

GHANA / JUDGMENT

REPUBLIC VRS DAMIEN & OR (UE/NA/DC/B1/36/2023) [2024] GHADC 511 (2 May 2024)

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IN THE DISTRICT COURT HELD AT NAVRONGO IN THE UPPER EAST REGION ON MONDAY THE 2ND DAY OF MAY, 2024 BEFORE HIS WORSHIP FAMOUS YAO AMANYO (DISTRICT MAGISTRATE) SUIT NO UE/NA/DC/B1/36/2023 THE REPUBLIC V

1. ATINGYENA DAMIEN
2. SOLOMON BANIA

JUDGMENT

[1]On the 20th June, 2023 Accused persons (A1 and A2) were arraigned before this court for the following offences: (a)Conspiracy to commit crimes to wit causing unlawful damage, unlawful entry and stealing contrary to sections 23(1), 172(1) (b), 152 and 124 of the Criminal offences Act, 1960 (Act 29),

- (b) Causing unlawful damage contrary to section 172 (1) of the criminal offences Act 1960 (Act 29), (c)Unlawful entry contrary to section 152 of the criminal offences Act 1960 (Act 29) and
- (d) Stealing contrary to section 124 (1) of the criminal offences Act 1960 (Act 29). Both A1 and A2 pleaded not guilty to all the four counts whereby full trial was ordered. [2]The facts of this case are that PW1 is the headmaster of Abatey Junior High School, Navrongo and lives at Namolo. A1 and A2 are unemployed residing at Balobia. On the 12th August, 2022 at about 9:30am PW1 reported to Navrongo Police that thief or thieves broke into his school's office and stole six black RLG Better Ghana Agenda Laptops and one Black Sonitec Radio valued at GH¢6,000.00 and GH¢100.00 respectively. In the course of investigations in another case involving accused persons, a search was conducted in A1's room where one of the stolen laptops was found in A1's school bag. The said laptop has Abatey JHS embossed on it. During interrogation A1 confessed that he and A2 stole some laptops from PW1's school. So far, three of the stolen laptops were retrieved from A1. The radio was also retrieved from one Erasmus in whose shop it was kept by A2. 1 [3]The case of prosecution was made through PW1, PW2, PW3 and PW4. Evidence of PW1, Johnson Asigijiwa is that on 11th August, 2022

all schools in Ghana including Abatey JHS went on vacation. All the classrooms, staff common room and his office were locked which he duly inspected. On 12th August, 2022 at about 7:30am, he was informed by PW2 who also got the message from a final year student of the school that thief or thieves broke into their offices. He observed that the staff common room and his office where he kept the laptops and the radio set were broken into and six laptops and one black sonitec radio set were taken away. [4]PW2, Nuhu Bayi Fuseini states that he is a teacher at Abatey JHS. On 11th August, 2022 all schools in Ghana including ABatey JHS went on vacation. They put their classrooms, staff common room and PW1's office under lock. On 12th August, 2022 at about 7:20 am he received a phone call from their student named Fatawu Bazunu that thief or thieves broke the main door and the doors of the inner office. Fatawu Bazunu was then at the school to organize extra class. According to PW2, he called PW1 who came and they went to police station and lodge complainant. [5]PW3, Erasmus Ayamba stated that he resides at Balobia. He knows accused persons. During second week of August, 2022 at about 7:00pm A2 visited him with a radio set and said he was going to fix antenna on it. His uncle John Bavure was present at the time A2 came to him. It was about to rain so A2 left the radio in the shop and went home. He also locked his shop when it started raining. He then went home. The next day, some women he can identify came to his shop and asked about A1. He called A2 and few minutes later he came and he told A2 that the women were looking for A1. A2 called A1. Luckily A1 was not far away so he came. Thereafter A1, A2 and the women left. On the same day police came to his shop and asked him to alert them when A1 was around. Police later came back demanding for a stolen radio set. According to the police the said radio was stolen by A1 and A2. He informed his father and his father collected the radio from him and handed it over to the police. [6]PW4, D/Corporal Dorothy Oteng also stated that on 12th August, 2022 at 9:30am, she was available investigator on duty when PW1 reported that suspects caused damage to their school's office door, entered the office and stole the items mentioned in the charge sheet. PW1 led her to the crime scene and she took photographs. On 18th August, 2022 both A1 and A2 were arrested by Navrongo police in a different theft case. In the course of investigation in that second case, a search was conducted in A1's room and one of the Black RLG laptops was found in his school bag. A1 was interrogated about the laptop and he admitted stealing the laptop from Abatey JHS and did it together with A2. Both A1 and A2 were handed over to her with the laptop and during her interrogation, they 2 admitted the offence in the presence of an independent witness. She took caution statement from A1 and A2. She escorted A1 and A2 to the crime scene where they demonstrated how they managed to gain ingress into the office. In the course of investigations, one Joseph Awiah produced the second laptop and stated that he heard about A1 and A2's arrest. She took statement from Joseph Awiah. Later A1's mother brought the third laptop but declined to submit statement. A2 told her that the radio set was with PW3. A2 then led her to PW3's house but they did not meet him. So she left the message with PW3's father. The following day PW3's father produced the radio set. Accused persons failed to assist police to retrieve remaining three laptops. PW4 tendered Exhibits A, B, C, D, E, F, G, H and J being the caution statement of A1, caution statement of A2, charge statement of A1, charge statement of A2, photograph

