

**IN THE CIRCUIT COURT “A”, TEMA, HELD ON TUESDAY,
THE 28TH DAY OF NOVEMBER, 2023, BEFORE HER HONOUR
AGNES OPOKU-BARNIEH, CIRCUIT COURT JUDGE**

SUIT NO: D10/08/23

THE REPUBLIC

VRS:

DESMOND YEBOAH

ACCUSED PERSON

PRESENT

INSP. EMMANUEL ASANTE FOR PROSECUTION PRESENT

PRINCE KWEKU HODO, ESQ. FOR THE ACCUSED PERSON

ABSENT

RULING ON MINI-TRIAL

FACTS:

The accused person is before this court on a charge defilement contrary to **Section 101(2)** of the Criminal Offences Act, 1960 (Act 29).

The accused person pleaded not guilty to the charge and the case proceeded to trial for the prosecution to prove the guilt of the accused person beyond reasonable doubt.

When the fourth prosecution witness (Investigator) Chief Inspector Gladys Ankomah of Dodowa Police Station was testifying, Counsel for the accused person objected to the admissibility of the caution statement on grounds that it was not voluntarily taken. The court proceeded to conduct a mini-trial to determine the voluntariness of the confession statement allegedly given by the accused person. In the case of **Anang V. The**

Republic [1984-86] 1GLR 458, the Court of Appeal held that the provisions on mini trial or “*Voire Dire*” are mandatory and the court has no discretion in the matter.

LEGAL ISSUE:

The main issue for the consideration of the court is whether or not the statements of the accused persons amount to a confession and if so, whether the statements were voluntarily given.

ANALYSIS:

Under **Section 120 (1) and (4)** of the Evidence Act, 1975 (NRCD 323), evidence of a statement made by an accused person, which constitutes a confession to the offence for which the accused person is standing trial is not admissible unless the statement was made voluntarily. **Section 120(4)(b)** further provides that a statement is not made voluntarily where the accused person”

“was induced to make the statement by being subjected to cruel or inhuman conditions, or by the infliction of physical suffering upon the accused by a public officer or by a person who has a direct interest in the outcome of the action, or by a person acting at the request or direction of a public officer or that interested person”

In the case of **State v. Banful** [1965] GLR 433, the court held in its holding 2 that:

“Where the prosecution intend to rely on a confession statement, it is their duty to prove affirmatively that the admissions therein were voluntarily made and not induced by any promise of favour or advantage or by the use of fear or threats or pressure by a person in authority.”

Thus, in the case of **The Republic v. Agyiri @ Otabil** [1982-83] 251, where an accused person objected to the tendering of his statement by the prosecution on grounds that the statement was written for him after he was handcuffed and severely beaten and then forced to thumbprint it without knowing the contents of the statement and without the presence of an independent witness, the prosecution alleged that there was an independent witness but failed to call the said officer as a witness. The Court, in upholding the objection, held in its holding 1 that:

“There was a well-established principle of law that a voluntary confession by an accused person to the commission of the crime charged was sufficient to support conviction of the accused. Therefore, the onus lay on the prosecution to prove that the confession was voluntary; the prosecution should prove that there was no inducement by threat or duress or promise held out to the accused by a person in authority. In the instant case, since A claimed that he was forced to thumb-print a fabricated story and also that there was no independent witness present at the time the statement was made, the onus shifted on to the prosecution to substantiate their case.”

To prove that the statements of the accused person were voluntarily given, MTPW1, the investigator testified that at the time of taking the statement of the accused person, he was brought to her office and she offered him a seat and informed him that she was about take his statement. She further

explained to the accused person his right to a lawyer of his choice, his right to choose his preferred language and the need for an independent witness and the role to be played by the independent witness. Thereafter, the accused person elected to make a statement in the Twi language which she recorded down in English language in the presence of an independent witness and after that she appended her signature and the independent witness certified and signed the statement. She tendered in evidence the investigation caution statement of the accused person admitted and marked as **Exhibit MT” A”**.

Under cross-examination by the accused person, the following exchanges took place;

Q: I put it to you that, it is true you recorded my statement but you did not allow me to go through myself, you only asked me to sign.

A: It is not true, My Lord. I read it to him and he approved of it in the presence of the independent witness.

Q: I put it to you that I just signed because you told me to sign.

A: That is not correct.

Q: I am putting it to you that there was somebody present but you did not introduce the person to me.

A: My Lord, I introduced the person as an independent witness and he knows him and they speak the same dialect.

Q: I put it to you that I know that person by face because we live in the same area but we do not speak the same language.

A: My Lord, it is never true. He knows him very well.

Q: I am putting it to you that when you were writing my statement, you never told me I have the right to a lawyer of my choice.

A: It is not true My Lord. That was the first thing I did before writing his statement.

