

IN THE CIRCUIT COURT HELD AT TEPA ON THURSDAY THE 13TH DAY OF
APRIL 2023 BEFORE HER LADYSHIP JUSTICE GWENDOLYN MILLICENT
OWUSU, A JUSTICE OF THE HIGH COURT SITTING AS AN ADDITIONAL
CIRCUIT JUDGE

66/2022

THE REPUBLIC
VRS
ABUBAKAR WAHABU

PROSECUTION: CHIEF INSPECTOR CHARLES AGOVI
ACCUSED PERSON PRESENT AND SELF REPRESENTING

JUDGMENT

The accused was arraigned before this court on a charge of causing unlawful damage contrary to section 172(1) (b) of Act 29/1960

The particulars of the offence are that the accused, a farmer aged 32 years in the month of August, 2020 at Asabrim near Asuhyiae in Ashanti circuit and within the jurisdiction of this court intentionally and unlawfully set fire and burnt a Honda water pumping machine valued at GHC 2400.00 and damaged same, the property of Akwasi Acheampong.

The accused pleaded not guilty to the charge.

The brief facts of prosecution's case are that Complainant Akwasi Acheampong aged 67 years is a farmer and lives at Asuhyiae. Accused Abubakar Wahabu age 32 years is also a farmer and resides at Asuhyiae. Complainant has a farmland situated at Asabrim near Asuhyiae which shares boundaries with a farmland accused cultivates rice on.

Complainant hid his Honda water pumping machine valued GHC 2,400 inside his farmland and left for Kumasi to attend to his sick son in the month of August, 2020. Accused who had earlier on cleared his farmland, set fire and burnt same. The fire travelled into the portion of complainant's farm and caused damage to the pumping machine. Complainant was informed on phone by one Kofi Nti of Asuhyiae. Complainant returned from Kumasi and informed accused person about same. Accused together with his mother in-law Yaa Nyanta went to the complainant and he promised to repair the machine for the complainant. Accused failed to repair same and complainant further reported the matter to the elders of Asuhyiae and they ruled the matter in favor of the complainant and ordered accused to either purchase a brand new machine for the complainant or repair the damaged one for him. Accused failed to deliver as instructed by the elders and all effort made to retrieve the machine proved abortive. Complainant reported the matter to police and accused was arrested. In accused person's investigation caution statement before an independent witness, he admitted the offence and indicated that in the cause of clearing the farmland, he saw the machine and handed over same to one Esther who was then working in the complainant's tomato farm to be given to the complainant, so he was not aware that complainant had hidden the said machine in the farm. After investigation, accused was charged with the offence as indicated on the charge sheet and arraigned before this honourable court.

BURDEN OF PROOF

The prosecution had the burden to prove that the accused person had the intent to cause damage, which damage was unlawful. This is so because in our criminal law jurisprudence, it is the prosecution which carries the burden of proof, the standard of which is proof beyond reasonable doubt as reflected in the statement of Lord Sankey in **Woolmington v. DPP [1935] UKHL 1** that

“no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained”.

In **Commissioner Of Police v. Antwi (1961) GLR 408**, Korsah C. J. stated that “the fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything; if he can merely raise a reasonable doubt as to his guilt, he must be acquitted”

Any doubt in the prosecution’s case should inure to the benefit of the accused person.

Section 11(2), (3) and (4) of the Evidence Act refers to the burden on prosecution to prove the guilt of the accused person beyond reasonable doubt. Section 11(2) states that

“in a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to the guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond a reasonable doubt”.

This is true to upholding the fundamental principle in Article (19) (2) (c) of the 1992 Constitution that everyone is innocent until proven guilty. To establish culpability, the prosecution must present enough evidence to convince the court that the accused is guilty of the offence charged. The Prosecution has the burden to provide evidence to satisfy all the elements of the offence charged – in this case, unlawful damage.

Section 172 of the Criminal Offences Act, 1960 (Act 29), states:

(1) A person who intentionally and unlawfully causes damage to property

(a) to a value not exceeding one million cedis or without a pecuniary value, commits a misdemeanour

(b) to a value exceeding one million cedis commits a second degree felony.

(2) A person who intentionally and unlawfully causes damage to property in a manner which causes, is likely to cause, danger to life commits a first degree felony.

(3) For the purposes of this section, "property" means movable or immovable property.

Section 173 of Act 29 defines damage thus:

"For the purposes of this Act, "damage" includes not only damage to the matter of a thing, but also an interruption in the use of that thing, or an interference with that thing by which the thing becomes permanently or temporarily useless, or by which expense is rendered necessary in order to render the thing fit for the purposes for which it was used or maintained."

