

GHANA / JUDGMENT

REPUBLIC VRS. ADJAIDOO AND OTHERS (CCD/CC1/51/24)

[2025] GHACC 6 (8 January 2025)

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COURT

Circuit Court

CASE / FILE NUMBER

CCD/CC1/51/24

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CORAM: HER HONOUR HALIMAH EL-ALAWA ABDUL BAASIT (MRS), JUDGE, SITTING AT THE CIRCUIT COURT, DANSOMAN-ACCRA ON THE 8TH DAY OF JANUARY, 2025. SUIT NO.: CCD/CC1/51/24 THE REPUBLIC VS

1. ALBERT ADJAIDOO
2. QUARSHIE - AT LARGE
3. ADJEI - AT LARGE
4. ATOO - AT LARGE
5. ATTER - AT LARGE Accused Persons – Absent Chief Inspector Nuarko for the Republic – Present

JUDGMENT

Background

1. The Accused Person herein was charged with the following offences;
 - a) Conspiracy to Commit Crime namely; Stealing: Contrary to Sections 23(1) & 124(1) of The Criminal and Other Offences Act, 1960 (Act 29).
 - b) Stealing: Contrary to Sections 23(1) & 124(1) of the Criminal and Other Offences Act, 1960 (Act 29). Judgment-The Republic vs Albert Adjaidoo and Ors. Page 1 of 16
 - c) Escape from Lawful Custody: Contrary to Section 226(1) (c) of the Criminal and Other Offences Act, 1960 (Act 29).

2. The Brief Facts of the case as narrated by D/Inspr. Ebenezer Ofori Attah are that Complainant Comfort Andoh is a business woman at Okaishie and the 1st Accused Person, Albert Adjaidoo is unemployed living at Akoto Lante near James Town Accra. On 22/02/2024, about 5:00am, the Complainant was driving her Toyota Vitz private car with registration number GR-1443-24 from Mamprobi to her shop at Okaishie. On reaching a section of the road near the Rawlings Park and to her surprise, the Accused Person and his Four (4) other accomplices suddenly stopped her car and started banging on her car to distract her attention. The accused quickly opened the passenger door of the car and stole the complainant's black handbag placed on the front seat containing cash sum of GHC5,881.00, an iPhone11 Pro-Max, a Samsung Galaxy A05, a Nokia keypad mobile phone, ID cards and bolted along with his cohorts who provided him with security.
3. The Complainant immediately raised an alarm and the Accused was pursued along with his cohorts by public spirited people. Eventually the Accused was apprehended with the handbag containing the aforementioned exhibits and he was handed over to the James Town Police Station for action. The Complainant was alerted of the Accused's arrest and later came to the Station to identify the Accused and the exhibits as hers. The Accused was arrested and while on detention behind the counter at the James Town Police Station, he jumped over the Charge Office Counter and fled to a distance. But with the help of others, he was recaptured with efforts being in progress to capture the remaining suspects. Judgment- The Republic vs Albert Adjaidoo and Ors. Page 2 of 16 The Plea
4. On the 10/01/2024, the Accused Person, pleaded not guilty to the Counts One and Two, pleaded guilty with explanation on Count Three but the Court entered a plea of not guilty on Count Three. Having pleaded not guilty, the burden now lies on the Prosecution to adduce enough evidence to establish beyond reasonable doubt that the Accused Person indeed committed the offences he has been charged with. Article 19(2) (c) of the Constitution 1992 provides that 'a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty'. It must be emphasized that throughout a criminal trial, the burden of proving the guilt of the Accused Person remains on the Prosecution. (See Asante vs. The Republic (1972) 2 GLR 177). An Accused Person is generally not required by law to prove anything, he is only to raise reasonable doubt in the mind of the Court as to the commission of the offence to secure an acquittal. (See COP vs Antwi (1961) GLR 408 SC).
5. As such, the Prosecution, per their witnesses and evidence before the Court, must establish that the Accused Persons indeed committed the offence. Section 11(2) of the Evidence Act, 1975 (NRCD 323) provides that '...in 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 a fact beyond reasonable doubt'. Evidence of Prosecution

