

CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT  
THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA  
ON THURSDAY, 27<sup>TH</sup> JUNE, 2023

SUIT NO. D1/25/22

THE REPUBLIC

VRS

SANGO KOFI MOHAMMED

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RULING  
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On the 7<sup>th</sup> day of June, 2022, the Accused Person herein was arraigned before this court on two counts; *Conspiracy to Commit Crime namely stealing contrary to section 23(1) and 124 of the Criminal Offences Act, 1960, Act 29 and Stealing contrary to section 124(1) of the Criminal Offences Act, 1960, Act 29.*

The particulars of offence for count one are that on the 4<sup>th</sup> day of March, 2021, at Kpone in the Tema Metropolis and within the jurisdiction of this Court, he agreed together with one Awudu, currently at large to dishonestly appropriate an amount of one hundred and twenty seven thousand, four hundred Ghana cedis (GH¢127,400.00) kept in a safe, a Samsung mobile phone valued at GH¢280.00, an official landline phone valued at GH¢200.00, DSTV decoder valued at GH¢170.00, cheque books, land documents and a picture frame valued at GH¢170.00 belonging to Maxwell Tata.

For count two, the particulars of offence are that on the even date, place and time, Accused Person dishonestly appropriated an amount of one hundred and twenty seven thousand, four hundred Ghana cedis (GH¢127,400.00) kept in a safe, a Samsung mobile phone valued at GH¢280.00, an official landline phone valued at GH¢200.00, DSTV

decoder valued at GH¢170.00, cheque books, land documents and a picture frame valued at GH¢170.00 belonging to Maxwell Tata.

After the charges were read and explained to the Accused Person in his preferred language of twi, he pleaded not guilty to both of them. Prosecution thus bore the singular duty of leading cogent, reliable and credible evidence to establish his guilt beyond reasonable doubt.

Denning J (as he then was) in the celebrated case of *Miller v. Minister of Pensions* [1947] 1 All ER 372 at 373 held that. "The constitutional presumption of innocence of an accused person is that an accused is presumed to be innocent unless he pleads guilty or is convicted by a court. The presumption is rebutted when the prosecution establishes a prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt." See also the dictum of Dennis Adjei JA in the Court of Appeal case of *Philip Assibit Akpeena v. The Republic* (2020) 163 G.M.J 32.

The veritable Dotse JSC in reading the decision of the Supreme Court in the case of *Amaning v. The Republic* [2020] GHASC 47, had this to say by way of a prologue;

"William Blackstone, an 18<sup>th</sup> century English jurist in a statement on the hallowed principle of 'Innocent until proven guilty:-rights of an accused person' upon which our criminal justice administration has been founded in Article 19(2) (c) of the Constitution, 1992 stated as follows: "better that ten guilty persons escape than that one innocent suffer". The above constitutes the fulcrum of our criminal justice jurisprudence".

In the case of *Domena V Commissioner of Police* [1964] GLR 563 the Supreme Court per *Ollenu JSC* (as he then was) commented on the burden and standard of proof as such:

“Our law is that by bringing a person before the court on a criminal charge, the prosecution takes upon themselves the onus of proving all the elements which constitutes the offence to establish the guilt of the defendant beyond reasonable doubt, and that onus never shifts. There is no onus upon an accused person except in special cases where the statute creating the offence so provides...”

The presumption of innocence guaranteed under the 1992 Constitution is not cast in historic concrete like King Arthur’s sword. That guarantee is that he is presumed innocent *until prosecution* has been able to lead evidence to establish his guilt beyond reasonable doubt.

That being so, prosecution may lead credible and positive evidence to upset that presumption. A court thus commences a criminal trial where an accused has pleaded not guilty on the rebuttable presumption that the accused person is innocent until proven guilty.

The onus lies on prosecution to lead evidence to establish a prima facie case against the accused person by the close of its case. It is only then, that prosecution would be deemed, prima facie to have upset the presumption of innocence in favour of the accused and he would in turn be called upon not to prove his innocence, but to raise a reasonable doubt in the mind of the court as to his guilt.

Prosecution in proof of its case called three witnesses.

### **THE EVIDENCE OF PW1**

According to PW1, Accused Person is his private security guard at his tanker yard located near B5. That on the 4<sup>th</sup> day of March, 2021, at about 4:45am, he received a call from one

of his workers by name Kenneth Abbew that armed robbers had gone to his company yard.

Upon receipt of the information, he drove to the office and detected that his safe containing an amount of one hundred and twenty seven thousand, four hundred Ghana cedis (GH¢27,400.00) one Samsung mobile phone, a telephone and his cheque books, yard documents and his personal picture frame had been taken away.

