

**IN THE DISTRICT COURT 2, TAMALE
HELD ON MONDAY 17TH OCTOBER, 2022
BEFORE HIS WORSHIP D. ANNAN ESQ.**

SUIT NO. B10/3/22

THE REPUBLIC

V

1. SULEMANA YUSSIF

2. TOFIK

JUDGMENT

1. Before I proceed with the judgment, the prosecution informed the court that A2 who was at large has been arrested and is in court. A2 is charged with the substantive offence of stealing while A1 is charged with abetment to commit crime to wit, stealing. A1 has pleaded not guilty and a full trial conducted to which judgment is slated for today. The Court, therefore, considered it appropriate to hear the plea of A2 before proceeding.

2. A2, Ibrahim Tofik, pleaded guilty with explanation. Upon hearing his explanation, this court is of the view that A2 is pleading guilty to the offence of stealing contrary

to s. 124(1) of the Criminal Offences Act 29/60. I hereby convict him in his plea and shall consider his sentencing at the end of this judgment.

3. In this case, A1 and A2 are charged with the following offences:

COUNT ONE

STATEMENT OF OFFENCE

Abetment of Crime to wit, Stealing, contrary to sections 20(1) and 124(1) of the Criminal Offences Act 29/60.

PARTICULARS OF OFFENCE

Sulemana Yussif, aged 54years, unemployed: On the 12th day of July, 2022 at Mariam Hotel, Tamale in the Northern Magisterial District and within the jurisdiction of this Court, did aid and abet one Tofik to steal a Samsung mobile phone valued at GH720.00 the property of one Diana Korley.

COUNT TWO

STATEMENT OF OFFENCE

Stealing, contrary to section 124(1) of the Criminal Offences Act 29/60.

PARTICULARS OF OFFENCE

Tofik: On the 12th day of July, 2022 at Mariam Hotel, Tamale in the Northern Magisterial District and within the jurisdiction of this Court, did steal a Samsung mobile phone valued at GH720.00 the property of one Diana Korley.

FACTS OF THE CASE

4. The brief facts of the case as presented by prosecution are that the Complainant, Diana Korley a receptionist at Mariam Hotel on the said 12th July, 2022 was at post when the Sulemana Yussif (A1) and Tofik (A2) went to the hotel under the pretext of booking a room for their master. The complainant led A1 to check one of the rooms leaving behind A2. When they had left, A2 took a Samsung mobile phone valued at GH720.00 belonging to the complainant and quickly ran out of the reception with it. This was captured in a CCTV footage. A1 followed suit on his return with the complainant. But A1 was arrested by the security man. Unfortunately, A2 was able to escape. Accused persons were charged with the above offence and arraigned before this court.

DEFINITION OF THE OFFENCES

5. Regarding Abetment of Crime and Trial and Punishment of Abettor, section 20(1) of Act 29 provides that, “[e]very person who, directly or indirectly, instigates, commands, counsels, procures, solicits, or in any manner purposely aids, facilitates, encourages, or promotes, whether by his act or presence or otherwise, and every person who does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of a crime by any other person, whether known or unknown, certain or uncertain, is guilty of abetting that crime, and of abetting the other person in respect of that crime.” Act 29 further provides that every person who abets a crime shall, if the crime is actually committed in pursuance or during the continuance of the abetment, be deemed guilty of that crime, see s. 20(2).
6. Section 125 of Act 29 defines stealing to mean, “a person steals if he dishonestly appropriates a thing of which he is not the owner.” Act 29 also provides that whoever steals shall be guilty of a second degree felony, see s. 124(1).

BURDEN OF PROOF

7. It has been affirmed that the golden tread that runs through the web of our criminal jurisprudence is that the guilt of an accused person shall be proved beyond reasonable doubt. This required standard is codified under the 1992 Constitution and the Evidence Act, 1975 (NRCD 323).

8. Article 19(2)(c) of the 1992 Constitution states that:

"A person charged with a criminal offence shall ... be presumed to be innocent until he is proved or has pleaded guilty."

