message to his mother also are turned to pick the phone but realized it was missing. Just when they were contemplating about their missing phones they saw a neighbour Seyram chasing accused and shouting "thief" "thief". The complainants went to Seyram and he held them that accused came into his room in an attempt to steal his motor bike. There the complainants accused him of being responsible for the theft of their missing phones but the accused denied.

The complainants subsequently reported the matter to the chief of the town and accused was arrested by the youth of the community: Upon interrogation accused

admitted to have stolen the phones. He subsequently directed his Sister who went and retrieve the phones. Accused was thereafter handed over to the Police.

In defence of the charge, accused told the court that he was at home and a boy called Michelle came to him with (4) four phones together with a music box. Following day, he was playing the music box in home. One Bani saw him and said the music box belong to his mother. He then told Bani Michelle sold same to him and told him the music box is his personal property. The said Bani also told him some were missing and he told him the phones were him. Subsequently, he received a call from the chief concerning the phones and he confirmed.

They asked about the phone and he told the it was in the house. He called his sister and she brought the phones from the house. He was later brought to the Police Station.

In criminal trials, the prosecution has the burden of proof of the charge against an accused person beyond all reasonable doubt. However, when the burden of persuasion is on an accused as to a fact the converse of which is essential to his guilt the accused is required only to raise a reasonable doubt.

See Section 11 (3) and 13 of the Evidence Act, 1973 (NRCD 323).

Section 124 (1) of the Criminal Offences Act, 1960 (Act 29) reads:-

“A person who steals commits
a second degree felony”.

Section (25), the definition of stealing Per the Act Supra reads:

“A person steals if he dishonestly appropriate
thing which he is not the owner”.

[In the case of]

Ampah versus The Republic

[1977] 2 GLR 171 ca, it was held that the essential ingredients of the offence of Stealing are:-

1) Dishonesty, (2) Appropriation and (3) property belonging to another. These ingredients prosecution is under an obligation to prove against the accused person herein to be able to secure conviction.

PW (1) narrated how he went to church returned only to rease his phone and that of his father were missing.

PW (1) is evidence disclosed the shout of one Seyram whose shout I identified accused in an attempt to steal in his room that failed. PW (2) equally confirmed her missing phone upon her return from church. PW 9@0 confirmed the shout of one Seyram that drew her to the said Seyram only to meet P. W. (3) and (4) Who equally complained about their missing phones.

The evidence on received did not disclose any direct evidence against the accused. Accordingly, the prosecution relies on the inferences drawn from all the complainants to sustain conviction.

[In Dogbe versus Republic]

[1975] 1 GLR 118 at holding 1, it was held that:-

“In Criminal trials, the Identity of the accused as the person who committed the crime might be proved by direct testimony is by circumstantial evidence of other relevant facts from which it might be informed by the court. Thus opportunity on the part of the accused to do the act and his knowledge of circumstances enabling it to be done where admissible to prove identify”.

Prosecution has established that all of the phones belonging to the complainants were informed in exclusive possession of the accused person. This piece of evidence was corroborated by accused himself who upon interrogation sent his own sister to retrieve the phones from his place of abode which was done.

The accused having admitted in his defence that he was in exclusive contract and possession of all the phones belonging to the complainants, the burden of proof shifts on

him to give account to the satisfaction of the court is how he came by those phones. Failure to do that the phones will be presumed to have been stolen or warfully obtained by him. On the evidence accused mentioned one Michelle as the person who brought the phones to him at home and he purchased same. Accused person did not call Michelle as a witness neither did the evidence in his defence disclose to the court that the said Michelle deal in mobile phones retail now wholesale which ordinarily should be known to members in the community.

Even if the phones were to have been given to the accused by the said Michelle, nevertheless accused would have been in contract with the law because evidence established that the phones do not belong to the said Michelle either.

Section 156 of the Criminal Procedure Code, 1960 (Act 30) Stated the following:-

“When a person is charged with stealing anything and it is proved that he received the thing through the same was to have been stolen, he may be convicted of receiving although not charged with the offence”.

CROSS EXAMINATION ON ACCUSED REVEALED.

Q. You said you were sent to the Palace. There you admitted to have stolen the phones.

A. I admitted Michelle sold them to me.

Q. And you could not lead Police to Michelle.

A. No Police told me to lead them to Michelle.

It is trite learning that accused was given time sufficient enough to call all his relevant

witnesses but he failed to call the said Michelle. Accused person's inability to call the said

Seyram to support his defence rather strengthens the case of prosecution against him.

[In the case of]

Gligah & Atiso versus The Republic

[2010 SCGLR 870, circumstantial evidence was described as: -

“Pieces of evidence which it put together made a very strong case against the accused person. It was like a series of small threads and which when put together made very strong rape. The same with circumstantial evidence. It was generally accepted that when direct evidence is unavailable, but there a bits and pieces of circumstantial evidence is available and when those were put together they would make a stronger, corroborative and more convincing evidence than direct evidence”.

The totality of the evidence the court finds, leads to one conclusion: -

The accused carefully timed all the complainants, entered their various rooms and stole the phones. Luck run out on him and the last victim, the said Seyram saw him in his filed attempt. Accordingly, the court finds the accused herein guilty of stealing and convict him therefrom.

Plea in Mitigation:

Accused:- I am pleading with the Court.

Prosecution: -

Q. Prosecution has the Phone been retrieved.

A. Yes.

BY COURT: An R. O. is ordered for all Victims to receive their Phones.

Accused convicted and Sentenced to (6) months Imprisonment in H. L.

In sentencing the accused, the court has observed that the accused person is known to the court and the charge preferred against him is a second degree felony offence.

.....sgd.....

GIFTY CUDJOE
THE MAGISTRATE