of stolen laptops and radio, photograph of damaged main door of PW1's office, photograph of damaged inner door, photograph of PW1's main office and photograph of PW1's cupboard respectively. [7]The case of A1 in the dock is that it was when he and A2 were going to the Catholic Church grave yard. It was raining and they went and had shelter at Abatey JHS. They were there for some time and heard some noise at the other part of the school. So they decided to see the people who were making the noise. When they were going, they saw two boys going away. They signaled the two boys to stop but they did not pay attention. So they returned to the veranda and saw that the office was opened. They saw three laptops by the building. He and A2 took the laptops. A2 later left the laptops under his care. He sent the laptops home and kept them. Two days later he was involved in a different case for which a search was conducted in his house. During the search, the laptop was found with him. Police informed him about report earlier made in connection with the laptop. [8]A2 stated under oath that he is not aware of the charges. He was not part of any offence at all. He did not take part. He was in the house and a strange number called him that A1 was arrested and mentioned his name. When he got to the new market, he saw A1 really arrested. He was also arrested and was informed that A1 said he gave him sandals. And that the sandals was a stolen property. A1 did not give him sandals. There was time when they finished loading tiles. He was putting off dust from himself when A1 requested to use his mobile phone to make a call which he obliged. After he was done putting off the dust, he could not find A1 again. He searched for him several days to no avail. He told his parents who advised him to report A1 to his mother and grandmother which he did. Later he met A1 and asked him about the phone but A1 could not say anything reasonable so he forcibly removed the sandals from his foot. The sandal was what police referred to when he was arrested. Police conducted a search in his room and found nothing to incriminate him. 3 [9]A1 and A2 did not call any witness. [10]I intend to touch on the evidential burden of prosecution and accused persons before I proceed. Section 11(2) of the Evidence Act, 1975 (NRCD 323) provides: "In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilty, 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." [11]In *Kugblenu v The Republic* [1969] CC 160 CA Ollenu JA noted" it is trite law that the onus upon the prosecution is to prove their case beyond all reasonable doubt. This applies to material issues and matters which form the pivot of the case of the prosecution or the pillars or foundation of the case upon which the case rests. If the prosecution leads evidence which creates uncertainty, they have failed and the accused should be acquitted." It is therefore prosecutions duty to establish by cogent evidence the guilt of A1 and A2. [12]Although A1 and A2 are not required to prove anything, they still have burden to raise doubt as to guilt if there is need for them to do so. Section 11(3) of the Evidence Act, 1975 (NRCD 323) made it clear as follows: In a Criminal action the burden of producing evidence, when it is on the accused as to any fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt." See *Mallam Ali Yussif v The Republic* [2003-2004] SCGLR 174. [13]Prosecution fulfills its burden if it provides

sufficient evidence to prove all elements in the offences A1 and A2 allegedly committed. In *Republic v Adu Boahen and Anor* [1993-1994] 2 GLR 324-342 Kpega JSC held “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...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.” [14] In the case of Conspiracy, Prosecution must prove ingredients such as plurality of mind between two or more persons, agreement to act together and the purpose of the agreement must be to carry out a common criminal purpose. 4 [15] In his *Text Book on Criminal Law in Ghana*, at Page 224 Daniel Korang noted that “From the wording of section 23 of Act 29, the constituent elements of conspiracy may be summarized as follows:

- a. Plurality of mind between two or more persons ...;
- b. Agreement to act together...and
- c. The purpose of the agreement must be to carry out a common criminal purpose. [16] In *Faisal Mohammed Akilu v The Republic* [2016-2017] SCGLR 444 Yaw Appau JSC noted “From the definition of conspiracy as provided under section 23 (1) of Act 29/60 a person could be charged with the offence even if he did not partake in the accomplishment of the said crime, where it is found that prior to the actual committal of the crime, he agreed with another or others with a common purpose for or in committing or abetting that crime... However, where there is evidence that the person did in fact take part in committing the crime, the particulars of the conspiracy charge would read “he acted together with another or others with a common purpose for or in committing or abetting the crime.” This double-edged definition of conspiracy arises from undeniable fact that it is almost always difficult if not impossible, to prove previous agreement or concert in conspiracy cases. Conspiracy could therefore be inferred from the mere act of having taken part in the crime where the crime was actually committed. Where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing the crime.” [17] The main consideration in conspiracy charge is that there must be two minds involved in committing crime. One person cannot conspire with himself. In *Republic v Bossman and others* [1968] GLR 595 Amissah J.A. (as he then was) noted “It is an elementary proposition of Law that on a charge of Conspiracy if the accused persons are acquitted except one, that one must be acquitted also unless it is charged and proved that he conspired with some other person not named in the charge.” [18] In this case, PW1 reported case of theft of six black RLG laptops and one black sonitec radio set. He repeated this report in his evidence in chief. PW4 stated that, in the course of investigation in another case a search was conducted in A1’s room and one of the RLG Laptops was found in his bag. PW4 stated further that A2 told her that the radio set was with PW3. A2 then led PW4 to PW3’s house but met his absence. [19] PW3’s father later brought the radio set to police. PW3 stated that in the second week of August, 2022 at about 7:00pm A2 approached him with a radio set. The next day some women came