9. Under both statute and at common law, the Prosecution carries this burden of proof. The relevant requirements under the Evidence Act, 1975 (NRCD 323) are reproduced below:

S. 11(2) In a criminal action, the burden of producing evidence when it is on the Prosecution as to any 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.

S. 13(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 reasonable doubt.

S. 22 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 thereupon, in the case of a rebuttable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact.

10. The common law position was stated by Denning J, (as he then was), in **Miller v Minister Of Pensions [1947] 2 ALL ER 372 at 374** that:

"Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it permitted fanciful possibilities to

deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the 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."

11. Whereas the prosecution carries the burden of proving the guilt of the accused beyond reasonable doubt, the accused carries no such burden of proving his innocence. At best, he has to raise a doubt in the case of the prosecution. The settled rule is that the doubt ought to be reasonable and not fanciful. Per the decision in **COP v Isaac Antwi [1961] GLR 408**, the burden to prove the guilt of the accused is placed on the prosecution throughout the trial and the accused may choose to remain silent.

12. In assessing the evidence of the prosecution, therefore, the Court would have to apply what is known as the three-tier test to each of the element of crime. This was amply stated in **The Republic v Francis Ike Uyanwune [2013] 58 GMJ 162, CA**, per Dennis Adjei, JA:

"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 a 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 person 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 person 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 person should be acquitted, but if it is not and the Court is satisfied that in considering the entire evidence on record the accused person is guilty of the offence, the Court must convict him. This test is usually referred to as the three-tier test."

METHODOLOGY

13. In the instant case, A1 pleaded not guilty to the charge of abetment. It is settled law that upon a plea of not guilty, the prosecution must prove the whole of its case including the identity and knowledge of offence(s), if any, against the accused. The prosecution in establishing a prima facie case against the accused person called three witnesses: G/Cpl. Gelin Baala Philip (PW1), complainant Diana Korley (PW2) and Emmanuel Azaso (PW3). Prosecution also tendered in evidence three exhibits: Exhibit A, the investigating cautioned statement, Exhibit B, the charge cautioned statement and Exhibit C, a pen drive containing the CCTV footage.

The Prosecution's Case

14. According to the PW1, No. 49589, G/Cpl. Gelin Baala Philip, this case was referred to him for investigation. He stated that during his investigation, he obtained information that the accused persons went to Mariam Hotel under the pretext of booking a room for their master. The receptionist, PW2, took A1 to check the room, but A1 intentionally left behind A2 who stole the Samsung mobile phone valued at GH720.00. A2 then went out of the hotel and waited on a motorbike for A1. He stated further that when PW2 and A1 returned to the reception, PW2 detected that her mobile phone had been stolen and therefore raised an alarm, shouting "thieves, thieves". The security man at post, PW3, then gave A1 and A2 a hot chase but he was able to grab A1, A2 rode off. He tendered in evidence, Exhibits A, B and C, aforementioned. In Exhibit C, A1 and A2 enters the reception of the hotel

at 0.16sec together. A2 is seen picking the phone at 1:55secs of video 2 and leaves at 2:31secs. A1 is also seen leaving immediately they returned to the reception at 2:27secs of video 2.

15. PW2, Diana Doyo Korley, the complainant and receptionist, testified that on 12/7/22 she was on duty when A1 and A2 entered the hotel to book a room for their master. She informed them that a room costs GH380.00 but the room was being cleaned. So A1 and A2 waited. When the room was available, PW2 stated that she led them to go check, but noticed that A1 was the only one following her. She showed A1 the room and A1 agreed to pay for it. But when they returned to the reception, A2 had left. A1 also left without continuing the booking. According to PW2, she suspected that something had gone wrong. She then detected that her Samsung mobile phone had been taken. She then raised an alarm and the security man, PW3, followed A1 and A2 but was only able to get A1.

