

**IN THE DISTRICT COURT BECHEM - AHAFO HELD ON TUESDAY 30TH
NOVEMBER, 2022 BEFORE HIS WORSHIP KORKOR ACHAW OWUSU, ESQ.
DISTRICT MAGISTRATE.**

CASE NO. B7 /608/17

THE REPUBLIC

VRS.

WILLIAMS OWUSU

PROSECUTION: ASP D. K. GADZEKPE - PRESENT

ACCUSED PERSON - PRESENT

J U D G M E N T

BRIEF FACTS

Accused stands charged with Stealing, contrary to section 124(1) of Criminal and Other Offences Act, 1960 (Act 29).

Upon his arraignment before this Court, his plea is: 'Not Guilty' to the charge. By this plea Williams Owusu, the Accused, puts himself in charge of the Court, meaning that his guilt has to be proved beyond reasonable doubt by Prosecution.

At common law the rule is that a person was presumed innocent until the contrary was proved or he pleaded guilty. This position has been given constitutional reinforcement under Article 19(2)(c) of the 1992 Constitution which enacts:

“(2) A person charged with a criminal offence shall -

(c) be presumed to be innocent until he is proved or has pleaded guilty”.

In the particulars of the offence, Prosecution stated as follows:

"On 25th day of December, 2021 at Bechem in the Ahafo Region and within the jurisdiction of this court, did steal Samsung mobile phone valued GH¢1,300.00 which contains GH¢636.00 mobile money on the said phone; and cash the sum of GH¢700.00 from complainant, Kwaku Boamah's barbering shop at Adum beside Post Office, Bechem.

The facts of the case are essentially as lumped up in the particulars of the offence. However, a little addition from the summary of evidence by Prosecution; and Defence will give a clearer mental picture of the case.

The main issue which the particulars and the facts of the case raised for the consideration of and determination by the Court was as follows:

Whether or not the Accused, Williams Owusu, was the person who entered PW1's barbering shop at Bechem and made away with Samsung mobile phone and various sums of money belonging to PW1.

Before I proceed to address the issue set out herein, it may be appropriate to chronicle the pieces of evidence as offered by both the Prosecution and the Defence.

CASE OF PROSECUTION

PW1 describes himself to the court as Kwaku Boamah; a barber who resides at Adum, a suburb of Bechem; and knows the Accused Person herein.

According to PW1, on the 25th day of December, 2021, he spent the night at his barbering shop at Adum beside Bechem Post Office where PW1 also sells second-hand flat screen television sets and car tapes.

On the same day around 1: 58 am, while PW1 was sleeping in the said shop, he was awakened by the noise produced by the fall of the extension board to which the plug of his 22 - inch television set was connected.

Accused, on realizing that PW1 was woken by the noise, took to his heels so PW1 shouted for help but no one came to his assistance.

PW1 later discovered the Accused had made away with his Samsung mobile phone valued GH¢1,300.00 and an amount of GH¢636.00 in his mobile money wallet and cash the sum GH¢ 700.00 all totaling GH¢2, 636.00.

He later found a pair of yellow slippers and a white ladies blouse which the Accused left on the veranda; and lodged a complaint against the Accused at the Police on the same day at about 7:30 am.

PW2 is Lucy Dankwah, unemployed and resides at Adum, a suburb of Bechem in the Ahafo Region and lives in the same house with PW1. She testifies that she knows the Accused Person in this case.

According to PW2, on the day of the incident, that is, 25th day of December 2021 at 1:00 am, she woke up and came out of the house in front of the main entrance to urinate. While she was urinating, she saw the Accused wearing a white ladies blouse standing in front of PW1's shop. The Accused on seeing her went and hid behind PW1's shop.

The following morning, around 6:00 am, she heard PW1 complaining about the theft at his shop. So PW2 informed him that at about 1:00 am on the day of the incident when she came out to urinate she saw the Accused in front of PW1's shop

PW3 is No. 6057 P/W Corporal Linda Asomaning, the Police attached to District CID Bechem. In her testimony in court, she states that on the 25th day of December, 2021, at about 7:30 am, she was the detective on duty at the charge office.