to his shop looking for A1. He called A2. Few minutes later A2 came and called A1 who also came. Both A1 and A2 left with the women. Police 5 visited him that same day. Three days later Police came again demanding for a radio set. He informed his father about the radio set. His father collected the radio and gave it to police. [20]A1 made a statement in the dock and said he and A2 were going to Catholic Church grave yard and it was raining so they went and had shelter at Abatey JHS. [21]These pieces of evidence above show that both A1 and A2 agreed to act together and acted together in stealing the radio and laptops. The question is how would the police know that the radio set was with PW3 when A2 did not tell PW4 and even led her to PW3 to retrieve it? It is therefore a confirmation of statement of A1 to Court and in Exhibit A. Exhibit B of A2 is also revealing of his involvement in the whole crime. [22]Since A1 repeatedly mentioned A2 to have taken part in the criminal enterprise and confirmed by the presence of the radio at where A2 directed the police, there is no doubt about this conspiracy of A1 and A2. [23]On the issue of causing unlawful damage, Prosecution is required to prove the damage caused to property and that the damage was caused unlawfully; that is without any justifiable cause. [24]In his text book Criminal Law in Ghana at Page 457 Daniel Korang summarized the elements of causing unlawful damage as follows:- "From the provisions of section 172 and 174 of Act 29 as well as the case law, the essential ingredients of the offence of unlawful damage may be stated as follows:

- a) that damage has been caused to property,
- b) that the damage was intentionally caused to property; and
- c) that the damage was caused unlawfully, that is without any justifiable cause. [25]In *Asante v The Republic* [1972]2 GLR 177 at 175 Anterkyi J observed as follows: "But the next point to be determined was whether the damage, thus intentionally caused was also unlawfully caused within the provisions of section 174 with regard to causing an event unlawfully, it is essential that the conduct of the actor should be capable of landing him in civil liability. Tersely, to secure conviction under section 172 of Act 29, not only must it be proved that the damage was caused intentionally with the provision relating to intent in section 11 of Act 29, but also it must be proved beyond reasonable doubt that it was caused without just cause or excuse; the burden lay on the Prosecution to prove conclusively the absence of any legal justification or excuse, but they failed to establish this by evidence". 6 [26]PW2 was told that the Abatey JHS was broken into. He informed PW1. PW1 went to the school and saw that staff common room and his office were broken into. PW4 also visited the crime scene, saw the damages and took photographs which she tendered in her evidence in chief as exhibits F, G and J. [27]In their defence A1 stated that they went to the school and saw the office opened. They also saw some boys moving away from the school who they signaled to stop but did not pay attention to them. Both A1 and A2 denied breaking the door of the school. Under cross examination of PW4 by A1 the following transpired. Q. Do you remember I told you that I did not break the place? A. Yes. But you demonstrated how you committed the crime. [28]Cross examination of A2 by prosecutor shows an inconsistent answer as follows: Q. You and police went to the crime scene. Is that correct. A. Yes Q. Whilst there you demonstrated to the police

