

**BEFORE HER HONOUR GLORIA N.B. LARYEA SITTING AS CIRCUIT COURT
JUDGE AT THE CIRCUIT COURT, MANKESSIM ON THE 20TH DAY OF MARCH,
2023.**

Suit No.: B18/26/2023

THE REPUBLIC

Vrs.

KWESI ODURO

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Accused Person

JUDGMENT

On 11th December, 2022 at about 11:00pm, the police received intelligence about the brisk sale and smoking of narcotics specifically Indian Hemp at the Asaabee Market. Consequently, the complainant, a police constable was dispatched to the scene in civilian attire. His mission was to go undercover and pose as a potential buyer of the narcotic drug. The complainant upon arriving at the scene identified the accused selling the narcotic plant to his customers. The complainant approached him and requested to purchase two wrappers of the Indian Hemp. The accused presented two wrappers of Indian Hemp to the complainant and received a payment of GHC 2.00 from the complainant. As soon as the transaction was completed, other police officers working with the complainant emerged from their hideout. The haven of Indian Hemp sellers and buyers was thrown into a state of confusion as everyone began to run so as to escape arrest by the police.

The accused however could not take off as the complainant had gripped him together with his bag of narcotic merchandise. The accused then assaulted the complainant leaving a deep cut in the lip of the complainant. The accused was overpowered and placed under arrest. His bag was searched and it revealed 78 wrappers of dried Indian

Hemp, a pair of scissors, a small smoking pipe, two lighters and an amount of GHC 3.00. The accused admitted ownership of these items.

These are the facts presented by the prosecution and denied by the accused. These are the very facts upon which the following three charges are founded;

1. unlawful possession of narcotic plant contrary to section 41 of the Narcotic Commission Act, 2020 (Act 1019);
2. prohibited business relating to narcotic plants contrary to section 42(1) of the Narcotic Commission Act, 2020 (Act 1019); and
3. assault on a public officer contrary to section 205(a) of the Criminal and Other Offences Act, 1960 (Act 29).

The matter proceeded to a full trial when the accused pleaded not guilty on all three counts. At the trial, the complainant re-echoed the prosecution facts. He had gone to the scene undercover. After posing as a customer and buying two wrappers of Indian Hemp from the accused, the scene was overrun with his other colleagues. He held the accused tightly and was assaulted by the accused in return. The eye witness testimony of PW1 could not be contradicted by the accused during cross examination. The prosecution's case was cemented by the exhibits tendered into evidence by the investigator. Exhibit A is the endorsed medical form of the complainant confirming that he had sustained a cut on his lower lips. The indian hemp was tendered into court with the report from the Forensic Laboratory attesting to its narcotic properties and identifying the dried leaves as Cannabis.

After the eye witness testimony of the complainant and the exhibits tendered into Court, the Court made a determination that there was a case to answer by the accused. In his defense, the accused maintained his innocence. His version of the facts that

unfolded that day is that the real owner of the Indian Hemp escaped. The police picked up five wrappers of Indian Hemp and pinned it on him. When he tried to extricate himself from the grip of the complainant his hand hit the complainant and he apologized to him. The accused did not rely on any witnesses.

The specific laws the accused has allegedly broken provide as follows:

Count 1-Section 41(1) of Act 1019:

"a person who without lawful authority, proof of which lies on that person, has possession or control of a narcotic plant for use or for trafficking commits an offence."

Count 2- section 42(1) of Act 1019:

"a person who without lawful authority, manufactures, possesses, produces or distributes narcotic plants commits an offence."

Count 3- section 205(a) of Act 29:

"Whoever assaults, obstructs, molests or resists, or aids or incites any other person to assault, obstruct, or resist any public or peace officer or any person employed by a public or peace officer and acting or proceeding to act in the execution of any public office or duty or in the execution of a warrant or legal process shall be guilty of a misdemeanour."

