

IN THE CIRCUIT COURT OF JUSTICE HELD IN HO, VOLTA REGION
ON MONDAY, THE 27TH DAY OF NOVEMBER 2023 BEFORE HIS HONOUR FELIX
DATSOMOR, ESQUIRE, CIRCUIT COURT JUDGE

COURT CASE NO. D9/3/2020

THE REPUBLIC

VRS

1. EVANS OHENE
2. PROSPER ADEGBE
3. KOFI AGBO

J U D G M E N T

INTRODUCTION:

The accused persons were jointly charged with the offences of causing unlawful damage and stealing contrary to sections 172 and 124(1) of the Criminal Offences Act, 1960 (Act 29) respectively (hereafter referred to simply as Act 29) and arraigned before this court on 3 December 2019. They all pleaded “*not guilty*” to the offences charged. However, in the course of the trial, the second accused, Prosper Adegbe, changed his plea to “*guilty*” simpliciter on both counts and was accordingly convicted and sentenced. It therefore goes without saying that this delivery relates exclusively to the first and third accused persons, Evans Ohene and Kofi Agbo respectively.

THE ALLEGED FACTS IN SUPPORT OF THE CHARGE:

The complainant, Elizabeth Tsikata, was the caretaker of a fully furnished building at Ho Ring Road belonging to one Azumaro Kwashie, who lived abroad. The first accused, Evans Ohene, was a friend to the second and third accused persons as well as one King alias Nana. On 23 August 2019, the Anyirawase police arrested the first accused on suspicion of theft and retrieved from him two double bed mattresses, one LPG cylinder and a woolen carpet that had the complainant's contact number inscribed on them. The police contacted the complainant to ascertain whether any belonging of hers had been stolen. The complainant, upon inspecting the house, found that the room had been broken into with some of her belongings therein including those found with the first accused made away with. The complainant reported the incident to Ho Central Police who took up investigations into the matter. During investigations, the first accused mentioned the second and third accused persons as the people who masterminded and carried out the theft and that suspect King alias Nana, a taxi driver, helped them to convey the items. According to the alleged facts, the first accused later led the police to arrest the second accused and the second accused in turn led the police to retrieve the double bed mattress as well as one deep freezer, one fridge, one washing machine, one glass center table, one disc jockey machine, one computer monitor and a 65-inch TLC flat screen television set. The first accused then led the police to the house of the third accused (then at large) for the police to retrieve from his room one ice maker machine. Later, the third accused was arrested and on caution, he mentioned the other accused persons as his accomplices and also stated that the second accused was the one who plotted the theft and got them involved. The third accused then led the police to retrieve one FM transmitter and one queen size mattress. All the items retrieved were identified by the complainant as having been stolen from the room in the house of which she was the

caretaker. All the accused persons were then charged and arraigned before this court to stand trial.

WHAT TRANSPIRED AT THE TRIAL?

At the trial, the prosecution called two witnesses to testify in support of its case albeit the prosecution had filed witness statements for four people. The witnesses who testified at the trial were the complainant (Elizabeth Tsikata) and the case investigator (Detective Lance Corporal Eric Osei Nyarko). I shall hereafter refer to them simply as PW1 and PW2 respectively for the sake of convenience, brevity, simplicity of description and ease of reference.

THE CASE FOR THE PROSECUTION:

As I have already hinted, the case of the prosecution was composed by the testimonies of the two witnesses called. All of the said witnesses filed their witness statements embodying their respective testimonies to the court.

PW1 was a personnel of the Nation Builders Corps (popularly known as NABCO) attached to the Ghana Revenue Authority (GRA) in Ho. She was the caretaker of a fully furnished building at Ho Ring Road belonging to one Azumaro Kwashie. PW1 testified that sometime in June 2019, she fell sick and thus left the house to seek treatment elsewhere. She was away until 23 August 2019 at about 3:00 pm when she had a phone call from the Anyirawase police through one Obronu Asuome Dzidzornu, a sister of Azumaro Kwashie, that the police had arrested a young man in possession of some items suspected to have been stolen. She added that she was told further that a woolen carpet which was part of the items found on the said young man bore her contact number and