6. To prove their case, Prosecution called a sole witness to give their testimony and tendered in the following as Exhibits; i. Exhibit 'A' - Statement of Complainant at the Police Station dated 22/02/2024. Judgment-The Republic vs Albert Adjaidoo and Ors. Page 3 of 16 ii. Exhibit 'B'- Accused Person's Caution Statement dated 22/02/2024. iii. Exhibit 'C'- Accused Person's Charge Sheet dated 22/02/2024. iv. Exhibit 'D'- Photograph of the Accused Person with the Complainant's Hand Bag.
7. The sole Prosecution Witness (PW2) was the Investigator herein who testified among others that he is stationed at the James Town Police Station CID. In the early hours of 22/02/2024, a group of young men arrested the first Accused Person together with a black ladies' handbag and brought him to the Station. In the process of interrogating the young men, the Complainant rushed in to lodge a formal complaint that while she was driving, some group of young men attacked her and one unexpectedly opened her passenger side door and made away with her black bag containing an unspecified amount of money, iPhone 11 pro Max, Samsung A5, Nokia keypad phone, ID cards, and driver's license.
8. He testified further that the Complainant identified the black handbag that was retrieved from the Accused Person as hers. The contents of the said bag were crosschecked and it revealed that the contents indeed belonged to the Complainant. He testified again that investigation disclosed that the Accused Person opened the Complainant's side passenger door and took the bag with the help of other accomplices but he was easily identified by the marks on his face. However, whilst the Accused Person was being detained to be later paraded before the Crime Officer, he jumped over the Charge Office and was subsequently charged with the offences as mentioned above together with his accomplices. Judgment-The Republic vs Albert Adjaidoo and Ors. Page 4 of 16 Prima Facie Case
9. On the 26/07/24, the Court upon the examination of the evidence adduced by the Prosecution, held that the Prosecution's evidence on record established a prima facie case of Conspiracy to Commit Crime to Wit; Stealing contrary to Section 23(1) and 124(1) of Act 29 against A1. The Accused Person was then ordered to prepare to open his defence to raise a reasonable doubt in the case of the Prosecution in accordance with Section 174 of the Criminal and Other Offences (Procedure) Act, 1960(Act 30). He was accordingly acquitted and discharged on Counts of Stealing: Contrary to Sections 23(1) & 124(1) of Act 29 and Escape from Lawful Custody: Contrary to Section 226(1) (c) of Act 29. The Defence of the Accused Person
10. The Accused Person denied knowledge of the crime and testified that he is only a Driver's Mate who takes rest at the Menaba Bus Stop at the Rawlings' Park Road when he is not loading passengers. On that fateful day, he was at the Bus Stop loading passengers when he heard people shouting that some items had been stolen by someone. He then followed the crowd and realized that the said stolen bag had been retrieved. However, because he was in the crowd, a woman pointed at him as being part of the said theft and called for his arrest. Subsequently, the Complainant was called to identify the person who stole the bag but she informed the Investigator that the Accused Person was not the one and asked for his release.

However, Investigator informed the Complainant that the Accused Person was arrested together with those who committed the said Judgment-The Republic vs Albert Adjaidoo and Ors. Page 5 of 16 theft as the Accused Person was seen holding the said stolen bag and therefore, could not be discharged, of which he was then arraigned before the Court.

