IN THE CIRCUIT COURT DUNKWA-ON-OFFIN; SITTING ON 20TH APRIL 2023 CORAM: HIS HONOUR YAW POKU ACHAMPONG

CASE NO.: B18/02/2023

THE REPUBLIC

VS

PHILIP ESHUN alias MENSAH

ACCUSED PERSON PRESENT

SERGEANT PRINCE ADU AMOAKO FOR PROSECUTION, PRESENT

JUDGMENT

Possessing narcotic substances without lawful authority is prohibited by law. The punishment varies according to the circumstances under which a person convicted possessed the substance.

The 37th section of the *Narcotics Control Commission Act*, 2020(Act 1019) deals with unlawful possession or control of narcotic drugs. It states:

(1) A person who, without lawful authority, proof of which lies on that person, has possession or control of a narcotic drug for use or for trafficking commits an offence.

(2) A person who commits an offence in subsection (1)

(a) for use is liable on summary conviction to a fine imposed in accordance with the penalty specified in the Second Schedule and an additional term of imprisonment specified in that Schedule if the fine is not paid;

(b) for trafficking is liable on summary conviction to the fine and imprisonment specified in the Second Schedule and an additional term of imprisonment specified in that Schedule if the fine is not paid.

According the second schedule of Act 1019, a person convicted in line section 37(2)(a) of Act 1019 is liable to pay a fine on not less than two hundred penalty units and not more than five hundred penalty units and that if that person is not able to pay the fine then that person will serve a prison term of not more than fifteen months.

According to the second schedule, a person convicted in line with section 37(2(b) of Act 1019, is liable to pay a fine of not less than ten thousand penalty units and not more than twenty-five thousand penalty units in addition to a prison term of not less than ten years and not more than twenty-five years imprisonment and if that person is able to pay the fine then that person will serve additional three years imprisonment.

It is under section 37(1) of Act 1019 *supra* that the police have charged the Accused person herein. The police gave the particulars of the offence as:

> "PHILIP ESHUN @ MENSAH; AGED 20 YEARS, EXCAVATOR OPERATOR APPRENTICE: For that you on the 23rd day of May, 2022 at about 5:10am at Mbradan, a suburb of Dunkwa-On-Offin in the Central Circuit and within the jurisdiction of this court, did have in your possession 6.78g of cannabis without lawful authority."

The police presented the following as the facts that culminated in the charging of Accused for prosecution in this matter:

> "The complainant in this case is Dunkwa Divisional Police Command. The accused…lives at Mbradan near Dunkwa-On-Offin. The Police had information that the accused person had been selling dried leave[sic] substance suspected to be Indian hemp(cannabis) at Kadadwen, a suburb of Dunkwa-On-Offin [at the] Anglican School area. Upon information received, on 23rd day of May, 2022 at about 05:10am in the morning, a team of Police Officers led by No. 46753 G/CPL Justice Andoh acted upon intelligence and the accused person was arrested in his bedroom at Mbradan a suburb of Dunkwa-On-Offin and a search conducted in his room revealed a piece of compressed dried leave[sic] substance suspected to be narcotic drug(cannabis) concealed in one of his footwears. The accused in his cautioned statement admitted the ownership of the exhibit and further stated that the knows[sic] how to smoke same and that the exhibit was meant for his personal use. The said exhibit was sent to Forensic Science Laboratory, Accra for testing on 1st June, 2022[sic]. Later, the test result was received from Forensic Science Laboratory, Accra and indicated[sic] that the said exhibit tested positive as 6.78g of cannabis and same was kept for evidential purpose."

Accused pleaded *Not Guilty* to the charge. Thereby, the police prosecution was called to duty to establish the guilt of Accused.

In the case *Majolagbe v. Larbi* [1959] GLR 190, Ollennu J(as he then was) made reference to a dictum he earlier gave in *Khoury and Anor. v. Richter* in a judgment he delivered on 08th December, 1958 on a question of proof in law. I find that statement to be sacrosanct and a good guideline on proving cases in court. The said dictum is:

> *"Proof in law is the establishment of facts by proper legal means. Where a party makes an averment capable of proof in some positive way, e.g. by producing documents, description of*

things, reference to other facts, instances, or circumstances, and his averment is denied, he does not prove it by merely going into the witness-box and repeating that averment on oath, or having it repeated on oath by his witness. He proves it by producing other evidence of facts and circumstances, from which the Court can be satisfied that what he avers is true."