that explained why she had been contacted to ascertain whether there had been any theft in her house. Hearing this, PW1 said she quickly rushed to the house at Ring Road to check and when she got there, she detected that the main door as well as the doors to the various rooms in the house had been forced open. She also said that upon entering, she found that some items in the house including one queen size mattress, two double bed mattress, two TCL air conditioners, one deep freezer, one 65-inch flat screen television set, one glass center table, one television stand, a woolen carpet, domestic gas cylinder, a washing machine, computer and accessories, FM transmitter, ice maker machine, disc jockey machine, closed-circuit television (CCTV) cameras with receiver and assorted drinks, altogether valued GH¢101,830 had been made away with. As a result, she lodged an official complaint with the Ho Central Police for assistance. PW1 said she was later invited by the police to identify some items retrieved from the accused persons. She honoured the invitation and identified the items as part of those stolen from the Ring Road house.

PW2 also told the court about what he knows about this case. According to him, on 26 August 2019, he took over the investigation of this case from one Constable Estella Boakye, the initial case investigator. He also said that at the time he took over the case, the first accused had been arrested with the assistance of the Anyirawase police and certain items retrieved from him including one double bed mattress, one gas cylinder, one system unit and a wooden carpet. PW2 disclosed that when he took over the case, he studied the case docket and discovered that the first accused had mentioned the second accused as the one who sold the mattress to him and also kept the other items with him for safekeeping and collection later. Consequently, PW2 said he interrogated the first accused and the first accused confessed to him that the second and third accused persons together with one King alias Nana (a driver) were those behind the theft. The first accused later led him and other police officers to arrest the second accused. According to PW2,

the first accused also led them to the house of the third accused at Abutia Teti where one ice cube maker machine was retrieved from third accused's room in his absence. He later visited the crime scene at Ring Road, Ho with the complainant and the first and second accused persons where the said accused persons demonstrated to him in the presence of the others how they managed to scale over the wall of the house and caused damage to one of the door locks to gain ingress into the various rooms in the house to steal. PW2 disclosed that at the scene of crime, the convict mentioned the items stated in the charge sheet as part of the items they stole from the said house. Thereafter, PW2 obtained investigation caution statement from the convict. Testifying further, PW2 told the court that on 29 August 2019, the second accused led him and other police officers to retrieve from unsuspecting buyers the two TCL air conditioners, the deep freezer, the 65-inch flat screen television set, a television stand, the washing machine, the disc jockey machine, a *Hisense* fridge and the CCTV cameras. It was later, according to PW2, that the third accused who was then at large was also arrested. He added that the third accused told him upon interrogation that he together with the first accused and the convict were indeed the ones who stole the said items. Thereafter, the third accused also led him to Ring Road and pointed to the house in question as the location where he stole the items from with the first accused and the convict. PW2 narrated further that the third accused led him and other police officers on 18 September 2019 to retrieve the FM transmitter, the queen size mattress as well as the computer and its accessories. He then took investigation caution statement from the said accused in the presence of an independent witness. He also emphasized that all the items retrieved from the accused persons were identified by the complainant as having been stolen from the house she was caretaker of. The said items, said PW2, were photographed and same were released thereafter to the complainant.

It is observed that during the presentation of his testimony to the court, PW2 tendered into evidence the various investigation and charge caution statements obtained from each accused person as well as the photographs taken of the items stolen from the Ring Road house.

On the strength of the testimonies of the prosecution witnesses as recounted *supra*, this court found as a fact that the 1st and 3rd accused persons had a case to answer in respect of the charges preferred against them pursuant to *sections 173 and 174(1) of the Criminal and Other Offences Act, 1960 (Act 30)* thereby necessitating that they be called upon to enter their defence to the said charges levelled against them. The court took such a view on 5 April 2022 and accordingly called upon the 1st and 3rd accused persons to enter their defence. As was held in the Supreme Court case of *Gligah & Atiso v. The Republic [2010] SCGLR 870; [2010-2012] 1 GLR 39, SC; [2010] 25 GMJ 1, SC*, per Dotse, JSC,

“...it is only after a prima facie case has been established by the prosecution that the accused person is called upon to give his side of the story.”

