

**BEFORE HER HONOUR GLORIA N.B. LARYEA SITTING AS CIRCUIT COURT
JUDGE AT THE CIRCUIT COURT, MANKESSIM ON THE 28TH DAY OF
FEBRUARY, 2023.**

Suit No.: B7/72/2022

THE REPUBLIC

Vrs.

JONATHAN DUODU

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ACCUSED PERSON

JUDGMENT

The accused stands trial on a single count of possession of stolen property contrary to section 148 of the Criminal and Other Offenses Act, 1960 (Act 29). The particulars of the offence are that on 9th July, 2022, the accused had in his possession ten dead goats valued at GHC 5,000. The prosecution's case against the accused is that on the said date at about 3:00am the accused, a taxi driver was in the course of work in his taxi with registration number GR 6436-22. He was driving from Mankessim towards Cape Coast with a passenger on board.

When the accused approached the Abonko Police check point, he was routinely signaled by the Policemen on duty to stop his taxi for an inspection of his vehicle. The accused refused to stop choosing instead to speed off. The police officers at the checkpoint pursued him to the Ceramics packaging junction where the accused had abandoned his taxi and was fleeing on foot. He was apprehended by the police officers but his passenger managed to abscond. When the taxi was searched, ten dead goats suspected to have been poisoned and the maize used to poison them were discovered in it. The accused denied the ownership of the dead goats explaining that they belonged to his absconded passenger.

To these facts and charge the accused has pleaded not guilty. In a quest to demonstrate the guilt of the accused, prosecution called one of the policemen present at the police checkpoint and who saw the whole incident unfold. He gave evidence that on that fateful dawn, he was on duty with three other policemen when the accused in his taxi approached the police checkpoint from Mankessim. The accused had one man on board. The accused was signaled to stop his vehicle. The accused ignored the order and sped off towards Cape Coast. The police officers immediately reacted by pursuing the accused in their service vehicle until the accused abandoned his taxi at the Saltpond Ceramic Packaging Company junction. The accused was arrested but his passenger escaped through the bushes. On the spot search was conducted on the taxi and it unveiled a suspicious cargo of ten dead goats. The accused and his unusual load were sent to the Saltpond police station. This concluded the eye witness testimony of PW1. None of the questions posed to him under cross examination by counsel for the accused put a dent in his evidence in chief.

PW2, is the investigator in charge of the case. His evidence was in agreement with that of his predecessor. He further buttressed the case of prosecution by tendering into evidence the caution and charge investigation statements of the accused, photographs of the accused, his taxi, the poisoned maize and the dead goats in his booth. At this juncture the prosecution rested its case.

Finding that a prima facie case had been made against the accused, the Court called upon the accused to mount his defense. According to the accused, he was returning from Adjumako when a man hailed his taxi. The man needed a ride to Mankessim. The accused recalled that the man held a school bag and two sacks of load. The accused stated that in the process of carrying the second sack into his booth, the sack exploded exposing the dead goats. The accused said he told the man he could not convey such a

load because there were police barriers ahead. The man encouraged him that he could pass through the police barriers. The accused then charged him GHC 100.00.

According to the accused, upon reaching Mankessim, the passenger asked to be taken further to Pedu where he will get a sack to buy as it will be morning by the time they arrived there. The accused said he charged the man an extra GHC 150.00. When they got to Abonko police barrier, there was a long vehicle in front of them. The police used their torch light to signal him to park. The accused recounted how he by-passed the long vehicle and drove off. This sparked a police chase. His passenger opened his door and fell onto the road. The passenger escaped but the police apprehended him and sent him to the Saltpond police station. The substance of the accused's defense is that the sack of dead goats did not belong to him but the passenger who fled.