16. PW3, Emmanuel Azaso stated in his witness statement that he was at the gate when A1, A2 and a motor rider entered the hotel yard. He added that A1 and A2 alighted and the motor rider left. He asked A1 and A2 their business at the hotel and was told that they wanted food to buy, so he directed them to the restaurant. He returned to his security room and few minutes later he heard PW2 shouting "thieves, thieves". He added that A1 run out of the hotel and joined A2 who was on the motorbike in waiting. He stated that he chased them and was able to get hold A1 but A2 escaped.

17. At the end of the Prosecution's case, the Court found that a prima facie case had been established against A1 and called upon him to open his defence.

A1's Defence

18. A1 opted to give evidence from the dock. In his unsworn statement, he stated that he was innocent of the charge against him. He added that PW3 contradicted his

own evidence against him and therefore the charge against him is unfounded. He, however, did not call any witness.

ANALYSIS OF FACTS AND LAW

19. The essential ingredient of the offence of abetment is that the act of an abettor must precede, or be contemporaneous with, the crime abetted and the abettor must know some essential facts constituting the crime. In **Effah & Anor. v The Republic [2000] DLCA 126**, the Court of Appeal referring to the case of **Commissioner of Police v Sarpey and Nyamekye [1961] GLR (Pt 11) 756 at 758, SC**, said:

“In order to convict a person of aiding and abetting it is incumbent on the prosecution to prove that the accused did any one of the acts mentioned in subsection(1) of section 20 [of Act 29]. Under subsection (2) a person who abets a crime shall be guilty if the crime is actually committed (a) in pursuance of abetment, that is to say, before the commission and in the presence or absence of the abettor and (b) during the continuance of the abetment, that is to say, the abetment must be contemporaneous in place, time and circumstance with the commission of the offence. In our view, an act constituting an abetment in law must precede or it must be done at the very time when the offence is committed.” See also the cases of **Enweonge v R [1955] 15 WACA 1** and **National Coal Board v Gamble [1959] 1 QB 11 at 20**.

20. From the evidence, A1 and A2 entered the hotel together. While A1 followed PW2 to check the room, A2 stayed behind and took the phone and left the reception. When A1 and PW2 returned, A1 did not complete his booking but also quickly left the reception. This was captured on Exhibit C. When PW2 detected that her phone had been taken, she then raised the alarm and A1 was arrested. It is also on record

that A2 was waiting for A1 on the motorbike. This is what ensued when PW2 was under cross-examination:

Q: What shows I connive with my counterpart to steal a phone?

A: As you walked in together, your colleague came to me asking for a room for your boss, which I told you the room was being cleaned. So you asked me if you can look at the room before booking it. So your colleague went to sit by you and you were speaking in Hausa language which I don't understand. So after that you got up and came to me to show you the room. So both of you were following me, which I had no idea that 2nd accused was following. So upon getting to the room I realized you were the only one with me. You told me you (they) will be taking the room. Getting back to the reception, you rushed out without standing for me to take the necessary details for the booking. So I became suspicious and checked where I placed my phones, I realized my Samsung phone was not there. So I rushed out shouting, "thief, thief" and A1 started running away. I called our security and he chased both of you and got you.

...

Q: So when you asked us to wait for the cleaners to clean, so after cleaning, you asked us to go and have a look at the room. So on the way my counterpart stuck back without my knowledge. So when we got to the room my counterpart was not with me so I told you that let me talk to my counterpart, isn't it?

A: You told me you (they) will take the room.

Q: When I came back to the reception my counterpart was not there and I stepped onto the compound and I heard you shout, “thief, thief” so I was arrested by the security, am I right?

A: You were running when I shouted thief and you never stopped.

Q: I am putting it to you that your evidence is not true.

A: As you were running with your colleague, the security caught you on the motorbike which you (they) were trying to escape with. So he was able to grab hold of you (A1).”

21. Regarding A1’s defence, the law requires that where the accused in opening his defence elects to make a statement from the dock and is not cross-examined as provided by s. 174 of Act 30 and ss. 63(2) and 96(1) of NRCDC 323, the court must consider that defence. In **Dochie v The State [1965] GLR 208**, the court held that, “[t]he probative value of the statement is of course weakened by the right to give sworn evidence accorded to the accused under the statute.” In addition, s. 174 of Act 30 requires that unsworn evidence will need to be corroborated before it can carry much weight.