I recall that the Supreme Court held per Adinyira (Mrs), JSC in the case of *Michael Asamoah & Another v. The Republic [2017-2018] 1 SCLRG 486* thus:

“Perhaps the single most important organizing principle in criminal law is the right of the accused not to be forced into assisting in his or her own prosecution. This means, in effect, that an accused is under no obligation to respond until the state has succeeded in making out a prima facie case against him or her.”

Also, in *Philip Assibit Akpeena v. The Republic supra*, Dennis Adjei, JA held thus:

“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."

Having held at the close of the case for the prosecution that a *prima facie* case has been established against the 1st and 3rd accused persons, they will be required to lead evidence to rebut the presumption of guilt raised by the case of the prosecution against them. In such circumstances, the burden shifts onto the said accused persons so they have to adduce sufficient evidence to avoid a ruling against them on the particular issue(s) at stake pursuant to *section 11(1) of the Evidence Act, 1975 (NRCD 323)*. As indicated earlier, the said accused person's duty will be discharged only if they are able to raise a reasonable doubt in the prosecution's case. The nature and extent of the onus on the 1st and 3rd accused persons was articulated in the case of *Woolmington v. Director of Public Prosecutions (1935) AC 462 at 481*, where HL Sankey LC 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".

This position of the law has been given statutory backing in sections 11(3) and 13(2) of NRCD 323 which provides thus:

13(2): *"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 guilt, requires the accused to provide sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to the guilt"*.

13(2): *"Except as provided in section 15(3), in 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 the guilt”.

The Supreme Court has also given an outline of how a court of law ought to examine the case of the defence (or accused) in the event where the court forms the opinion that a *prima facie* case has been made against the accused and thereby proceeds to call upon him to make a defence to the charge(s) levelled against him. For the avoidance of doubt, that authoritative pronouncement is embodied in the case of *Lutterodt v. Commissioner of Police* (1963) 2 GLR 429, and the following is what the Supreme Court said as captured in the law report (per holding 3 thereof):

“(3) In all criminal cases where the determination of a case depends upon facts and the court forms the opinion that a prima facie case has been made, the court should proceed to examine the case for the defence in three stages:

(a) if the explanation of the defence is acceptable, then the accused should be acquitted;

(b) if the explanation is not acceptable, but is reasonably probable, the accused should be acquitted;

(c) if quite apart from the defence’s explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict...”

I will, without further ado, proceed therefore to evaluate the defence put up by the 1st and 3rd accused persons in the light of the above. See also: *The Republic v. Aku Kedevi @ Mansanor & Michael Boti (Suit No. MIC/02/2018 dated 13th July, 2020) per Eric Baah, J (as he then was)*.

I intend to begin with the evaluation by recounting the testimony of the 1st accused which he offered to the court 17 August 2022 and thereafter, that of the 3rd accused offered to the court on 30 November 2022.

THE DEFENCE OF THE FIRST ACCUSED:

The first accused gave a very detailed testimony in his defence on 17 August 2022. I shall endeavour to extract the salient points in the testimony of the first accused for its full legal effect.

In his defence, the first accused said he did not know anything about the charges levelled against him. He lamented that he did not have anybody to help him in this life so he resorted to running errands for any elderly person who sent him on such errands so that he would get something to sustain his life. Consequently, he had been following the third accused whom he had known at Anyirawase since 2019 to the farm to assist him to work. He said anytime he went to assist the third accused on the said farm, the third accused would sometimes prepare food for them to eat on their return from the farm and at other times, the third accused would give him money ranging between GH¢10 to GH¢20 to buy food with it. The first accused narrated that in the course of time, the third accused told him that he has a phone shop in Ho so since he (first accused) had taken the third accused as his elder brother, he ran all errands that the third accused sent him on. He explained