Analysis

11. The offence against A1 is Conspiracy to Commit Crime to Wit; Stealing contrary to Section 23(1) and 124(1) of Act 29. Section 23(1) of 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 to commit or abet the criminal offence...’ Thus, to succeed on a charge of conspiracy, the Prosecution has to prove that (a) the Accused Persons agreed together with a common purpose for or in committing or abetting a crime or (b) the Accused Persons acted together with common purpose for or in committing or abetting a crime. To prove that the Accused Persons conspired with others to commit the offence, Prosecution relied solely on the Exhibit ‘A’, the Statement made by the Complainant, Exhibit ‘B’, the Caution Statement of A1 and Exhibit ‘D’, a picture of the Accused Person holding a black bag, purse and a mobile phone.
12. It must be stated that Article 19(2) (c) provides that ‘a person charged with a criminal offence shall be presumed innocent until he is proved or has pleaded guilty’. Apart from strict liability offences, the general rule is that, throughout a criminal trial, the burden of proving the guilt of the accused person remains on the Prosecution. (See *Asante vs. The Republic* (1972) 2 GLR 177. An Accused Person is generally not required by law to prove anything, he is only to raise reasonable doubt in the mind of the court as to the commission of the offence to secure an acquittal. (See *COP vs Antwi* (1961) GLR 408 SC; *Bruce Konua vs The Republic* (1967) GLR 611). It is also settled law that the Accused Person’s story needs not be truthful but must only be reasonably probable to raise doubt and Judgment-The Republic vs Albert Adjaidoo and Ors. Page 6 of 16 secure acquittal. (See *Amartey vs The State* (1964) GLR 256 SC; *Darko vs The Republic* (1968) GLR 203.
13. In criminal cases, it is not enough for the Prosecution to prove that a crime has been committed. The Prosecution must lead sufficient evidence to link the accused to the commission of the offence in a situation where the Accused Person pleaded not guilty to the charge. Consequently, once the Accused Person pleaded not guilty, the Prosecution must prove beyond reasonable doubt that a crime has been committed by the accused person. The Prosecution must also discredit the defence of the accused, if any. See *The Republic vs Gyamfi* (2007) 13 MLRG 192 CA, *Sarpong vs The Republic* (1981) GLR 790. It is trite learning that, in criminal cases such as the present one, the burden of proof is proof beyond reasonable doubt at the end of the case. This position of the law has received both statutory and judicial edification and there exist plethora of authorities on same.

14. Section II (2) of The Evidence Act, NRCD 323 states; “In a criminal action, the burden of producing evidence when it is on the Prosecution as to any fact which is essential to guilt, required 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”. Section 13(1) of (Act 323) also provides; “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. The reason for this high standard is that, the conviction of the Accused Person places a fetter on his personal liberties. An Accused Person is presumed innocent until he has been found guilty by a court of competent jurisdiction or has pleaded guilty. Thus, in our jurisprudence, an Accused Person, no matter how heinous a crime he is charged Judgment-The Republic vs Albert Adjaidoo and Ors. Page 7 of 16 with, is presumed innocent until his guilt is established in accordance with due process of the law. The law places the burden of proving the guilt on the Prosecution since it is the Prosecution that is alleging the commission of the offence by the accused. It is not for the accused to prove his innocence.
15. It is accordingly provided by Section 15 (1) of Act 323 (supra) as follows; “Unless and until it is shifted, the party claiming that a person is guilty of a crime or wrong doing has the burden of persuasion on that issue.” This position as to the standard and burden of proof is strictly adhered to and our Courts have insisted on the Prosecution meeting this standard with judicial jealousy as part of the Courts duty to safeguard the liberty on individuals. The Supreme Court in the case of Commissioner Of Police V. Isaac Antwi [1961] GLR 408, held “the fundamental principles underlying the rule of law are that the burden of proof remains throughout on the Prosecution and the evidential burden shifts to the accused only if at the end of the case for the Prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything; if he can merely raise a reasonable doubt as to his guilt, he must be acquitted.”
16. In the instant case, it is ample from the evidence of the Prosecution that no one witnessed the act complained of nor saw the person(s) who committed same. The Accused Person herein, from the evidence of the Prosecution, was arrested only because he was seen at the crime scene. There is therefore no direct evidence to link the Accused Person to the crime but it must be stated emphatically that the fact that there is no direct evidence to an offence does not mean that the Prosecution cannot lead other pieces of evidence to prove the commission of a crime. However, in view of the fact that direct evidence is often uncommon, most crimes are proved by the use of circumstantial evidence Judgment-The Republic vs Albert Adjaidoo and Ors. Page 8 of 16 which is said to be “evidence of surrounding circumstances, which by undesigned coincidence is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say it is circumstantial.”

