

**IN THE DISTRICT MAGISTRATE COURT HELD AT N.A.M.A. NSAWAM ON 27TH
DAY OF JULY 2023 BEFORE HER HONOUR SARAH NYARKOA NKANSAH
CIRCUIT COURT JUDGE SITTING AS ADDITIONAL MAGISTRATE**

CASE NO: B1/39/20

THE REPUBLIC

VRS:

- 1. KENNEDY GHARTEY@ BOB**
- 2. JOHN ADEWU @JOE KAWUKUDI**

ACCUSED PERSONS: PRESENT

PROSECUTION: CHIEF INSPECTOR ADDAE FOR PROSECUTION PRESENT.

JUDGMENT

Both Accused Persons herein were arraigned before this Court charged with the offences of conspiracy to commit crime to wit assault, and assault contrary to contrary to sections 23(1) and 84 of the Criminal Offences Act, 1960 (Act 29). 2nd Accused Person alone was in addition to the charges above, charged with stealing contrary to section 124(1) of the Criminal and Other Offences Act, 1960 (Act 29). The accused persons pleaded not guilty after the charges had been read out and explained to them.

2nd Accused Person later changed his plea in counts one, three and four to Guilty on 29/10/2022. 2nd Accused Person was accordingly convicted and sentenced on those counts. He however maintained his plea of not guilty on count Four. Both accused persons were tried on the outstanding respective counts.

In the *Republic v. Adu-Boahen & Another [1993-94] 2 GLR 324-342*, per Kpegah JSC, the Supreme Court held that:

“A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an Accused Person When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial Court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt”.

THE CASE OF THE PROSECUTION

It is the case of the Prosecution that on 9th April, 2020 at about 5:30 pm, Complainant Akotey Francis was at home when 1st Accused Person came to him and accused him of killing his fowl with a trap set up by the Complainant in his farm at the outskirts of the Community they live in. That at about 11:30 pm on that same day, Complainants were at home when 1st Accused Person and three others including 2nd Accused Person arrived all wielding sticks and without any provocation, pounced on them and assaulted them mercilessly. Prosecution averred that, 1st Accused Person hit the head of Complainant Akosua Atitso with the stick he was wielding while 2nd Accused Person and one other called Yaw currently on the run assaulted Complainant Francis Akotey. In the process of the attack, Complainant Akosua Atitso collapsed. Both Complainants sustained injuries and were rushed to the Government Hospital, Adeiso and Complainant Francis Akotey was treated and discharged. Complainant Akosua Atitso was referred to the Korle-Bu Teaching Hospital, Accra where she was on admission for three (3) days and later discharged. 1st & 2nd Accused Persons were subsequently arrested and during investigations, An Itel Mobile Phone value GH¢60.00 belonging to Complainant Akosua

Atitso which got missing in the process of the attack was recovered from 2nd Accused Person. After the investigations both were charged and brought before the Court.

THE CASE OF THE DEFENCE

Both 1st & 2nd Accused Persons gave unsworn statements from the dock. 1st Accused Person maintained per his Defence that he went to complainants' house to enquire if 1st Complainant had set the trap that had killed his chicken. According to 1st Accused Person the 2nd complainant struggled with him for the trap when he threatened to take it to the chief's palace and that he got the trap back when a tenant intervened. On the part of 2nd Accused Person, he maintained that he did not steal the phone but that he took it and gave it to the Pastor who also sent it to the Police Station.

This being a criminal case, the prosecution bears the burden of proof to establish the guilt of the Accused Person beyond reasonable doubt as per *Sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323)*

In the case of *Bruce-Konuah v. The Republic [1967] GLR 611 – 617*, Amisshah J.A. stated thus:

“Barring the well-known exceptions, an accused is under no obligation to prove his innocence. The burden of proof of the Accused Person's guilt is on the prosecution.”

Section 23(1) of the Criminal Offences Act, 1960 (Act 29) provides:

If two or more persons agree to act together with a common purpose for or in committing or abetting a crime, whether with or without any previous concert or deliberation, each of them is guilty of conspiracy to commit or abet that crime, as the case may be.

From the above section, the elements of conspiracy are as follows:

1. *That two or more persons agree to commit an offence*
2. *That the individuals have a common intention to carry out the agreed upon offence*
3. *That they have acted in furtherance of the intention*

Section 86(1) of Act 29 defines Assault as follows:

“A person makes an assault and battery upon another person if, without the other person’s consent and with the intention of causing harm, pain, or fear, or annoyance to the other person, or of exciting him to anger, he forcibly touches the other person or causes any person, animal or matter to forcibly touch him.”

From the above section, the elements of assault are as follows:

1. *Forcibly touching or causing any person, animal or matter to forcibly touch that person;*
2. *Without that person’s consent;*
3. *With the intention of causing harm, pain, fear or annoyance*

Section 125 of Act 29 defines stealing as follows:

“A person steals who dishonestly appropriates a thing of which that person is not the owner.”

In **The State v. W. M. Q. Halm and Aryeh Kumi Crim. App Nos. 118/67 and 113/67, 7 August, 1969; (1969) CC155**, the Court per Akufo Addo, C. J., Ollenu, Apaloo, Amisah JJ.A and Archer J stated the three essential ingredients which proves a charge of stealing under our criminal law as:

- “(i) That the person charged must not be the owner of the thing allegedly stolen;*
- (ii) That he must have appropriated the thing;*
- (iii) That the appropriation must have been dishonest.”*

I shall determine 2nd Accused Person’s only outstanding charge first; that is Count Four (4).

2nd Accused Person has been charged with stealing per count four (4). It is not in doubt that 2nd Accused Person took the phone. At paragraph 4 of 2nd Accused Person’s unsworn statement from the dock states as follows:

“I did not steal the phone, but I took it and gave it to the pastor. He also sent it to the Police Station.”

