

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
SITTING IN HO - VOLTA REGION
A. D. 2023**

CORAM: H/L JUSTICE YAW OWOAHENE-ACHEAMPONG

SUIT NO. F15/05/2020
18TH MAY, 2023

THE REPUBLIC

VERSUS: -

- 1. EKLU HAVOR**
 - 2. EMMANUEL OPOKU**
-

Accused persons present

All Jurors present

Andrews D. Adugu (SSA) with Celestine Arku (ASA) and Senyo Axame (ASA) for the Republic present

Saviour Senyo Asase for the accused present

SUMMING UP BY COURT

Ladies and gentlemen of the Jury, it is said that a journey of thousand miles begins with just one step. And the good old book tells us that there is time for everything.

We have come to the end of the evidence led in this matter, as well as the end of the addressed put in by the State Prosecutors and the defence team and it now my duty to sum up to you by drawing your attention to the evidence adduced at the hearing, the law involved and its application to the evidence you have heard so far in this matter.

I deem it right to remind you of your charge and duties as explained to you earlier on and as contained in the oath you took.

As judges of facts, you consider yourself free from some comments I may make in the course of this all important exercise, this so, because you are not bound by them even though it will be within my right to pass any such comments.

In this exercise, it shall be my duty to give you directions and explanations on the law, but here you are bound by any such directions and explanations that I shall give you. This is so because you are judges of facts and I am the judge of the law.

I must also remind you that your decision must be based exclusively on the evidence adduced at the trial of this matter and you must not forget that your verdict must be unanimous, this being a murder trial. This is the position of the law under Article 19 (2) (a) (1) of the Constitution of Ghana, 1992.

Standard of Proof in Criminal Matters

It must be noted that, the bedrock or the foundation of our criminal jurisprudence is that an accused person is presumed innocent until he is proved or has pleaded guilty. Article 19 12, C of the Constitution *supra*, refers.

Flowing from the above therefore, the generally accepted principle of law in our criminal trials is that, it is the duty of the prosecution to establish the guilt of the accused persons herein beyond reasonable doubt.

What this means is that, if upon the consideration of the entire evidence you entertain reasonable doubt in the case of the prosecution, as against fanciful doubt, the reasonable doubt must necessarily inure to the benefit of the accused persons and on that score your verdict shall be not guilty.

See section 11 (2) of the Evidence Act, 1975 (NRCD 323).

Ladies and gentlemen or the Jury, you must also bear it in mind that apart from the case of the prosecution, you are also to consider the defence put forth by the accused persons as well.

If you accept the defence put forth by the accused persons, then your verdict should be that of Not Guilty. And even if you do not consider the defence to be true, you still have a duty to consider whether the story of the accused persons is reasonably probable, if your observations lead you to that conclusion then your verdict should not be guilty. You must return a verdict of Guilty only when you come to the conclusion that of the totality of the evidence adduced you are not left in any reasonable doubt as to the guilt of the accused persons.

Now, you have a crucial role to play as trier of facts, having regard to the solemn oath you took at the inception of this matter.

I need to remind you that this is the moment to live up to the oath you swore.

Let me emphasize the point that you are to ignore totally anything you may have heard outside this court room in your consideration of the facts of this case.

The charges faced by the accused persons

The accused persons face two different charges.

The charge preferred against the first accused person hereafter referred to as simply A1 is the murder of an 80-year-old woman by name one Martha Addobea on 28th November, 2017, at a village known as Soyakordzi near a town called Dededo. The offence of murder is contrary to section 46 of the Criminal Offences, Act, Act 29/60 which provides that “*whoever commits murder shall be liable to suffer death*”.

And what constitutes the offence of murder has been captured under section 47 of Act 29/60 as follows:

“whoever intentionally causes the death of another person by any unlawful harm is guilty of murder”.

I wish to deal with the law concerning the material ingredients or elements of the offence of murder which prosecution must lead cogent and satisfactory evidence to prove against A1 that he murdered the deceased person.

In order to be successful, the prosecution must prove beyond reasonable doubt each of the following elements.

