

GHANA / JUDGMENT

REPUBLIC VRS ASANTE (CC/121/21) [2024] GHADC 307 (24 July 2024)

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JUDGMENT DELIVERED IN THE DISTRICT COURT, ADA ON WEDNESDAY, THE 24TH OF JULY, 2024 BEFORE HER WORSHIP PAULINA KWAKYEWA ADWOA. SUIT No. CC/121/21 THE REPUBLIC VS. PATRICK ADU ASANTE ACCUSED Accused
Person.....Present Chief Insp. Godfred Appiah for the
Prosecution..... Present

JUDGMENT

The accused person herein was arraigned before this court, charged with the offence of Defrauding by false pretenses contrary to section 131(1) of the Criminal Offences Act, 1960, (Act 29). The accused pleaded Not Guilty to the offence charged and so same was set down for trial after Case Management Conference (CMC)' The facts of the case as stated by the prosecution were that, the complainant, one Antoine Koomson is unemployed and lives at Cape Coast whilst the accused is a teacher and lives at Tetsonya- Big Ada. Sometime in the month of October, 2022, the prosecution said the accused person approached, convinced and demanded an amount of Six thousand Ghana cedis (GHc6,000.00) from the complainant under the pretext of assisting him and his brother, one Charles Awofa to be employed at the Ghana Health Service and Ghana COCOBOD respectively. According to the prosecution, the complainant sent an amount of Three Thousand Ghana cedis (GHC3,000.00) on two different occasions to the accused person. One, on behalf of his brother, Awofa, on the 21st of October, 2022 and the other for himself on the 4th of November, 2022, making a total amount of Six Thousand Ghana cedis (GHc6,000.00), both via mobile money transfers. It was the case of the prosecution that after the receipt of the money, the accused person went into hiding and sent photographs of himself to the complainant as having sustained injuries from an accident, just to deceive the complainant. However, the complainant, realizing that he had been defrauded by the accused, made a formal complaint with the police on the 19th of November, 2022 after which police intelligence led to his arrest on the 22nd of January, 2023. Investigation Caution Statement was obtained from him where he allegedly admitted having committed the offence and promised to refund same. He was later charged with the offence. The prosecution called ...witnesses in support of its case. In stating his case, the First Prosecution Witness (PW1) informed the court that he got to know the accused herein through a lady friend of his, by name Bridget Sachie where the accused introduced himself to him as an

errand boy of the Deputy Minister for Employment and Labour Relations, one... and for that matter he could assist him and his brother, Charles Awofa to get permanent employment. According to the PW1, the accused further told him that he could help his brother Charles Awofa get permanent employment in the health sector as a procurement officer. He then charged GH¢3000.00 and asked for a deposit of GH¢1000.00 which he paid. After payment of the deposit, on behalf his brother, Charles the PW1 said the accused person indicated to him that it would take a period of three weeks for him to make the appointment letter available to him. He later sent the GH¢3000.00 via mobile money transfer to him through his telephone number upon the request of the accused person. On the 4th of November, 2022, the PW1 said the accused person again informed him about the fact that his so called boss, the Deputy Minister for Employment and Labour relations had been given a slot at Cocobod and was demanding Twelve Thousand Ghana cedis (GH¢ 12,000.00) for the slot and so before anything else, he should send him all his documents and a part payment of GH¢3000.00. The accused person further promised to call him as soon as the appointment letter was ready. According to the PW1, the accused person later phoned him on the 6th of November, 2022 and told him that his brother, Charles Awofa's appointment letter was ready and so he, together with his brother should meet him and his boss in Koforidua with the rest of the money-GH¢7,000.00. Two days later, a Sunday, they both set off to Koforidua. They tried calling the line of the accused person but his line was off. They called several times but it did not go through. So, they spent the night there, in Koforidua. The following day, a Monday, they again phoned him the whole day, but his phone was still off. They waited and phoned him on Tuesday and Wednesday but to no avail. They then decided to go to the Koforidua Regional Co-coordinating council to find out if he indeed works there since he had told them he was working there and also the fact that, that was his boss's office. They got to the office – Labour and Employment Unit, only to be told that they did not have any one by that name – Patrick Adu Asante, working there. That was when the PW1 said they came to the realization that they had been defrauded and so they returned to Cape Coast. After their return to Cape Coast, the PW1 indicated to the court that they waited for about two weeks in expectation that the accused would call them, but that they did not hear anything from him. So, he phoned Bridget Sachie Senam and recounted their ordeal to her. Bridget then offered to assist him and therefore on the 18th of November, 2022, - a Friday, he, the PW1 came to Ada and together with Bridget, they lodged a formal complaint to the police the following day, the 19th of November, 2022. Later that day, the PW1 said the accused person sent him a voice message and told him that he got involved in a fatal accident on the day that they were to meet him in Koforidua and followed the voice call with a photograph of himself, with a bandage around his head. However, the PW1 said a close look at the photograph, the photograph was not that of the accused person. He subsequently got information from the police investigator that the accused person had been apprehended. The Second Prosecution Witness PW2 was the police investigator of this case. He indicated in his Evidence in Chief to the court that, on the 19th of November, 2023, that the complainant called at the station and reported that the accused had convinced him and collected a total amount of Six Thousand Ghana cedis (GH6000.00) from him under the pretext of offering him and his brother employment at the Ghana Health Service and Cocobod respectively but that upon receipt of the money, the accused person went into hiding and failed to assist them with the employment as

