

**IN THE CIRCUIT COURT, HELD IN NSUTA, ON MONDAY,  
THE 15<sup>TH</sup> DAY OF APRIL 2024 BEFORE HER HONOUR  
WINNIE AMOATEY-OWUSU, CIRCUIT COURT JUDGE**

**CASE NO: 127/22**

**THE REPUBLIC**

**VRS.**

**SEIDU MUSAH**

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**JUDGMENT**

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1. On 18<sup>th</sup> March 2022, the accused was arraigned before this Court for various offences under the Criminal Offences Act, 1960 (Act 29). His plea was not taken. On 4<sup>th</sup> April 2022, the prosecution withdrew the original Charge Sheet and substituted it with a new Charge Sheet by which the accused is charged with two counts of threat of death; one count of offensive conduct conducive to breach of the peace; and one count of escape from lawful custody contrary to Section 75, 207 and 226(1)(c) respectively of Act 29. He pleaded not guilty to the charges.

2. A summary of the facts as contained in the accompanying Charge Sheet and read by the prosecution at the commencement of the case is that, the complainant, Abdullai Billa is resident at Kintampo and the Farm Manager of Y and M Regeneration Limited (hereinafter called “the Company”) whilst the accused is a farmer resident at Mampong. In 2020, the Company bought 1,000 acres of land located at Balana from the Paramount Chief of Beposo, Nana Boamah Kwabi IV for farming projects. During the latter part of February 2022, the Company started cultivating maize on the land when the accused went onto the land and threatened the workers verbally that if they did not stop the work and leave the land, he would kill them with a cutlass. He also rained insults on them to wit: “fools, useless, senseless and stupid beings” and other abusive words. For fear of their lives, the workers left the land and went home. A report was made to that effect at the Beposo Police Station leading to the accused’s arrest. The accused and the complainant were sent to the Station Officer’s office for further interrogation. While the Station Officer was interrogating the accused, the Station Officer received a

phone call and went out to listen to it. On his return to his office, he did not see the accused and the complainant told him the accused also received a call and went out to receive it but did not return. On 17<sup>th</sup> March 2022, the accused was re-captured from his hideout at Ejura and cautioned in the presence of an independent witness. After the investigation, he was charged with the offences herein and arraigned before this Court.

3. Article 19(2)(c) of the 1992 Constitution states that an accused is presumed innocent until he is proved guilty or he pleads guilty. In a criminal trial, the burden rests with the prosecution to prove the charge against the accused.
4. The burden of proof in criminal cases is codified in the Evidence Act, 1975 (NRCD 323) as follows:

“Burden of Proof

10. Burden of persuasion defined

(1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.

(2) The burden of persuasion may require a party

(a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(b) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

#### 11. Burden of producing evidence defined

(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

(2) In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential

to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.

- (3) In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt.

### 13. Proof of crime

- (1) In a civil or 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.
- (2) Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt."

Also, Section 22 of NRCD 323 provides:

“22. Effect of certain presumptions in criminal actions

In a criminal action, a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond a reasonable doubt, and, in the case of a rebuttable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact.”

5. In **Abdul Raman Watara Benjamin v. The Republic, Criminal Appeal No. H2/17/2019 dated 9th July, 2020 (unreported)**, the court stated, “It is trite that in criminal trials it is the duty of the prosecution to prove the case against the accused person beyond reasonable doubt. This has been codified in sections 11(2), 13(1) and 22 of the Evidence Act, 1975 (NRCD 323). At the end of the trial the prosecution must prove every element of the offence and show that the defence is not reasonable. The prosecution assumes the burden of persuasion or the legal burden as well as the evidential burden or the burden to

produce evidence. The legal burden or the burden of persuasion is to prove every element of the charge. The evidential burden is to adduce evidence that will suffice to establish every element of the offence. This burden remains on the prosecution throughout the case. Proof beyond reasonable doubt also implies that it is beyond dispute that the accused person was the one who committed the offence." Also, in **Asare v. The Republic [1978] GLR 193 @ 197**, Anin JA held, "As a general rule there is no burden on the accused; that he is presumed innocent until his guilt is established beyond reasonable doubt; that the burden is rather on the prosecution to prove the charge against him beyond reasonable doubt".