- (a. That indeed, Madam Martha Addobea is dead.
- (b. That her death was caused by harm.
- (c. That the harm was unlawful.
- (d. That the harm caused was intentional but not accidental
- (e. That the harm which was unlawful and intentional was caused by A1 but nobody else.

Ladies and gentlemen of the jury, the definition of unlawful harm has been provided for in section 76 of Act 29/60 read out and explained.

Intentionally causing harm. The relevant provisions or the law as to intent. Section 11 and the sub-sections read and explained.

It must be noted that a man is presumed to intend the natural consequences of his act unless the contrary is proved.

Ladies and gentlemen of the jury, I now turn attention on the 2nd accused person, who shall be referred to as A2 hereafter.

The charge preferred against A1 is one of abetment of crime to wit murder contrary to section 20(1) and 46 of Act 29/60, *supra*.

The particulars of the 2nd court against A2 are that A2, Emmanuel Opoku Adze for a fetish priest between April and November 2017 at Soyakodzi near Dededo did instigate and counsel A1 (Eklu Havor) to intentionally and unlawfully cause the death of the late Martha Adobea by cutting her heard and vagina for ritual purposes.

Abetment of crime has been detailed in section 20(1), of Act 29/60 as follows:

Read out and explained:

There again the prosecution has the duty to establish by cogent evidence that A2 actually abetted A1 in the death of the deceased old lady.

Witness statements of the prosecution witnesses.

In compliance with modern trend of adjudication, the prosecution caused to file their witness statement.

On 7/02/2020 D/C/Corp Gilbert Kofi Takyi and G/Corl Lawrence Kankam caused to file their respective witness statement for the prosecution. Subsequently 26/02/2020, one Mama Badasu and D/Sgt Moses S. Kutom caused to file their witness statements to the prosecution.

Evidence Adduced at the trial

In its bid to establish and to prove the guilt of the accused persons, the prosecution invited three witnesses, even though they filed four persons' witness statements.

And since Mama Badasu did not appear before the court and to affirm her witness statement and to was also not available to be cross-examined on her filed witness statement, this court

will not put any evidential value on that witness statement as same remains an unsworn statement, not tested under cross-examination.

On 14/04/ 2021, the prosecution was called upon to open their case. PW1, relied on his witness statement filed on 7/02/2022.

The first prosecution witness hereafter referred to as PW1 was No. 47428 D/L/Corp. Gilbert Kofi Takyi.

The evidence of PW1 was to the effect that on 28/11/2017 whilst on duty at the Kponvi barrier with some other police officers, A2 came there in the company of one Godsway on a tricycle and reported that he (A2) was in his house when A1 came with fresh female human head and a severed vagina for him to buy.

According PW1 he and his colleague police men immediately rushed to the house of A2 and on reaching the shrine of A2, he and his other police officers saw A1 holding a fertilizer sack.

PW1 continued his evidence that when A1 was confronted as to the content of the fertilizer sack, he (A1) replied that the content of the fertilizer sack was a fresh female head and a severed vagina of an old lady.

It is the case of PW1 that A1 went on to inform the Police that it was A2 who asked him (A1) to provide those human parts for an amount of fifty thousand cedis (GH¢50,000.00).

The accused persons were then immediately arrested and brought before the Anyirawase police station.

Upon the above evidence, PW1 was cross-examined by counsel for the accused persons.

On 10/05/2021, the prosecution invited its 2nd witness (PW2) who relied on his witness statement filed on 7/02/2020 as his evidence-in-chief.

The evidence of PW2, No, 42573 G/Corp. Lawrence Kankam was just a repetition of the evidence of PW1 largely because both PW1 and PW2 were together in the arrest of the accused persons and I think it will be a boredom to repeat the same evidence here.

The last prosecution witness was D/Insp. Moses S. Kutam (PW3). PW3 also relied on his witness statement filed on 26/02/2020.

PW3 informed the court that he inherited the case docket from his colleague police officer D/Insp. Vincent Lord Agbaklah who passed on to eternity on 7/3/2019.