If prosecution is to obtain a conviction on all three counts it must prove beyond reasonable doubt that the accused had in his possession narcotic plant. The burden then shifted to the accused to prove that he had the lawful authority to possess the narcotic plant. The burden which lay upon the prosecution was to establish also that the accused possessed and distributed the said narcotic plant without lawful authority. Finally, it was necessary that the prosecution should establish that the accused assaulted a police officer while he was engaged in and discharging his official duties. What has to be

ascertained upon the totality of the evidence is always the same matter; is it true the accused committed the acts alleged by prosecution.

Properly considered, the evidence spells out the guilt and doom of the accused. The accused was unable to assail the eye witness testimony of a credible police officer. His own words worked against him. The accused under cross-examination admitted ownership of five wrappers of the Indian Hemp when a few minutes earlier he had claimed they were planted on him by the police. This is what transpired during the cross examination of the accused:

“Q: You indicated in exhibit B your caution statement that out of the 78 wrappers, 5 belong to you?

A: the five belong to me.”

When confronted with his own confession as contained in Exhibit B his caution statement the accused had no reasonable explanation for the contradiction. In exhibit B, the accused accepted ownership over five wrappers of indian hemp. A confession made by an accused person of the commission of a crime is sufficient to sustain a conviction without any independent proof of the offence having been committed by the accused.: **see STATE v. OTCHERE AND OTHERS [1963] 2 GLR 463-531.**

From the whole of the evidence adduced, the Court is satisfied that the accused was in possession of the 78 wrappers of Indian Hemp tendered in Court. the accused was unable to proffer the lawful authority he had to possess the narcotic plant. Having so found the Court finds the accused guilty on Count 1.

With regards to Count 2, the court rests upon the testimony of the complainant to find that the accused is into the distribution of the narcotic plant and is a vendor of the Indian hemp. He was engaged in brisk business prior to arrest. He had completed a sale

with the complainant before he was arrested. There is also evidence that the accused has no lawful authority to distribute the narcotic plant.

Concerning the assault on the police officer, exhibit A attests to the fact and corroborates the testimony of the complainant that the accused assaulted him during the course of his arrest. Admittedly, the complainant was clad in civilian attire. However as soon as the market was overrun with police officers, the accused was fully aware that it was a police operation and that the man who was holding him was a police officer. Clearly, he assaulted the complainant conscious of the fact that he was assaulting a police officer howbeit in plain clothes. The accused had no justification to resist arrest to the extent of assaulting the complainant because he was in the middle of committing an offense. There was no requirement for a warrant of arrest or to inform the accused of the reason for his arrest. I find authority in the case of **AMPOFO v. THE STATE [1967] GLR 155-167** where the Court held as follows:

“A policeman might arrest without a warrant any person who committed an offence in his presence.”

The defense of the accused that he accidentally hit the complainant lacks conviction. An accidental throw of the hand could not have resulted in a deep cut in the lower lip of the complainant. The effort of the complainant is applauded for the risk he undertook to enter into a den of criminals in order to uphold the law in this jurisdiction. He placed his life on the line and is deserving of the commendation of the Court.

In conclusion, therefore, the prosecution, in my view, discharged the burden which lay upon them to prove the charges against the accused person. Consequently, the Court finds the accused guilty on all three counts and convicts him accordingly. As to the sentence, a deterrent sentence is called for. The sheer quantity of narcotic plant found

on the accused being 78 wrappers, his position as a dealer of narcotics and his assault on a police man during his arrests are factors that account for an aggravated sentence.

The accused is sentenced as follows;

Count 1: the accused is sentenced to pay a fine of 1,200 penalty units or in default serve a term of imprisonment of 3 years. in addition to the above fine the accused is sentenced to a term of imprisonment of 11 years with hard labour.

Count 2: the accused is sentenced to serve a term of imprisonment of 11 years.

Count 3: the accused is sentenced to serve a term of imprisonment of 3 years with hard labour.

The sentences to run concurrently.

The seized 78 wrappers of indian hemp tendered into Court is to be disposed-off in accordance with section 108 of Act 1019 a month after the delivery of this judgment.

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HH GLORIA N.B. LARYEA

CIRCUIT COURT JUDGE