as to how you and A1 conspired to enter the office. Is that correct. A.No Q.I put it to you that that very day you and A1 demonstrated to the police how you entered the office and stole the laptops. A. I have forgotten. [29]It is on record that at about 7:20am on 12th August, 2022 a student called PW2 and reported the incident. The School went on vacation on 11th August, 2022. It therefore seems to me that the crime actually took place between the time the schools vacated on 11th August, 2022 and early hours of 12th August, 2022. [30]It is not quite clear that A1 and A2 actually broke the doors of the office; the fact that they entered the office and stole the items from the office shows that they broke the office because the timing between 11th August 2022 and 7:20am of 12th August, 2022 was very short for another person to break into a place before the arrival of A1 and A2. Moreover if A1 is saying that they were going to Catholic Church's grave yard on 12th August, 2022, the question is when exactly were they going to the grave yard? Both A1 and A2 could not raise the doubt needed to believe them that they are not responsible for the damage caused to the doors of the school. [31]On the issue of unlawful entry, it is expected of prosecution to show that the whole or some part of the body of accused or an involuntary agent enters the building. It must also establish that the entry was unlawful, thus the criminal intent of accused persons ought to be shown. [32]In *Kanjarga v The State* [1965] GLR 479 Ollenu JSC noted at page 482 "To constitute that offence, the entry must be made with a purpose or intent to commit a crime. It follows that in addition to proving entry, the prosecution, to succeed, must prove that intent to commit a crime in the premises existed at the time of entry and was the purpose for the making of the entry." [33]It was revealed in this case that A1 and A2 entered the office of PW1 and stole laptops and radio. PW1 stated that he kept the said items in his office. PW4 tendered exhibits F, G, and J showing that the office was broken into. A1 stated in Court that he and A2 entered the office and brought out the laptops. A1 stated inter alia as follows:- "We saw three laptops by the building. I and A2 took the laptops." [34]One of the laptops with inscription of the name of Abatey JHS was found in the school bag of A1 upon a search. So the fact that A1 and A2 entered the office of PW1 to steal is not in doubt. [35]The final issue is stealing which was the agenda of A1 and A2 for breaking the office and entering into it. The ingredients which must be proved by Prosecution are, appropriation, the appropriation was dishonest and that the accused was not the owner of what was appropriated. [36]In *Dramani v The Republic* [1973] GLR 37 Kowranteng Addo J of blessed memory noted at page 381 that "in a case in which the accused person has pleaded not guilty, the burden lay on the prosecution to establish all the three ingredients of the charge namely:

1. that there was an appropriation,
2. that the appropriation was dishonest and
3. that accused was not the owner of the stolen thing." See *Brobbeey and others v The Republic* [1982-1983] GLR 60 [37]In proving these elements, prosecution called PW1, PW2, PW3 and PW4. PW2 told Court that he had information about theft that occurred in Abatey JHS and called PW1. PW1 went to the school and saw that the office door was broken and six of