6. In **Brobbey & Ors v. The Republic [1982-83] GLR 608**, Twumasi J explained the expression "proof beyond reasonable doubt" as follows: "Proof beyond reasonable doubt in a criminal trial implies that the prosecution's case derives its essential strength from its own evidence. Therefore, where part of the evidence adduced by the prosecution favors the accused, the strength of the

prosecution's case is diminished proportionately and it would be wrong for a court to ground a conviction on the basis of the diminished evidence." Lord Denning MR in **Miller v. Minister of Pensions [1947] ALL ER 372** also explained the principle when he stated that: "The degree of cogency need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to affect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favor which can be dismissed with a sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt but nothing short of that will suffice".

7. When the prosecution makes a prima facie case against the accused and the Court calls on the accused to open his defence, the accused's only duty is to raise a reasonable doubt about his guilt. See Section 11(3) and 13(2) of NRCD 323. In



**Commissioner of Police v. Antwi [1961] GLR 408**, the court held, “The fundamental principles underlying the rule of law are that the burden of proof remains throughout on the prosecution and the evidential burden shifts to the accused only if at the end of the case for the prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything. If he can merely raise a reasonable doubt as to his guilt he must be acquitted.”

8. In considering the accused’s defence, the Court is bound to consider any evidence which favors his case as well as the cautioned statements obtained from him by the Police and tendered during the trial. See **Kwame Atta & Anor v. Commissioner of Police [1963] 2 GLR 460**; **Annoh v. Commissioner of Police [1963] 2 GLR 306**. Further, questions asked and answers given during cross-examination form part of a party’s evidence and must be considered by the court in evaluating the evidence as a whole. See **Ladi v. Giwah [2013-2015] 1 GLR 54**.

In **Lutterodt v. Commissioner of Police [1963] 2 GLR 429**, the Supreme Court per Ollennu JSC set out how the court should approach the defence of the accused as follows: “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.”

See also **Regina v. Abisa Grunshie [1955] 11 WALR 36**

9. Also, in **Republic v. Francis Ike Uyanwune [2013] 58 GMJ 162, CA**, it was held per Dennis Adjei, JA that: “The law is that the prosecution must prove all the ingredients of the offence charged in accordance with the standard burden of proof; that

is to say the prosecution must establish a prima facie case and the burden of proof would be shifted to the accused person to open his defence and in so doing, he may run the risk of non-production of evidence and/or non-persuasion to the required degree of belief else he may be convicted of the offence. The accused must give evidence if a prima facie case is established else he may be convicted and, if he opens his defence, the court is required to satisfy itself that the explanation of the accused is either acceptable or not. If it is acceptable, the accused should be acquitted and if it is not acceptable, the court should probe further to see if it is reasonably probable. If it is reasonably probable, the accused should be acquitted, but if it is not, and the court is satisfied that in considering the entire evidence on record the accused is guilty of the offence, the court must convict him. This test is usually referred to as the three-tier test.”

10. Upon the direction of the Court, the prosecution filed its Witness Statements and other disclosures on 6<sup>th</sup> June 2022. Case Management Conference was held and the case proceeded to trial with the prosecution’s case. The

prosecution called five witnesses. Apart from paragraph 14 of PW1's Witness Statement which was struck out as being prejudicial, the Witness Statements were adopted as the witnesses' evidence in the case. The prosecution witnesses are:

- I. Abdulai Bila – PW1: The complainant resident at Kintampo and Farm Manager of Y and M Regeneration Limited;
- II. Yushau Abubakari - PW2: A tractor driver resident at Bawa Akura at Kintampo;
- III. Adam Zakari – PW3: A farmer resident at Balana;
- IV. C/Insp. Agyare Frank- PW4: The Station Officer at the Beposo Police Station; and
- V. No. 56616 G/Const. Prince Addo – PW5: The investigator of the case.

The following were tendered by the prosecution through PW5:

- I. Exhibit 'A': Investigation Cautioned Statement of the accused obtained on 17<sup>th</sup> March 2022; and
- II. Exhibit 'B': Charge Cautioned Statement of the accused obtained on 17<sup>th</sup> March 2022.

11. By the Court's Ruling delivered on 22<sup>nd</sup> September 2023, the Court held that the prosecution had failed to make a prima facie case against the accused on count 1, 2 and 3 and accordingly acquitted and discharged him on the said charges. On the contrary, the Court held that the prosecution had made a prima facie case against the accused on count 4 and called on him to answer same. The accused testified personally and called no witness. He also did not tender any exhibit. He relied on his Witness Statement filed on 4<sup>th</sup> December 2023 as his evidence in the case.

