

IN THE CIRCUIT COURT '1' HELD AT TAKORADI, WESTERN REGION ON
THURSDAY THE 27TH DAY OF JULY, 2023 BEFORE HIS HONOUR MICHAEL K.
AMPADU, CIRCUIT COURT JUDGE

SUIT NO. C7/112/2021

THE REPUBLIC

VRS:

FRANCIS ARTHUR @ ATO

JUDGEMENT

Accused : Present

Prosecution: Present

Counsel: Lawyer Ebo Donkor for accused person

The accused person, Francis Arthur @ Ato was charged on four (4) counts which are: Unlawful Entry contrary to Section 152 of The Criminal Offences Act, 1960, Act 29; Assault contrary to Section 84 of Act 29; thirdly on Causing Unlawful Harm which is contrary to section 69 of Act 29; and finally for Stealing contrary to Section 124(1) of Act 29.

On the 29/06/21 when his plea was taken, he pleaded guilty with explanation to counts 1 and 3 and not guilty to counts 2 and 4. However after his explanations, a plea of not guilty was entered for him on counts 1 and 3 making his pleas not guilty to all the four counts.

On 02/06/22, accused prayed to be allowed to change his plea. He was allowed so the facts were re-read to him and he pleaded guilty to count 1, 2, and 3 and not guilty to court 4 which was the charge of stealing.

The facts of the case are that, complaint, Fati Mohammed is a trader and a resident of Kansaworodo. Victim Edward Mensah is a driver whilst Alimatu Mohammed is a fashion designer all residents of Kansaworodo. Accused Francis Arthur @ Ato is a mason and a resident of Kansaworodo. On 05/06/2021 witness sent food to the victim in his house at Kansaworodo on his request about 9:30pm. Victim after eating the food was having conversation with the witness and in the process, he slept off in his bed whilst witness was also seated in a chair in the bedroom dozing without locking up the door. About 10:30pm accused armed himself with a pair of scissors and sneaked into the victim's room, assaulted and stabbed him multiple times in the head with same. Accused after the act, took one of two white envelopes containing GH¢4,000.00 which the complainant placed on a table in the bedroom and bolted with same. Witness rushed out from the victim's room to seek help for victim to be sent to the hospital but again met accused on the way who assaulted and stabbed her on the left hand with a sharp implement. Both victim and witness were rushed to Jemima Crentsil Hospital for treatment and a complainant was later made on behalf of the victim and the witness by the complainant and were issued with police medical report forms. Accused also went to Anaji Police Station on 06/06/2021 and made a causing harm case against the victim but he was later arrested by the police upon seeing the severity of the injury of the victim. Accused in his investigation cautioned statement admitted causing harm to the victim and told police that witness Alimatu Mohammed is his girlfriend that he suspected victim for having an affair with her and warned him on several occasions to stop following the witness but he ignored his warnings. Accused further told police that witness visited him earlier on the day of the incident and told him she was going home and come back to him but she did not show up and he therefore suspected her

to be with the victim and went and stood behind victim's window for some time and was satisfied that witness was with the victim after identifying her voice in the room. That he went inside the room and saw both of them in bed and attacked the victim with hefty blows and it turned into a fight between the two and in the process, victim took a pair of scissors and stabbed him at the back but he overpowered him, collected the pair of scissors and stabbed him with same multiple times in the head.

To prove their case, the prosecution called three (3) witnesses even though on the prosecution's notice of documents filed for this case, they stated thereon that they were calling four (4) witnesses, one of their witness, Fatima Mohammed was not called to testify.

Section 11(2) of the Evidence Act, 1975, Act 323 provides that:

"In a criminal action, the burden of producing evidence, when it is on the prosecution as to any fact that is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence, a reasonable mind could find the existence or the fact beyond a reasonable doubt".

Section 13(1) of the Evidence Act supra also states that:

"In a 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 reasonable doubt".

Section 11(3) and 13(2) of Evidence Act provides that:

"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 guilty, requires the accused to produce sufficient evidence so that on all the evidence, a reasonable mind could have a reasonable doubt as to guilt”;

Section 13(2) states”

“Except as provided in section 15(3), on a criminal action, the burden of persuasion when it is on the accused as to any fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt”.

The accused person was charged on four counts. On the 29/06/21, he changed his plea and pleaded guilty to the first three counts which are Unlawful Entry, Assault and Causing Unlawful Harm contrary to Sections 152, 84 and 69 respectively of the Criminal Offences Act, Act 29/60. He however pleaded not guilty to the fourth count which is Stealing. This trial is therefore on the fourth count which the accused person pleaded not guilty to.

Section 124(1) of the Criminal Offence Act, Act 29/60 provides as follows:

“A person who steals commits a second degree felony”.

Section 125 of the Act states that:

“A person steals who dishonestly appropriates a thing of which that person is not the owner”.

The three essential elements which require proof on a charge of stealing are:

- (i) That the person charged must not be the owner of the thing allegedly stolen.
- (ii) That he must have appropriated the thing.
- (iii) That the appropriation must have been dishonest.

To secure a conviction, the prosecution is expected to prove the above elements of the offence.

