IN THE DISTRICT MAGISTRATE COURT HELD AT N.A.M.A NSAWAM ON 23RD MARCH, 2023 BEFORE HER WORSHIP SARAH NYARKOA NKANSAH MAGISTRATE

CASE NO: B1/42/20

THE REPUBLIC

VRS

1. YAW TAWONU
2. KANKAM DANKWA

ACCUSED PERSON: 1ST ACCUSED PERSON DEALT WITH. 2ND ACCUSED PERSON PRESENT.

PROSECUTION: CHIEF INSPECTOR AKAPAME FOR PROSECU-TION PRESENT.

JUDGMENT

The Accused Person herein was charged together with 1st Accused Person for conspiracy to steal and stealing contrary to Sections 23(1) and 124(1) *of the Criminal and Other Offences Act, 1960 (Act 29)*. He was also charged with assault on Public Officer contrary to section 205(A) of Act 29.

The Accused Person pleaded not guilty to Counts one(1) and two (2) and he pleaded guilty with explanation to Count three (3) after same had been read out and explained to him. The Court upon hearing the explanation given by the Accused Person on Count three (3) ruled that, it raised a defence in law and accordingly entered a plea of "not guilty" on Count three (3) for Accused Person.

1st Accused Person who had been charged with Accused Person presently standing trial pleaded guilty to the charges laid against him and was dealt with on the same day. The Court proceeded to try 2nd Accused Person on account of his plea of not guilty on all Counts.

In **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*".

FACTS OF THE CASE

The facts as presented by the Prosecution were that, on 22nd June, 2020, the Complainant, a Police officer aided a victim in the retrieval of a stolen mobile phone from 1st Accused Person and 2nd Accused Person. Following this, 2nd Accused Person assaulted the Complainant and when the matter was reported to the Police, the Accused Persons were charged with the offences stated supra and arraigned before this honourable Court.

The Prosecution called three (3) witnesses PW1, PW2& PW3 who essentially corroborated the case of the Prosecution.

THE CASE OF THE DEFENCE

The Accused testified that, on the 22nd of June, 2020 at about 3 pm, he and the 1st Accused Person met a young boy running with a phone. The Accused Person continued that, the 1st Accused took the phone from the boy and thinking that they knew each other, the Accused Person did not pay them much attention. The Accused further added that, they came across a group of men which included the Complainant who demanded that the phone be returned to the boy and without any provocation,

the Complainant hit the Accused which led to a retaliation. The matter was then reported to the Police.

The defence thereafter closed its case.

The legal issues to be determined by this Court are:

i. *Whether or not the Accused Person conspired with A1 to steal the young boy's phone.*

ii. *Whether or not the Accused Person(A2) dishonestly appropriated the young boy's phone*

iii. *Whether or not Accused Person assaulted the complainant while complainant performed a public*

The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that a person was guilty, has been provided for in *Sections 13 and 15 of the Evidence Act, 1975 (NRCD 323)*. Significantly, whereas the Prosecution carries that burden to prove the guilt of the Accused Person beyond reasonable doubt, there is no such burden on him to prove his innocence. At best he can only raise a doubt in the case of the Prosecution. But the doubt must be real and not fanciful.

Section 23(1) of the Criminal Offences Act, 1960 **(Act 29)** *provides that;*

"Where two or more persons agree to act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy or abet the criminal offence."

To found conviction for conspiracy, the prosecution has the duty to establish the following ingredients:

1. That the offence involved two or more persons;

2. That those persons agreed to act together

3. That they acted together with a common purpose, i.e. to commit a crime or do an unlawful act or a lawful act by an unlawful means.

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., Ollennu, Apaloo, Amissah 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."

Section 205 of Act 29 provides as follows:

A person commits a misdemeanour

(a) assaults, obstructs, molests, or resists, or aids or incites any other person to assault, obstruct, molest, or resist any public or peace officer, or any person employed by a public or peace officer, acting or proceeding to act in the execution of any public office or duty or in the execution of any warrant or legal process; or

(b) uses any threatening, abusive, or insulting language, or sends any threatening or insulting message, or letter, to any peace officer in respect of his duties,

The essential ingredients to prove are

That any of the actions named in section 205 of Act 29 was undertaken by the Accused Person

That it was against a public officer in the performance of his public duty

Prosecution witness PW1 testified that, on the day of the incident, a young boy approached him and those in his company and complained about his phone being taken by two (2) young men and asked for assistance. According to PW1, one of the young men got annoyed upon questioning and assaulted him. Although he did not state clearly that it was 2nd Accused Person who assaulted him, 2nd Accused Person has himself admitted per his Charged Statement that he hit PW1.

It is not in doubt that, the said phone did not belong to 2nd Accused Person herein. However, there is no direct evidence linking 2nd Accused Person to the appropriation of the phone from the said young boy. According to PW1 he was informed by the young boy that his phone had purportedly been taken from him by some two (2) young men. PW1 did not witness this event himself; he was only told of it. And since 2nd Accused Person herein has vehemently challenged the allegation that he took the phone from the young boy, the Court cannot rely on PW1's hearsay evidence to make a ruling against Accused Person on the charge of stealing. It is trite learning that hearsay evidence is generally inadmissible.