12. I shall now deal with the charge, evaluating the evidence against the accused to determine if it meets the standard of proof of proof beyond reasonable doubt and the accused's defence, if it raises a reasonable doubt.

Count 4 on the Charge Sheet reads:

**"COUNT FOUR**

**STATEMENT OF OFFENCE**

ESCAPE FROM LAWFUL CUSTODY CONTRARY TO SECTION 226(1) (C) OF THE CRIMINAL AND OTHER OFFENCES ACT 1960 (ACT 20)

**PARTICULARS OF OFFENCE**

**SEIDU MUSAH:** AGED 47; FARMER: For that you on the 14<sup>th</sup> day of March, 2022 at about 3:45pm at Beposo in the Ashanti Circuit and within the jurisdiction of this court, did escape from lawful custody at Beposo Police Station."

13. Section 226(1)(c) states that a person commits a misdemeanour if he endeavours to resist or prevent the execution of the law, by escaping personally or permitting to be rescued by any other person from lawful custody. To successfully prove the charge, the prosecution must lead sufficient evidence to prove that:

- i. The accused was lawfully arrested and placed in custody; and
- ii. The accused escaped by himself from lawful custody or allowed himself to be rescued from lawful custody by another person.

14. From Section 3 of Act 30, a Police Officer may effect an arrest by one of three means: (a) by actually touching the person or (b) by confining the person or (c) by the person submitting voluntarily to the custody of the Police Officer, either verbally or by conduct. A Police Officer may arrest with or without a warrant. Under Section 10(2)(a) of Act 30, a Police Officer may arrest without a warrant a person whom the Police Officer suspects on reasonable grounds of having

committed an offence. Under Section 7 of Act 30, unless the person being arrested is in the course of committing a crime or is pursued immediately after escaping from lawful custody, the Police Officer is mandated to inform the person of the cause of the arrest, and if acting under the authority of a warrant, notify the person of the contents thereof and if required, show the warrant to the person.

15. The statutory duty imposed on the Police to inform the person arrested of the cause of the arrest is made a constitutional right in the 1992 Constitution, Article 14(2) of which provides that a person arrested shall be informed immediately, in a language he understands, of the reasons for his arrest and of his right to a lawyer of his choice. In **Amadjei & Ors v. Opoku Ware [1963] 1 GLR 150 @161**, Crabbe JSC said, "A person who is arrested without a warrant is entitled to know as soon as is reasonably practicable that he is being arrested and also the grounds for his arrest. If the officer arresting fails to inform the suspect accordingly the arrest would be unlawful, unless the arrested



man is caught red-handed and the crime is patent to high heaven.”

16. When a Police Officer places a person under arrest, that person shall remain in the custody of the Police unless granted Police Enquiry bail or presented before a court of competent jurisdiction within forty-eight hours of the arrest for the court to consider whether to remand or release the person on bail. See **Article 14(3)(b) of the 1992 Constitution**. Where an arrest is made in accordance with law and the person is placed in lawful custody, a person commits an offence if he escapes therefrom. On the contrary, where the arrest is unlawful, a person who escapes therefrom does not commit any offence.
  
17. PW1 testified that he reported a case against the accused at the Beposo Police Station on 14<sup>th</sup> March 2022. PW4 and PW5 corroborate PW1’s testimony of the report he made against the accused to the Beposo Police which they said was a case of threat of death. There is also undisputed evidence that the accused himself reported to the Beposo Police Station on 14<sup>th</sup>

March 2022. According to PW4, upon his arrival, the accused was placed under arrest after his offence had been pointed out to him and he was detained behind the counter. He testified further that he asked PW5 to parade the accused and the complainant in his office and while he was with them in his office, he got a phone call and went outside to receive it leaving them behind. On his return, the accused was nowhere to be found and the complainant told him that while he was away, the accused also went outside to receive a phone call. PW5 corroborates PW4's testimony in all material particulars and testified further that a search was conducted but the accused was nowhere to be found.