## **THE EVIDENCE OF PW2**

According to PW2, PW1's tanker yard is directly opposite their yard. Around 10:00pm on the said date, she and her sisters were out boiling water when they saw the Accused Person on three occasions come out of the yard.

Accused Person usually brings women to the yard at night but on that day, his actions seemed suspicious and so they decided to hide and watch him to see who would be coming to him.

They hid in the darkness in their hall. At about 11:00pm, Accused Person came out again. He could not see them as they were hiding but she and her sisters could clearly see him because there were streetlights.

Accused Person returned to the yard and came out with a shiny box on his head. Accused Person then passed on a road which led to one Mr. J.K. Narh's house. The next day, they had information that some items were stolen from PW1's yard including a safe. The description of the safe matched the box they saw the Accused Person carrying the previous night and so they suspected it might be the same thing.

### **THE EVIDENCE OF PW3**

PW3 is the investigator. She tendered in evidence the investigation caution statement, ordinary statement and charge statement of Accused Person as Exhibits A, B and C respectively. She said in the course of investigations, the Accused Person told the police that at about 2:00am on the 4<sup>th</sup> of August, 2021, he heard a knock on the security gate. It is the normal time that the tanker drivers come in and so he opened the gate only to be attacked by four armed men.

The armed men proceeded to PW1's office where they caused damage to the main door leading to the office and made away with PW1's safe box. PW3 says that she obtained an ordinary statement from the Accused Person at the time. However, information revealed that some persons living opposite the company saw the Accused Person carrying a box from the company yard to an unknown destination that night and so Accused Person was arrested.

Accused Person confessed to the offence and mentioned one Awudu as his accomplice. Accused Person described his role as well as that of Awudu.

Prosecution closed its case after this.

### **CONSIDERATION BY COURT**

Per section 173 of the *Criminal and Other Offences (Procedure) Act, 1960 (Act 30)*, I am enjoined at the close of prosecution's case, to determine whether Prosecution has made out a case against the Accused Person sufficiently to require him to make a defence. The generally accepted meaning of this section is that Prosecution must at the close of their

case, establish a prima facie case against the accused person. It is only then that the accused person would be called upon to open his defence.

See the dictum of Denning J (as he then was) in the celebrated case of *Miller v. Minister of Pensions [1947] 1 All ER 372 at 373* where he held that. "The constitutional presumption of innocence of an accused person is that an accused is presumed to be innocent unless he pleads guilty or convicted by a court. The presumption is rebutted when the prosecution establishes a prima facie case against the accused person and the accused shall be called upon to raise a reasonable doubt as to his guilt." See also the dictum of Dennis Adjei JA in the Court of Appeal case of *Philip Assibit Akpeena v. The Republic (2020) 163 G.M.J. 32*

The prosecution would be deemed to have failed to establish a prima facie case against the accused where at the close of its case it fails to prove an essential element of the offence charged, where the evidence led has been so discredited by cross-examination, where the evidence led is so manifestly unreliable such that no court of law can safely convict on it (see *Apaloo & Others v. The Republic [1975] 1 GLR 156*) and finally where the evidence adduced by the prosecution is evenly balanced and is susceptible to two likely explanations; one being consistent with the guilt of the accused whilst the other is consistent with the innocence of the accused (see *Tsatsu Tsikata v. The Republic [2003-2004] SCGLR 1068*).

In the case of *The Republic vrs. Eugene Baffoe Bonnie & 4 ORS delivered by the Court of Appeal on 25<sup>th</sup> day of March, 2020 (Crim. Appeal No 82/2/2019)*, the Court of Appeal held that "It is true that at the close of the case for the prosecution, the guilt of the accused is not supposed to have been proved beyond reasonable doubt. As the authorities however show, and having regard to the provisions of section 11 (2) of the Evidence Decree, 1975 (NRDC 323), the evidence led at this stage should however be such that it should be capable of convicting the accused if

he/she offers no explanation. Not only should all the elements of the offence should have been proved, but also that the evidence adduced should be reliable and should not have been so discredited, through cross-examination that no reasonable tribunal can safely convict on it. The evidence at this stage should also not be so equally balanced as to be susceptible to two likely explanations or consistent to both guilt and innocence''.

