CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA
ON TUESDAY, 4TH JULY, 2023

SUIT NO. D7/13/22

THE REPUBLIC
VRS
WISDOM OSABUTEY

JUDGMENT

The accused person is before this Court on a charge of dishonestly receiving, contrary to ***Section 146 of the Criminal Offences Act, 1960 (Act 29)***. The particulars of offence are that on the 22nd day of January, 2022 at Afienya in Tema and within the jurisdiction of this court, he did have in his possession one Toyota RAV4 vehicle with Registration number GT 901-21 beige in colour with chassis number 2T3BFREV5DW013876, valued at Ghs 97,000 which he well knew to have been obtained by robbery.

The charge was read and explained to him in his language of preference, ewe. Accused person pleaded not guilty and by so doing, cast upon prosecution the burden of leading cogent, credible and material evidence in proof of their claim against him. According to the case of ***Davis v. U.S, 160 U.S 469(1895).*** "Upon that plea the accused may stand, shielded by the presumption of his innocence, until it appears that he is guilty; and his guilt cannot in the very nature of things be regarded as proved, if the jury entertains a reasonable doubt from the evidence".

The accused person by his plea of not guilty had put in issue all the essential elements necessary to prove that he had committed the offence as charged. A plea of not guilty serves as both a shield and a sword.

A shield for the accused person who is presumed to be innocent until proven guilty and does not have to say anything in proof of his innocence and a sword pointed at his accusers to lead evidence to establish a prima facie case against him on the charge(s). It is only when prosecution has discharged its duty that the sword would now turn towards the accused person; not to establish his innocence but to raise a reasonable doubt in the mind of the court.

In the case of ***Gligah & Atiso v. The Republic [2010] SCGLR 870 @ 879*** the court held that *"Under article 19(2) (c) of the 1992 Constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person is arraigned before any court in any criminal trial, it is the duty of prosecution to prove the essential ingredients of the offence charged against the accused person beyond any reasonable doubt. The burden of proof is therefore on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person would be called upon to give his side of the story."*

In proof of its case, prosecution called three witnesses. According to PW1, he was robbed at gun point by three armed robbers all wearing face masks and wielding a gun and a big hammer. They took away his Toyota Rav-4 Vehicle with registration no GT 901-21 among other items. That they ransacked their room and took away other items and also demanded for his mobile money pin.

PW2's evidence is that she is the wife of PW1. That they were in asleep when they were attacked by armed robbers around 3:00am on the said date. That the armed robbers took the Toyota Rav4 of her husband away and whilst one drove the vehicle away, the other two demanded for money and their phones and also forced PW1 to disclose his mobile money pin.

PW3's evidence is that on the 22nd day of January, 2022, he and his crime officer after receiving information about a robbery visited the scene of the robbery. They met PW1, PW2 and their children upon arrival as the victims of the robbery. They made some observations and the case was later handed to him for investigations.

He took the statements of PW1 and PW2 as to what happened and they mentioned the TOYOTA RAV 4 as one of the properties that they were robbed of. On the 24th day of January, 2022, he was informed by his District C.I.D that the accused person has been arrested in possession of the stolen car by the anti-armed robbery unit of the Ghana police service headquarters. He was asked to and he handed over the docket to them for continuation of investigations.

CONSIDERATION BY THE COURT

Section 173 of the Criminal and Other Offences Procedure Code, 1960 (Act 30) provides that; "If at the close of the evidence in support of the charge, it appears to the Court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him."

According to the Supreme Court in the case of ***Asamoah &Anor. Vrs. The Republic [2017-2018] 1 SCGLR, 486, Adinyira JSC*** speaking for the apex court, stated that ''the underlying factor behind the principle of submission of no case to answer is that, an accused person should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted. The grounds under which a trial court may uphold a submission of no case as enunciated in many landmark cases whether under a summary trial or trial by indictment may be restated as follows;

a) There had been no evidence to prove an essential element in the crime

b) The evidence adduced by the prosecution had been so discredited as a result of cross examination; or

c) The evidence was so manifestly unreliable that no reasonable tribunal could safely convict upon it

d) The evidence was evenly balanced in the sense that it was susceptible to two likely explanations, one consistent with guilt, one with innocence.