Abatey JHS laptops he kept in his office were stolen. PW3 stated that A2 brought a radio set to his shop and left. His father later collected the radio and gave it to police. 8 [38]Record shows that in the course of a search in another case, one of the laptops was found in the school bag in the room of A1. Two of the laptops were later recovered from the mother of A1 and another person. PW4 tendered photographs of the laptops so far retrieved and the radio set in evidence. A1 confirmed stealing the laptops and the radio set together with A2. [39]This overwhelming evidence speaks for itself and creates no doubt that A1 and A2 committed the crime of stealing. By so doing all the elements were proved by prosecution. [40]Apart from all the analysis above, both A1 and A2 confessed to the commission of the crimes except unlawful damage. In Exhibit 'A', A1 stated "I am a person of Atingyena Damien who lives in Balobia. I and my friend Solomon Bania was going for a grave digging on the 12th of August, 2022. As we were getting there the rain started drizzling. We all at the grave yard run to a school closed by called Abatey and we all went to camp ourselves there. All of a sudden I and Solomon heard some noise at the other side of the classroom as I and Solomon went to that side we saw nobody but we saw the door broken so Solomon went inside and came out with three laptops saying he saw them at the entrance of the office on the first table and he pick them to me. So I told him to go home and I took them to my house. And the next morning we took them out to sell and we sold one to a person I know long time ago and gave one to my friend as an exchange of owing him some money. And the last one was with me in my bag which the police went for it. As I was arrested my relatives try their best to bring the rest of the laptops to the police". [41]A2 also stated in exhibit 'B' as follows: "I am unemployed residing at Balobia a suburb of Navrongo. On the 12th of August, 2022 I was there when Damien called that they had a funeral so I should escort him to the grave side at the catholic cemetery to dig a grave. On our way, around Abatey JHS the rain started so myself and Damien run to the school when Damien told me we should go to the other side of the school and we saw that the offices were broken. So Damien told me we should go inside of which he entered first and I also entered. We saw three laptops and a radio set on a table so Damien told me to pick same, hide them and came back. I also picked them and went and hide them besides the school toilet. On my way coming, I saw him with the radio set also coming towards me. So he gave me the set that I should go and showed him where I hide the laptops and after that he asked me to go and sell the radio and he will get someone to buy the laptops. Later I went and gave the radio set to one Erasmus to check for me if it is working and on checking it, it was working so I left same, came to town to look for Damien..." 9 [42]A1 made statement before the Court in the dock and confirmed his confession statement to police with some contradictions. A2 denied making the statement which denial was found to be incorrect. These confession statements buttressed the evidence adduced by Prosecution showing that A1 and A2 really committed the crimes. [43]The principle of confession statement is now trite as it is well grounded in statute and several judicial decisions. In *Ekow Russel v The Republic* [2017-2020] SCGLR 469 Akamba JSC defines confession as "an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact, charge 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 safeguard have been put in place to ensure that what is given as a confession is voluntary and without any fear, intimidation, coercion, promises or favours.” [44]Admissibility of confession statement was discussed in *Francis Arthur v The Republic* [2021]DLSC 11148 where Amegatcher JSC noted “we are, therefore, clear in our minds that the criminal jurisprudence of this Court leans towards the conviction of an accused person based on a voluntary confession to the commission of a crime charged. However, we are aware that in the peculiar facts of some cases where the only evidence available to convict was the confession statement, the Courts decried the unreliability and indeed set aside a conviction solely on the confession without some other corroborative evidence that the crime was committed and by accused...” [45]It is clear that the confession of A1 and A2 does not stand alone. PW1 confirmed his statement to the police when he was before the Court. A2 denied but directed the police to PW3 to recover the radio set. The police recovered the radio from PW3’s father. In a search in a different case one of the laptops was found in the school bag of A1. PW4 tendered photographs of the laptops and the radio in Court. So it is my opinion that the confession of A1 and A2 was well supported by evidence of Prosecution. [46]In the light of this overwhelming evidence of prosecution, I am of firm belief that prosecution has amply discharged its burden of proof of all the offences A1 and A2 have been charged with. Prosecution has proved its case beyond reasonable doubt. Accused persons could not raise the doubt needed to negative effect of prosecution’s evidence against them. [47]A2 tried to extricate himself but has forgotten that the second case he made reference to happened on 15th August, 2022 at 9:55 am as against this case which took place between 11th August, 2022 and 12th August, 2022. Clearly, A1 and A2 were good friends at the time this case arose. So A2’s statement that he had misunderstanding with A1 in connection with sandals before this case happened cannot be correct version of this case. [48]In the result, I find both A1 and A2 guilty of all the offences charged. They are convicted accordingly. Since A1 and A2 decided to waste the Court’s time, I will not be lenient with them. However, they are young persons whose future may be damaged by long years of custodial sentence although the limit this court could sentence is two years. I have also considered their plea for mitigation. [49]Therefore, A1 is hereby sentenced to pay a fine of forty penalty units on count one or serve a prison term of three months IHL. On count two A1 is sentenced to pay a fine of sixty penalty units or imprisonment for five months IHL. On count three, A1 is sentenced to pay a fine of one hundred penalty units or serve a prison term of six months IHL. A1 is sentenced on count four to pay a fine of two hundred penalty units and in default be imprisoned for eight months in hard labour. [50]A2 is also sentenced to pay a fine of forty penalty units on count one, sixty penalty units on count two, one hundred penalty units on count three and two hundred penalty units on count four or be detained at the Senior Correctional Centre, Mamobi Accra for three months, five months, six months and eight months respectively. The sentences for both A1 and A2 are to run concurrently. [51]A1 and A2 are ordered to compensate PW1 with GH¢500.00 each. They are again ordered to return the remaining three laptops or pay the purchase price to PW1. (SGD.) H/W FAMOUS YAO AMANYO (DISTRICT MAGISTRATE) REPRESENTATION

1. Chief Inspector Emmanuel Darko Nimako for prosecution.
 2. No representation for accused persons. 11 IN THE DISTRICT COURT HELD AT NAVRONGO IN THE UPPER EAST REGION ON MONDAY THE 2ND DAY OF MAY, 2024 BEFORE HIS WORSHIP FAMOUS YAO AMANYO (DISTRICT MAGISTRATE) SUIT NO UE/NA/DC/B7/36/2023 THE REPUBLIC VRS
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 2. SOLOMON BANIA

JUDGMENT

On the 20th June, 2023 Accused persons (A1 and A2) were arraigned before this court for the following offences:- (a) Conspiracy to commit crimes to wit causing unlawful damage, unlawful entry and stealing contrary to sections 23(1), 172(1) (b), 152 and 124 of the Criminal offences Act, 1960 (Act 29) . 12