Similarly, there is no evidence on record to support the charge of conspiracy to steal by any of the Prosecution witnesses against 2nd Accused Person. Nowhere in the evidence adduced during the trial, was it proved that 2nd Accused Person and 1st Accused Person agreed to act together to steal the young boy's phone.

In the opinion of the Court, the Prosecution failed to prove Counts one (1) and two (2) beyond reasonable doubt against the Accused Person (A2).

In ***Dexter Johnson v. The Republic [2011] SCGLR 601, Dotse JSC*** had this to say about the standard of proof in criminal matters and I quote:

"Our system of criminal justice is predicated on the principle of the prosecution, proving the facts in issue against an Accused Person beyond all reasonable doubt. This has been held in several cases to mean that, whenever any doubts exist in the mind of the Court which has the potential to result in a substantial miscarriage of justice, those doubts must be resolved in favour of the Accused Person".

The learned judge continued and I quote:

"I believe this principle must have informed William Blackstone's often quoted statement that 'Better than ten guilty persons escape than one innocent suffer' which was quoted and relied upon by me in the unanimous decision of this Court in the case of Republic vrs Acquaye alias Abor Yamoah II, ex-parte Essel and Others [2009] SCGLR 749 @ 750*".*

In the light of the foregoing, I resolve the first and second issues in favour of Accused Person (A2). I acquit and discharge A2 on Counts One and Two.

Accused Person challenged the evidence adduced by PW1 at the trial. Although Accused Person reserved his right to remain silent by waiving his right to open his Defence. Accused Person indeed put it to PW1 under cross-examination that all that PW1 had said to the Court was untrue.

It is not clear to the Court if any thorough investigation was conducted, because in essence PW2 (investigator) per her evidence just recounted to the Court the formalities

she undertook when the case was referred to her. In substance the Investigator's investigation comprised, taking statements from complainant and his witness, issuing out a Police medical report, arresting Accused Person and taking his Cautioned Statement and Charged Statements. It seems PW2 did not go beyond these regular motions by way of investigation. Accused Person put the following two questions to the investigator by way of cross-examination.

Q. Was investigation conducted at the place the incident occurred?

A. No.

Q. Are you the one who conducted the Investigation ?

A. Yes.

Despite Accused Person's general denial of PW1's case against him, Accused Person had earlier admitted in his charged statement Exhibit "B" that he hit someone. He states as follows per his charged statement;

"I am sorry and asking for forgiveness. I did not know he was a policeman like I will not hit him"

This portion of Accused Person's charged statement corroborates PW1's account that accused slapped him. 2nd Accused Person's admission also constitutes a confession on his part. Exhibit "B" was indeed admitted without any objection and as stated on the face of the charged statement it was made voluntarily after Accused Person was arrested and also made in the presence of an independent witness. These conditions make Accused Person's confession statement admissible in the present case.

In the case of ***State v. Otchere and Others [1963] 2 GLR463-531***, 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."

There is proof that Accused Person hit PW1 and it is also not in doubt that PW1 is a police officer. What remains doubtful is whether PW1 was assaulted in the course of his performance of a public duty. There is no evidence on record to support that PW1 was on duty or performing his public duty when he was assaulted.

In the case of ***Asante V. The Republic [1972] 2GLR 177*** it was held that:

"Accused need not know that the person is a peace officer. However, the prosecution must prove that the assault or molestation took place in the course of the performance of a public duty."

It therefore did not matter that Accused Person did not know PW1 was a Police Officer. However, Prosecution ought to have proved that PW1 was on duty or performing a public duty when he was assaulted. It seems PW1 was not on duty at the time. Per his own witness statement, he was playing draft when the young boy approached him. In such a circumstance, the proper charge ought to have been assault and not assault on public officer.

This notwithstanding, it is trite learning that, where the evidence on record supports an offense other than the one Accused Person was charged with, the Accused Person may still be convicted for the offense that the evidence on record supports.

In view of same, I am of the opinion that, the evidence on record supports a conviction for assault against 2nd Accused Person, as same was confessed by him per his charged

statement. I shall accordingly proceed to convict 2nd Accused Person, for the offence of assault.

I therefore find the Accused Person *KANKAM DANKWA* guilty of the offence of Assault and convict him accordingly.

Q: Any plea in mitigation before sentence is passed?

A: I will not do that again. If I am forgiven I will not do that mistake again.

Q: Is the Accused Person known to the police?

A: No.

By Court: Accused Person is hereby ordered to execute a bond to be of good behaviour for one (1) year and in default one (1) year imprisonment.

Final Orders: Accused Person is ordered to pay a compensation sum of GH¢600.00 to the Complainant herein.

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H/W SARAH NYARKOA NKANSAH

MAGISTRATE

23/03/2023