17. The evidence in this case, against the Accused Person, can at best be said to be circumstantial evidence. Our Courts use circumstantial evidence with extreme caution and same is use within certain parameters. The parameters are well captured in local locus classicus case of *State v Anani Fiadzo* [1961] GLR 416 where the Supreme Court held at page 418 that: “Presumptive or circumstantial evidence is quite usual as it is rare to prove an offence by evidence of eye-witnesses and inference from the facts may prove the guilt of appellant. A presumption from circumstantial evidence should be drawn against the appellant only when that presumption follows irresistibly from the circumstances proved in evidence; and in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the appellant, and incapable of explanation upon any other reasonable hypothesis other than guilt. A conviction must not be based on probabilities or mere suspicion.”[Emphasis mine]
18. Thus, to found a conviction on circumstantial evidence, the evidence must be cogent and compelling and must establish the commission of the offence and most importantly, the fact that, it was committed by the person charged before the Court and no other person. Hence, the requirement is that, it should be inconsistent with the innocence of the Accused Person. In *Odupong v Republic* (1992-93) GBR 1038 per holding 2, the Court of Appeal said “When a charge was grounded on circumstantial evidence, that evidence must not only be consistent with guilt, but must also be inconsistent or incompatible with any other rational conclusion”. As stated earlier, the whole case against the Accused Person was based upon Judgment-The Republic vs Albert Adjaidoo and Ors. Page 9 of 16 the fact he was in the crowd at the crime scene. The Accused Person has consistently denied committing the offence and the Prosecution had a duty to prove that the Accused Person indeed conspired with others to steal the said bag. This is particularly important when the sole Prosecution witness could state with certainty that the Accused Person was committed the offence.
19. In fact, during cross-examination of the Accused Person, the following transpired; Q: A: Q: A: Q: A: Q: A: It is also your case that you were pointed out by someone? Yes. This same rough route was the road the 2 person who arrested you used? It was not the rough road, we had chased the supposed thieves when someone pointed at me that I was one of them. If you use we it means it includes members of your station, is that so? I am referring to those around. I am putting it to you that the 3 main persons at large are your accomplices? They are not my friends.
20. The evidence as adduced by the Prosecution as to the identity of whoever stole the said bag is not too clear. In his book, *Criminal Procedure in Ghana*, 3rd Edition, 2021 at page 203, the learned Justice Sir Dennis Adjei stated as follows; ‘... Where the identity of the person is in dispute, the court may use other relevant evidence such as an identification parade, hair identification, bite mark and tool mark to help identify a person’. He continues by stating that ‘identification parade normally occurs in cases of robbery, rape, defilement and murder where the person who commits Judgment-The Republic vs Albert Adjaidoo and Ors. Page 10 of 16 the offence absconds and the victim or a person who saw the suspect is positive that he

or she can identify that person even where the person is found in a group of people’.