- (b) Causing unlawful damage contrary to section 172 (1) of the criminal offences Act 1960 (Act 29). (c) Unlawful entry contrary to section of the criminal offences Act 1960 (Act 29) and
- (d) Stealing contrary to section 124 (5) of the criminal offences Act 1960 (Act 29). Both A1 and A2 pleaded not guilty to all the four counts whereby full trial was ordered. The fact of this case are that PW1 is the headmaster of Abatey Junior High School Navrongo. A1 and A2 are unemployed residing at Balobia. That on the 12th August, 2022 at about 9:30 am PW1 reported to Navrongo Police that thief or thieves broke into his school office and stole six black RLG Better Ghana Agenda Laptops and Black Sonitec Radio valued at GH¢6,000.00 and GH¢100.00 respectively. In the course of investigations in another case involving accused persons, a search was conducted in A1's room where one of the stolen laptops was found in A1's school bag. The said laptop has Abatey JHS embossed on it. During interrogation A1 confessed that he and A2 stole some laptops from PW1's school. So far, three of the stolen laptops were retrieved from A1. The radio was also retrieved from one Erasmus in whose shop it was kept by A2. The case of prosecution was made through PW1, PW2, PW3 and PW4. Evidence of PW1 is that on 11th August, 2022 all schools in Ghana including Abatey JHS went on vacation. All the classrooms, staff common room and his office were locked which he duly inspected. On 12th August, 2022 at about 7:30am, he was informed by PW2 who also got the message from a final year student of the school that thief or thieves broke into their offices. He observed that the staff common room and his office where he kept the laptops and the radio set were broken into and six laptops and one black sonitec radio set were taken away. PW2 states he is a teacher at Abatey JHS. On 11th August, 2022 all schools in Ghana including ABatey JHS went on vacation. They put their classrooms, staff common room and PW1's office under lock. On 12th August, 2022 at about 7:20 am he received a phone call from their student named Fatawu Bazunu that thief or thieves broke the main door and the doors of the inner office. Fatawu Bazunu was then at the school to organize extra class. According to PW2, he called PW1 who came and they went to police station to

lodged complainant. PW3 stated that he resides at Balobia. He knows accused persons. During second week of August, 2022 at about 7:00pm A2 visited him with a radio set and said he was going to fix antenna on it. His uncle John Bavure was present at the time A2 came to him. It 13 was about to rain so A2 left the radio in the shop and went home. He also locked his shop when it started raining. He then went home. The next day, some women he can identify came to his shop and asked about A1. He called A2 and few minutes later he came and he told A2 that the women were looking for A1. A2 called A1. Luckily A1 was not far away so he came. Thereafter A1, A2 and the women left. On the same day police came to his shop and asked him to alert them when A1 was around. Police later came back demanding for a stolen radio set. According to the police the said radio was stolen by A1 and A2. He informed his father and his father collected the radio from him and handed it over to the police. PW4 also stated that on 12th August, 2022 at 9:30am, she was available investigator on duty when PW1 reported that suspects caused damage to their school's office door, entered the office and stole the items mentioned in the charge sheet. PW1 led her to the crime scene and she took photographs. On 18th August, 2022 both A1 and A2 were arrested by Navrongo police in a different theft case. In the course of investigation in that second case, a search was conducted in A1's room and one of the Black RLG laptop was found in his school bag. A1 was interrogated about the laptop and he admitted stealing the laptop from Abatey JHS and did it together with A2. Both A1 and A2 were handed over to her with the laptop and during her interrogation; they admitted the offence in the presence of an independent witness. She took caution statement from A1 and A2. She escorted A1 and A2 to the crime scene where they demonstrated how they managed to gain ingress into the office. In the course of investigations, one Joseph Awiah produced the second laptop and stated that he heard about A1 and A2's arrest. She took statement from Joseph Awiah. Later A1's mother brought the third laptop but declined to submit statement. A2 told her that the radio set was with PW3. A2 then led her to PW3's house but they did not meet him. So she left the message with PW3's father. The following day PW's father produced the radio set. Accused persons failed to assist police to retrieve remaining three laptops. PW4 tendered Exhibit A, B, C, D, E, F, G, H and J being the A1 caution statement of A2, charge statement of A1, charge statement of A2, photograph of the laptops and the radio set, photograph of the damaged main gate of the school, photograph of the inner office, photograph of the main office and photograph of the cardboard. It is the case of A1 who chose to remain in the dock and make a statement, that it was when he and A2 were going to the Catholic Church grave yard. It was raining and they went and had shelter at Abatey JHS. They were there for some time and heard some noise at the other part of the school. So they decided to see the people who were making the noise. When they were going, they saw two going away. They signaled the 14 two boys to stop but they did not pay attention. So they returned to the veranda and saw that the office was opened. They saw three laptops by the building. He and A2 took the laptops. A2 later left the laptops under his care. He sent the laptops home and kept them. Two days later he was involved in a different case for which a search was conducted in his house. During the search, the laptops were found with him. Police informed him about report earlier made in connection with the laptop. A2 stated under oath that he is not aware of the charges. He was

