

GHANA / JUDGMENT

REPUBLIC VRS ABDULAI (B1/37/2024) [2024] GHACC 272 (5 July 2024)

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IN THE UPPER WEST CIRCUIT HELD AT WA ON FRIDAY THE 5TH DAY OF JULY 2024 BEFORE HIS HONOUR JONATHAN AVOGO ESQ. CIRCUIT COURT JUDGE B1/37/2024 THE REPUBLIC VRS SEIDU ABDULAI

JUDGMENT

The charges/Plea The accused person was accused of having attempted robbery and rape. He however got charged with attempted robbery and two counts of causing harm on the PW1 the complainant and the wife. These offences are contrary to sections 18(2) and 149 and 69 of the Criminal and Other Offences Act 1960 [Act 29]. When the charges were read out and explained to accused person, he pleaded not guilty to the charges thus putting prosecution to work to prove the charges against him. The prosecution proceeded to serve all that they intended using to prove their case against the two accused persons setting the stage for pretrial processes and the trial. The accused was tried from custody and so the court decided to dispense with witness statements to facilitate an expeditious trial. Summary of facts The summary of the case docket is that on 17th June 2024 at about the hours of 0400hrs PW1 and wife together with their baby were fast asleep when Accused and two others broke into his room and demanded of him to surrender his gun. When PW1 responded 1 he had none they beat him up hoping he will yield but since he indeed had none they asked him to turn in whatever valuables he had with him. Again, PW1 said he had just expended in procuring weedicide and so showed them the box of the consignment for them to take if that will allow the go and leave him alone and in peace but his assailants refused and decided to do a search around his residence and later hauled his wife meters away and subjected her to bouts of sexual intercourse and fled. That later when he was assisted by community members to visit the Community Clinic whilst there accused brought his son for medical care and he spotted him. That when their eyes first met he could read some discomfort in the eyes of accused and so he tried walking away from him but he prompted the nurses and a call was placed for the police to advance to the facility to arrest him. PW1 called no other witness to support his claims and prosecution quickly assembled the investigator on the matter as their PW2. EVIDENCE OF PW1 PW1 Kassim Ahmed told the court he was a farmer in the hamlet of Mepeasem where accused also lives and that he knows him so well in the community. That on 17th June at about 4am he heard noise and a push into his room where three men including

accused and another he identified as Belko break in asking him to surrender all he had none they asked him to turn in whatever valuables he had with him. Again, PW1 said he had just expended in procuring weedicide and so showed them the box of the consignment for them to take if that will allow the go and leave him alone and in peace but his assailants refused and decided to do a search around his residence and later hauled his wife meters away and subjected her to bouts of sexual intercourse and fled. Accused said he was nursing his injuries at a community health centre where accused also brought his son and he identified him to be arrested. 2 That during that torturous act on the wife he hid himself in a pit so he will not be seen and when they left he emerged and went to the aid of the wife who was in tears and rebuked him for coming out of hiding too soon because they could return for him. Accused said he signaled others to come to their aid by asking a brother who is mentally retarded to call his neighbors to assist them get to the clinic close by and he did. That whilst he was on admission nursing his injuries at a community health center called St Pauls Health Centre accused also brought his son and he identified him. That when their eyes first met he could read some discomfort in the eyes of accused and so he tried walking away from him but he prompted the nurses and a call was placed for the police to advance to the facility to arrest him. PW1 called no other witness to support his claims and prosecution quickly assembled the investigator on the matter as their PW2. Evidence of PW2 PW2 was the Police investigator on the matter at the regional office who was assisting the investigator at on the ground. He told the court he received the docket as one from the out station and went to the ground to investigate and the account of PW1 was what he took from him with accused denying ever being involved. PW2 went ahead to tender the investigative caution statement and the charge statements to the court as well as the medical report from the medical facility that treated PW1. Interestingly though the report recorded the history to have been as a result of assault, no diagnosis revealed same as PW1's chest was clear and had no bruises or abrasions to support assault. Prosecution closed its case and the court allowed a full trial to pan out to hear from the accused. Prima Facie Determination 3 Prosecution closed its case leaving the court to determine that a prima facie was made out against the accused. The cases of accused person When accused took to the witness box and was sworn in he soberly responded to the questions meant to lead him in evidence in chief and he utterly denied knowledge of having attempted to rob or harm PW1 and wife. He told the court he was home with his wife and child and at no time did he go out to indulge in that. Accused was very moderate in speech and responded to questions in cross examination to the best of his knowledge but that was like a chorus of "I have no idea" He ended up calling no witness and closed his case. The relevant law The fundamental rule in criminal practice has been stated in the 1992 Constitution of Ghana as follows; "A person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty". See article 19 [2] [c]. Therefore, in this trial, for the prosecution to sustain a conviction and subsequently sentence on all three counts against the accused person it must prove that in deed and in fact that accused did enter the space of PW1 and attempted robbing him and in the process caused harm on him and the wife. This in criminal jurisprudence means that the accused person has no duty under the law to prove their innocence but to merely raise a doubt in the case of prosecution to secure an acquittal. All that they are required to do is to raise the least doubt in the prosecution's case so as to be acquitted and discharged. In 4 Commissioner

of *Police vs Antwi* [1961] GLR 408, the Supreme Court held that the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt. The evidential burden The evidential burden which is also the obligation to prove that A2, 3 & 4 committed these two offences lies squarely on the prosecution to prove by the standard set to be proof beyond reasonable doubt. Section 11 [2] of the Evidence Act 1975 [Act 323] says; “In a criminal trial, 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 reasonable doubt”. It is not easy to determine what constitutes ‘reasonable doubt’. In the case of *Oteng vs The State* [1966] GLR 352, the Supreme Court had said; ‘... the citizen too is entitled to protection against the State and that our law is that a person accused of a crime is presumed to be innocent until his guilt is proved beyond reasonable doubt as distinct from fanciful doubts’. Proof of identity of the accused *Dogbe vs The Republic* [1975] 1 GLR 118 established that in criminal trials, the identity of the accused person as the one who committed the crime might be proved either by 5 direct testimony or by circumstantial evidence of other relevant facts from which the identity might be inferred by the court. Also, in *Adu Boahen vs The Republic* [1972] 1 GLR 70, CA, it was decided that where the identity of an accused person is in issue there can be no better proof of his identity than the evidence of a witness who swears to have seen the accused person committing the offence charged. In this instance, PW1 who was allegedly attacked in his house claims to know the accused prior to the event and looking at the hours 0400 hrs when the incident is reported to have occurred leaves one to ponder if farmers could not be awake heading to farms to have come to the aid. Analysis of the evidence The case of prosecution that accused was the one who attacked PW1 and raped his wife leaves a lot of doubt lingering in the minds of the court. First the time the incident is alleged to have happened that is about 400hrs in the morning was very early that farmers could be on their way to their farms and the claims of PW1 cannot be evidentially sustained. Accused on the other habd simply denies the fact of his involvement and this required that prosecution proves that he indeed was the one who committed the offence. Prosecution having called PW1 leaving his wife who will have had a better view of her assailants if indeed they ended up raping her was true. The court therefore cannot proceed to find the accused guilty because the evidence of prosecution was not sufficient. I proceed to acquit and discharge the accused of the charges he stands trail for. HIS HONOUR JONATHAN AVOGO ESQ
CIRCUIT COURT JUDGE, WA 6

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