Also in Exhibit G1 which is 2nd Accused Person’s Cautioned statement given to the police he states as follows:

“..... I did not steal the phone but I thought that the child whom I gave the Adakavi’s passbook to might tamper with the phone and spoil it. The next day, I told my surety of the phone and he said that once they have made a police case I should keep it and if he the surety is coming to the police station then he would bring it. I gave the phone to the surety who is a pastor three days after the incident and he brought same to the police.....”

As shown in 2nd Accused Person’s statements reproduced supra, 2nd Accused Person indeed took the phone. He is however saying in his defence he did not steal it and that he gave the phone to the pastor three days after the incident.

It is also not in contest that the phone does not belong to 2nd Accused person. Now the Court shall guide itself with this question. That is; does the phone belong to the said

pastor? And the obvious answer is no. Since the phone does not belong to the Pastor then 2nd Accused Person's Defence of giving the phone to the pastor is rather immaterial and insignificant.

In analyzing the elements of the offence of stealing which have been stated supra. It can be shown that 2nd Accused Person appropriated a phone of which he was not the owner. Now the appropriation of the phone must be dishonest before the charge of stealing can be established against 2nd Accused Person.

Section 125 of Act 29 states as follows:

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

Section 122 of Act 29 spells out acts which amount to an appropriation as follows:

"(1) An appropriation of a thing by a trustee means a deal with the thing by a trustee, with the intend of depriving a beneficiary of the benefit of the right or interest in the thing, or in its value or proceeds, or a part of that thing.

(2) An appropriation of a thing in any other case means any moving, taken, obtaining, carrying away, or dealing with a thing, with the intent that a person may be deprived of the benefit of the ownership, or of the benefit of the right or interest in the thing, or in its value or proceeds, or part of that thing."

As seen from the evidence, 2nd Accused Person moved the phone which did not belong to him from the crime scene without the permission of the phone's owner. This shows clearly that he did so with the intention of depriving the owner of the benefit of the ownership which in this case is depriving the owner of the benefit of her possession of the phone.

The foregoing leads to only one conclusion; that is, 2nd Accused Person appropriated the phone which did not belong to him dishonestly. Although it is good that he eventually handed the phone over to the police through the Pastor, his change of heart came after he had already committed the offence. I find that the charge of stealing has been made out against 2nd Accused Person.

COUNTS ONE AND TWO

Although 2nd Accused Person pleaded guilty to Count One when he changed his plea, 1st Accused Person maintained his plea of not guilty. Establishing agreement of two or more persons to commit a crime is a foremost ingredient in the offence of conspiracy to commit crime. However, the prosecution failed to lead evidence on the agreement of the accused persons to commit the assault. In the absence of establishing all the essential ingredients of a crime the charge cannot be made out. In the present case I find that the prosecution has failed to establish the charge of conspiracy against 1st Accused Person. 1st Accused Person is hereby acquitted and discharged on count one.

In respect of count two, 1st Accused Person stated the following while cross-examining PW1.

Q. You say I have beaten you. **I have accepted it.** But did I come and apologise to you or not.

A. You have not come to apologise to me.

1st Accused Person impliedly admitted to beating PW1 in the question that he asked. And since it is the duty of the Court to unravel the truth in any matter before it, the Court

cannot turn a blind eye to the admission of 1st Accused Person clearly embedded in his question to PW1. It is clear enough to the Court that 1st Accused Person did indeed beat PW1 and that even if he apologized after the act it was only a change of heart that came after the crime had already been committed. 1st Accused Person's admission is considered a confession by the Court.

In the case of *State v. Otchere and Others [1963] 2GLR 463-531*, the Court held that:

"A confession made by an accused person in respect of a crime for which he is being tried is admissible against him provided it is shown by the prosecution that it was made voluntarily and that the accused was not induced to make it by any promise or favour, or menaces, or undue terror."

In *Billa Moshie V. The Republic [1977] 2GLR 418, CA* the Court held that;

"A conviction could quite properly be based entirely on the evidence of a confession by a prisoner, and such evidence was sufficient as long as the trial judge inquired most carefully into the circumstances in which the alleged confession was made and was satisfied of its genuineness."

Also in the case of *Ofori v. the State [1963] 2GLR 452, SC*, the Supreme Court held that;

"A free and voluntary confession of guilt by an Accused Person, if it is direct and positive and is duly made and satisfactorily proved, is sufficient to warrant a conviction without any evidence."

In view of the foregoing I find 1st Accused Person guilty of assault.

I have considered the whole of the evidence that was adduced at the trial and I find that, the Prosecution has successfully proved of the charges of assault and stealing brought against the Accused Persons. 1st Accused Person and 2nd Accused Person respectively. I therefore find the Accused Person ***Kennedy Gharthey guilty*** of the offence of Assault and

I find Accused Person *John Adewu guilty* of the offence of stealing and I convict 1st Accused Person and 2nd Accused Person accordingly.

Q: Any plea in mitigation before sentence is passed?

1st Accused Person: I am pleading with the Court. I did not beat anyone.

2nd Accused Person: I am pleading. I did not take it intentionally. I plead with the Court to forgive me.

Q: Is the Accused Person known?

A: No.

BY COURT: Accused persons are both sentenced to a fine of 167 penalty units each on their respective counts and in default 90 days in imprisonment each.

1st Accused Person is ordered to pay the sum of GH¢2,000.00 as compensation to the victim, Akosua Atitso. The Court orders are in consideration of Exhibit "C".

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H/H SARAH NYARKOA NKANSAH
CIRCUIT COURT JUDGE SITTING
AS ADDITIONAL MAGISTRATE
27/07/2023