

CORAM: HIS WORSHIP MR. MAWUKOENYA NUTEKPOR (DISTRICT MAGISTRATE), SITTING AT THE DISTRICT COURT, BOLGATANGA IN THE UPPER EAST REGION OF GHANA, ON WEDNESDAY, THE 28TH DAY OF FEBRUARY, 2024.

CASE NO: UE/BG/DC/B7/32/2022

THE REPUBLIC

VRS.

ATUBIGA AGONGONGO

TIME: 09:26AM

ACCUSED PERSON -ABSENT

INSPECTOR BALIKI ISSAKA AMIDU FOR THE PROSECUTION - PRESENT

RICHARD ADAZABRA, ESQ. FOR THE ACCUSED PERSON ABSENT

JUDGMENT

Introduction

1. There is a revered adage in criminal law which stated as follows:

“Better that ten guilty persons escape, than that one innocent suffer.” **Per William Blackstone, an Eighteenth Century English Jurist**

In the instant case, the court shall demonstrate whether the prosecution has succeeded in proving the guilt of the accused person. The accused person herein was brought or arraigned before this court on the 16th August, 2021 and charged for the offence of Dishonestly Receiving contrary to Section 146 of the Criminal and Other Offences Act, 1960 (Act 29) as amended. The accused person pleaded NOT GUILTY to the charge against him.

Case of the Prosecution

2. The case of the prosecution as can be gleaned from the brief facts attached to the charge sheet filed on 16th August, 2021 is that Complainant, Maxwell Gazari is a head pastor of Global Prayer Center River of Life Intentional residing at Soe-Bolga. The Accused person is a meat seller residing at Bongo-Zue. On 04-02-2021 at 2140hours, the complainant together with about 100 church members were having evening devotion in the church at Akupeligo and in the process seven unidentified men armed with locally manufactured pistol and cutlasses on board two Bajaj tricycles besieged the church premises. The robbers attacked and robbed the church members off Red Haojin motor bike with registration number M-20-UE-7945, Wine Apsonic motor bike with registration number M-20-UE-1914, Blue Honda motor bike with registration number M-20-UE-1885, cash the sum of GH¢2,000.00, fifteen mobile phones, hand bags and its contents and further inflicted cutlass wounds on the complainant's mouth and fled with their booty. The complainant reported the case to the police. On 09-02-2021 at 1000hours, police gathered intelligence to the effect that the accused person sent a Blue Honda motor bike with registration number M-20-US-1885 to a mechanic who is a witness in this case at Bongo for repairs. Police immediately proceeded to the mechanic shop to ascertain the facts. Upon the mechanic seeing police, he took to his heels leaving the motor bike at his shop. The motor bike was retrieved and retained for evidential purpose after the complainant identified it as one of the motor bikes which were robbed at his church. The mechanic reported at the police station and informed police that the said motor bike retrieved at his shop was brought to him for repairs by the accused person and that after repairs; he should sell it for him without any documents covering it. The mechanic after the repairs made efforts to reach the accused person to come for his motor bike but failed. The mechanic stated that he could not have sold the motor bike without the document. Police had information that the accused person was hiding at Apuwongo-Bongo. Police proceeded to Apuwongo and arrested the accused person. Meanwhile, exhibit Motor Bike is retained at the station for evidential

purposes. After investigation, the accused person was charged with the offence per the charge sheet and arraigned before this Honourable Court.

Burden of Proof

3. In a criminal case where an accused person pleaded not guilty, it is the duty of the prosecution to prove the guilt of the accused person. Article **19 clause (2)(c) of the 1992 Constitution of Ghana** provides that:

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

The proof required is proof beyond reasonable doubt. **The Evidence Act, 1975 (NRCD 323)**, outlines this in subsections 11(2) and 13(1) and Section 22 as follows:

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.

13(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.

Section 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”.

4. The Supreme Court in a unanimous decision in the case of **Abdulai Fuseini v The Republic, reported in [2020] Crim LR, page 331** reiterated and affirmed the basic philosophical principles underpinning criminal prosecution in our courts as follows:-

*“In criminal trials, the burden of proof against an accused person is on the prosecution. The standard of proof is proof beyond reasonable doubt. Proof beyond reasonable doubt actually means “proof of the essential ingredients of the offence charged and not mathematical proof.” **Emphasis supplied***

5. In the case of **Miller Vrs Minister of Pensions [1947] 2 ALL ER 372 at 373** Lord Denning (as he then was) explained proof beyond reasonable doubt as follows:

*“It need not reach certainty but it must carry a high degree of probability, proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted 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.” **Emphasis supplied***

6. In the case of **Dexter Eddie Johnson Vrs the Republic [2011] SCGLR 601** Dotse JSC discussed the principle of proof beyond reasonable doubt in some detail and cited the case of Woolmington Vrs DPP [1934] AC 462 where Lord Sankey made the following statement:

“Throughout the web of the English Criminal Law, the golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt – if at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner – the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.” See the case of:

Commissioner of Police Vrs Isaac Antwi [1961] GLR 408
where the Woolmington principle was applied.