that as time went on, the third accused acquired a piece of land at Anyirawase and requested him to join some people he had hired to dig foundation trenches on the land for him which he obliged. According to him, the third accused paid all the people he had hired to dig the said foundation trenches but due to the close relationship that had developed between him and the third accused, the third accused asked him to hold on for a while for his wages. Shortly thereafter, the third accused relocated to Ho. The first accused testified further that he was at his house one evening between 6:30pm and 7:00pm when the third accused called him on phone and said that he had sent a vehicle to deliver some goods for him but he will not be around when the goods arrive so he (first accused) should wait by the roadside and take delivery of the goods on his behalf. The first accused added that the third accused described the items to him by mentioning one cylinder, one woolen carpet and one mattress as those that would be offloaded at a roadside for him to carry home on his behalf. The first accused explained that when he got to the roadside and saw the items by the roadside, he conveyed them to the house for the third accused. He testified further that there was a case of stealing involving a certain friend of his at Anyirawase in respect of which a search was conducted in the room of the said friend but the stolen items involved in that case could not be found there. As a result, it was believed that since he (first accused) was a friend to the suspect in that case, the suspect might have hidden the stolen items with him so his place of abode was eventually searched. The first accused said he was not in the house when that incident occurred but the Anyirawase police came to his house and forced his door open and conducted the said search in his room and it was during that search that the police found the woolen carpet folded and sealed with a sealing tape (popularly referred to in our local parlance as *sellotape*) lying in his room just as it was when he brought it on the instructions of the third accused. He said the items were then sent to the police station. The first accused recounted that because he knew it was the third accused who asked him to keep those items for him, he tried to reach out to the third accused on phone but all his calls to him

did not go through so he followed up to the police station and explained the situation to the station officer who directed him to go and bring any of his family members. He obligingly went to his father's hometown and invited one of his uncles to the police station and while he was being interrogated, the sealing tape used to wrap the carpet was cut open and the carpet unfolded. It was then that it was discovered that a name and telephone number had been written and stitched to the carpet. That finding, according to the first accused, led the station officer to arrest him, and the number that was written on the carpet was called on the phone and the one who answered the call said that the items were stolen from Ho. That also made the station officer to detain him until the police in Ho were called to come for him. The first accused testified further that he was interrogated when he was brought to the Ho Central Police Station and he told the police that he did not know anything about the items. That, according to him, caused the police to subject him to some beatings amidst being asked to say the truth. But the beatings notwithstanding, he insisted that he did not know anything about the items and that it was someone who kept the items with him. The police would obviously not accept his explanation and so they kept beating him with electric wire and a cutlass thereby making him sustain some lacerations on his body. The first accused also disclosed that in the course of his detention, the third accused did not visit him but rather went into hiding knowing that he (first accused) had landed himself in the instant trouble due to the assistance that he (first accused) offered him. The first accused stated further that it was not until this court graciously admitted him to bail that he met the third accused. According to him, he chose not to go to Anyirawase but to stay with one of his aunties in Ho when he was granted bail by this court, and that during that period, he once went to the timber market at C. K. Road in Ho and there he spotted the third accused and got him arrested with the help of a certain man selling hardwares there and taken to the police station.

With regards to the charge of causing unlawful damage, the first accused testified that he did not know anything about it because the location where the damage was alleged to have been caused was where the stealing eventually took place. He added that he made the police aware that he had not been to that place before and explained that his first time of going there was on the day the police took him and the other suspects (i.e. the third accused and the convict) there. He even said it was the investigator who told him that it was upon the arrest of the third accused that he (third accused) together with the convict told the police that it was the two of them who went to the place and stole the items and also demonstrated to the police how they broke into the house.

During cross-examination of the first accused, the prosecution sought to impress upon the court that the items retrieved from the first accused's room constituted the first accused's share of the booty they got from the stealing exercise but the first accused denied same and explained that though the mattress as well as the gas cylinder and the woolen carpet were retrieved from his room thereby leading to his arrest, he was not part of those who stole the said items.

