

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

CCNO: 181/2022

THE REPUBLIC

VRS

BISMARK OFOSU

JUDGMENT

The facts of the case

The complainant and the accused persons are businessman and storekeeper respectively. The accused person is 23 years old and a former employer of the complainant. Both resides at Nkrankwanta in Dormaa West District of the Bono Region. The complainant was dealing in cement and mattresses which he handed over to the accused person. The accused person was making daily sales to the complainant from September 18, 2017 to February 8, 2022. On the day of the incident, that is the 9th February, 2022, the complainant went and audited the accused and detected that 85 low density mattresses valued GH¢16,770, 104 high density mattresses valued GH¢78,656; 72 pillows valued GH¢2,660.00; 53 bags of cement valued GH¢2,650.00 all totaling GH¢100,936 could not be accounted for. The accused person was arrested and upon interrogations, the accused person admitted the offence and further stated that he used some of the money for gambling. Again, about thirteen (13) different people brought receipts indicating

that, the accused person has sold a total of 193 bags of cement valued GH¢10,545.00 but they did not receive the cement. This made the amount increased from GH¢100,936.00 to GH¢111,481. An amount of GH¢11,000.00 was retrieved from the accused person. The accused person was subsequently charged and put before the Court.

The offence charged and the plea

The accused person was charged with the offence of stealing contrary to Section 124(1) of Act 29 of the Criminal and other Offences Act 1960 as amended by paragraph 4 of NLCD 398 of 1969. The accused person pleaded not guilty to the offence and the Court was to dive into the merits of the case.

The prosecution in proving their case against the accused person called five (5) witnesses. Amongst these witnesses included the complainant, one Madam Vida Lawa and the case investigator.

The authoritative case in the case of stealing is the STATE V WMO HALM AND AYEH KUMA (1969) CC 135 under the law of stealing as provided under our Act 29 was fully and lucidly expounded by the full bench of the Court constituted by Akuffo Addo CJ Ellenu, Apaloo, Amissah JA and Archer J upon an application by the Attorney General for a review of the decision by the ordinary bench of the Court of Appeal in acquitting the appellants of various stealing charges preferred against them of which they had each been convicted by the Accra High Court. The Court gave these essential elements which require proof in a charge of stealing under our law to be:

- (i) that the person charged must not be the owner of the thing allegedly stolen;
- (ii) that he must have appropriated the thing; and

(iii) that the appropriation must have been dishonest.

From the above the court must be able to satisfy itself at the trial that indeed these essential elements have been proven by the prosecution.

The issues for determination in this case are:

- (i) whether or not the failure on the side of the prosecution to provide the record book was fatal to their case.
- (ii) Whether or not a confession statement can warrant a conviction with or without a corroboration.

The case investigator under cross-examination said as follows:

Q *In your witness statement to the Court, you claim that you requested for record books from the accused person and detected that details of the transaction were not recorded as stated by the complainant.*

A *Yes*

Q *Have you made the record book available to the Court for the Court to verify.*

A *No, my Lord.*

Q *Infact, you refused, neglected or failed to present the record books to the Court because there was no such records of embezzlement.*

A *There is enough evidence of embezzlement against the accused person from the record books*

Q *And in refusing to produce that evidence here, you denied the Court from verifying on its own, the veracity of what you are claiming.*

A *The prosecution cannot deny the Honourable Court from verifying from the record books if the Court intends to do so.*

Considering this line of question by the counsel for the accused person, counsel seems to suggest that the issue of the record book was consequential in the case of the prosecution.

1.whether or not the failure on the side of the prosecution to provide the record book was fatal to their case.

The complainant Enoch Amponsah (PW 1) said he employed the accused person as a shop keeper for one of his cement and mattress shop pn the 18/09/17. He said he usually goes to do auditing or stock taking at the shop but for a period of about 4 months he was unable to do the auditing. When he finally got to the shop to check the records and take stock on the 10/02/22 he detected some losses and he reported the case to the police for necessary action. Later about 13 people reported to him that they have also made payment of about 193bags of cement valued 10,545 to the accused person which they are yet to receive or pick them from the shop yet the money has not been given to him.