In support of the charges against the accused persons, PW3 tendered in evidence the caution and the changed statements of the accused persons (Exhibits A-F).

The coroner's report on the deceased as exhibit G; a photograph of A1 holding in his hand the severed head of the deceased as exhibit H1 and photograph of the decapitated head of the deceased old woman as exhibit H2.

Again, PW3 tendered in evidence a photograph of A1 standing by the spot where the decapitated body of the deceased was buried exhibit H3 and lastly a picture depicting the exhumed decapitated body of the deceased poor old woman as exhibit H4.

On 21/10/2021, the prosecution tendered in evidence as exhibit J, the statutory statement of the accused persons made at the committal proceedings at the District Court 2, Ho and on that note the prosecution announced the closure of its case.

At the close of the prosecution case, each of accused persons was called upon to open their respective defence after a *prima facie* case was established against them.

Upon his arrest and when he gave his caution statement on 30/11/2017, A1 admitted hitting the old lady with a stick and cutting her head and vagina to be given to A2 to perform rituals and also to be given an amount of GH¢50,000.00.

On 08/11/22 when A1 filed his witness statement he did not depart from his statement to the police upon his arrest. He stated that he actually murdered the deceased and cut off her head and vagina.

Ladies and gentlemen of the Jury, I believe you recall that in open court on oath A1 on 7/02/23 affirmed his witness statement and relied on the same as his evidence-in-chief.

This means that A1 has been consistent in his evidence to the court that he intentionally murdered the old lady in cold blood and cut off her head and vagina to be given to A2 for ritual purposes and for monetary gains.

On this point it is my duty to direct you on the law that the statement A1 gave to the police and his evidence to the court is what is known as confession in law and it is under section 120 of the Evidence Act, *supra*, read out and explained.

The general rule is that a confession statement will be admissible if found to be voluntarily made. See **Agyiri aka Otabil v The Republic [1987-88] IGR CA** and **Dua v The Republic (1987-88) IGLR 343, AC**, but confession statement will be inadmissible if involuntarily made.

Explanation on confession statement made

Let me remind you that 15/01/2020, when plea of A1 was taken he pleaded guilty simpliciter.

Now, notwithstanding his plea of guilty simpliciter, aforesaid, the court in its wisdom applied the provisions under section 199 (5) of the Criminal and Other Offences Procedure Act, Act 30/60 and by so doing the court did not accept A1's plea of guilty but at altered the same and entered a plea of not guilty for him. (explanation offered).

Evaluation of the evidence on record in respect of A1

Honourable members of the Jury, in this matter the painful truth is that Madam Martha Addobea is dead. Her body was retrieved and her decapitated pictures were shown to you during the trial in the exhibit H series. The pathology report also confirmed the death of the old lady.

So, here the death of the old lady has been proven without any doubt by the prosecution.

The second element of death, what was the cause of death of the deceased?

The coroner report dated 11/12/17 and signed by one Supt/Dr. O. Owusu Afram of Police Hospital Accra (exhibit J) gave the cause of death of the deceased as follows:

- a. Exsanguination
- b. Decapitation
- c. Homicide
(unnatural)

So, you should not be left in any doubt that the cause of death of the deceased was by way of harm. I do not think there is any harm more than cutting off the head of a human being.

The next element of murder I need to remind you that the harm which resulted in the death of the deceased was unlawful.

Here again, I am duty bound to direct you on the law where harm will be deemed to be unlawful and I shall draw your attention to section 76 of Act 26/60 as follows:

“Harm is unlawful which is intentional negligently caused without any of the justification mentioned in chapter one of this part”.

It is to be noted that Chapter One of Act 29/60 has the following provisions, sections and sub-sections: section 30: justification for force or harm, (read and explained).

Section 31 (grounds on which force or harm is justified”. Section 32: General limits of justifiable force or harm. (Read and explained).

From the above explanations, therefore, I think that you should not find it very difficult to form an opinion that the harm caused to the deceased was not lawful.

