

IN THE CIRCUIT COURT HELD AT BIBIANI ON MONDAY THE 28TH DAY OF NOVEMBER, 2022 BEFORE H/H JOSHUA CALEB ABAIDOO ESQ, THE CIRCUIT COURT JUDGE

CASE NO. BN/CT/11/23

THE REPUBLIC

VRS

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| 1. LINDA GYAMFI (A1) | 1 ST ACCUSED |
| 2. COLLINS APPIAH (A2) | 2 ND ACCUSED |
| 3. ISAAC MENSAH a.k.a. KWAKU DEGOR | 3 RD ACCUSED |
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ACCUSED PERSONS PRESENT AND SELF REPRESENTED

D/C/INSP. FRED AMOH FOR THE PROSECUTION.

JUDGMENT

The accused persons were jointly charged with one count of the offence of **Conspiracy to commit crime to wit Stealing** contrary to section 23(1) and section 124(1) of the Criminal Offences Act 1960, Act 29, one count of the offence of Causing Unlawful Damage contrary to section 172(1)(b) of the Criminal Offences Act 1960, Act 29, one count of the offence of Unlawful Entry contrary to section 152 of the Criminal Offences Act 1960, Act 29 and one count of the offence of **Attempt to commit crime to wit Stealing** contrary to section 18(1) and section 124(1) of the Criminal Offences Act 1960, Act 29

A2 and A3 pleaded “not guilty” to all the charges made against him. A1 pleaded guilty with explanation to all 4 counts. Upon hearing A1’s explanation to all 4 counts the court entered a plea of ‘guilty’ on her behalf for count 3 i.e. Unlawful Entry contrary to section 152 of the Criminal Offences Act 1960, Act 29 and a plea of not guilty on her

behalf for the other three offences charged against her. Sentencing for count 3: Unlawful Entry contrary to section 152 of the Criminal Offences Act 1960, Act 29 was deferred to the end of the trial.

The prosecution then assumed the burden to prove the charges levelled against the accused person beyond reasonable doubt in accordance with Section 13 (1) of the Evidence Act, 1975 NRCD 323.

Under section 11(2) of Evidence Act, 1975 NRCD 323, in criminal cases the burden of proof is on the prosecution throughout. The prosecution is required to produce sufficient evidence on a fact essential to establish the guilt of the accused, so that on all the evidence a reasonable mind could find the existence of that fact beyond reasonable doubt.

The brief facts of the case are that A1 Linda Gyamfi, age 22 is a Seamstress apprentice and a resident of Dominibo, A2 Collins Appiah a.k.a Pall Mall, age 25, is unemployed and a resident of Subri Nkwanta and A3 Isaac Mensah a.k.a Kwaku Degor age 30, is unemployed and a resident of Bibiani Old town. The complainant Samuel Ayisi is a security man at the Bibiani Government Hospital.

On 13/06/22 the complainant on his routine checks at the various departments sensed the presence of intruders in the Covid-19 Isolation centre of the Hospital. He in the presence and with the assistance of one Mark Forster Doh entered the centre and saw A1, A2 and A3 having removed 2 ceiling fans valued GHC 1,000 from the ceiling. The door to the entrance of the centre had been damaged. A1 and A2 were arrested but A3 escaped. Due to injuries sustained by A2 he was admitted at the same hospital for treatment but he escaped from the hospital bed. A1 mentioned the names of A2 and A3 as the main culprits. She was granted Police inquiry bail but she jumped bail. On

26/07/22 A2 was arrested at Sefwi Bodi by the Police at Bodi and handed over to the Police at Bibiani. On 24/08/22 A1 and A3 were arrested from their hideout.