Section 174 gives an explanation of unlawful damage, and it states:

(1) A person does an act or causes an event unlawfully, within the meaning of the provisions of this Act relating to unlawful damage, where that person is liable to a civil action or proceeding, or to a fine or any other punishment under an enactment,

(a) in respect of the doing of the act causing an event, or

(b) in respect of the consequences of the act or event, or

(c) in which that person would be so liable if that person caused the event directly by a personal act, or

(d) in which that person is liable to be restrained by injunction or any other proceeding from doing that act or causing that event.

(2) It is immaterial whether a person accused of a criminal offence in respect of any premises or a thing is or is not in possession or occupation of the premises or of that thing.

(3) A person who is interested jointly or in common with other persons in any premises or a thing as an owner or otherwise, or who as owner is a trustee for any other person, can commit a criminal offence punishable under the provisions referred to in subsection (1) by an act which is unlawful under this Chapter.

(4) A person who is the sole beneficial owner of any premises or a thing can commit a criminal offence punishable under the provisions referred to in subsection (1) by an act done with intent to injure or defraud a person or to cause harm to a person although the act is not otherwise unlawful.

(5) Despite anything contained in Part One as to mistake of law, a person is not liable to punishment in respect of doing a thing which that person in good faith, believes to be entitled to do.

The provisions as to mistake of law contained in Part One can be found under section 29 (2) which states that:

“A person shall not, except as in this Act otherwise expressly provided, be exempt from liability to punishment for an act on the grounds of ignorance that the act is prohibited by law.”

Prosecution is enjoined by law to prove all the ingredients of the offence and prove it beyond reasonable doubt. This burden remains on the prosecution throughout the trial. All that an accused person will have to do is to cast a reasonable doubt.

PROSECUTION'S CASE

According to PW1, he had left his farming implements and the water pumping machine on a portion of his farm. He was out of town when he had a call informing him that the accused person set fire to his own farm, and the said fire had spread through to his farm, causing damage to the pumping machine. On his return, he approached the accused who came with his in-law to his house to look at the machine and promised to repair same. However, accused failed to honour his promise. The investigator, PW2 says during his investigations, he visited the farm but could find no proper evidence; he however says the accused in his cautioned statement admitted the offence and promised to repair the machine.

At the close of the case for the prosecution, it is within the discretion of the judge to decide that no case has been made against the accused on the offence he has been tried for. If the judge so decides, he stops the case. The judge arrives at the conclusion based upon the fact that there is no evidence that the accused has committed any offence. It is well settled law that there is no burden on the accused. If there is any burden at all on the accused, it is not to prove anything, but to raise a reasonable doubt. If the accused can raise only such a reasonable doubt, he must be acquitted. Thus, at the close of prosecution's case, this court was of the opinion that a prima facie case had been made for the accused person to answer, and called upon him to open his defence under **Section 174(1) of the Criminal Procedure Act, 1960 (Act 30)**. A prima facie evidence is nothing other than evidence that can lead to the conviction of the accused, if the accused leads no evidence to rebut the presumption raised on it.

THE DEFENCE OF THE ACCUSED

According to the accused, he had gone with some other persons to clear a portion of land he had leased to him for rice cultivation. In the course of clearing the land, one of the workers shouted that he had seen a pumping machine, and they all rushed there. One Esther who also came to the scene informed them that the machine belonged to Mr.

Acheampong, PW1, whom the said Esther works for. Accused then entrusted the machine to the said Esther to be given to PW1. A week after, accused saw PW1 and asked him whether Esther had brought the machine to him and he answered in the affirmative. Some days later, accused went to burn the land they had cleared in preparation for cultivation. Two days later, he heard that PW1's machine had been burnt. PW1 later came to ask the accused to help him to repair the machine so that both of them can use it to work on their respective farms. A year after, PW1 summoned the accused before the chief of Asuhylae, accusing him of burning his pumping machine. This, the accused refuted. Accused called two witnesses. The first witness, DW1 testified that PW1 had called him and asked him to go and check whether the accused had burnt his weeded land or not. DW1 found the land burnt, and the pumping machine which had been put just at the edge of the burnt farm of accused was also burnt. DW1 answering questions from the bench said the portion of land on which the machine was placed itself was not burnt, it was just at the edge of the burnt farm of the accused. DW2 testified that he was one of ten people who went to weed the land of the accused. He confirmed that they had seen the pumping machine at a portion of the land they were clearing for the accused and given same to Esther, who was working on the farm of PW1 at the time to be given to PW1.