promised. He then took a Complainant Statement from him and invited the accused person through several phone calls to go and assist them with investigations but he failed to honor those invitations. Sometime later, the PW2 said, police intelligence led to his arrest after which investigations cautions statement was obtained from him. The PW2 further stated that, in the course of investigations, it was revealed that the accused person, after his inability to assist the complainant, sent a photograph of somebody with a bandaged head to the complainant, via WhatsApp messenger alleging to be the one in the photograph, suggesting that he sustained an injury as a result of the accident, hence, his inability to answer his calls and also fulfil his promise. It was however the case of the PW2 that they were unable to print that photograph for evidential purposes because the accused person deleted same. The PW2 then tendered in evidence both the caution statement taken from the accused person on the 23rd of December, 2022, as well as the supplementary caution statement taken on the 5th of April, 2023 upon the orders of the Court. They were both admitted in evidence as exhibits 'A' and 'B' respectively. The investigation Charge statement was also tendered and admitted in evidence as exhibit 'C' without any objections. At the end of the Prosecution's case, the court gave the accused person the opportunity to state his case. He mentioned his full name and occupation as Adu Asante Patrick and a professional teacher respectively, teaching at the Sege Secondary Technical School, Sege, in the Ada West District of the Greater Accra Region. In his defence, the accused informed the court that a friend of his, by name Bridget Senam, also a teacher, introduced six (6) persons, including the PW1 herein and his brother, Charles Awofa to him to help them get employment in the Ghana education Service (GES), the Ghana Health Service and Lands Commission in the month of August,

2022. According to the accused, the said Bridget Senam brought those six (6) persons to him to help secure those employments for them because he had helped her on numerous occasions to get employment for other persons earlier. It was also the case of the accused person that anytime Bridget Senam sent people to him for help, they agreed on some terms. He said, those wanting employment at Ghana Education Service (GES) and the Ghana Health Service (GHS) paid Seven Thousand Ghana cedis (GH¢7000.00) respectively whilst those desiring to be employed at the Lands Commission paid Twelve thousand Ghana cedis (GH¢12,000.00). According to the accused person, the PW1 told him that he and his brother Charles Awofa wanted employment at Ghana Education Service (GES) and Ghana Health Service (GHS). The accused person also stated that they further agreed that the PW1 and his brother should each pay two- thirds of their individual amounts before he start the process. The Accused therefore admitted in his evidence in chief that he later received the total amount of six thousand Ghana cedis (GHC6000.00) from Bridget Senam in the month of September, 2022 on behalf of the PW1 through mobile money vendor but contended that he did not make the appointment letters available to the PW1 and his brother because of their failure to pay the two- thirds of the fee charged as agreed. This, he said he informed the PW1 about. Sometime later, the accused person said the PW1 asked him to assist him with National Service Reposting for which the PW1 agreed to pay him two thousand Ghana cedis (GH¢2000.00). He then requested that he made one Thousand