Flowing from the nature of the testimony the first accused had given to the court parts of which seemed to incriminate the third accused, the third accused cross-examined the first accused in respect of those incriminating pieces of evidence led. This is because the first accused had stated quite forcefully that it was the third accused who sent those items to him through a driver. The third accused on his part sought to portray that it was just because he (third accused) did not visit the first accused when the first accused and the convict were arrested for stealing that the first accused implicated him in this case as a form of taking revenge. But as to be expected, the first accused denied that allegation. The third accused also created the impression during cross-examination that the first accused came to his house to tell him that the convict had kept some items with him (first accused) thereby insinuating that it was the convict who kept those items with the first accused

but not him (third accused). When quizzed by the third accused as to why he did not call anybody to witness it when he was packing the items to his place of abode since he did not meet the driver who brought the items, the first accused answered that he had taken the third accused as his elder brother so he could not have told anybody that it was the third accused who sent those items to him for safekeeping coupled with the fact that the third accused most often sent him on errands.

THE DEFENCE OF THE 3RD ACCUSED:

The third accused, in his defence of 30 November 2022, stated that he was at Anyirawase one fateful day when the police went to arrest the convict and the first accused and that at the time of the arrest, the first accused had a mobile phone on him so the first accused called him to inform him about the arrest and also requested him to come to the police station and bail him. The third accused said he told the first accused that he would not step foot at the police station because he had warned him (first accused) several times against the kind of company he was keeping with the convict, a warning that eventually made his (third accused's) relationship with the first accused turn sour.

The third accused confirmed that the first accused usually assisted him to do every work that he did at home but lamented that the first accused and the convict came to his house one night and slaughtered his goat and when he questioned them about the said act, they both denied knowledge of it. Feeling obviously irked by the alleged conduct of the first accused and the convict, the third accused said he refused to go and bail the first accused when he and the convict were arrested. The third accused alleged that it was consequent upon his refusal to go and bail the first accused that the first accused threatened to cause his arrest when he and the convict were eventually released. According to the third accused, the first accused's reason for issuing the said threat was that he (third accused)

was the cause of their arrest. Because of that belief held by the first accused, said the third accused, the first accused vowed to implicate him and get him arrested in a similar fashion. Narrating his story further, the third accused said the first accused was kept in police custody for some time before he was later released from police detention. He added that he came to Ho one morning and met the first accused heavily drunk and in the company of another person. He thus called the first accused and asked him when he was released from police custody and the first accused immediately told the one he was then walking with that he (third accused) was the cause of his arrest and thereby sought the assistance of that person to apprehend him (third accused). This, according to the third accused, led to some struggle between them so a certain wood merchant nearby came to hold him and advised him not to struggle with anybody and that he should just follow him to the police station to defend himself there. They accordingly proceeded to the police station where the investigator asked him whether he was the one who sent some items from Ho to Evans Ohene (first accused) and immediately thereafter both of them were taken to the Crime Officer who also subjected him to some form of interrogation and thereafter instructed the investigator to take down his statement in writing. The third accused said that the Crime Officer then asked the first accused whether it was not Prosper Adegbe (the convict) who sold the items to him but the first accused could not answer. The third accused said that notwithstanding the inability of the first accused to answer the question posed by the Crime Officer, he (third accused) was detained at the police cell and later brought to court together with the convict. On the basis of the foregoing, the third accused maintained that he did not know anything about this case and that it is the first accused who is trying to implicate him in the matter. The third accused believed that the first accused was peeved at him when he advised him against the bad company he was keeping with the convict and the various crimes the two were committing at Anyirawase. Thus, in his view, the first accused thought that he (third accused) was the one who reported him to the police. In concluding his testimony, the

third accused said he has never even set eyes at the crime scene where the damage was caused to the door and lock as alleged by the police and that he was sure that the first accused only wanted to implicate him for what he knew nothing about.

The third accused admitted under cross-examination that the first accused had been helping him on his farm and also been running errands for him save that he never sent the first accused to buy any of the alleged stolen items for him. He also denied that it was he and the convict who went to commit the crimes charged at the complainant's house explaining that he did not even know the house in which the incident occurred. He also mentioned that he had not seen any of the stolen items before and denied that he led the police to retrieve the FM transmitter, the queen size mattress as well as the computer and its accessories on 18 September 2019 as alleged contending that the items were not found with him. The third accused also made it clear that he told the police, among others, that he saw the first accused and other people in possession of the items and that was why the police went and arrested the first accused and the convict and retrieved the items from them. He therefore denied the fact that the first accused was first to be arrested before he (first accused) mentioned his (third accused's) name. He denied quite forcefully that it was he and the convict who stole the items in question and sent part thereof to the first accused.