On count one, the applicable sections of the *Criminal Offences Act, 1960 (Act 29)* are sections 23 (1) and 171 (b). Prosecution's first obligation is to provide cogent, material and credible evidence to establish that the accused person and one Awudu agreed to act together with a common criminal purpose of stealing an amount of one hundred and twenty seven thousand, four hundred Ghana cedis (GH¢127,400.00) kept in a safe, a Samsung mobile phone, valued at GH¢280.00, an official landline phone valued at GH¢200.00, DSTV decoder valued at GH¢170.00, cheque books, land documents and a picture frame valued at GH¢170.00 belonging to Maxwell Tata.

The provision on *Conspiracy in the Criminal Offences Act, 1960 (Act 29)* is section 23 (1). It provides that "where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence.

In the case of *Agyapong v. The Republic [2013-2015] 2 GLR 518*, the court of Appeal noted that "under the old formulation of section 23(1) of Act, 29, the prosecution needed to prove only one of two things. One was that the accused persons agreed to act together in furtherance of the commission of the offence and the other was that even without agreeing to act together, they acted together in furtherance of the crime. But under the new formulation, the prosecution had a duty to prove that there was a prior agreement by the accused persons to act together with a common purpose, before it could secure a conviction for conspiracy''. See also the decision of

Marful Sau J.A (as he then was) sitting as an additional High Court Judge in the case of *Republic v Augustina Abu and others, (Unreported) Criminal Case No. ACC/15/2013*.

In the oft cited case of *Azametsi & Others v. The Republic [1974] 1 GLR 228*, the apex Court held that “it was not always easy to prove agreement by evidence, but it could be inferred from the conduct of and statements made by the accused persons”. See also the case of *Duah v. Republic [1982-88] 1 GLR 343*.

The reverent **Torkornoo JSC (as she then was)** in reading the decision of the Supreme Court in the case of *Asiamah v. Republic (J3 6 of 2020) [2020] GHASC 64 (04 November 2020)* held that “The elements of conspiracy as just stated were outlined in *Republic v. Baffoe Bonnie and 6 Others (Suit No. CR/904/2017) (unreported) dated 12 May 2020 by Kyei Baffour JA* sitting as an additional justice of the High court in these words: ‘For prosecution to be deemed to have established a prima facie case, the evidence led without more, should prove that:

1. There were at least two or more persons
2. There was an agreement to act together
3. The sole purpose for the agreement to act together was for a criminal enterprise.

The Supreme Court, through Appau JSC, stated in the case of *Akilu v. The Republic [2017-2018] SCGLR 444 at 451*: The double- edged definition of conspiracy arises from the undeniable fact that it is almost always difficult if not impossible, to prove previous agreement or concert in conspiracy cases. Conspiracy could therefore be inferred from the mere act of having taken part in the crime where the crime was actually committed. *Where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing” (emphasis mine)*

In order for Prosecution to establish its case against the Accused Person on count one, it must lead positive, cogent and credible evidence to establish that;

1. The Accused Person and one Awudu agreed to act together
2. The agreement to act together was for the common purpose of undertaking the criminal enterprise of stealing the items listed in the particulars of offence
3. Each of them acted in a specific manner towards ensuring the success of their joint criminal enterprise

Although it is a legal known that a charge of conspiracy can be sustained even where the accomplice is at large, Prosecution is bound to lead cogent and credible evidence of the involvement of the accomplice and the role that he played in the commission of the offence. See the case of (Mensah Bonsu)

Prosecution's only evidence as to the involvement of Awudu in the said offence is the confession statement of Accused Person himself. There was no independent investigation into the involvement of the said Awudu to establish if he even exists in the first place.

*In the case of Francis Yirenskyi vs The Republic, CRA J3/7/2015 delivered on 17<sup>th</sup> February 2016 (unreported), SC, Akamba JSC* in reading the decision of the apex court, had occasion to elaborate on the evidential value of confessions made against other accused persons. He held that "It is trite criminal law that a confession made by an accused person which is admitted in evidence is evidence against him. It is however not evidence against any other person implicated in it (See Rhodes (1954) 44 CR. App. R. 23) unless it is made in the presence of that person and he acknowledges the incriminating parts so as to make them, in effect, his own".

The confession statement of Accused Person, if at all, is evidence against him only and cannot serve as evidence against an Awudu who may or may not exist. As Prosecution has failed to lead any cogent evidence of the involvement of another person in the commission of this offence and a person cannot conspire with himself, I find at the close of Prosecution's case that it has failed to establish a prima facie case against the Accused Person on count one. Accordingly, the Accused Person is acquitted and discharged.