The evidence in chief of the prosecution witnesses are as stated in the witness statements of PW1 Samuel Ayisi who is the complainant, PW2 Mark Doh Forster and PW3 PW/L/Cpl Faustina Amponsah, who tendered in evidence the following exhibits;

1. “ B:- the written statement of PW1 to the Police
2. “ C:- the written statement of PW2 to the Police
3. “ D:- investigation Caution Statement of A1
5. “ E:- investigation Caution Statement of A2
4. “ F:- investigation Caution Statement of A3
5. “ G:- Charge Caution Statement of A1.
6. “ H:- Charge Caution Statement of A2.
7. “ J:- Charge Caution Statement of A3.
8. “ K:- Scene of the crime
9. “ L:- Photograph of the Motorbike used by the accused persons
-and abandoned at the scene

A photograph of the two ceiling fans was tendered in evidence without objection through PW2 Mark Doh Forster by A2 Collins Appiah and marked Exhibit A.

In dealing with count one on Conspiracy section 23(1) of the Criminal Offences Act, (1960) states that;

“(i) 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 previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.”

For the prosecution to obtain a conviction evidence will have to be led to prove that the accused persons acted together with a common purpose for or in committing or abetting the criminal offence.

Also in the case of, *The REPUBLIC v. MAIKANKAN AND OTHERS* [1972] 2 GLR 502-514 the court, per ABOAGYE J. as he then was held:

“For a charge of conspiracy to succeed under section 23 (1) of the Criminal Code, 1960 (Act 29), there must be evidence that the accused persons agreed or acted together with a common purpose to commit the offence.”

In the case of *Commissioner of Police v. Afari and Addo* [1962] 1 GLR 483 SC the Supreme Court noted 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.”

In other words conspiracy like any state of mind can be proven by inference from proven facts.

In evaluation the evidence the explanation of A1 to all the offences charge is instructive and therefore reproduced below;

"I have forgotten the date but it was a Sunday morning. Degor (A3) is my boyfriend. He came to visit me at Dominibo with Pall Mall (A2). I know A2 at Subri Nkwanta where I learn my trade. I decided to come to Bibiani with them when they were coming to Bibiani because there was no one at home.

At about 9.00 pm on the same day A2 said he was going to Subri Nkwanta. I said that I was going to ride with him on his motorbike and alight at Dominibo to go home.

A3 said we should go and visit a friend of his by name Pablo who lives behind the hospital after which we will go home and he also will go home to Bibiani Old Town. We used the road to the Government Hospital. When we went past the hospital then A3 asked A2 to stop the motorbike so A2 stopped the motorbike. We all got down from the motorbike.

A3 asked me to wait for them by the motorbike so I waited by the motorbike while they went away. I waited for a while but they were not coming so I went to where they went to find out what they were doing which had kept them so long. I entered the room through where they used to enter the place.

When I entered I saw two ceiling fans lying by A2 and A3. After that when I was getting out of the room then the security man saw me. The security man said "thief", "Stop there". A2 and A3 ran away and left me so the security man caught up with me and arrested me."

PW1 Samuel Ayisi was positive in his evidence that he saw A3 running away into the dark but did not see his face and that A1 gave his name to the Police. Even though A3 denied being involved and present at the scene of the crime A2's evidence was very incoherent it corroborates A1's story about the involvement A3 who directed the three of them to the hospital. He however, answered questions very intelligently when he was cross examined. This suggests that his incoherence during his evidence in chief was deliberate. Even though A2 denied ever being in the room and being involved in the

commission of the offence the following transpired during the cross examination of A2 by A1;

Q: I put it to you that you never told me that you were going to take/steal anything from the room. You told me yesterday that if I tell the truth you will also say that I was also involved in what you did.

A: I never told you that I would say you are involved but we told you what we were going to do.

Now merely telling a person about what you are going to do or intend to do does not amount to the person agreeing to the doing of the thing. The extract above amounts to an admission that A2 and A3 had agree to act together for a common purpose. This is also a corroboration of the evidence of A1 and must therefore be preferred to the denial of A3. It can be safely inferred from the evidence that A2 and A3 agreed to and did act together with a common purpose to steal the ceiling fans from the centre. The evidence suggests that A3 was the mastermind and the director of the whole operation. A2 and A3 clearly conspired to commit the offence but same cannot be said of A1.

A1 is therefore acquitted and discharged on count 1; **Conspiracy to commit crime to wit Stealing** contrary to section 23(1) and section 124(1) of the Criminal Offences Act 1960, Act 29,.