One leg that the prosecution built his case strongly on was the fact that an auditory works by the shop owner revealed that the accused person has embezzled a certain amount of money; hence has been put before the Court. The most elementary thing for every prosecutor in a criminal trial is to prove the actus rea, mens rea if any and that the accused person indeed and no other person committed the offence. The prosecution can do this by the use of documents, witnesses and objects of many kinds such as photographs, handwriting, fingerprints and more. In other words, the prosecution must discharge its burden by adducing evidence and such evidence must be admissible un law and relevant to the matter in issue.

In the case of R V ANSERE [1958] 3 WALR 385, the appellant a treasurer at the Kibi Local Council was charged with stealing. A shortage occurred in the accounts of the council after a government senior executive officer had audited the council's books. The appellant was charged because the entries in the cash books had been correctly entered but the cash at hand was short by £656 and the appellant was unable to show how it happened. However, the appellant had made a statement to the effect that the collection was made by one Sasu Twum who also made entries and kept some without the appellant having an opportunity to reconcile accounts with him. The appellant again said that Sasu had some monies with him which he has still not been able to hand over to him before the auditing. All the above was borne out of the statement the appellant gave to the police which came to light during cross-examination of the case investigator. On appeal, the conviction was quashed on the ground that Sasu was a material witness whose evidence could have resolved the case one way or the other and that the prosecution failed to prove the case beyond reasonable doubt.

The facts of this instance case is quiet similar to the Ansere's case (supra) except to the effect that PW4 (Vida Lawa) in the instance case confirmed and corroborated the case of the complainant and the case investigator that there was an existing record book which her name was not found in it and the accused person did not prove otherwise in this situation.

Madam Vida Lawa, one of the prosecution's witness who had paid for some bags of cement to the accused person but had not yet received the cement had this to say under cross-examination by counsel for the accused person:

Q You are also claiming in your statement that the complainant in this case, Mr. Enoch Amponsah (PW1) said your sales transaction was not reflected in the records of the shop.

A *That is correct*

Q *The said PW1 did not show you the records he was referring to to you.*

A *That is not correct. He showed me the book.*

Q *So the book he showed you, were you able to confirm that your sale transaction was not reflecting in the book.*

A *I was able to identify that my name was not in the book.*

This evidence by PW4 shows that indeed there was a record book and there was a mishandling of same by the accused person and the Court does not need to see the record book to satisfy itself that such discrepancies had occurred. The case investigator and the complainant as stated above corroborated the evidence of PW4.

2. Whether or not a confession statement can warrant a conviction with or without a corroboration.

The other leg the prosecution built their case strongly on was a confession statement given by the accused person to the police. The prosecution tendered this confession statement without any objection from the accused person, even though he was duly represented by counsel and same was marked as Exhibit 'A'.

Per the record of proceedings on *the 12th May, 2022 before H/H Samuel D. Kotey*, the prosecution tendered both the investigation caution statement and the charge statement without any objection by the counsel for the accused person. The proceedings were subsequently adopted on the 29th August 2023 by this honourable court.

The investigation caution statement of the accused person reads as follows:

"....the complainant who owns a cement and foam store employed me as a store keeper or sale boy on 18/01/2017. By then one Victoria who was taking care of the store took me through orientation for 2 weeks and handed over the store to me. Whenever I sell goods, I use some of the money to buy my needs and also gambled with some by staking 'betway' with the intention that I will replace the money later but fails. I cannot remember the exact amount I use for the gambling until the complainant came and took stock on 10/02/2022 and also audited my record book and detected that I have embezzled the above stated amount which is true. I gave one mattress and 2 pillows valued GH¢670 on credit and also saved through my uncle Emmanuel Owusu which amounted to GH¢10,000.00 but same has been given to the complainant and I also pleaded with him to let me work and pay the remaining amount gradually. This is all that happened."