FINDINGS MADE:

From the rival positions taken by the 1st and 3rd accused persons, one can clearly conclude that one of them is certainly telling lies and thereby trying hard to obscure the sight of the court just to disable the court from seeing through the case and finding out the truth. Honestly, one of them is playing smart here. But I believe, the record will certainly spill out the beans. It is without any shred of doubt that some of the stolen items in question,

particularly the woolen carpet, were found and retrieved from the room of the first accused. That alone would ordinarily implicate the first accused to a high degree, if not conclusively. The first accused does not deny the fact that the said item(s) were found and retrieved in his room. He however sought to explain away the situation by stating that he was at home one evening when the third accused called him on phone and informed him that he (third accused) had sent a vehicle to deliver some goods (consisting of a cylinder, a woolen carpet and a mattress) for him but he will not be around when the goods arrive so he (first accused) should take delivery of the goods on his behalf which he eventually did, and that explains how the said goods ended up in his room. By this, the first accused meant that the goods did not get into his room by means of any crime of which he was involved neither were they his share of any booty obtained by means of a crime in which he was involved. If this line of defence is found to be true, then the first accused could be left off the hook because it would be deemed that both *mens rea* and *actus reus* required for one to be held culpable for committing a crime would have been conspicuously negated. The first accused even said that knowing that it was the third accused who asked him to take delivery and keep those items for him, he tried to reach out to the third accused on phone ostensibly when he was arrested in connection with the said items. In my considered view, reaching out to another when one is in distress, *exempli gratia*, when he has been arrested and detained by the police, would reasonably take place when one needs assistance from the other or when one needs to inform another who is believed to be fully or partly answerable for the arrest. This is where the knot has to be untied. I say so because the third accused denied flatly that he is complicit in any crime in connection with the said items retrieved from the room of the first accused and explains that the first accused only called him on the day of first accused's arrest to request for his assistance by way of standing surety for him to be released on bail by the police. These are two very plausible explanations coming from the first and third accused persons. But beyond that, the third accused alleged that he had had some issues with the

first accused prior to the arrest of the first accused which had marred the hitherto healthy relationship between him and the first accused so the first accused sought to implicate him with this case when he turned down the first accused's request for assistance for bail at the time the first accused was arrested and detained by the police. Honestly, this is where I draw the line. I do not seem to believe the case of the third accused in that light. I shudder to say that if the third accused truly had issues with the first accused which said issues had patently soiled his relationship with the first accused as he claimed, the first accused would have never called him on phone to seek his intervention as a surety for him to be released on bail. It is obviously the most unthinkable thing for the first accused to do under the circumstances particularly when he could not have been the only person that the first accused could have gotten that kind of assistance from. Even when he allegedly refused to assist the first accused, the first accused was eventually released on bail by the police all the same. Moreover, I do not believe the third accused when he put up that sort of defence, because if the first accused indeed called him on phone in that regard, then there could not have been any bad blood flowing through them at the time of the first accused's arrest as alleged. That aside, the third accused alleged that it was consequent upon his refusal to go and bail the first accused that the first accused threatened to cause his arrest when he is eventually released. This allegation is inconsistent with reason. How can the first accused decide to implicate him merely because he refused to bail him at the police station when the first accused was arrested? The first accused is someone the third accused himself admitted under cross-examination had been helping him on his farm and running errands for him. The first accused, on his part, did not say otherwise. He told the court that he had known and followed the third accused to his farm to assist him work on the farm since 2019 and the third accused would sometimes either prepare food for them to eat on their return from the farm or give him money to buy food with it. Such a person like the first accused was most likely to run any errand for the third accused particularly when what he was being asked by the third

accused to do was not unconscionable or illegal. I seem, therefore, convinced by the testimony of the first accused that he was home one evening when the third accused asked him to take delivery of certain items to be delivered by a vehicle on his (third accused's) behalf because he would not be around by the time the items so arrive. That is quite plausible and common in the normal scheme of things.