18. By way of defence, the accused denied he escaped from lawful custody on 14<sup>th</sup> March 2022. He said he was not even arrested on the said date. He testified that on arrival at the Police Station on the said date, he was told a complaint of threat of death had been made against him. On hearing that, he narrated his side of the story to the Police Officer after which the Police Officer asked him for money which he

reluctantly gave him. Thereafter, he left the Police Station. He maintained he never escaped from lawful custody. He said he was not informed he was under arrest; neither was his statement taken at the Police Station on the said date. Rather, it was on 17<sup>th</sup> March 2022 that to his utmost surprise, he was told he was under arrest and taken to the Police Station and his cautioned statements were taken the same day. He said the prosecution's case against him was frivolous and misconceived.

19. There is incontrovertible evidence that the accused reported to the Police Station by himself on 14<sup>th</sup> March 2022. There is however no evidence whether he went there upon the invitation of the Police or not. Throughout the defence counsel's cross-examination of PW4 and PW5, he maintained the accused was never arrested on 14<sup>th</sup> March 2022 when he went to the Police Station, a claim PW4 and PW5 denied. This also ensued when the accused was cross-examined by the prosecution:

Q. According to paragraph 10 of your Witness Statement, you went to the Police Station on 14/3/2022 by yourself. Is that so?

A. That is true, my Lord.

Q. Then, on what basis did you go to the Police Station on the said date?

A. The complainant in this case made certain allegations against me so I went to the Police Station to tell my side of the story.

Q. When you arrived at the Beposo Police Station, what did the Police tell you?

A. The Police did not say anything to me immediately I arrived at the Station but I was the one who approached the Station Master (PW4) and told him the allegations that the complainant had leveled against me are not true.

Q. Then, do you agree with me that when you went to the Police Station to explain yourself, there was already a case against you from the complainant?

A. The complainant had not lodged any case against me then.

Q. Then, what did you hear that made you go to the Police Station to explain yourself to the Station Master?

A. Sometime ago, I heard that one Abdulai Billa whom I did not know had said I had said I would let blood flow.

Q. If there was no case against you at Beposo Police Station and you only heard the statement made by the Complainant, then, why did you not go to the Nsuta Police Station, but rather went to Beposo Police Station?

A. I went to Beposo Police Station because earlier I went to see the Beposomanhene with Ejura Member of Parliament (Hon. Bawa Braimah) and my brother and that was when I was told that Abdulai Billa (complainant) had made allegations against me that I

had said I will let blood flow. Upon hearing that, I, together with the MP and my brother went to the Beposo Police Station to explain my side of the story that the allegations were not true. The next day, I went to the Police Station again with my brother to further explain things to the Station Master. After my discussion with the Station Master and we were about to leave, the complainant also came to the Police Station. The Station Master then told us that the complainant has reported a matter against me that I had said I will let blood flow. I told the complainant that if this is the matter that he has brought to the Police today, then it is the same as the matter we came to discuss yesterday so there was no outstanding issue. There, the linguist of the Beposo Chief came to the Police Station and told me to find some money for the Station Master so that we can leave. My brother and I gave the Station Master money and we left the Station.

Q. Then per what you just told the Court, would you then agree with me that the Police officially told you that the complainant had made a case against you?

A. The Police did not officially tell me that the complainant has lodged a case against me. It was just a verbal conversation we were having.

Q. You are not being truthful to this Court because you were officially told that a case had been lodged against you by Abdulai Billa.

A. That is not true.

20. The accused's claim that PW1 had not lodged any case against him at the time he went to the Beposo Police Station on 14<sup>th</sup> March 2022 and that the Police did not also officially inform him that PW1 had made a complaint against him is not borne out of his evidence-in-chief and cross-examination above. In paragraph 11 of his Witness Statement, the accused stated that on arrival at the Police Station on the said date, he was told that a complaint of threat of death had

been made against him and on hearing that, he narrated his side of the story to the Police Officer. The evidence shows the Police Officer is PW4.

21. In the cross-examination posers above, the accused stated that the complainant in this case (PW1) made certain allegations against him and so he went to the Police Station to tell his side of the story. Clearly, the accused would not have gone to the Beposo Police Station if he had not heard by whatever means, that there was a complaint against him at that particular Police Station.

22. The accused further testified in his evidence-in-chief that after narrating his side of the story to PW4, PW4 asked him for money which he reluctantly gave him after which he left the Police Station. Under cross-examination, he stated that he and his brother gave PW4 money on the said date after which they left the Police Station. Part of what further ensued during the accused's cross-examination is as follows:



Q. I put to you that upon the return of the Station Officer, you were nowhere to be found. You had left his office.

A. That is not true. Before leaving the Station Officer's Office, I bade him farewell and gave him money.

Q. I put to you that it was at that point that a case of escape from lawful custody was made against you.

A. That is not true. When I was leaving, I bade farewell to the Station Officer and gave him money. I also gave the Station Officer's phone number to my son to transfer/send additional GH¢300.00 to the Station Officer.