That dictum was referred to with approval in some cases decided in later years such as *Klutse v. Nelson* (1965)GLR 537 @ 542 and *Baah Ltd v. Saleh Brothers* [1971] 1GLR 119 @ 122.

The police called one witness – the investigator herein. In his witness statement which metamorphosed into his evidence-in-chief, the sole witness of Prosecution stated the following, *inter alia*:

"5. On 10-05-2022 at about 10:20am, a case of possession of narcotic drug without lawful authority reported by the Dunkwa-On-Offin Police Divisional Command against the accused person...was referred to me for investigation.

6. ...on 23-05-2022 at about 5:10am, the accused person was arrested in his bedroom at Mbradan...by myself together with a team of Police men led by G/CPL. Justice Andoh.

7. A search conducted in his bedroom upon his arrest, revealed a piece of compressed dried leaves substance suspected to be Indian hemp (Cannabis) concealed in one of his footwears.

8. Accused was interrogated at the spot and he admitted ownership of the said exhibit.

9. He also told Police that the exhibit was meant for his personal use."

The prosecution witness tendered in evidence the statement he said he took from Accused on caution for the purpose of investigations. Accused is said to have stated the following:

"On the 23rd of May 2022 at about 5:15am, I was in my bedroom when a team of police personnel came and arrested me together with one wrap of dried leaves suspected to be Indian hemp and brought me to Atechem Police Station together with the exhibit. I must state that the exhibit belongs to me and I bought it from someone whom I do not know his name at Dunkwa-On-Offin Zongo Market. I must also state that I know how

to smoke Indian hemp. I bought it purposely for use. I am not the owner of the dried leaves suspected to be Indian hemp which was carried away by the police at Kadadwen, a suburb of Dunkwa-On-Offin Anglican School Park area on 10-05-2022 and neither do I sell same."

It was held In *Kru v. Saoud Bros & Sons* [1975] 1GLR 46, CA that the testimony of a single witness to a motor accident was sufficient basis on which to found the judgment. The only condition stated in that case was whether or not that evidence was entitled to credit. The court added at 48 that "judicial decisions depend on intelligence and credit and not multiplicity of witnesses produced at the trial."

The broadness of the rule was narrowed down further in *Logos & Lumber Ltd v. Oppong* [1977] 2 GLR 263, CA, where it was held that a court could act on the testimony of a single witness provided that:

(i) He was an honest witness;

(ii) There was nothing in his background to cast doubt on his veracity;

(iii) He had no motive to misrepresent facts or be biased; and

(iv) His evidence was in no way tainted, i.e. he was not an accomplice.

Though the prosecution called only one witness to prove their case, the witness presented his evidence quite well, making the evidence of prosecution appear reasonably probable. What is more, Accused had no cross-examination for the witness.

After the prosecution had closed their case, the court explained section 174(1) of Act 30/ section 63 of NRCD 323 to Accused. The court also explained Article 19(10) of the Constitution to Accused. Accused chose to give a statement from the dock.

Section 174(1) of Act 30: *At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require him to make a defence, the Court shall call upon him to enter into his defence and shall remind him of the charge and inform him that, if he so desires, he may give evidence himself on oath or may make a statement. The Court shall then hear the accused if he desires to be heard and any evidence he may adduce in his defence*.

Section 63 of NRCD 323 states: *(1) An accused in a criminal action may make a statement in his own defence without first taking an oath or affirmation that he will testify truthfully and without being subject to the examination of all parties to the action.*

(2) Such a statement by an accused is admissible to the same extent as if it had been made under oath or affirmation and subject to examination in accordance with sections 61 and 62.

(3) The fact that the evidence was given without oath or affirmation, or that there was no possibility of examination, may be considered in ascertaining the weight and credibility of the statement, and may be the subject of comment by the court, the prosecution or the defence.