While on duty, PW1 called at the station and lodged a case of stealing against the Accused involving a Samsung mobile phone valued GH¢1,300.00 which contains GH¢636.00 mobile money and cash of GH¢700.00 at his barbering shop at Adum beside Post Office Bechem. Therefore the Accused was arrested and the same day investigation cautioned statement was obtained from him.

Subsequently on 29th December, 2021 at 4:30 pm a relative of the Accused who gave her name to Police as Rita Gyesi came to the Police Station and confirmed that the pair of yellow slippers belonged to the Accused. The Statement respectively of the Accused; and Exhibits 'C' and 'D' for the ladies blouse and a pair of yellow slippers respectively.

CASE OF DEFENCE

The Accused Person's evidence was very short. Testifying under oath, he stated that on the day and time of the incident, he had slept in his room at his mother's (DW1's) residence. It was the following morning of 26th December, 2021 that his mother came to wake him up from bed to slaughter a fowl to prepare a Christmas meal for the family. He added that while he was in his room with his nephew, he overheard his mother DW1 shouting at his elder brother to return something his brother had stolen and brought to the house. Later, the Accused was arrested by the police for allegedly breaking into PW1's shop to steal. Thus on his arrest, he mentioned to the CID in charge of the case that it was his elder brother who broke into PW1's shop so they should go and arrest him. However, tried as he did, the Accused's plea fell on deaf ears. Accused also denied the ownership of the white ladies blouse and a pair of

yellow slippers; but emphasised that the pair of yellow slippers belonged to his ielder brother.

APPLICABLE LAW AND AUTHORITIES

To resolve this issue, the relevance of sections 11(2) and 13(1) of the Evidence Act, 1975 [NRCD 323] cannot be dispensed with; and they flow as follows:

“11. Burden of producing evidence defined

(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 all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt".

“13. Proof of crime

(1) In any 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".

It is a fundamental principle in a criminal prosecution that the prosecution must prove its case. That is, a person however clear the evidence seems to be, is innocent until proven guilty (see **C.O.P v. Isaac Antwi** [1961] GLR 408); and **Woolmington v. DPP** [1935] AC 462).

The prosecution has to prove its case beyond reasonable doubt, and the judge must not convict unless he is convinced that all the elements of the offence were present. In other words, the phrase ‘beyond reasonable doubt’ is the conventional way of expressing the idea that the judge must feel sure of the accused’s guilt.

Now I shall turn to the statutory position of the offence for which the Accused herein has been charged – Stealing. Section 124(1) of the Criminal Offences Act, 1960, (Act 29) provides:

“Section 124—Stealing.

(1) Whoever steals shall be guilty of a second degree felony.”

On definition of stealing, section 125 of the Act 29 states:

“Section 125—Definition of Stealing.

A person steals if he dishonestly appropriates a thing of which he is not the owner”.

Twumasi J. expounding the definition in **Brobbey & Others v. The Republic [1982-83] GLR 608-616** named three elements that must prevail to found a charge of stealing.

According to the Learned Justice, the three essential elements are that:

"(1) the person charged must have appropriated the thing allegedly stolen.

(2) the appropriation must have been dishonest.

(3) the person charged must not be the owner of the thing allegedly stolen".

What has the Accused herein stolen? In other words, the Prosecution has not been able to produce the said Samsung mobile phone they allege the Accused has stolen as an exhibit in court. Therefore, the elements constituting stealing as prescribed in **Brobbey & Others v. The Republic** (supra) are conspicuously missing in the evidence by the Prosecution.

The other part of the Prosecution’s evidence which the court considered with a pinch of salt was the evidence by PW3. Per her witness statement, PW3 stated, and the relevant portion I repeat as follows:

“On 29th December, 2021, at 4:30 pm, a relative of the Accused who gave her name to the Police at Rita Gyesi came to the Police Station and confirmed that the pair of yellow slippers belonged to the Accused”.

This is a disjointed piece of evidence the Prosecution fed to the court. That is, until PW3 entered the witness box to be cross-examined on her witness statement; nowhere

had she told the court that the police had in their custody the pair of yellow slippers belonging to the Accused.