Earlier when PW4 was cross-examined on 3<sup>rd</sup> August 2023, this transpired:

Q. You took some monies from the accused through his brother in respect of this matter. Not so?

A. My Lord, it is not true.

23. Since PW4 denied he took any money from the accused, the accused was supposed to adduce sufficient evidence to prove

the payment of the said monies and establish the requisite degree of belief concerning his assertion in the mind of the Court but he failed to do so. Although the accused claimed he even gave PW4's phone number to his son to make a transfer of an additional GH¢300 to PW4, he produced no evidence of the said electronic fund transfer. Monies or funds transferred by electronic means are easily verifiable from the electronic records of the sender, recipient or the electronic fund transfer service provider. In **Mallam Ali Yusuf Issah v. The Republic [2003] DLSC2390**, the Supreme Court stated, "The burden of producing evidence and the burden of persuasion are the components of 'the burden of proof'. Thus, although an accused person is not required to prove his innocence, during the course of his trial, he may run a risk of non-production of evidence and/or non-persuasion to the required degree of belief, particularly when he is called upon to mount a defence." See also **Republic v. Francis Ike Uyanwune [supra]**

24. I have stated earlier in this Judgment that PW4 and PW5's testimony is consistent that the accused was put under arrest and placed behind the counter and subsequently paraded together with PW1 before PW4 in his office for interrogation. That, it was while in PW4's office that in the absence of PW4, the accused left the Police Station without notice. When the defence counsel cross-examined PW4 and PW5 on 3<sup>rd</sup> August 2023, aside the fervent denial that the accused was placed under arrest on the said date, he did not challenge the rest of PW4 and PW5's testimony pertaining to the charge. However, the accused's testimony under cross-examination suggests he was never paraded with PW1 before PW4 in his office and that the only time he went to PW4's office on the said date was when he said he went to bid PW4 farewell before he left the Police Station. Relevant portions of the accused's cross-examination are as follows:

Q. I put to you that when the offence was pointed to you, you were immediately arrested and kept behind the counter.

A. That is not true. When we went to see the Station Master at the Police Station, we did not enter the Police Station building. We sat on a bench in front of the Police Station. He was not present when we arrived. Shortly after our arrival, the Station Master arrived and we discussed the matter where we were seated on the bench. After the discussion, the Station Master went to his office and we decided to go and bid him farewell. It was on 17/3/2022 that I was arrested and kept in the Police cell.

Q. I put to you that on 14/3/2022 when you were arrested and the Station Master arrived, you were paraded before the Station Master (Station Officer) together with the complainant.

A. I was not arrested on 14/3/2022 by the Police and I was not paraded before the Station Officer on that day together with the complainant.

Q. At the Station Officer's Office, the Station Officer went out to receive a call, leaving behind you and the complainant including the investigator.

A. That is not true.

Q. I put to you that upon the return of the Station Officer, you were nowhere to be found. You had left his office.

A. That is not true. Before leaving the Station Officer's Office, I bade him farewell and gave him money.

Q. Following your absence, the Station Officer was also told by the complainant that you asked permission to make a call and you did not return.

A. That is not true. When I arrived home that day, I phoned the Station Officer and told him I was home.

25. In my view, the claims made by the accused through his responses above are serious. Yet, when he had the opportunity through his counsel to cross-examine PW4, the said Station Officer/ Master, he failed to put the said claims

across for his response. The court has held in **Yaokumah v. The Republic [1976] 2 GLR 147** that if a defence was to carry any weight, it must be put to the prosecution witnesses during their testimony.

26. Although the accused has denied throughout the trial that he was arrested on 14<sup>th</sup> March 2022 when he reported to the Beposo Police Station, his statement in Exhibit B is an admission that he did indeed escape from lawful custody. The accused is said to have stated in Exhibit B as follows: “I relied [sic] on my former statement given to police on 17/03/2022 but admit to the offence of escaping from lawful custody.”