Article 19(10) of the Constitution, 1992 states: *No person who is tried for a criminal offence shall be compelled to give evidence*.

Accused stated:

"I cannot say anything again. I pray the Honourable Court to forgive me; it will never happen again."

Prosecution then said they had no comment on the statement given by Accused. See section 63(3) of NRCD 323 *supra.*

In *Ackah v. Pergah Transport Limited and Others*[2010] SCGLR 728; Sophia Adinyira JSC stated at page 736 that:

"It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material witnesses, admissible hearsay, documentary and things(often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable[sic] *than its non-existence. This is a requirement of the law on evidence under sections 10 and 11 of the Evidence Decree*[sic]."

Section 10(1) of NRCD 323 defines "Burden of Persuasion" and it states:

For the purposes of this Decree, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court.

Section 10(2) of the Evidence Act adds that: *The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact or that he establishes the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.*

Section 11 of NRCD 323 defines "Burden of Producing Evidence" and states further as follows: *(1) For the purposes of this Decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on the issue.*

(2) 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 a

reasonable doubt.

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

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.

In *Oteng v The State*[1966] GLR 352@ 354, SC, Ollennu JSC stated:

"*One significant respect in which our criminal law differs from our civil law is that, while in civil law a plaintiff may win on a balance of probabilities, in a criminal case the prosecution cannot obtain conviction upon mere probabilities.*"

This principle found space in the *Evidence Act* of 1975 i.e. NRCD 323, in section 13(1), to wit:

In any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.

Therefore whatever be the case that comes before the court, whether criminal or civil, when there is a criminal issue to be determined, the standard of proof is proof beyond a reasonable doubt. See *Sasu Bamfo v Simtim* [2012] 1 SCGLR 136 at 138 and also *Fenuku v John-Teye* [2001-2002] SCGLR 985

In Commissioner of Police v. Isaac Antwi[1961] GLR 408 SC, Korsah CJ stated:

"*The fundamental principles underlying the rule of law that the burden of proof remains throughout on the prosecution and that the evidential burden rests on the accused where at the end of the case of the prosecution an explanation is required of him, are illustrated by a series of cases. Burden of proof in this context is used in two senses. It may mean the burden of establishing a case or it may mean the burden of introducing evidence. In the first sense it*

always rests on the prosecution to prove the guilt of the accused beyond reasonable doubt; but the burden of proof of introducing evidence rests on the prosecution in the first instance but may subsequently shift to the defence, especially where the subject-matter is peculiarly within the accused's knowledge and the circumstances are such as to call for some explanation."

The learned judge continued, referring to Archbold's Criminal Pleading, (34th ed.) at p. 371, para. 1001, that:

"Where the prosecution gives prima facie evidence from which the guilt of the prisoner might be presumed and which, therefore, calls for an explanation by the prisoner and no answer or explanation is given, a presumption is raised upon which the jury may be justified in returning a verdict of 'guilty'. But if an explanation is given by or on behalf of the prisoner which raises in the mind of the jury a reasonable doubt as to his guilt, he is entitled to be acquitted, because if upon the whole of the evidence in the case the jury are left in a real state of doubt the prosecution has failed to satisfy the onus of proof which lies upon them."

In the instant case, the accused failed to raise any doubts about the case of the prosecution as he failed to offer any explanation in his defence. Therefore having found that the prosecution's evidence is cogent, I hold that the prosecution have succeeded in proving the guilt of Accused. Accused is hereby convicted accordingly

The evidence, both from the prosecution's side and from the side of Accused suggests that Accused had possession of the said substance for his personal use. Therefore, it is section 37(2)(a) of Act 1019 that will be applied in sentencing Accused.

I find that Accused appeared remorseful for his action. I have therefore decided to give him the minimum sentence as by law established.

Accused is hereby sentenced to pay a fine of 200 penalty units and if he is not able to pay, he will serve one month imprisonment.

(SGD)

HH YAW POKU ACHAMPONG

CIRCUIT COURT JUDGE

20/04/2023