A2 and A3 are each convicted on count 1; **Conspiracy to commit crime to wit Stealing** contrary to section 23(1) and section 124(1) of the Criminal Offences Act 1960, Act 29,

On count 2 i.e. **Causing Unlawful Damage** contrary to section 172(1)(b) of Act 29 the evidence of A1 indicate that he saw A2 and A3 enter the centre through an opening in the wooden wall at the back of the centre and that is where she also used to enter the building. This was not undermined or discredited through cross examination by the

prosecution. It is obvious that the opening in the wooden wall is not the entrance or door to the centre which was under lock. There is therefore the possibility that the damage to the door lock was caused by someone other than the accused persons.

I find that the accused persons have raised a reasonable doubt in the case of the prosecution on count 2. A1, A2 and A3 are therefore acquitted and discharged on count 2

On count 3 on Unlawful Entry contrary to **Section 152 of Act 29** states that;-

“A person who unlawfully enters a building with the intention of committing a criminal offence in the building commits a second degree felony.

Section 153 of Act 29 explains unlawful entry thus;

“A person unlawfully enters a building if that person enters otherwise than in the exercise of a lawful right, or by the consent of any other person able to give the consent for the purposes for which that person enters.

The evidence led indicates that all the three accused persons A1, A2 and A3 entered the facility without any lawful authority to do so. None of them had any legal right to enter the centre on their own volition.

A1 having been already convicted on her own plea for this offence A2 and A3 are also found guilty of the Offence of unlawful entry contrary to section 152 of Act 29. A2 and A3 are each accordingly convicted on count 3

On count 4 on Attempt to commit crime to wit stealing contrary to section 18(1) and section 124(1) of the criminal offences Act, 1960 Act 29.

Section 18(1) states as follows;

A person who attempts to commit a criminal offense shall not be acquitted on the ground that, the criminal offence could not be committed according to the intent

(a) By reason of the imperfection or other condition of the means, or

- (b) By reason of the circumstance under which they are used ,or
- (c) By reason of the circumstances affecting the person against whom, or the thing in respect of which the criminal offence is intended to be committed or
- (d) By reason of the absence of that person or thing.

It is clear from the evidence before me that A2 and A3 conspired and moved to the hospital and to the Covid-19 Isolation centre with the intention of committing the offence of stealing the ceiling fans. They unlawfully entered the centre and removed the fans. The fact that A2 and A3 did not complete the offence of stealing the fans according to section 18(1) of Act 29 shall not be a reason for acquitting them. The evidence led however, does not prove beyond reasonable doubt that A1 was involved with the attempt to steal the ceiling fans. It seems to me that A1, morally bankrupt and reckless in her life and associations associated herself with the wrong people and found herself in the wrong place at the wrong time.

A1 is therefore acquitted and discharged on count 4.

A2 and A3 are convicted on count 4 of the offence of Attempting to commit crime to wit stealing contrary to section 18(1) and section 124(1) of the criminal offences Act, 1960 Act 29

SENTENCING

A1 is sentenced to a fine of 150 penalty units or in default 15 months in prison with hard labour for count 3

A2 is sentenced as follows;

Count 1:- 30 months in prison with hard labour

Count 3: a fine of 150 penalty units or in default 15 months in prison with hard labour.

Count 4:- 30 months in prison with hard labour.

All sentences to run concurrently.

A3 is sentenced as follows;

Count 1:- 36 months in prison with hard labour.

Count 3: a fine of 150 penalty units or in default 15 months in prison with hard labour.

Count 4:- 36 months in prison with hard labour.

All sentences to run concurrently

In coming to this decision the court took into consideration the high prevalence of such offences especially among the youth within its jurisdiction, the time of the day and the manner in which the offence was committed and the fact that A2 and A3 escaped and evaded arrest until the long arms of the law finally caught up with them.

The court also took into consideration the fact that they are first time offenders, their pleas in mitigation and the time that they have spent in police custody.

R/O

The retrieved ceiling fans and the motor bike are to be returned to their owners.

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H/H JOSHUA C. ABAIDOO
(CIRCUIT COURT JUDGE)