

IN THE CIRCUIT COURT HELD AT DORMAA AHENKRO ON THURSDAY
THE 21ST DAY OF MARCH, 2024 BEFORE HER HONOUR PHILOMINA
ANSAAH ASIEDU ESQ., CIRCUIT COURT JUDGE

CC NO: 14/2024

THE REPUBLIC

VRS

ASARE YAW

JUDGMENT

The accused person arraigned before the Court was charged with the offence of stealing on both count one and count two, contrary to Section 124 of Act 29/60. The accused person pleaded not guilty on both counts 1 and 2.

The facts

The facts of the case are that on 7th August 2023 at about 10:45am, the accused person was arrested and brought to the station with two bunches of plantain, some cocoyam in a sack and another sack containing four (4) aluminum roofing sheets. The accused person is unemployed and resides at Kyeremasu. The accused person was spotted earlier on in the day at about 7:00am with the items mentioned above. The complainant (PW1) identified the roofing sheets as his property at the station. Some two other women came to the station to identify the cocoyam and the plantain as theirs. During investigations, accused person admitted stealing the roofing sheet from the complainant (PW1)'s building site and the cocoyam and

plantains from his grandmother's farm. After investigations, the accused person was arraigned before this Honorable Court.

The accused person having pleaded not guilty, the burden of proof shifted on the prosecution to prove their case beyond reasonable doubt. Section 13 (1) of the Evidence Act 1975 (NRCD 323) provides:

“In any civil and criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt” .

The prosecution in proving the guilt of the accused called PW1 in the person of Daniel Aboagye, PW2 in the person of Cecilia Animah and lastly PW3 in the person of No. 58711 D/Const. Joseph Naaman, the case investigator. A witness statement was filed for the fourth prosecution witnesses in the person of Lucy Agyeiwaa which was later withdrawn by the prosecution.

The case of the prosecution

Daniel Aboagye (PW1) stated that his roofing sheet valued GH¢1,000.00 was deposited at his uncompleted fuel station. His friend, Richard Kumi informed him that they have arrested someone with roofing sheet and he suspected he stole them from his site. He then rushed to his site and realized that his four (4) aluminum roofing sheets has been stolen. He then proceeded to the station and found the sheets folded in the sack. He then gave a statement to the police after identification of his roofing sheet.

PW2 in the person of Cecilia Animah also gave evidence to the effect that she is a mixed crop farmer and that she went to her farm about five (5) days after the

incident and found out that someone has harvested her cocoyam and it was about 21 suckers. Upon her return from her farm, she discussed what she had seen with her friend and it was then that her friend told her about the arrest of the accused person with some food stuffs. She went and then identified her cocoyam and further gave statement to the police.

PW3, the case investigator No. 58711 D/Const. Joseph Naaman, a police officer stationed at Kyeremasu police CID testified that the case was referred to him on the same 07/08/2023 for investigations. He stated that he took statement from the individual complainants and the accused person and also visited the building site of PW1 as the accused person took the sheets from there. He also added that the accused person could not take him to the farm he harvested the plantain and cocoyam from.

The investigator also tendered the Exhibit A – investigation caution statement of the accused person, Exhibit B – the charge caution statement of the accused person, Exhibits C and C1 – photographs of the roofing sheets dated 08/08/2023 and Exhibit D – the photograph of the cocoyam and plantain dated 24/08/2023.

The case of the accused person

After the prosecution has brought their case to a closure, a prima facie case was established against the accused person and the accused person was called upon to answer.

The accused person opened his defence and only made this statement on oath '*My name is Yaw Asare. I am unemployed. I live at Kyeremasu. I accept the offences charged against me and I plead with the Court and I will not do that again. That is all I have to say.*'

The accused person after this did not call any witness to support his case.

The accused person did not cross-examine PW1 and PW3 during the trial. He only cross-examined PW2 on one question and I quote:

Q When did you see me harvesting your cocoyam and the plantain.

A I did not see you in my farm but upon searching the farm, I detected theft of my cocoyam and plantain

The cross-examination by the accused person revealed a corroboration on his position that he only knew he took the cocoyam and the plantain from his grandmother's farm. His true intention was revealed with such a question. The accused person maintained this position throughout the trial. He had also earlier on stated this in his statement to the police and same can be inferred from Exhibit 'A'.