This is because, I think that there can be no justification whatsoever for A1 to cut off the head of the deceased. But I leave it to you to decide as a tier of fact.

Ladies and gentlemen of the jury, this brings you to the forth element of the offence of murder to wit, did A1 inflict the harm on his victim intentionally or deliberately?

The evidence of A1 is that he used a club and hit the old lady and she became unconscious. Thereafter, he used a cutlass to cut off her head.

Members of the jury, can the conduct of A1 be said to be accidental and unintended?

Without proffering any further comments on the above question, I leave it to you to determine it.

The last element of murder in the instant case, who killed the old lady? In other words, can it be suggested that it was A1 but nobody else who killed Madam Martha Addobea on that fateful day?

Ladies and gentlemen of the Jury, remember that I had earlier on directed you and explained to you that the evidence of the A1 is basically nothing but confession.

And so ordinarily, there should have been no need to proceed further in drawing your conclusion.

But remember also that there is a very serious offence such as murder before you and I have already explained to you the applicable sentence if you are convinced that the prosecution has been able to prove their case against A1 without any doubts in your minds.

For the above reasons, I wish to back-track and draw your attention to some crucial evidence on record.

Let me remind you that from totality of the evidence adduced there was absolutely no eye-witness.

That is, nobody actually saw A1 hitting the deceased with a club and no one saw A1 cutting the head of his victim.

But note firstly, that A1 was actually arrested with a human head of an old woman in his possession.

And upon his arrest A1 led the police to the exact location where the deceased was buried.

Thirdly, when the body was exhumed it was headless.

Fourthly, upon his arrest A1 confessed that it was nobody else but he who cut off the head of the poor victim to be given to A2 for rituals and for monetary gains.

Fifthly, in his testimony to the court, A1 did not allege that he gave an involuntary statement to the Police.

In other words, in his own evidence to the court in your very presence, A1 confessed to the killing of the deceased.

Lastly and more importantly, when A1 was cross examined by counsel for A2 just recently on 7/02/2023, the following evidence emerged on record.

Q. I put it to you that A2 never made any promise or instruction to go and kill anybody.

A. It was A2 who sent me to go and kill the woman and I believe that it was A2 who sent me to go and kill the woman.

Q. Assuming without admitting that A2 asked you to bring human head and an old lady's vagina that does not mean you should go and kill any human being.

A. A2 just sent me and that was what I executed for him.

Finally, on A1, ladies and gentlemen of the jury, from totality of the evidence before you if you are satisfied, that the prosecution has successfully **without any reasonable doubt been** able to establish all the elements in the charge of murder against A1, then you must return a verdict of GUILTY.

But on the contrary if you are not satisfied or convinced on the proven facts before you shall return a NOT GUILTY verdict.

Evaluation of the evidence on record in respect of A2

From the very on set upon A2's arrest and in his caution statement this is what he said in;

"I have never conspired with Eklu Havor to commit such crime. I have never also asked him to go and kill human being and bring me the head and the vagina to perform rituals".

This is categorically denial of the charge of abetment of crime to wit murder by A2.

Later, on 15/01/2020, when the charge of abetment of crime to wit murder was preferred against A2 in open court he pleaded not guilty to the said charge.

I believe you know as a notorious fact once A2 has pleaded not guilty, the onus is on the prosecution to establish his guilt beyond reasonable doubt.

Let me draw your attention to the punishment of abetment capture in section 20 (93) of Act 29/60. (Read and explained).

In this witness statement filed on 24/02/2022, A2 repeated his categorical denial as quoted above word for word (Read out).

A2 does not deny knowing A1 because according to him (A2) A1 came to his shrine for spiritual request and he (A2) asked him to provide red fowl, duck and red oil for some rituals.

And that sometime in November 2017 whilst in his house A1 came holding a sack and when he (A2) opened it he saw human head and then he rushed to the police barrier at Kponvi and reported the conduct of A1 to the police.

It is the defence of A2 that he followed the arresting police officers to the Anyirawase Police Station and it was at the police station that A1 told the police that (A2) sent him to bring human head and vagina which he never did.