7. See also the following cases on the burden of proof in criminal cases: *Frimpong @Iboman v The Republic [2012] 1 SCGLR 297*, *Gligah & Anr v The Republic [2010] SCGLR 870*, *Tetteh v The Republic [2001-2002] SCGLR 854*, *Francis Yirekyi v Republic [2017-2020] 1 SCGLR 433* at 457 and 464-466, just to mention a few.

The Ingredients of the Offence of Dishonesty Receiving, Evaluation of Evidence and Legal Analysis

8. In an attempt to prove a case beyond reasonable doubt every prosecutor is required to prove the ingredients of the offence the Accused is charged with. On the charge of Dishonesty Receiving –sections 146, 147 (1) and 148 (1) of Act 29 provides as follows:

“Section 146-Dishonestly receiving property

A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this Chapter, commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence.

Section 147(1)-Dishonestly receiving

(1) A person commits the criminal offence of dishonestly receiving property which that person knows to have been obtained or appropriated by a criminal offence, if that person receives, buys, or assists in the disposal of the property otherwise than with a purpose to restore it to the owner.

Section 148 (1)-Possession of stolen property

(1) Where a person charged with dishonestly receiving is proved to have had in possession or under control, anything which is reasonably suspected of having been stolen or unlawfully obtained, and that person does not give an account, to the satisfaction of the Court, as to the possession or control,

the Court may presume that the thing has been stolen or unlawfully obtained, and that person may be convicted of dishonestly receiving in the absence of evidence to the contrary.”

See also the following authorities on the offence of dishonestly receiving: **Hammah Mohammed Vs. The Republic [2020]DLCA10036**, The book entitled “**Contemporary Criminal Law in Ghana, 3rd edition by Dennis Dominic Adjei (JA) Pages 360-364** and The book titled “**Criminal Law in Ghana**” (Ghana Publishing Corporation) 1985 by P. K. Twumasi (of blessed memory) at pages **352-358**.

9. From the above authorities we can glean the ingredients of the offence of dishonestly receiving as follows: (a) That the accused received property which he knew to have been obtained or appropriated by crime and (b) That the receipt of the property was dishonest. In other words, for the prosecution to succeed in a charge of dishonestly receiving there must be clear and abundant evidence that: the item or thing in question was stolen or misappropriated; the item was in the possession or control of the accused; and the Accused could not give a reasonable explanation of how he came by the item.

10. In the instant case, it is the prosecution's case that the accused person on 04/02/2021 dishonestly received Blue Honda Motor Bike with registration number M-20-US-1885 valued GHC5,500.00 the property of one Maxwell Gazari which he knew to have been obtained or appropriated by means of crime to wit-Robbery. Prosecution in bid to prove its case beyond reasonable doubt called three witnesses. **PW1-**Maxwell Gazari testified in his evidence in chief as follows: “I am the head pastor of Global Prayer Center Rivers of Life International located at Akupeligo-Bolga. On 04-02-2021 about 09:40pm, I together with about hundred church members were having evening devotion in the said church premises. In the process, seven unidentified men armed with locally manufactured pistol and cutlasses on board two Bajaj tricycles besieged the church premises suspected to be armed robbers. The

robbers attacked and robbed the church members off their Red Haojin motor bike with registration number M-2 –UE-7945, Wine Apsonic motor bike with registration number M-20- UE-1914, Blue Honda motor bike with registration number M-20-UE-1885, cash the sum of GH¢2,000.00, fifteen mobile phones, hand bags and its contents and fled with their booty. I could not identify any of the armed robbers at the time of the robbery, since they were masked. Subsequently, I reported the case to the police.”

11.PW2-Assibi Akambo testified in his evidence in chief as follows: “I am a motor mechanic at Bongo. About a year ago, the accused person brought to my shop a blue Honda and black Loujia motor bikes for repairs after which I should sell for him but I refused to sell. In the month of February, 2021 the accused person also brought the exhibit blue Honda motor bike to my shop for repairs in the presence of my apprentice Yaw Aduko and he left the shop. After repairing the said exhibit motor bike, I made efforts to get in touch with the accused person to come for the motor bike but all efforts proved futile. Subsequently, a young man came to the shop to claim ownership of the exhibit Honda motor bike but he later left the shop. The next day, the police came to my shop in respect of the exhibit Honda motor bike which the accused person brought to my shop for repairs. Upon seeing the police, I fled off with the reason that I could be arrested for having in possession of a stolen motor bike. I later reported myself to the police and informed the police that the motor bike retrieved at my shop was brought to me for repairs by the accused person and that after repairs I should sell it for him; but I refused to sell the motor bike since the accused person could not produce the documents.”

12.PW3- No. 54606 G/ Const Kontor Isaac testified in his evidence in chief that on 04-02-2021 at 1000hours, he was on duty at the station as an investigator when a case of robbery was reported and referred to him for investigation. He obtained statement from the complainant and other witnesses. He visited the scene of crime together with the complainant.