The relevant criminal provision is section 148 (1) which stipulates that;

“where a person is charged with dishonestly receiving is proved to have had in possession or under control, anything which is reasonably suspected to have been stolen or unlawfully obtained, and that person does not give an account, to the satisfaction of the Court, as to the possession or control, the Court may presume that the thing has been stolen or unlawfully obtained and that person may be convicted of dishonestly receiving in the absence of evidence to the contrary.”

It is clear from the provision that this is one of the few peculiar circumstances where the accused must prove his innocence or defense. Prosecution is not entirely saved from proving the offense. Prosecution is required to establish a prima facie case against the accused before the accused can be invited to give his account to the satisfaction of the Court of his innocence. Prosecution is to make out a prima facie case against the accused by first demonstrating that the accused was found in possession of property reasonably suspected to have been obtained by some criminal means. This the

prosecution in the instant case did effortlessly. The eye witness PW1 narrated how the accused sped off on reaching the police barrier. The accused later abandoned his car to escape from the police. The question is: what was the accused running away from. Clearly, the accused was aware that the load in his booth was tainted by crime. In his own testimony, he admitted the fear that descended upon him upon seeing the dead goats after the second sack broke. The accused told the Court that he initially refused to carry the man and his load because of the police barriers ahead.

Evidently, he knew that if the load was discovered by the police, the custodians of the law, he would end up at the wrong side of the law. The accused charged an exorbitant fare fully aware of the risk of conveying the ten dead goats because he knew of their criminal origin. The accused on reaching the police barrier sped off. Though he sought to blame the passenger for instructing him to speed off and grabbing his steering wheel, he conceded that he accelerated the car away from the police. Undoubtedly, the attitude of the accused betrayed him. He was fully cognizant of the fact that the ten dead goats he was conveying for his mysterious passenger at that ungodly hour were the proceeds of a crime most likely stealing. The accused even perceived the maize that was used to carry out the deed. I daresay that in the natural course of human activities, goats on this side of our world are slaughtered and not fed poisoned maize to kill them.

The accused in his caution statement, exhibit E expressed his panic when he saw the dead goats as he was loading his taxi. Right from the onset, from the moment he negotiated the fare with the passenger he had the knowledge that the goats were stolen and most likely, his passenger was the thief. The whole story would have had a different happy ending for the accused if he had stopped at the police barrier and turned over the man and his criminal booty to the police. The moment the accused with guilty knowledge received the ten dead goats into his vehicle, the passenger and

himself shared possession of the stolen goats. He could not extricate himself from the offense by saying that the load belonged to his passenger.

In **Salifu and another v The Republic [1974] 2 GLR 291**, the Court held that knowledge referred to knowing that the goods have been stolen at the time they were received and not subsequently. As indicated earlier, the accused had knowledge of the criminal nature of the dead goats at the beginning when he received them into his vehicle.

Generally, the suspicious manner in which the accused behaved when he sighted the police also led the Court to presume that the accused possessed a guilty knowledge as he conveyed the load. I find support for this proposition in the case of **Santuoh v the Republic [1976] 1 GLR 44**. The Court in the aforementioned case presumed guilty knowledge on the part of the appellant from his suspicious conduct after he took delivery of the stolen goods.

Surely, the accused was found in possession of ten dead goods. The Court agrees with prosecution that these goats are highly suspected to have been stolen. Prosecution has further shown that the accused was aware of the fact that the goats were stolen. Prosecution has therefore discharged its burden. When the burden shifted onto the accused to render a reasonable explanation he failed woefully. His account that he was an innocent taxi driver conveying the load of a passenger has been displaced by evidence to the contrary. The evidence confirmed that the accused knew that they were stolen goats. The Court is naturally loth and slow to convict in criminal cases except where there is no reasonable doubt as to the guilt of the accused. I declare that there is no reasonable doubt that the accused was found in possession of ten stolen goats without a satisfactory account. I therefore find him guilty and convict him accordingly.

The accused is sentenced to three years imprisonment with hard labour.

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HH GLORIA N.B. LARYEA

CIRCUIT COURT JUDGE