Q: I am putting it to you that all what you have said is not what you told me at the police station. After writing the statement, you asked me to see the parents of the girl for amicable settlement.

A: It is never true My Lord. I never said that because I have no interest in the case. Such cases are normally not settled out of court. So I did the needful.

Q: I am putting it to you that you never mentioned it to me that the matter will be coming to court.

A: It is never true My Lord because I did charge him on the offence he committed and told him he will appear before court.

The prosecution did not call the independent witness to testify since they informed the court that the whereabouts of the independent witness is unknown after diligent search.

The accused person in his defence testified that on the date of his arrest, he was in custody and they took him to the Domestic Violence and Victim Support Unit (DOVVSU) the following day. According to the accused person, the distance between the police station and DOVVSU is far so the investigator asked if he could write his statement by himself in his preferred language for her to reduce it into writing in the English Language. According to the accused person, although he is a literate person, at that moment, due to tension, he told the investigator that he

would speak Twi for her to translate it into the English language for him. He therefore dictated his statement and the investigator wrote his statement down in English.

According to the accused person, at the time the investigator was writing his statement, a man was sitting there but she did not introduce the person to him as an independent witness and the statement was also not read over and explained to him in the Twi language. The accused person further states that he was in custody when the investigator brought the statement to him and he realised that the statement contained information that he did not give to the investigator.

The accused person denies stating in his statement that he could not resist the actions of the alleged victim and he romanced her. He further states that the investigator had written that he said the victim brought him soup which he never said that. Also, in the statement, the victim's name is written as Rita and somewhere as Anita and this, according to the accused person shows that the investigator did not write exactly what he told her. The accused person admits that the statement was taken voluntarily save that it does not truly reflect what he told the investigator. The accused person rather alleges that on their way to court, the investigator asked him to plead guilty to the offence.

Under intense cross-examination by the prosecution, the accused person insisted that portions of the statement were not made by him and that the investigator did not introduce the independent witness to him and that the investigator compelled him to come to court to plead guilty to the offence.

The court has carefully examined the statement allegedly made by the accused person as contained in his investigation caution statement and the charge statement and the contents reveals that the statement, taken together, the accused person did not confess to having had sexual intercourse with the alleged victim but rather it states that the victim signalled him to follow her to an uncompleted building and told him that she was not a virgin and that he only fondled with her breast whilst the alleged victim also held his penis. The accused person does not deny that a statement was taken but maintains that portions of the statement are not correct. He is also not alleging that the statement was not voluntarily taken since he admits that he freely gave the statement at the police station without any form of duress.

The accused person also raises issue that although at the time of taking the statement, there was someone, but the person was not introduced to him as an independent witness. **Section 120(4)** of the NRCD 323, where the accused is blind or illiterate, the independent witness should read over and explain the statement to him before he signs or thumb prints it and the witness must also provide a certification that he read and explained the contents to him and he appeared perfectly to have understood the contents before signing. Thus, in the case of the **Republic v. Animah** [1989-90] 1 GLR 440, a confession allegedly made by an illiterate accused person was rejected as inadmissible when there was no evidence that the statement was read over to the accused and there was no certificate that it had been so read over to him and that he appeared to perfectly understand the confession before he signed it.

In the case of **Dua v. The Republic** [1987-88] 1 GLR 343, CA, the court held that a confession may be admissible even where there is no independent witness to it provided that it was freely made by the accused without any pressure or influence from any force or source. S.A. Brobbey in his Book Essentials of Ghana Law of Evidence states at page 130 that the voluntariness of the confession is the major criterion under **Section 120(1)**. In the instant case, the accused person admits that he made the statements voluntarily and that he was not subjected to any form of abuse at the time the statement was taken only that portions of the statement were not made by him.

In this situation, the accused person who admits that he is literate but deliberately informed the police that he was illiterate is saying that he gave a statement and but portions of the statement were doctored or changed. This therefore does not impact on the admissibility of the statement but the accused person may cross-examine on the portions of the statement not made by him as he alleges. See S.A Brobbey Supra, at page 136. In the case of **Asare alias Fanti v. The State** [1964] GLR 70, SC, the court held in its holding 1 that:

“Where an objection is raised against the tendering of a statement alleged to have been made by an accused person, evidence will be heard only when the accused alleges that no statement was made at all, or that the statement was made under duress. But when the objection is raised against such a statement on the ground of inaccuracy, its admissibility becomes a question of law for the judge and the weight to be attached to it is a question of fact for the jury, and it must therefore first be admitted before it can be evaluated.”

On the totality of the evidence led, I find that the caution statement and charge statement of the accused person were voluntarily made by him without any form of threat, promise, reward or duress. The statements are therefore admissible.

SGD.

**H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)**