Inspection conducted at the scene revealed blood stains on the floor of the church secondary to the harm caused to the complainant by the armed robbers. On the 09-02-2021, intelligence led to the retrieval of the exhibit blue Honda motor bike with registration number M-20-Us-1885 at witness Assibi Akambo's mechanical shop at Bongo. Investigation revealed that in the month of February, 2021 the accused person sent a Blue Honda motor bike with registration number M-20-US-1885 to Assibi Akambo, a mechanic at Bongo for repairs. Police immediately proceeded to the shop to ascertain the facts. Upon the mechanic seeing the police, he took to his heels leaving the motor bike at his shop. The motor bike was retrieved and retained for evidential purpose after the complainant identified it was one of the motor bikes which were robbed at his church. The mechanic later reported at the police station and informed Police that the said motor bike retrieved at his shop was brought to him for repairs by the accused person and that after repairs; he should sell it for him without any document covering it. The mechanic after repairing the exhibit blue Honda motor bike, he made efforts to reach the accused person to come for his motor bike but failed and that he could not have sold the motor bike without the documents. He tendered in evidence the Investigation Caution Statement and Charged Caution Statement of the accused person as **Exhibits A** and **B** respectively. He Also tendered in evidence a Photograph of a blue Honda motor bike with registration No. M-2—USS-1885 as **Exhibit C**.

13. At the close of prosecution's case, the court in accordance with sections **173 and 174 of Act 30**, found that there was a prima facie or sufficient case against the accused person. He was therefore called upon to open his defence. The Accused Person in his defence testified as follows: *"I have never set my eyes on the said motor bike but pictures of it. I do not sell motor bikes; I have not seen the said motor bike before. When I was arrested at the police station I did not see the motor and when I was brought to court too I never saw it. That is all I know about this matter."*

During cross examination of accused person by prosecution on 17th January, 2024 he testified as follows:

Q. Do you know one Assibi Akambo, a mechanic (PW2)?

A. Yes.

Q. How do you know him?

A. He is my uncle.

Q. What work does he do?

A. Motor mechanic.

Q. He came and gave evidence in this court, is that correct?

A. I have never seen him in the witness box or court. When I was arrested he was not arrested.

Q. I put to you, that Assibi Akambo gave evidence in this court?

A. I cannot tell because I did not see him.

Q. In his evidence he told the court that you gave him the motor bike?

A. Since I have been arrested, I have not set my eyes on the motor bike nor given any motor to Assibi to repair. Besides, the prosecutor has not set his eyes on the motor bike before.

Q. How do you know I have not set eyes on the motor bike before?

A. The reason is that since I was arrested I have never seen the motor bike.

Q. You also told Assibi to sell the motor bike for you after repairs?

A. That is not true.

Q. I put it to that you are the one who sent the motor in question to Assibi for repairs?

A. That is not true.

Q. I also put it to you that the said motor was obtained by means of the robbery on 04/02/2021 while church activity was on going?

A. I cannot tell. I have not dishonestly received any motor.

Q. I finally put it to you that you sent the motor to Assibi for repairs?

A. I have never seen that motor before. Assibi may know about the motor. He should be arrested.

Q. Since you claim Assibi is your uncle, he could not have come to tell untruth about you?

A. If he came to testify, then he deceived the court.

14. From the explanation of the accused person he maintains that he has never seen the motor bike in question before. Besides, in the statements accused person gave to the police (**Exhibits A and B**), the accused person stated that he was not aware of any robbery and have not robbed anyone nor stolen any motor bike or dishonestly received any Blue Honda Motor bike.

15. It is noteworthy that PW2 who is a mechanic and on whose shop the motor bike in question was found fled when he saw the police coming to his shop. The mechanic later reported himself to the police and informed them that it was the accused person who brought the motor bike for him to repair and after that he should sell it for him. The question to ask is why did he run away upon seeing the police? If indeed it was the accused person who brought the motor bike for him to repair, he should have disclosed that information to the police when they came to his shop and

not wait till another day. The inference that that can be made is that PW2 knew the motor was obtained via means of crime or he knew something about the motor bike that was why he runs away. To this court, the claim that it was the accused person who brought the motor to him for repair is an afterthought. Accordingly, the evidence on record therefore leaves some doubts in the mind of this court and the doubts inure to the benefit of the accused person.

Conclusion

16. The law is that 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 Lutterodt vrs Commissioner of Police (C. O. P.) [1963] 2GLR 429-440, holding 3, per Ollennu JSC.

17. So, having examined the whole evidence of the prosecution and Defence on record, the court holds that the explanation of the Accused person is acceptable to this court or his explanation is reasonably probable. The prosecution has therefore failed to discharge its burden of proof beyond reasonable doubt regarding the charge against the accused person. In other words, the ingredients of the offence of Dishonestly Receiving were not proved beyond reasonable doubt. Thus, the prosecution has

failed to prove beyond reasonable doubt that the accused person dishonestly received a motor bike for which he knew to have been stolen. Accordingly, the accused person is hereby acquitted and discharged.

(SGD.)

**H/W MAWUKOENYA NUTEKPOR
(DISTRICT MAGISTRATE)**