27. Exhibit A and B were admitted without any objection from the defence counsel. Whereas Exhibit B contains a confession to the charge of escape from lawful custody, Exhibit A is not a confession at all. It is worth mentioning that in Exhibit A, the offence for which the accused was investigated is threat of death and the accused’s statement therein was principally

about what transpired on the land under his cultivation on 15<sup>th</sup> March 2022 which pertained to count 1, 2 and 3. But, in Exhibit B, it is indicated that he is charged with threat of death, offensive conduct conducive to breach of the peace and escape from lawful custody.

28. Confessions are governed by Section 120 of NRCD 323. A confession statement voluntarily made in accordance with the law is admissible and sufficient ground for the conviction of an accused. See **Duah v. The Republic [1987-88] 1 GLR 343**. In **Ekow Russell v. The Republic [2017-2020] SCGLR 469**, Akamba JSC stated, “A confession is an acknowledgment in express words, by the accused 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 voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary

and of the accused person's own free will without any fear, intimidation, coercion, promises or favours."

29. In the recent case of **Francis Arthur v. The Republic, Criminal Appeal No. J3/02/2020 dated 8<sup>th</sup> December 2021 (unreported)**, the Supreme Court held that confession statements may be used alone in the conviction of an accused person, and such evidence is sufficient as long as the trial judge enquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness. In the earlier case of **State v. Otchere & Ors [1963] 2 GLR 463**, the Supreme Court stated that a confession made by an accused in respect of the crime for which he is tried is admissible against him provided it is affirmatively shown on the part of the prosecution that it was free and voluntary and that it was made without the accused being induced to make it by any promise or favour, or by menaces, or undue terror. That, a confession made by an accused of the commission of a crime is sufficient to sustain a conviction



without any independent proof of the offence having been committed by the accused.

30. In Exhibit B, the accused relied on Exhibit A and added that he admitted the offence of escaping from lawful custody. When an accused has an opportunity to give another statement to the Police and he relies on his former or earlier statement, it is deemed that he gave the statements voluntarily. See **Kerechy Duru v. The Republic [2014] 71 GMJ 186**. I have also given thoughtful consideration to Exhibit B and find that it was taken in the presence of an independent witness in the person of Osei Adom Junior of Beposo who gave his certificate indicating the accused voluntarily gave the statement and same was read and explained to him after which the accused thumbprinted to signify his approval. Exhibit B thus meets the requirements of Section 120 of NRCD 323.

31. The question on the mind of the Court is, if the accused was not arrested and placed in lawful custody, why did he admit

to escaping from lawful custody in Exhibit B? Since neither the accused nor his counsel raised any objection to the tendering of Exhibit B and the Court having satisfied itself that Exhibit B meets the requirements of Section 120 of NRCDC 323, the only reasonable inference to be drawn is that the accused admitted escaping from lawful custody because he was indeed arrested and placed in the lawful custody of the Police on 14<sup>th</sup> March 2022.

32. In **Gyabaah v. Republic [1984-86] 2 GLR 461 @ 471**, the Court of Appeal per Osei-Hwere JA held that, “For the law was that a witness whose evidence on oath was contradictory of a previous statement made by him, whether sworn or unsworn, was not worthy of credit and his evidence could not be regarded as being of any importance in the light of his previous contradictory statement unless he was able to give a reasonable explanation for the contradiction.” See also **Odupong v. Republic [1992-93] GBR 1038**

33. The accused having admitted in Exhibit B which was taken three days after he is said to have escaped from lawful

custody, that he indeed escaped from lawful custody, I do not find credible his testimony before this Court that he was never placed under arrest, in the absence of any reasonable explanation for the contradiction. In short, I do not find his defence acceptable.

**34. On the totality of the evidence adduced, I find that the accused has failed to raise reasonable doubt about his guilt on count 4. I find him guilty and he is accordingly convicted.**

35. In passing sentence, I have taken into account the fact that the accused is a first offender and the mitigation plea advanced by the defence counsel on his behalf. I have also taken into account the submission by the prosecution. I will deal with the accused leniently. I sentence him to a fine of 70 penalty units, in default 3 months' imprisonment.

**SGD.**

**HH WINNIE AMOATEY-OWUSU**

**CIRCUIT COURT JUDGE**

**PARTIES AND REPRESENTATION:**

- 1. THE ACCUSED PRESENT**
- 2. INSP. CHRISTOPHER KWAME GYESI FOR THE PROSECUTION PRESENT**
- 3. NANA AKWASI OSEI BONSU ESQ. FOR THE ACCUSED**