Ghana cedis (GHc1000.00) part payment before the process could kick – start but they told him to deduct the GHc1000.00 from the GHc3000.00 he sent earlier which he did deduct and so was able to secure the reposting for them. After that, the accused said the PW1 asked for a refund of the rest of the money – GHc3000.00. Bridget sent to him, since the first deal was unsuccessful. So, he sent him GHc2,500.00 and later added GHc 500.00 making a total of GHc 3000.00. He later asked me when he would send his balance of GH2000.00. He told him that he was not done with payment for the NSS Reposting and so they needed to meet for a discussion. Later, my inability to re-register my MTN number led to the disconnection of my MTN number and for that matter they were unable to get in touch with each other. He however re-registered his sim card after which he phoned Bridget who told him that the PW1 was busily searching for him and the fact that he- the PW1 was in Ada. So, early morning, the 19th of November, 2022, he phoned the PW1 and told him to meet him at a later date in Ada for a discussion on the issue but he informed him that he had already lodged a complainant with the police and so the case was no longer in his hands. On 21st of November, 2022, the accused person said he received a phone call from the PW2 – Corporal Musah Sugulu who informed him about the complaint and also told him about the complainant. The accused person also said the police investigator further asked him to avail himself at the police station, anytime he came to Ada, for investigations. So, on the 22nd of December, 2022, he came to Ada and as soon as he alighted from a car at Ada, he met a police officer who told him to follow him to the police station. He later met Corporal Musah at the police station who arrested him and charged him before court. The accused person did not call any witness and ended his case at this point. This is a case of Defrauding by false Pretences and the issue to be discussed at the end of trial is: Whether or not the accused person is guilty of the offence charged. The fundamental principle underlining the rule of law as far as criminal law is concerned is that the burden of proof remains on the prosecution and the evidential burden shifts to the accused only after a prima facie case had been made against the accused person. In the case of Commissioner of Police V Isaac Antwi [1961] GLR 408 it was held per holding one (1) as follows: “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” Also, in the case of Gligah & Atiso v. The Republic [2010] SCGLR 870@879, Dotse JSC (As he then was) stated as follows: “in other words whenever an accused person is arraigned before any court in any criminal trial, it is the duty of the prosecution to prove the essential ingredients of the offence against the accused person beyond any reasonable doubt...” This is also provided for by Section 13(1) and (2) of the Evidence Act 1960 (NRCD 323). Section 132 of the criminal offences Act, 1960 (Act 29) defines Defrauding by False pretences to be that, “a person defrauds by false pretences if, by means of a false pretence, or by personation that person obtains the consent of another person to part with or transfer the ownership of a thing.” Personation as explained in section 134(1) of Act 29 provides that: “Personation means a false pretence or representation by a person that, that

person is a different person whether that different person is living or dead or is a fictitious person. Again, section 134(2) of Act 29 states that: “A person may commit the criminal offence of personation although that person gives or uses that person’s own name, if that is done with intent of being believed to be a different person of the same or of similar name. The Elements of Defrauding by false pretences were also stated in the case of Kuma v. The Republic [1970] CC 113 as follows: “For the prosecution to succeed on a charge of Defrauding by false pretences, it must be proved that: (I) there was a mis-statement or personation by the accused which in law amounts to a false pretence; (ii) that the falsity of the pretence was known to the accused; (iii) that the accused thereby obtained the consent of another person to part with transfer, the ownership of anything; and (iv) that the accused acted with intent to defraud. Whether or not the accused person is guilty of the offence charged Following from the totality of the evidence adduced before me, it is clear that the accused person herein, though a professional teacher, made a representation to the PW1 as being able to get employment for him and his brother as well as other persons for various sums of money, although he knew very well that he was not in the position to do that. This became clear when the accused person himself, in his evidence in chief as well as in both of his caution statements taken on the 23rd of December, 2022 and 5th of April, 2023 respectively, admitted that he had been securing employment for persons on agreed terms and the fact that the PW1 and his brother did not receive their appointment letters because they were unable to pay some amounts of money to him. Now, the question that needs to be answered is whether the accused person, a professional teacher, working at the Sege Secondary Technical School, had the authority to offer employment at either the Ghana Education Service, the Ghana Health Service or the Lands commission where he claims he has been securing employment for people for various amounts of money. I therefore find that the accused person herein succeeded in getting the PW1’s consent to part with the separate amounts of money he- the accused person, received from him, by making some representations to him, representations he – the accused person knew to be false, since he very well knew he did not have the mandate to provide such employment. Consequently, I find the accused person herein, Patrick Adu Asante, guilty of the offence of defrauding by false pretences as charged and convict him accordingly. Plea in Mitigation: I pray the court for sympathy. I have been unwell for some time now. I am ready to refund the money he received from the complainant. Q. Is the accused person known Prosecution: No, he is not known. BY COURT: The accused person, I am told is a first time offender. He has prayed the court to have sympathy on him on health grounds, though he has no documentary proof of same. The accused person has also informed the court about his readiness to refund the money he received from the complainant herein. He would be given the opportunity to reform. However, for deterrence sake, the accused person herein is sentenced to pay a fine of 350 penalty units or in default, he should serve one -year prison term. SGD H/W PAULINA KWAKYEWA ADWOA .

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