Moreover, the accused person filed a witness statement and had this to say when he was called upon to open his defence. At the paragraphs 7 – 10 of his witness statement reads as follows:

- "(7) I am unable to know whether any of the people who took my place during the periods of my absence were responsible for the shortage or not;*
- (8) I am also unable to determine what the complainant or any other person did with the keys anytime I handed over the keys to him after close of work.*
- (9) About 3 years ago, thieves broke into the store and stole several items but stock was not taken of the goods in the store until 19th February, 2022".*

Clearly, the accused person's story when he opened his defence is inconsistent with the confession statement. I must say this was a last minute attempt to salvage a situation out of beyond repairs. His evidence in the dock is clearly an

afterthought and self-serving. The accused person could not explain the contradictions between his investigation caution statement and the witness statement but instead admitted having freely made the statement (Exhibit 'A') in the presence of an independent witness when he was under cross-examination. The legal inference for the confession statement is that he confessed to the commission of the offence. This was when the matter was fresh in his mind. It can be deduced that the accused person told the truth when the matter was still fresh in his mind and had no time to massage or manipulate same.

By definition, a confession statement is one which includes any statement wholly or partly averse to the person who made it, whether made to a person in authority or not or whether made in words or otherwise. Confession therefore is an acknowledgement in express words by an accused person in a criminal charge, of the truth of the main fact charged or of some essential part of it. By its nature, such statement if voluntary given by an accused person himself offers the most reliable piece of evidence upon which to convict the accused person. See FRANCIS ARTHUR V THE REP [2021] 174 GMJ 606 SC; EKOW RUSSEL V THE REP [2017-2020] SC GLR 469.

The Black Law Dictionary 7th Edition edited by Bryan A Harver as editor in chief defines confession as "a criminal suspect acknowledgment of guilt usually in writing and often including details about the crime". Wigmore on Evidence in trial at Common law defines confession as "an acknowledgement in express words by an accused at the truth of the main fact charged or of some essential part of it."

From the above, it is my conclusion that the confession statement of the accused person that is the Exhibit 'A' is a confession. See also KWAKU ATTA V THE REP [2022] 176 GMJ 417 SC.

CONCLUSION

When the accused person opened his defence, he could not counter the evidence or the confession statement presented by the prosecution. Apart from the confession statement, a prosecution witness (PW4 – Vivian Lawa) corroborated the case of PW5 (case investigator) in her evidence before the Court. PW4 stated clearly that the accused person failed to make entries in the record on her transaction after issuing receipts to her and therefore frustrated her from getting her cement when she was ready to do so. She backed her case with Exhibit D9 – a receipt in the name of PW4 for purchase of 10 bags of cement and net supplied. This confirms the inability and or failure of the accused person to keep accurate records of transaction of the shop.

In the case of AYOBI V THE REP [1992-1993] Pt 2, 769, the Court of Appeal re-affirmed the legal position on BILLAH MOSHIE V THE REP by holding (2) that once a confession was direct positive and satisfactory proved, it suffices to warrant conviction without corroborative evidence.

By the position of the law afore-mentioned, the confession alone would have warrant a conviction. Moreover, in the instance case the confession statement does not even stand alone, but corroborated by the evidence of some prosecution witnesses. A combination of the confession statement and the case of PW4, case investigator and the complainant leads to the irresistible conclusion that the accused person indeed misappropriated funds which did not belong to him.

The accused person is hereby convicted.

SENTENCING

Considering the submission of counsel for the accused person and the prosecution, the fact that the accused person is a youngman, he is also a first time offender, the accused is sentenced to three years imprisonment.

H/H PHILOMINA ANSAAH ASIEDU
CIRCUIT COURT JUDGE

21/03/2024