

IN THE CIRCUIT COURT HELD AT CAPE COAST ON WEDNESDAY THE 12TH
DAY OF OCTOBER, 2022 BEFORE HER HONOUR VERONIQUE PRABA
TETTEH (MRS.), CIRCUIT JUDGE

236/2021

THE REPUBLIC

VRS

1. GEORGE BAAH

2. ENOCH KWABENA SEFAH

JUDGMENT

In their book, Criminal Law (10thed) by Catherine Elliot and Frances Quinn, they write at page 273 that

“One of the reasons for the existence of inchoate offences is that without them the police would often have to choose between preventing an offence being committed, and prosecuting the offender – it would be ridiculous, for example, if they knew a bank robbery was being planned, and had to stand by and wait until it was finished before the robbers could be punished for any offence. In addition, the person would have had the mens rea for the commission of the offence, and it may often merely be bad luck that he or she did not complete the crime – for example, if a planned bank robbery did not take place because the robbers’ car broke down on the way to it.”

The above passage is self-explanatory and I believe is the main motivation for prosecution in pursuing this case. Coincidentally, the two accused persons are charged with conspiracy to commit the crime of robbery of the Fiaseman Bank. The particulars of offence reads that the accused persons

On the 11th day of May 2021, you at Abura Cape Coast in the central Region and within the jurisdiction of this court, did agree to act together with a common purpose to commit crime to wit robbery.

According to prosecution's first witness on the 11th of May 2021 as part of his usual rounds as a mobile money banker for the Fiaseman Rural Bank, he went to the shop of the accused persons there. While conversing with the accused persons *they*

"told me that they wanted to conspire with me so that anytime I have collected enough money, I should tell them so that they would beat me up to indicate that I have been attacked by robbers and they would collect all the money and later give me 50% as my share."

He added that accused persons also collected information about the bank and asked about how they could enter the bank so as to steal from it. He was asked to think about it and he went back on the 14th of May to give them his response. This time he went with a recorder and recorded their conversation. This audio recording was tendered as Exhibit C. This witness can be referred to as the star witness of the prosecution as he was the main person who witnessed the conversation with the accused persons.

The second witness of prosecution is the branch manager of the bank the first witness works for. She testified that the first witness reported the conspiracy of the accused persons to and being alarmed by their intent sent him back with a recorder to capture their conversation. The final witness for prosecution was the police investigator and he tendered the statements made by accused persons after their arrest and when they were charged for the crimes. In their statements they claim that they did not intend to carry out the robbery.

Accused persons at the close of prosecution's case were called upon to testify. Both of them vehemently denied plotting to attack and steal money from either the first witness or the bank. They also maintained that any such statements made were in

jest and not to be taken seriously. Accused persons also pointed fingers at the first witness as being the mastermind of the idea even though there was no actual intention to actually carry it out.

The audio recording was made on the 14th of May 2021 and is not the subject matter of this suit since the date accused persons are to have conspired was the 11th of May 2021. To determine if the accused persons truly conspired to rob the bank, the court must rely on the oral evidence of the parties in court. It is a matter of first witness' evidence on oath against accused person's evidence on oath. In *Amarthey v The State* 1964 GLR 256 the court was of the opinion that

“where a question boils down to oath against oath, especially in a criminal case, the trial judge should first consider the version of the prosecution, applying to it all the tests and principles governing credibility of witnesses; when satisfied that the prosecution's witnesses are worthy of belief, consideration should then be given to the credibility of the accused's story, and if the accused's case is disbelieved, the judge should consider whether, short of believing it, the accused's story is reasonably probable”

While the prosecution witnesses claim the accused persons intended to rob the bank, the accused persons also claim it was a joke and not meant to be taken seriously. The court must therefore consider the credibility of the accused person's version.

In the first place prosecution is not certain of which of the two acts accused persons were to have committed. There were no concrete plans made by the accused persons that can be gleaned from the first witness' testimony. No actual plans were made which would show that their conversation was to have serious consequences. Was the plan to attack the first witness while he was out or was it the bank itself? The conspiracy, so called, did not progress beyond the discussion that went on the 11th of May 2021.

Even on the 14th of May 2021 that the audio recording was made, it is clear no actual plans had been put in place days after the initial conversation to commit the robbery.

It is sufficiently clear that the parties discussed attacking the first witness and the bank but like the accused persons said it was just conversation. There was no actual intent to carry it out hence the absence of any planning.

On the issue of the recording, it was first introduced during the filing of disclosures. During the case management conference and on several court sittings after, counsel for the accused contested the quality of the audio recording. He complained of its bad quality and requested that a transcript be prepared of the recording, so the court as well as the accused persons could better understand the contents of the audio. Prosecution protested at the cost of transcribing the audio and proclaimed they could not pay for it. Due to the reluctance of both parties to pay for the transcription of the audio recording and the insistence of prosecution on relying on the exhibit, this court ordered that hearing commence in order not to further delay this case.

Thus the audio recording was never transcribed and the court had to rely on it as it was. Being a native speaker of the Akan language, I can understand the conversation in the recording if I were to listen to it. It would be unfair to the accused persons and even prosecution to rely solely on my interpretation of the audio and use it in my judgment. I find therefore that I am unable to rely on it in making a final determination.

Prosecution's duty in criminal cases is well defined. Section 15(a) of the Evidence Act, NRCD 323 makes it clear that the burden of establishing the guilt of the accused persons lies on the prosecution. In *Gligah & another v The Republic* 2010 SCGLR 870, the Supreme Court explained that

“...whenever an accused person is arraigned before any court in any criminal trial, it is the duty of the prosecution to prove the essential ingredients of the offence charged against the accused person beyond reasonable doubt.”

Section 13(1) of the NRCD lends clear authority to the degree of proof that prosecution is saddled with establishing. It is through this lenses of proof, beyond

reasonable doubt, that the evidence on the conspiracy to rob has been examined. I do not find that prosecution has proved beyond reasonable doubt that the accused persons conspired to rob the complainant bank. It is clear it was a careless statement made without any actual intent to carry it out. They are therefore acquitted and discharged.

(SGD)

H/H VERONIQUE PRABA TETTEH (MRS)

(CIRCUIT JUDGE)