not of any offence at all. He did not take part. He was in the house and a strange number called him that A1 was arrested and mentioned my name. When he got to the new market, he saw A1 really arrested. He was also arrested and was informed that A1 said he gave him sandals. And that the sandal was a stolen property. A1 did not give him sandals. There was time, when they finished loading tiles. He was putting off dust from himself when A1 requested to use his mobile phone to make a call which he obliged. After he was done putting off the dust, he could not find A1 again. He searched for him several days to no avail. He told his parents who advised him to report A1 to his mother and grandmother which he did. Later he met A1 and asked him about the phone but A1 could not say anything reasonable so he forcibly removed the sandals from his foot. The sandals was what police referred to when he was arrested. Police conducted a search in his room and found nothing to incriminate him. Let me highlight on the burden of prosecution and accused persons in this case before I proceed. Section 11(2) of the Evidence Act, 1975 (NRCD 323) provides: "In a criminal action the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilty, 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." In *Kugblenu v The Republic* [1969] CC 160 CA Ollenu JA noted" it is trite law that the onus upon the prosecution is to prove their case beyond all reasonable doubt. This applies to material issues and matters which form the pivot of the case of the prosecution or the pillars or foundation of the case upon which the case rests. If the prosecution leads evidence which creates uncertainty, they have failed and the accused should be acquitted." It is therefore prosecutions duty to establish by cogent evidence the guilt of A1 and A2. Although A1 and A2 are not required to prove anything, they still have burden to raise doubt as to guilt if there is need for them to do so. Section 11(3) of the Evidence Act, 1975 (NRCD 323) made it clear as follows:- In a Criminal action the burden of producing evidence, when it is on the accused as to any 15 fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on all the evidence a reasonable mind could have a reasonable doubt as to guilt." See *Mallam Ali Yussif v The Republic* [2003-2004] SCGLR 174 Prosecution fulfills its burden if it provides sufficient evidence to prove all elements in the offences A1 and A2 allegedly committed. In *Tamekloe v The Republic...* In the case of Conspiracy, Prosecution must prove ingredients such as plurality of mind between two or more persons; there must be two or more parties to it, agreement to act; the parties must not only agree to commit or abet a crime, but must agree to act together for that purpose; and the purpose of the agreement must be to carry out a common criminal purpose. In his Text Book In this case, PW2 wastold that the Abatey JHS was broken into. He informed PW1. PW1 went to the school and saw that he staff common room and his office was broken into PW4 also visited the crime scene, saw the damage and took photographs which she tendered in her evidence in chief as exhibits F,G and J. In their defence A1 stated that they went to the school and saw the office opened. They also saw some boys moving away from the school who they signaled to stop but did not pay attention to them. Both A1 and A2 denied breaking the door of the school. Under cross examination of PW4 by A1the following transpired. Q. Do you remember I told you that I did not break the

place? A. Yes. But you demonstrated how you committed the crime. Cross examination of A2 by prosecutor also went this way. Q. You and police went to the crime scene. Is that correct. A. Yes Q. Whilst there you demonstrated to the police as to how you and A1 conspired to enter the office. Is that correct. A. No Q. I put it to you that that very day you and A1 demonstrated to the police how you entered the office and stole the laptops. A. I have forgotten. It is on record that at about 7:20am on 12th August, 2022 called PW2 and reported the incident. The School on vacation 11th August, 2022. It therefore seems to me that the crime actually took place between the time the schools vacated on 11th August, 2022 and early hours of 12th August, 2022. Though it is not clear whether A1 and A2 actually broke the doors of the office, the fact that they stole the items from the office shows that they broke the office because the timing between 11th August 2022 and 7:20am of 12th August, 2022 was very short for another person to break into a place before the arrival of A1 and A2. Moreover if A1 is saying that they were going to Catholic Church's grave yard on 12th August, 2022, the question is when exactly were they going to the grave yard? Both A1 and A2 could not raise the doubt needed to believe them that they are not responsible for the damage caused to the doors of the school. On the issue of unlawful entry, it is expected of prosecution to show that the whole or some part of the body of accused or an involving agent enters the buildings. It must also be that the entry was unlawful, this the criminal intent at accused. In *Kanjarga Vs The State* [1965] GLR 479 Ollenu JSC noted of page 482 "To constitute that offence, the entry must be made with a purpose or intent to commit a crime. It follows: that in addition to proving entry, the prosecution, to succeed, must prove that intent to commit a crime in the premises existed at the time of entry and was the purpose for the making of the entry the office was broken into. A1 stated in Court that he and A2 entered the office and brought out the laptops. A1 stated inter alia as follows:- "We saw three laptops by the building. I and A2 took the laptops." One of the laptops with inscription of the name of Abatey JHS was found in the bag of A1 upon a search. So the fact that A1 and A2 entered the office PW1 is not in doubt appropriation was dishonest and that the accused was not the owner of what was appropriated. In *Dramani Vs the Republic* [1973] GLR 37 Kowranteng Addo J of blessed Memory noted at page 381 that "in a case in which the accused person has pleaded not guilty, the burden lay on the prosecutor ingredients of the charge namely