22. A1 relied heavily on the evidence of PW3. He stated that due to the inconsistencies in the evidence of PW3, he should be acquitted and discharged. Here are excerpts of the cross-examining PW3:

Q: You also heard the receptionist Diana (PW2) shouting, "thief, thief" and stated that in your statement?

A: PW2 did not shout thief, thief, she said you have taken her phone.

Q: Paragraph 3, last sentence reads, "I also entered my security room, for some few minutes I heard the receptionist Diana was shouting my phone, thieves, thieves, then the accused person quickly ran out of the hotel, I followed him, he sat on the motorbike with his counterpart I held the accused person, the accused person started shivering and shouting that I did not pick the phone, then his counterpart sped off, am I right?"

A: You were three when you came and two alighted and entered the hotel and the other rode the motorbike away.

Q: In your evidence, you just stated we were three, but in your statement we are two?

A: You were three when you came but one left with the motorbike.

Q: I am putting it to you that your evidence is not true. You are here to waste the time of the court?

A: I am being truthful.

23. In my opinion, although PW3 contradicted his own evidence, the fact that he arrested A1 stands unchallenged. The inconsistencies in the evidence of PW3 will therefore not enure to the benefit of A1 to the extent of exonerating him.

24. From the above, there is therefore no doubt in my mind that A1's actions were contemporaneous in place, time and circumstance with the commission of the offence. See the case of **Commissioner of Police v Sarpey and Nyamekye (supra)**. I, therefore, find him guilty in the offence of abetment to commit crime to wit stealing contrary to section 20(1) and 124(1) of the Criminal Offences Act 29/60.

25. I also find A2 guilty in the offence of stealing contrary to section 124(1) of the Criminal Offences Act 29/60.

SENTENCING

26. Having heard the accused persons and prosecution on pre-sentencing hearing, I hereby sentence the accused persons as follows:

- a. A1, SULEMANA YUSSIF, is not a first time offender. Also he has been in lawful custody since 29/9/2022. Having noted these, A1 is sentenced to 3months imprisonment plus a fine of 60pu (GHS720.00) or in default shall serve a term of 4months. He is also to compensate the complainant DIANA DOYO LORLEY in the sum of GHS320.00 on or before 18/10/22.
- b. A2, IBRAHIM TOFIK, is therefore also sentenced to 5 months imprisonment plus a fine of 80pu (GHS960.00) or in default shall serve a term of 6 months. He is also to compensate the complainant DIANA DOYO LORLEY in the sum of GHS400.00 on or before 24/10/22.

H/W D. ANNAN ESQ.

[MAGISTRATE]

A1 AND A2 APPEARED IN PERSON

C/INSP EUNICE APASNABA HOLDING THE BRIEF OF SGT. IGNATIUS
ATIREKPERE FOR THE REPUBLIC

References:

1. *Article 19(2)(c) of the 1992 Constitution*
2. *ss. 20(1) and (2), 124(1) of Act 29*
3. *s. 174 of Act 30*
4. *ss. 11(2), 13(1), 22, 63(2) and 69(1) of the Evidence Act, 1975 (NRCD 323)*
5. *Miller v Minister Of Pensions [1947] 2 ALL ER 372 at 374*
6. *COP v Isaac Antwi [1961] GLR 408*
7. *The Republic v Francis Ike Uyanwune [2013] 58 GMJ 162, CA*
8. *Effah & Anor. v The Republic [2000] DLCA 126*
9. *Commissioner of Police v Sarpey and Nyamekye [1961] GLR (Pt 11) 756 at 758, SC*
10. *Enweonge v R [1955] 15 WACA 1 and National Coal Board v Gamble [1959] 1 QB 11 at 20*
11. *Dochie v The State [1965] GLR 208*