On count two, the definition section of the offence of stealing is *Section 125* and it provides that a person steals if he dishonestly appropriates a thing of which he is not the owner. The essential elements that Prosecution has to prove to establish their case are;

1. that the Accused Person is not the owner of the cash sum of GH¢127,400.00 as well as all the other items mentioned in the particulars of offence
2. that the Accused Person appropriated the said sum
3. that his appropriation was dishonest.

The first element of this offence is not in issue. Accused Person through his counsel does not challenge the case of Prosecution that the sum of GH¢127, 400.00, Samsung mobile phone, DSTV decoder, picture frame, cheque books, land documents and land line telephone belongs to PW1. Save for the sum involved having been written as GH¢129,400.00 by PW1 and PW3, there was no dispute as to this element. With regard to the discrepancy, PW3, the investigator sought to correct the figure under cross-examination and indicated that she relies on the figure contained in the charge sheet. That is GH¢127,400.00.

On the second element, Per section 122 (2) of Act 29; an appropriation of a thing in any other case means any moving, taking, obtaining, carrying away, or dealing with a thing, with the intent that some person may be deprived of the benefit of his ownership, or of

the benefit of his right or interest in the thing, or in its value or proceeds, or any part thereof”.

On the third element to be established by Prosecution, *section 120 (1) of Act 29* provides that an appropriation of a thing could be deemed to be dishonest if it is proved that the appropriation was made:

(i) with intent to defraud; or

(ii) by a person without any claim of right; and

(iii) with a knowledge or belief that the appropriation was without the consent of some person for whom he was a trustee or who was the owner of the property appropriated;

I would consider both elements together. The evidence of Prosecution against the Accused Person is circumstantial. There was no direct evidence led as to the Accused appropriating the items. Circumstantial evidence is admissible to prove the fact of an event. See the case of *People v. Scott 176 Cal. App. 2d 458 (1960)*. However, it is elementary that whenever circumstantial evidence is being used to prove the guilt of an Accused Person, the evidence must exclude every other reasonable hypothesis and point to one and only one irresistible inference, that is, that the accused has committed the offence.

Lord Chief Justice Goddard in the case of *R v. Onufrejczyk [1935] QB 338* stated that “any other fact, can be proved by circumstantial evidence, that is to say, evidence of facts which lead to one conclusion, provided that the jury are satisfied and are warned that it must lead to one conclusion only.” See the case of *Bosso v. Rep (2009) SCGLR 420*.

Prosecution's evidence is that Accused Person took the safe box of PW1 which contained the sum of GH¢127,400.00 as well as the other items listed in the particulars of offence, that although he was not seen taking the money and the other items, the safe that he was seen carrying away contained the money and the land documents of PW1.

PW1 and PW2's testimonies are particularly important. PW1 is the boss of Accused Person and he employed him as a security man in the company yard. His evidence is that the Accused Person was the only one who knew that he had received money and kept it in the office that day. He maintained this under cross-examination.

Under cross-examination by learned counsel for the Accused Person, PW1 answered at page 19 of the record of proceedings;

*Q: Are you in the habit of keeping large amounts of money in the premises?*

*A: Yes, please. On the said date, I had received some money. I give loads to people so they came to pay me around 4pm in the evening. The following day was to be a holiday and so I could not send the money to the bank and I left it in the office. Accused Person's office is close to mine and he was there that day when the person who came to pay me passed by his office and came to my office with the money.*

*Q: Was the Accused Person the only other worker on site at the time the money was delivered to you?*

*A: My lord, it is a tanker yard so there are other workers.*

*Q: That means other people were aware of the fact you had taken delivery of a large amount of money.*

*A: No one knew. The others are tanker drivers who were in the yard and not close to my office. It is only the Accused Person who was close to my office.*

PW2 and her family live opposite the company yard of PW1 and also sell food in the same area. PW2 maintained that she saw the Accused Person carrying the safe box around 11:pm out of PW1's yard and towards another direction. PW2's knowledge of Accused Person and her ability to identify him was not put in any doubt. Aside from her evidence that PW1's yard where the Accused Person works is directly opposite their house, she also provided further details of her knowledge of Accused Person.