4. That there was an appropriate
5. That the appropriate was dishonest
6. That accused was not the owner of the stolen thing. See *Brobbeey and others V The Rep.* [1982-83] GLR 60 In proving these elements prosecutor called PW1, PW2, PW3 and PW4. PW2 told Court that he had information about theft that occurred in Abatey JHS and called PW1. PW1 went to the school and saw that the office door was broken and six of Abatey JHS laptops he kept in his office were stolen. 17 PW3 stated that A2 brought a radio set to his shop and left. His father later collected the radio and gave it to police. Record shows that the course of a search in another case, one of the laptops was found in the bag in the room of A1. Two of the laptops were later recovered from the mother A1 and other person. PW4

tendered the laptops so far retrieved and the radio set in evidence. A1 confirmed stealing the laptops and the radio together with A2. This overwhelming evidence speaks for itself and creates doubt that A1 and A2 committed the crime of stealing. By so doing all the elements were satisfied by prosecutor. Apart from all the analysis above, both A1 and A2 confessed to the commission of the crime except unlawful damage. In Exhibit 'A' A1 stated "I am a person of Atingyena Damien who lives in Balobia. I and my friend Solomon Baniah was going for a grave digging on the 12th of August,

2022. As we were getting there the rain started drizzling. We all at the grave yard run to a school closed by called Abatey and we all went to camp ourselves there. All of a sudden I and Solomon heard some noise at the other side of the classroom as I and Solomon went to that side we saw nobody but we saw the door broken so Solomon went inside and came out with three laptops saying he saw them at the entrance of the office on the first table and he picked them to me. So I told him to go home and I took them to my house. And the morning we took them out to sell and we sold one to a person I know long time ago and gave one to my friend as an exchange of owing him some money. And the last was with me in my bag which the police went for it. As I was arrested my relatives try their best to bring the rest of the laptops to the police". A2 also stated in exhibit 'B' as below " I am unemployed residing at Balobia a suburb of Navrongo. On the 12th of August, 2022 I was there when Damien called that they had a funeral so I should escort him to the grave side at the catholic cemetery dig a grave. On our way, around Abatey JHS the started so myself and Damien run to the school when Damien told me we should go to the other side of the school and we saw that the offices were broken. So Damien told me we should go inside of which he entered first and I also entered. We saw three laptops and a radio set on a table so Damien told me to pick same, hide them and came back. I also picked them and went and hide them besides the school toilet. On my way coming, I saw him with the radio set also coming towards me. So he gave me the that I should go and showed him where I hide the laptops and after that he asked me to go and sell the radio and he will get someone to buy the laptops. 18 Later I went and gave the radio set to one Erasmus to check for me if is working and on checking it, it was working so I left same, came to town to look for Damien. A1 made statement before the Court in the dock and confirmed his confession statement to police. A2 denied albert with some contradiction making the statement which denial was found to be incorrect. This confession states buttressed the evidence adduced by Prosecution showing that A1 and A2 really committed the crimes. The principle of confession statement is now trite as it is well grounded in statute and several judicial decisions. See In Ekow Russel Vs The Rep [2017-2020] SCGLR 469 Akan. In Francis Arthur Vs The Rep ARgatcher JSC noted "we are therefore clear in our minds that the criminal jurisprudence of this Court leans towards the conviction of an accused person based on voluntary confession to the commission of a crime discharged. However, we are aware that in the peculiar facts of some cases where the only evidence available to convict was the confession statement, the Court decried the unreliability and indeed set aside a conviction solely on the confession without some corroborative evidence that the crime was

committed and by accused” It is clear that the confession of A1 and A2 do not stand alone. PW1 confirmed his statement to the police when he was before the Court. A2 denied but directed the police to PW3 to recover the radio set. The police recovered the radio from PW3’s father. In a search in a different case one of the laptops was found in the bag of A1. PW4 tendered photographs of the laptops and the radio in Court. So it is my opinion that the confession of A1 and A2 was well supported by evidence of Prosecution. I am of firm belief that Prosecution has amply disclosed its burden of proof of all the offences A1 and A2 have been charged with. Prosecutor had proved its case beyond reasonable doubt. Accused persons could not raise the doubt needed to negative effect of Prosecutors evidence against them. A2 tried to escape but has forgotten that the second case he made reference to happened on 15th August, 2022 at 9:55 am as against this case which took place on 12th August,

2022. So, clearly A1 and A2 were good friends at the time this case arose. So A2’s statement that he had misunderstanding with A1 in connection with sandals and therefore not in this case happened cannot be correct version of this case. 19 In the result, I found both A1 and A2 guilty of all the offences charged. They are therefore convicted accordingly. Since A1 and A2 decided to waste the Court’s time, I will not be lenient with them. However, they are young persons whose future may be damaged by long years of custodial sentence although the maximum is two years. In ----- A1 is hereby sentenced to pay fine of Conspiracy 40 3 Causing damage 60 5 Unlawful entry 100 6 Stealing 200 8 To run concurrently A2 Conspiracy 40 3 Causing damage 60 5 Unlawful entry 100 6 Stealing 200 8 To run concurrently Compensate school with 500 each. Return remaining laptops or purchase price. SGD..... H/W FAMOUS YAO AMANYO ESQ (MAGISTRATE) 20

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