Now in your deliberation would you believe the version of A1 or you would believe the defence of A2?

If you do not believe the version of A1, then do you also doubt his confession?

Ladies and gentlemen of the jury, remember the defence of A2 that if he had asked A1 to kill human being and bring the head and vagina he would have never turned round to have reported him (A1) to the Police.

Firstly, consider whether the explanation of A2 is acceptable.

Secondly, if you do not consider the explanation of A2 acceptable is his explanation reasonable probable?

I wish to direct you that if the above questions are in the affirmative then the guilt of A2 has not been proven beyond reasonable doubt and so you shall return a verdict of NOT GUILTY.

Finally, on A2, ladies and gentlemen of the jury, you have a duty to consider the entire case of the prosecution and the defence of A2.

I believe you had the occasion to observe the demeanor of A2 since the beginning of this case. The demeanour of accused persons forms an integral part of our justice delivery system. For instance, you should ask yourselves has A2 been consistent or contradictory? Has A2 been punctual during the pendency of the proceedings?

Ladies and gentlemen of the jury as I leave you to retire to consider your verdict, remember the individual oath you swore and let your conscience guide you to live up to your oath. May the Almighty God be with you.

You may now retire and return with your verdict.

Summing up starts at 11:40 am

Summing up ended at 1:25 pm

Jury retires at 1:25 pm

Jury returned at 1:40 pm

Accused person present

All Jurors present

Court Clerk: Ladies and gentlemen of the Jury, have you arrived at your verdict?

By Foreman of the Jury: Yes, my Lord: we have arrived at a verdict

On count 1 of murder the Jury has arrived at GUILTY verdict for A1 by unanimous decision.

By Foreman: On court 2, the abetment of crime to wit murder on A2. Six (6) members of the panel found A2 guilty and one member of the panel found A2 not guilty.

By Court: Mr. Eklu Havor the Jury by unanimous decision returned a verdict of GUILTY. Do you have anything to say why the court should not sentence you according to law.

By A1: The court may pass sentence on me according to law but may the court have mercy on me because it was not my intention to kill the old lady but it was A2 who misled me to kill her.

By Court: Mr. Eklu Havor, the Jury having returned verdict of GUILTY by unanimous decision the court hereby passes sentence of GUILTY.

You are found GUILTY for murder. The punishment for the offence of murder is death.

You are therefore sentenced to suffer death by hanging.

The President of the Republic shall sign your death warrant according to law.

But you have the right to appeal against your conviction and sentence within 3 months. May the Good Lord have mercy on you.

By Court: Mr. Emmanuel Opoku the Jury were not unanimous in their verdict. The Jury by a majority of 6 to 1 returned a verdict of guilty.

And by section 20(3) (b) of Act 29/60 your punishment should be by death, because your abetment had actually resulted in the death of Madam Martha Addobea.

But under Article 19(2) (c) (i) of the Constitution, *supra*.

- a. A person charged with a criminal offence or treason, the punishment for which is death or life imprisonment be tried by a Judge and Jury.
- (i.) Where the punishment is death, the verdict of the Jury shall be unanimous.

Now, from the above Constitutional provision and because the Jury did not return unanimous decision, I am unable to pass a death sentence on you.

Under section 286 of Act 30/60, I shall discharge the jury. And I thank the Jury for executing their task up to this time.

Emmanuel Opoku, this court had the option to either detain you in custody or release you on bail.

But since you have been substantially punctual at entire hearing of the matter, I shall release you in bail.

But note that having been found guilty of abetment of the killing of Madam Addobea, you have not been acquitted and the prosecution had the right under the law to retry you.

May the Lord have mercy on you for the role you played in the killing of that poor old woman.

And may you live by your conscience.

I wish to express my appreciation to the state prosecutors and the defence team for the immense role they played at the hearing of this matter.

A2 is discharged on your former bail terms.

H/L JUSTICE YAW OWOAHENE-ACHEAMPONG
JUSTICE OF THE HIGH COURT

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