I recall that when the third accused took his turn to cross-examine the first accused, he suggested to the first accused that he (first accused) was arrested in connection with another stealing case when the gas cylinder as well as the mattress and the woolen carpet (i.e. the items in question in this case) were found with him during a search conducted on him but the first accused acquitted himself creditably by stating that it was a friend of his suspected of having committed stealing whose room was searched and when the item allegedly stolen by the said friend was not found, the police came to his (first accused's) room to also conduct a search since he was a friend to the suspect, and it was then that the said gas cylinder, mattress and woolen carpet were found in his room. This line of defence is also not reasonably improbable. I am not oblivious of the fact that just as the first accused's testimony sought to have laid the blame for his prosecution at the doorsteps of the third accused in this case, that of the third accused also did same to the first accused.

That aside, the explanation the third accused gave as the first accused's reason for issuing the said threat was that he (third accused) was the cause of his arrest. Granted that the first accused ever issued any such threat at all, he would have reasonably done so believing that the third accused was the cause of his arrest, and that would be consistent with and/or accord with reason.

I must at this juncture observe that should I even choose not to believe both accused persons' stories, I find that the case of the first accused is nonetheless reasonably probable unlike that of the third accused.

Therefore, from the foregoing discussions made so far in this delivery, I hold that whereas the defence of the first accused appears reasonable probable, even if unacceptable, that of the third accused is neither acceptable nor reasonably probable.

The circumstances of this case lead me to hold that the third accused was the one who together with Prosper Adegbe (now convict) intentionally caused unlawful damage to the door lock of the Ring Road house in Ho belonging to Azumaro Kwashie in the month of August 2019 and proceeded to steal and/or dishonestly appropriate Azumaro Kwashie's aforementioned belongings in the room.

CONCLUSION AND DECISION OF THE COURT:

In the final analysis, whereas the first accused is found legally entitled to be, and is accordingly, acquitted and discharged of the charges levelled against him and the third accused in counts 1 and 2 relating to *causing unlawful damage* and *stealing*, the third accused is found guilty of both charges. He (third accused) is accordingly convicted of both charges.

SENTENCING:

In sentencing the third accused, I have taken into account the plea for mitigation of sentence ably put up by counsel for the third accused as well as the response put forth by the prosecution. I have also taken into account the extent of the damage caused by the accused and the premeditation with which he executed his unlawful plans. I have also not lost sight of the fact that the accused is a first-time offender who deserves the mercy of the court. That notwithstanding, it is my candid view that potential offenders must generally, as a matter of grave concern, be deterred from the commission of any crime of

whatever character and by extension, render our societies free from any form of crime ranging from petty offences to grave ones. I also take note of the fact that stealing and its allied offences have high degree of revulsion felt by well-meaning and/or right-thinking members of the Ghanaian society for it and it is one of the social ills prevalent within the jurisdiction of this court in recent times. It is also my considered view that there is the need to instill in all well-meaning and/or right-thinking members of the Ghanaian society the sense of toiling for our wants and needs in life without resorting to the use of criminal acts to achieve such ends.

Again, it is observed that Prosper Adegbe (now convict) who was, until he changed his plea and suffered conviction in consequence thereof, the second accused person in this case was handed down a custodial sentence of three years' imprisonment in respect of count 1 and ten years' imprisonment in respect of count 2. Therefore, for parity of treatment, I take the view that the third accused (now convict) must be handed down the same or similar sentence for the sake of fairness.

Guided by these considerations, I hereby sentence the third accused as follows:

- (a) On count 1, the accused is to serve three years imprisonment with hard labour.*
- (b) On count 2, the accused is to serve ten (10) years imprisonment with hard labour.*

The sentences (a) and (b) outlined above are to run concurrently.

(SGD) H/H FELIX DATSOMOR
CIRCUIT COURT JUDGE
22/11/2023

REPRESENTATION:

CHIEF INSPECTOR AGNES AHIABLE APPEARS FOR PROSECUTION

ACCUSED APPEARS IN PERSON