Under cross-examination by counsel for Accused Person at page 24 of the record of proceedings,

Q: *You have stated that you know the Accused Person and that he is a security guard. How did you come by that information?*

A: *My lord he usually frequents my mother's end to eat and we know that he is a security guard at Tata's yard.*

Again at page 25 and 26 of the record of proceedings, she answered;

Q: *You have indicated that the accused person always brings women to the yard at night. How many times have you seen the Accused Person with women in the yard at night?*

A: *My lord, I cannot tell the number but he usually brings in women.*

Q: *You have further stated that on the night in question, his movement seemed suspicious. What about his movement was suspicious?*

A: *My lord, it is because he passed there the first time and upon his return, he brought nothing. He did so a second and third time and so we became suspicious and decided to spy on him.*

Q: *So on the night in question, did you see the Accused Person with any other person at the yard?*

A: *No my lord.*

Q: *Did you hear anything happening in the yard?*

A: *Yes my lord.*

Q: *Why did you not tell the police because it is not in your statement to the police that you heard anything?*

A: *My lord in the night, I did not hear anything going on in the yard. It was rather in the morning that I heard something.*

Q: *How many minute(s) did you stay there spying on the Accused Person?*

A: *My lord I cannot tell but the time that he kept going back and forth, it was around 11pm that we saw him carrying the box.*

Q: *In all the time you were spying on the Accused Person, you did not hear any sounds or anything happening in the yard?*

A: *No my lord.*

Also at page 20 of the record of proceedings, PW1's description of the safe box is the same as the description of the box PW2 says she saw the Accused Person carrying on his head.

Q: Let us go back to the safe, can you tell the court what colour it is?

A: My lord, it is like brown coloured, about the colour of the desk in court.

Q: Is it a painted safe, is it rust coloured?

A: It is a new safe that I purchased at china mall for use. It was just as it was manufactured.

Q: And you are telling this court that one person can lift the safe. Is that so?

A: Yes my lord.

Q: What else was taken apart from the safe and the phone?

A: My lord, a picture frame of myself and a DSTV decoder.

Then at page 27 of the record of proceedings, PW2 answered;

Q: You have stated in paragraph 9 of your evidence-in-chief that you saw the Accused Person with a shiny box on his head (paragraph 9 reads out loud in court). Is that so?

A: Yes my lord.

Q: How big was the box?

A: To me and the way I saw it, the box is about a size of the cover of a butterfly sewing machine but it has the colour of the court table.

Q: You stated that it was shining?

A: Yes, my lord.

Q: I am putting it to you that the colour you indicated does not shine especially at night.

A: Please, there were street lights where he was passing and so as he was going, the box was shining.

Both PW1 and PW2 were emphatic about the colour of the box. Indeed, the court noted that the court's desk is shiny as it is the newest furniture in the court. Thus their referral to the court desk was not coincidental but a matter of them testifying about what they had first hand knowledge of.

I found their evidence, particularly that of PW2 to be credible. She had testified of events that she had first hand knowledge of and had shown herself as a witness who was in this court to speak of only what she had seen with her eyes. She was clear that she had not seen Accused Person with any other item apart from the safe on his head on the said date.

She answered questions put to her in a direct manner and did not try in anyway to be evasive. She gave a good account of herself to the court and maintained her evidence under rigorous cross-examination by learned counsel for the Accused Person. In answering questions, she provided further particulars and details of the events that she had witnessed and

spoken of in her evidence-in-chief. I found her to be a witness of utmost truth whose evidence was relevant and material to the case of Prosecution.

Accused Person had also confessed to the crime. As I earlier indicated in the *Yirenkyi case (supra)* “a confession made by an Accused Person which is admitted in evidence is evidence against him”. As the Accused Person had in Exhibit A confessed to the offence, that would be considered as evidence against him. Indeed, his own confession statement corroborates the evidence of PW2. Accused Person stated that he carried out the box on the said date. PW2 had seen him carrying the safe box on his head.

From the evidence of Prosecution, Accused Person did so without any claim of right and with the knowledge that PW1, for whom he was a security man would not consent to his appropriation. The money belonged to PW1 and PW1 had not authorized Accused Person to take it. Indeed, Accused Person’s job as a security man was to guard the said yard and that included guarding the safe box. That Accused Person laid the blame for the appropriation at the doorstep of armed robbers per Exhibit B, his ordinary statement, is an indication that he knew that PW1 would not consent to his appropriation hence the decision to lie.

At the close of Prosecution’s case, I find that they have established all the requisite elements of the offence of Stealing against the Accused Person. The evidence has not been so discredited under cross-examination, the evidence is reliable such that a court of competent jurisdiction can rely on same to found a conviction if Accused Person refuses to testify and the evidence at present lends itself to only one explanation; a prima facie case of guilt of Accused Person on the charge of stealing. Accordingly, the Accused Person is called upon to open his defence if he so desires.

(SGD)

**H/H BERTHA ANIAGYEI (MS)**  
**(CIRCUIT COURT JUDGE)**

ASP STELLA ODAME (MRS)

DANIEL OSEI FOR JUSTICE ABDULAI FOR THE ACCUSED PERSON PRESENT