21. The evidence on record fails to indicate whether an Identification Parade was held or not. However, per Exhibit ‘A’ which is the statement made by the Complainant, the Complainant stated among others and specifically at page 2 as follows; ‘... I later came to James Town Police Station with the view of making a complaint but fortunately for me, I found my bag and one of the suspect who stole same. Hence, I was able to identify him with the items stolen...’ Unfortunately, the Prosecution was unable to produce the said Complainant to testify and be subjected to cross-examination. Again, according to Justice S. A. Brobbey, *supra* at page 91, ‘... as a general rule, the Prosecution are required to call any material or relevant witness whose evidence might resolve doubts in the case one way or the other; and failure to call such a witness has been held to be fatal to the case of the Prosecution...’
22. In the Court of Appeal’s decision in *Tsatsu Tsikata vs The Republic* [2003-2004] 1 GLR 296, the Court held that: “The question of failing to call a material witness might be properly raised after evidence from both the Prosecution and the defence had been heard. Any failure on the Prosecution’s part to call such a witness, if that witness’s evidence could settle the matter one way or the other, would result in the failure of their case because they would not have proved their case beyond reasonable doubt. On the authorities, therefore, it was clear that the concept of “material” or “vital witness” as well as the legal consequences that flowed from the Prosecution’s failure to call such a witness to give evidence, subject to qualifications and exceptions, was another way of stating and applying the basic legal principle of “burden of proof” or “burden of persuasion” within the meaning of sections 11(2), 13(1) and 15(1) of NRC 323. Judgment-The Republic vs Albert Adjaidoo and Ors. Page 11 of 16
23. The Prosecution failed to call their material witness and the Accused Person also denied being identified as the one who committed the offence; the following transpired during cross-examination; Q: I am putting it to you that you could not have been a victim of circumstances as someone within the area you were could intervene? A: People followed up to the station to testify on my behalf and Complainant said she does not know me. Q: I am putting it to you that the Complainant never stated that she does not know you? A: Right in the Investigator’s office, Complainant was asked if she knew who the thieves were and she was asked if I was part and she said no and the Investigator told her that I was the one.
24. Additionally, in Exhibit ‘B’, the Caution Statement of the 1st Accused Person, he stated as follows in Line 5, Page 2; ‘...I have to state that the crime was committed by me and my friends including Kwashie, Adjei, Atoo and Atteh ... I in the company of my aforementioned friends went to the rough part of the road at Rawlings Park area with idea of committing crime as business for us ... we spotted this female who was driving a private car. Upon seeing her, my friend Atoo signaled her to stop which she obliged and he started engaging her in false ideas, hence at her blind side, Kwashie quickly opened the passenger front door of her car and stole her black hand bag containing unspecified amount of cash, three mobile-phone and other personal effects. In fact after succeeding in stealing the bag, we run

through with the view of sharing the booty...' Judgment-The Republic vs Albert Adjaidoo and Ors. Page 12 of 16

25. The said Exhibit 'B' is the Confession Statement of A1 and in the case of Ekow Russell vs The Republic [2017-2020] SCGLR 469, the Court defined a Confession Statement as follows: "A confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person's own free will without any fear, intimidation, coercion, promises or favours..." The statements made by the Complainant and the 1st Accused Person thus establishes a fact that the 1st Accused Person agreed to act together with other Accused Persons with a common purpose for or in committing or abetting a criminal offence.
26. However, the 1st Accused Person gave a different narration during cross- examination as follows; Q: Take a look at the Charge Sheet, there are 4 other named persons been at large, is that not the case? A: That is so, my Lady. Q: Investigations arrived in proffering charges at those named person on the charge sheet because you informed Police that they are your friends you went to the crime scene with, is that not the case? A: No, I did not say so. Judgment-The Republic vs Albert Adjaidoo and Ors. Page 13 of 16 Q: Take a look at your Caution Statement , page 2, line 6 [Counsel reads], flowing from the passage, you will agree with me that Police came by charging your accomplices because you named them and nothing else? A: I will agree with you on the basis that I indeed mentioned their names because they were the people that worked at that place and not because I committed the crime.
27. It will be observed from the above that there are Two (2) versions of what exactly happened on that faithful day when the offence was committed. One version is as narrated by the Prosecution and the other version is as narrated by the Accused Person. The Prosecution called only one witness, Investigator and he testified by narrating facts based on what he was told and not what he saw per se. Yet, Prosecution was unable to produce any other witness to corroborate the testimony of the Investigator. The narrations of the Prosecution seems to suggest that the Accused Person was arrested and charged based on mere suspicions and upon reliance on statement of persons who claim to have seen the Accused Person. However, the Prosecution, regrettably did not call any other witness to corroborate the testimony of the Investigator.
28. Although the Prosecution has discretion as to which witness to call, the discretion is exercised judicially and sometimes, the failure to call such a witness could be of dire consequences for the case of the Prosecution. Yet, it is not always the case that, the failure to a call a particular person as a witness must always mean the failure of the Prosecution's case. In the instant case, the evidence on record shows that there were people who witnessed the commission of the crime, yet the Prosecution failed to adduce enough