The accused person was truthful and candid with the Court throughout the trial. This was also revealed when he was called upon to open his defense. He admitted the offence and only pleaded with the Court that he will not do it again.

The obvious question here is even if the accused person admitted the offence and pleaded with the Court for mercy when he mounted the witness box, was the prosecution able to prove their case beyond reasonable doubt.

Every individual is presumed to be innocent, decent and law-abiding member of a community until proven otherwise. See Article 19 of the 1992 Constitution. The right to be presumed innocent until proven guilty requires, at a minimum that (1) an individual be proven guilty beyond a reasonable doubt; (2) the state must bear the burden of proof and (3) criminal prosecution must be carried out in accordance with lawful procedures and fairness. See REP V OAKES [1980] 1 SCR 103.

The Court as the case must be must be satisfied beyond reasonable doubt that the accused person is guilty. The presumption of innocence is a doctrine that allocates the burden of proof in criminal trials. In OKYERE & ANOTHER V THE REPUBLIC [1972] 1 GLR, Hayford Benjamin J (as he then was) stated at p. 107:

“The Court in Ghana has always treated the presumption of innocence of accused person with respect. Where therefore the burden of proof has without statutory authority been placed on to the accused person, the fact alone resulted in the quashing of the conviction”

The prosecution was able to prove the case of stealing in Count one. The prosecution was able to prove that the accused person was not the actual owner of the roofing sheet stolen. The stolen roofing sheets were also in accused person’s possession at the time of his arrest and PW1 identified same as his own. The accused person in his investigation caution statement (Exhibit ‘A’) admitted having taken the roofing sheets at PW1’s fuel station construction site.

On Count 2, I would say that the prosecution failed to prove their case. The accused person stated in his statement to the police that as for the cocoyam and the plantain, he knew that same were from his grandmother’s farm. He again cross-examined PW2 whether she saw him harvesting the cocoyam and plantain from her farm and the witness said “No”. Indeed PW2 is not the only cocoyam or plantain farmer in the village. One thing we should also bear in mind is that PW2 per her witness statement visited her farm about five (5) days after the commission of the offence. This implies that any other person could have done that aside the accused person within the period of five (5) days.

Again, the prosecution failed to call the accused person's grandmother to Court to ascertain the claim or otherwise after he has stated in his statement that he took the plantain and cocoyam from her farm. The mere mentioning of this fact in the prosecution's fact is not evidence for the Court to rely on.

From the above, it is clear that the accused person never intended to steal from PW2's farm, he exhibited true intentions that he was taking the foodstuffs from his grandmother's farm at the time he went to the farm and not any other person (PW 2 to be precise), as far as he is concerned.

CONCLUSION

In the case of ATTA V COMMISSIONER OF POLICE [1963] 2 GLR 460 SC held that where an accused gives no evidence or explanation in his defense, the Court is bound to consider in the judgment, any evidence which favors his case as well as statements of the accused on caution given to the police and which are tendered in evidence. In the instant case, even though the accused person did not give any explanation in his defense, the Court has considered his investigation caution statement (EXHIBIT 'A') and his cross-examination on PW2 and was able to conclude that the accused person raised issues on the Count 2 which was never proved or addressed by the prosecution. Therefore, the accused person is discharged on Count 2.

However, in the case of R V AJANI (1936) 3 WACA 3, which was approved in ARMAH V THE STATE [1961] GLR 136 SC; STATE V AFENUVOR [1961] GLR (Pt 11) 655 SC; MORO V THE REPUBLIC [1979] GLR 256 and ARCHIBOLD CRIMINAL PLEADINGS, EVIDENCE AND PRACTICE (34th Edition) at pg 371 para 1001 are authorities for the propositions that if by the close of the case for the

prosecution, the accused is called upon to open his defense but he refuses to offer any defense, he can be properly convicted provided the evidence given by the prosecution justifies the conviction.

From the above submission, the prosecution provided enough evidence on Count 1 and the accused person refused to offer any defense but only pleaded for mercy, this is enough to justify conviction. The accused person is therefore convicted on count 1.

H/H PHILOMINA ANSAAH ASIEDU
CIRCUIT COURT JUDGE
21/03/2024