See the celebrated case of ***The State v. Ali Kassena [1962] 1 GLR 144*** **in which the Practice Direction issued by the Queens Bench Division in England [1962] 1 E.R 448 (Lord Parker CJ) was approved of.**

I am mindful of the law that in evaluating evidence, a court must avert its mind to the quality of the testimony of witness(es) and not the quantity for a sole witness's evidence may be relied on in proof of a case if that testimony is credible and relevant. In the case ***of Frimpong v. The Republic (2012/ GHASC, VOL 3 – 18th January 2012,)***, it was held by the Supreme Court speaking through Dotse JSC "that evaluating evidence in a criminal trial….. is not based on the quantity of witnesses called at a trial in proof of the case of the prosecution or the defence, but the quality of the evidence that the witness(es) proffer at the trial''.

Again in the ***Gligah case (supra),*** the Supreme Court held that '' The Supreme Court would affirm as good law, the principle of law regarding the need for a party to call a material witness in support of its case. …..In establishing the standard of proof required in a civil or criminal trial, it was not the quantity of witnesses that a party who had the burden of proof called to testify that was important, but the quality of the evidence called and whether at the end of the day, the witnesses called by the party had succeeded in proving the ingredients required in proving a particular case.'' ***See also***

the cases of Tetteh v. The Republic [2001-2] SCGLR …and Dexter Johnson v. The Republic [2011] SCGLR 601.

The evidence of the three witnesses for the State must thus be relevant to the charges and establish the necessary ingredients of the offences, it must be credible, it must not be discredited under cross examination, their evidence must be such that the court can rely on it and the said evidence must lead to one conclusion; a prima facie case of the guilt of the accused person.

On the charge of dishonestly receiving, the definition section for the offence is section 147.

147 (1) of Act 29 explains the offence as follows;

''A person is guilty of dishonestly receiving any property which he knows to have been obtained or appropriated by any crime, if he receives, buys, or in any manner assists in the disposal of such property otherwise than with a purpose to restore it to the owner''.

The relevant elements for the prosecution to establish in a case of dishonestly receiving are that;

1. Accused person knew that the Toyota Rav4 vehicle in question was obtained or appropriated by crime and;
2. That knowing this, he proceeded to receive same
3. That his receiving was dishonest i.e. he either received, bought or in any manner assisted in the disposal of the property for a purpose other than restoring it to the owner.

On a charge of dishonestly receiving, prosecution in proving that the accused person had knowledge of the fact that the goods were obtained by robbery must establish

that at the point of receiving the Toyota RAV 4 vehicle, the accused person knew that same had been dishonestly appropriated through robbery. See the dictum of Atta Bedu J in the case of ***Salifu & Another v. The Republic [1974] 2 GLR 291***

Prosecution need not establish actual knowledge. According to the decision in Owusu Addo J. in the case of ***Santuoh v. The Republic [1976] 1 GLR 44*** ''in discharging the onus of proof of knowledge, it was not necessary for the prosecution to lead evidence of actual knowledge, it was sufficient if evidence from which knowledge could be justifiably inferred was established''.