ANALYSIS

In the said exhibit "C", the investigating cautioned statement given to the police, accused had stated that PW1 had asked him (the accused) to repair the pumping machine so that they both use same to work on their farms, to which he agreed, but he could not do so due to financial constraints. The accused never admitted having committed the offence

for which reason he was willing to repair same as stated by PW2. The testimony of PW2 that the accused in his cautioned statement exhibit "C" accepted to repair the pumping machine but later reneged on his promise is unfounded. This fact became crystal clear during cross-examination of PW2 by the accused:

Q. Where and when did I tell you that I will repair the pumping machine?

A. After taking his caution statement, it was the surety who came to seek for bail for him who told the police he would want the police to grant him the permission to bail the suspect and together with the complainant, try to settle the matter amicably.

Q. I am putting it to him it is untrue. The one who stood surety for me is there. If court permits, he will come to testify. If I was going to accept responsibility to repair it, I would have accepted it back home when they brought the issue.

A. That was the prayer of the surety, and even after his release, the surety came back to the station and informed the police that all efforts to resolve the matter has proved futile, and therefore want the police to continue with the case.

Q. I am putting it to him that what he has said is untrue.

A. It is true

Q. Mention the name of the person who said I was going to repair the machine

A. The person is John Asare and he is the committee chairman of the Asuhyiae community.

Q. I am putting it to you that the said surety had no such discourse with me relating to the repair of the machine

A. For that one, I am not in a position to tell

Q. I am putting it to you that it was you who told me to go and get the machine repaired and I told you that I will not do so because I am not responsible for the burning of the machine.

A. It is true that on the day of his release I said so but it was as a result of what the surety had informed the police that made me suggest to him that it is better he repairs the said machine as the surety alleges that the complainant was demanding.

Besides the above, the court could not even rely on the contents of the said exhibit "C" because during cross-examination of the accused person, he informed the court that there was no independent witness when his statement was being taken, and so it was the investigator himself who read the contents to him and some of the averments being attributed to him were never made by him, and they were not stated to him when the contents were being read over. Prosecution took an adjournment to procure the attendance in court of the supposed independent witness and though the case suffered two adjournments on account of this, they were never able to bring him to court, and the court had to proceed with the trial.

PW1 claims that he had kept his pumping machine on his farm where the fire from accused's land swept through and burnt his machine but does not complain of his farm or crops getting burnt, and says the pumping machine was kept in his farm and got burnt by the accused. According to DW1, the ground on which the machine was sitting was not burnt. The question then is what really took place? It is the view of this court that even if the machine had caught fire for some other reason, the land on which it sits as well as its immediate surroundings will be affected by the fire. The gnawing question again is, if PW1 had his machine on his own farm as he says, and his farm and crops had not caught fire, what was the need to ask DW1 to go and verify if the accused had burnt his cleared up land? Again, who is the said Kofi Nti who allegedly informed PW1 that his machine had gotten burnt and how did he get to know? He was never called to testify.

The accused, for all intents and purposes, had handed over the said machine to the said Esther, who was at the time working on the farm of PW1, and this was corroborated by DW2. According to PW1 during cross-examination, the said Esther never told him that anybody removed the machine and gave same to her but neither prosecution nor the accused called the said Esther to testify. It was held in **Asare v. The Republic (1978) GLR 193 – 199** that “as a general rule, there was no burden on the accused to establish his innocence. Rather it was the prosecution that was required to prove the guilt of the accused beyond all reasonable doubt.”

Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt; meaning the prosecution has the burden to lead sufficient and admissible evidence such that on an assessment of the totality of the evidence adduced in Court, including that led by the accused person, the Court will believe beyond reasonable doubt that the offence has been committed and that it is the accused who committed it. Apart from specific cases of strict liability offences, it is trite learning that throughout a criminal trial the burden of proving the guilt of the accused person remain with the prosecution.

Thus, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him/her, he/she is generally not required by law to prove anything. He is only to raise a reasonable doubt in the mind of the Court as to the commission of the offence and his/her complicity in it except where he/she relies on statutory or special defence.

This court is of the view that, on the totality of the facts, the evidence on record, and the law as laid down, the ingredients of the offence have not been proved. The pumping machine got burnt, but prosecution has failed to prove that the damage was caused by the accused, let alone prove that it was done unlawfully and intentionally. In **Asante v. The Republic [1972] 2 GLR 177**, the court held that it was necessary to establish that the

damage was intentionally and unlawfully caused. The prosecution having failed to discharge that burden, the conviction could not stand.

This court, considering all the evidence on record, and the law as laid down, finds the defence of the accused reasonably probable. Accordingly, the court holds that the accused is not guilty, and he is hereby acquitted.

SGD

H/L JUSTICE GWENDOLYN MILLICENT

(JUSTICE OF THE HIGH

**OWUSU
COURT)**