If PW3's evidence to the effect that there was one Rita Gyesi confirmed that the Accused's ownership of the pairs of yellow slippers was anything to go by, what precluded the Prosecution from calling the said Rita Gyesi to testify in court in corroboration of the Prosecution's claim. The failure and/or refusal by the Prosecution to call the said Rita Gyesi, a necessary witness, it impresses upon the court there was no such person or else the Prosecution would produce her to testify to enrich their evidence against the Accused.

Further on the pair of yellow slippers and a ladies' white blouse found at the crime scene. Here again, the court finds issues with that piece of evidence because it does not yield credence to their case.

That is, assuming without admitting that those items belonged to the Accused, which of course he has copiously denied ownership, the case for the Prosecution will still not jell with the rhythm of logic and law. In other words, when the Prosecution laid hands on those exhibits, they ought to have conducted a forensic examination to establish that there were some body fluids of the Accused in those exhibits. The mere fact that the Prosecution found those items at the scene of the crime with the suspicion that the Accused entered PW1's barbering shop could not crystallize into conclusive evidence.

On suspicion of a person committing a crime, Crabbe JSC has the following to share in the very old jury case of **The State v. Ali Kassena [1962] 1 GLR**. The learned Justice expressed a justifiable apprehension in relying on suspicions to make a proof. The learned Justice observed inter alia:

"You cannot put a multitude of suspicions together and make proof of it. ...we think it is dangerous in jury cases to leave to the jury evidence which amounts to suspicion only as there is the fear that they may 'put a multitude of suspicions together and make proof out of it'".

The ratio decidendi in **State v. Ali Kassena** case (supra) aligned to the facts and evidence by PW3 makes the Prosecution case fraught with hollow suspicion. The court is therefore tempted to presume that when PW1 was giving his evidence, PW3 was lurking around the court to eavesdrop on proceedings to feed her limping evidence. In that regard, I find PW3's evidence as a clear case of inadmissible hearsay; full of mischief and malice intended to secure wrongful conviction for the Accused. In other words, the court is of the humble view that PW3 embarked on armchair investigations which undoubtedly smacks of unprofessionalism. (See section 117 of NRCD 323).

Let me also touch on one other legal flaw that taints the case for Prosecution on Exhibits 'C' and 'D'. Granted that these exhibits were found at the scene of the crime, what shows that they belonged to the Accused person. The Prosecution did not conduct a forensic examination to find the Accused's fluids on those exhibits.

A case on point for this argument is **The State v. Ali Kassena** (supra). In that case, the prosecution only relied on taints of human blood on the accused and quickly jumped to the conclusion that it was the accused person who killed the deceased. In holding 1(c), of the case, the Learned Justice dismissing the prosecution's case with the contempt it deserved held

"Where the prosecution seeks to rely on the allegation that human blood was found on the clothes of the accused, it is incumbent upon them to prove also that the blood was that of the deceased, otherwise they fail completely in establishing a nexus between the accused and the killing.

In much the same way, the court shall reject the Prosecution's case to the effect that Exhibits 'C' and 'D' belonged to the Accused based on the ratio in **The State v. Ali Kassina**'s above discussed.

Come to think also of the cross-examination questions and the Accused's answers thereto. That is to most of the questions asked by Prosecution, the Accused answered with denials. The law is settled that where an accused person has denied almost all

the allegations levelled against him in cross-examination putting the prosecution in a terrible fix to prove their case, the accused must be freed ex debito justitiae (see section 11(2) of NRCD 323.

For that proposition, an authority for reference is the case of **Logan v. The Republic [2007-2008] 1 SCGLR**. In that case, the Apex Court held that if no case was established against the accused to answer, the case of the prosecution must be deemed to have collapsed and the accused must be acquitted.

In fact, the ratio in **Logan's** gives credence to the very old English legal maxim that: "It is better to free a thousand criminals than to convict one innocent person". And this court finds the same circumstances in the instant case.

On the evidence on record, therefore, this Court finds that the Prosecution have not been able to prove their case against the Accused Person herein to secure conviction for him. Accordingly, the Accused, Mr Williams Owusu is hereby acquitted and discharged.

(SGD)

H/W KORKOR ACHAW OWUSU, ESQ.

BECHEM - AHAFO

DATE: 30TH NOVEMBER, 2022