Neither PW1 nor PW2's evidence implicated the accused person on the charge of dishonestly receiving in any way. Indeed, PW1 under cross examination by the accused person had this to say at page 5 of the record of proceedings;

Q: *You claim that 3 armed men came to your house to rob you. How do you know that I am part of the 3?*

A: *All the 3 robbers were masked on that day and so I could not identify any of them. It was when I came to court that I saw you and this is my second time.*

Q: *I suggest to you that the Rav 4 vehicle was not found on me.*

A: *As I stand here, it is only the police who can confirm whether or not they saw the car with you because I did not see you with the car.*

Q: *Are you aware that the locations where the vehicle was stolen and where I was arrested are not in close proximity at all.*

A: *I know nothing about what you are saying.*

Q: *Did you hear that those who robbed you of your car were killed by the police?*

A: *No please.*

Q: *I was arrested in front of a hotel. Where were you at the time of my arrest?*

A: *I know nothing about how and where you were arrested.*

Then at page 7 and 8 of the record of proceedings, PW2 had also denied knowing the accused person and how he is connected to this case both in her evidence in chief and under cross examination by the accused person.

Q: *Do you know the accused person in the box?*

A: *No please.*

Q: *You were asked initially if you know me knew me and you said no. The said car that was stolen, where was it recovered?*

A: *Please I do not know where it was found.*

Q: *In whose hands was the car recovered by the police?*

A: *Please, I do not know the one whom the car was recovered from.*

Q: *Where is the person who was mentioned to have bought the car?*

A: *Please, I do not know anything about that.*

Q: *Where was I arrested when the issue occurred?*

A: *Please, I do not know anything about it.*

PW3 also had no personal knowledge of how the accused person herein dishonestly received the Toyota RAV 4. In his evidence in chief, he had answered at page 10 of the record of proceedings during his evidence in chief;

Q: *Do you also know the accused person in the box.*

A: *My lord, I did not know the accused person until he was brought to this court as the receiver of a stolen vehicle.*

Under cross examination by the accused person at page 11 of the record of proceedings, PW3 had answered;

Q: *Please, the car that they claim was stolen, where was it arrested?*

A: *My lord, I was not informed about the place of arrest of the car.*

Q: *Who was in possession of the car at the time of its arrest?*

A: *My lord, I was only told that they arrested the accused person with the car.*

Q: *I put it to you that, I was not arrested with the car.*

A: *My lord, accused person name was mentioned to me by the anti-robbery team at the head office that you were the one arrested with the car.*

Q: *Do you know the time the car was arrested?*

A: *No my lord. But it was on the 24th January 2022 when I was called to bring the docket to the Anti – Armed Robbery Unit – National Headquarters – Accra.*

Prosecution had a final witness to testify. After three adjournments for the said witness to appear, he failed to appear and the court closed prosecution's case for it.

At the close of prosecution's case, I find that none of their three witnesses provided any material or relevant evidence to this court on the charge of dishonestly receiving against the accused person. All the three witnesses appeared to be clueless as to why the accused person was placed before this Court. Even PW3, who had commenced investigations into the matter, was only in court based on hearsay without any personal knowledge of how the accused person was involved in this case.

In the case of ***Akilu v. The Republic [2017-2018] 1 SCGLR, 444,*** the SC speaking through Apau JSC held that "we want to lay emphasis on the principle in criminal trials that; all reasonable doubts that make the mind of the court uncertain about the guilt of the accused, are always resolved in favour of the accused. By reasonable doubt is not meant mere shadow of doubt. Where, from the totality of the evidence before a trial court, a soliloquy of "should I convict' or 'should I acquit' takes control of the mind of the court, then a reasonable doubt has been raised about the guilt of the accused. The appropriate thing to do in such a situation is to acquit, as required by law''.

In the circumstances of this case, I do not even find myself in a quagmire or cross roads between whether prosecution has established a prima facie case or not against the accused person. Prosecution did not provide a scintilla of material and relevant evidence in proof of the charge against the accused person. At the close of prosecution's case, I am firm in my mind and I find that they have failed to establish a prima facie case against the accused person. Accordingly, he is acquitted and discharged.

(SGD)

H/H BERTHA ANIAGYEI (MS)

(CIRCUIT COURT JUDGE)

D.S.P.J. ASAMANI FOR THE REPUBLIC PRESENT