evidence to establish that. In essence, the Prosecution failed to lead evidence to link the Judgment-The Republic vs Albert Adjaidoo and Ors. Page 14 of 16 Accused Person directly to the instant crime and appears to have charged the Accused Person on mere suspicions. See State vs Ali Kasena [1962] 1GLR 144.

29. It must be stated again that the law places the burden of proving the guilt on the Prosecution since it is the Prosecution that is alleging the commission of the offence by the Accused Person. It is not for the Accused Person to prove his innocence. It is accordingly provided by Section 15 (1) of Act 323 (supra) as follows; “Unless and until it is shifted, the party claiming that a person is guilty of a crime or wrong doing has the burden of persuasion on that issue.” This position as to the standard and burden of proof is strictly adhered to and our Courts have insisted on the Prosecution meeting this standard with judicial jealousy as part of the Court’s duty to safeguard the liberty on individuals. The Supreme Court in the case of Commissioner Of Police V. Isaac Antwi [1961] GLR 408, held “the fundamental principles underlying the rule of law are that the burden of proof remains throughout on the Prosecution and the evidential burden shifts to the accused only if at the end of the case for the Prosecution an explanation of circumstances peculiarly within the knowledge of the accused is called for. The accused is not required to prove anything; if he can merely raise a reasonable doubt as to his guilt, he must be acquitted.”
30. On the totality of the evidence adduced by the Prosecution, it is the considered opinion of the court that the Prosecution charged the 1st Accused Person on suspicions but woefully failed in establishing and/or proving the identity of the Accused Person as well as linking the Accused Person to the crime. Let me further conclude by relying on the case of G/L/CPL Ekow Russel vs. The Republic [2016] DLSC 2800 at page 3, where Akamba JSC stated that the basic principles underlying our criminal justice system are as follows; ‘... First, is that an accused person is presumed innocent until the Prosecution proves or establishes the Judgment-The Republic vs Albert Adjaidoo and Ors. Page 15 of 16 contrary and this is a constitutional guarantee provided under article 19(2)(c) of the Constitution 1992. Secondly, throughout the trial of an accused person, the Prosecution has the burden to prove each ingredient of the charge against the accused, beyond reasonable doubt. Failure to meet this high burden in relation to one of the ingredients of a charge must resonate in an acquittal on that particular charge. The Prosecution must produce the evidence to meet the requirements of S. 11 (2) of the Evidence Act, NRCD 323. Lastly, our criminal justice system is premised upon the principle that it is better for ninety-nine (99) criminals to go away scot free, than for one innocent person to be wrongly incarcerated or jailed. (Emphasis mine).

Conclusion

31. In the circumstances, the Court holds that Prosecution’s case is based on probabilities and suspicion which cannot secure a conviction. Additionally, the Prosecution’s failure to adduce cogent evidence left a vacuum in proving an essential element of the offences charged, that is, as to the fact that, the Accused Person was the one who committed the offences as

mentioned in the Charge Sheet. Furthermore, the evidence has adduced by the Prosecution is subject to Two (2) conclusions; that it the Accused Person may have committed the offence or the Accused Person may not have committed the offence. As such, the Prosecution's case fails and the Accused Person is accordingly acquitted and discharged. H/ H HALIMAH EL-ALAWA ABDUL-BAASIT CIRCUIT COURT JUDGE Judgment-The Republic vs Albert Adjaidoo and Ors. Page 16 of 16

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