The prosecution alleged that the accused person took a certain envelop from the complainant's room which contained an amount of Four Thousand Ghana Cedis (GH4,000.00). According to the complainant, PW1, the accused took this envelop after assaulting and injuring him and bolted with same. This he said in both his witness statement and in his evidence-in-chief to the Court on 15/03/22. In the PW1's initial statement to the police however, he stated that he saw the accused pick one of two envelopes he placed on a table in his room which envelopes contained Seven Hundred Ghana Cedis (GH700.00) and Four Thousand Ghana Cedis (GH4,000.00) respectively and he later realized that it was the envelop containing the GH4,000.00 that the accused picked.

This evidence was corroborated by the PW2 Alimatu Mohammed who did not state it in her witness statement to the Court but in her initial statement to the police where she stated that "after the act I saw him (accused) pick one of the two white envelopes victim placed on his table in the room and bolted with same".

The accused denied the allegation of taking any money from the victim's room. He stated at the last paragraph of his witness statement that "If it is true that I had stolen any money from the scene, the prosecution would have earnestly produced the person who gave it to Edward (complainant) or a statement of that transaction to back up their allegation since he answered in cross-examination that the GH4,000.00 he alleged to have been stolen was given to him by a friend who withdrew it from a mobile money vendor that same day in his presence". This is the denial statement of the accused person given to Court on 14/02/23. In both his investigation and cautioned statements, the accused denied taking any envelop containing money from the victim's room.

It was stated in the famous case of **Woolmington vrs. Director of Public Prosecution (1935) AC 462 at 481**, where **Sankey L.C.** stated that:

“...while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence”.

From the above case and the statutes referred to supra, the accused person is only expected to raise a reasonable doubt in the mind of the Court as to his guilt.

The statement of the accused person that if it was true that the victim had the GH4,000.00, then the prosecution should have investigated where he got the GH4,000.00 from was not good enough denial from the accused.

The facts of the case stated that the victim is a driver. The accused person did not deny that the victim is a driver. If the victim is a driver, then the prosecution need not go into investigations as to how he got his money. In any case he told the Court when he was cross-examined by the accused that the money was given to him by a friend. In cross-examination when the accused asked the victim where he got the money from and brought it home, the victim (PW1) answered that it was a friend who wanted to buy a fridge which cost GH6,000.00 and so came to give the GH4,000.00 to him to keep while he tried to get the balance of GH2,000.00. Whether this explanation is acceptable or not is not the issue.

Where a thing is got from before it is stolen will not change the fact that it was stolen when the thing, irrespective of where and how it is got, is taken by a person who is not the owner of the thing.

In his denial, the accused went ahead to ask the following questions in his defence:

Q: When did the money come to you?

A: The Saturday morning before the incident happened in the evening.

Q: Where was the money contained?

A: It was in an envelope.

Q: Was it in bundles or what?

A: It was Two Hundred Ghana Cedis (GH200.00) and One Hundred Ghana Cedis (GH100.00) notes. There was no other denominations.

Q: So how did you know that I took the money?

A: When you pushed me on the louvers and the louvres got broken and I was injured, that was the time you took the envelop.

Q: I have no further question.

The above questions and their conclusion does not raise any doubt in the mind of the Court concerning the guilt of the accused person.

In his witness statement, the accused again stated that as soon as he knocked at the victim's door, there was no response but the shouting suddenly stopped and the lights went off so on entering the room, he slipped and fell directly on the victim's bed because of the darkness in the room so he could not have seen any envelop in the room. However, in his investigation cautioned statement, the accused stated that "when he entered the bedroom, he saw the victim and his girl lying on the bed and that was when he started hitting the victim with his fist. Victim removed scissors from the wall

and stabbed him at the back with same". So from this statement on the investigative cautioned statement, it is clear that the bedroom was not dark after all so the accused could see his girlfriend and the victim lying on the bed that was why he started hitting the victim with his fist. Again, the room was not dark that was why the accused was able to see the victim removing a scissors from the wall. It can therefore not be true that the room was dark so the accused could not have seen a white envelop on the table. A white envelop is more visible than a pair of scissors. The Court therefore finds that the accused took the white envelop which contained the amount of GH¢4,000.00 from the victim's bedroom and bolted with same.

Having come to this conclusion, the Court accepts the prosecution witnesses evidence that the accused person unlawfully entered into the bedroom of the victim, picked a white envelope containing the sum of GH¢4,000.00 which did not belong to him and fraudulently bolted away with it. He is therefore convicted on count four (4) which is a count of stealing contrary to Section 124(1) of Act 29/60.

It is recalled that the accused person pleaded guilty to the first three counts earlier on, on 02/06/22 and he was convicted on them. This means accused is convicted on all the four counts preferred against him by the prosecution.

In sentencing the accused person, the Court has taken into consideration the fact that the accused got into this trouble because he was too careful and caring about a girlfriend who was not allegedly giving him the attention that he deserved from her.

He is hereby sentence to two (2) years imprisonment on all the four (4) counts. Sentences are to run concurrently.

H/H MICHAEL K. AMPADU
CIRCUIT COURT JUDGE