

GHANA / JUDGMENT

REPUBLIC VRS CYNTHIA AGBAKPE (d7/39/2020) [2023] GHACC 864 (18 July 2023)

[2023] GHACC 864

COURT

Circuit Court

CASE / FILE NUMBER

d7/39/2020

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CORAM: HER HONOUR BERTHA ANIAGYEI (MS) SITTING AT THE CIRCUIT COURT 'B' OF GHANA HELD AT TEMA ON TUESDAY, 18TH JULY, 2023 SUIT NO. D7/39/2020 THE REPUBLIC VRS CYNTHIA AGBAKPE

JUDGMENT

On the 28th day of February, 2023, I determined that prosecution had established a prima facie case against the accused person herein and called upon her to open her defence if she so desired. An accused person when called upon to open his defence does not have a duty to prove his innocence. His only duty if at all at this stage, is to raise a reasonable doubt in the mind of the court concerning the prima facie case established against him by the prosecution. See the dictum of Korsah CJ in the case of Commissioner of Police v. Antwi (1961) GLR 408. Where the accused person is able to raise a reasonable doubt in the mind of the court, he must be acquitted and discharged. See Bruce-Konuah v. The Republic [1967] GLR 611 and Section 11(2) and (3) of NRCD 323. In arriving at whether an accused has raised a reasonable doubt, the court may either believe or accept the explanation given by the accused or find that although it disbelieves the explanation, it is reasonably probable. In both instances, the court must acquit and discharge the accused. Page 1 of 11 Thirdly, the court must consider the whole evidence on record and see if it raises any defence in favour of the accused. If quite apart from the defence's explanation, the court is satisfied on a consideration of the whole evidence that the accused is guilty, it must convict. See the case of Brempong II v. The Republic [1997-98] 1 GLR 467 and Tsatsu Tsikata v. The

Republic [2003- 2004] SCGLR 1068 Accused person testified alone and did not call any witness. In her evidence in chief, accused person said that sometime in 2018, PW3 placed her in charge of the running of the company after she had managed to save the company from bankruptcy. That this was the beginning of her problems as she began to death threats and messages from people. That she also began to feel physically and psychologically drained and felt bullet and arrow pains on her body. She also began to feel she was being stalked and heard footsteps through out the night. That she moved to live with her aunty and these footsteps which came at night did not stop. Her aunt had to make a complaint to the police. During the period, some information that she logged unto the accounting software were either deleted and/or manipulated and she found out it was PW1. That she continued to perform her work as an accounting officer diligently. That in October, 2019, some goods worth 4 million dollars were released without authority and she assisted in internal investigations. That she believes that the people behind the death threats upon realizing that she was not perturbed set a trap for her to fall into. That knowing that she was a staunch Christian, they chose to get a pastor to Page 2 of 11 make revelations that would scare her for her to take steps to save herself and the company. That she received a mail from a pastor from Hallelujah Ministries in South Africa who after giving her information about the missing goods, asked her to send Ghs 10,500 for the purchase of oil and directions. She did so with the consent of PW3 and the pastor later pointed out that PW1 was the one behind the illegal transactions. That she believes that PW1 was behind this pastor hoax. That the pastor later made certain revelations about attacks on her life and the company and demanded that she sends money for the purchase of oil for intercession for the company. She did so without informing PW3 but with the knowledge that she would later inform him after the problem was solved also that PW3 would not object. That she had the authority to withdraw money and expend on the company's behalf so in her confused state she did so. That the pastor promised her that the moneys would be refunded. That all she sought to do was to save the company. Further that Pw1 confessed to her mother that he had hacked her WhatsApp and email account in order to get first hand information on all she did. She tendered in evidence EXHIBIT 1 and 2. EXHIBIT 1 as evidence of text messages she received which threatened her and EXHIBIT 2 as a letter from PW3 detailing her diligence at work prior to this incident. She continued that this was a well orchestrated plan against her by PW1 and also that the audit report was rushed and purposely done to implicate her. That she signed it in a state of confusion. Page 3 of 11 In her investigation caution statement, accused person said she has borrowed some money from the company for the purpose of spiritual directions. That she kept receiving threats to kill her and this was extended to her husband to be as well. That in all, she borrowed USD 74,000. That the pastor promised to refund the money to her. CONSIDERATION BY COURT In analyzing the evidence of the accused person, I find that the accused person admits having taken the sums of money, although she seeks to lay it on the doorstep of spirituality. I do not believe her explanation. It is trite that the law does not admit of spiritualities. Indeed, the accused person herself does not appear to believe in the acclaimed spiritualities as her evidence in chief is replete with various paragraphs in which she says that she believes PW1 was behind this pastor hoax either by pretending to be the pastor himself or providing information to whoever the pastor was and this was a well orchestrated set up against her. In her evidence in chief, she mentions her aunt as a witness to

how footsteps are heard in their home through out the night and how the aunt reported this to the police. Accused person did not call the said aunt as a witness and neither did she tender in evidence the said police complaint. Accused person also says that PW1 informed her mother that he had hacked into her email and WhatsApp accounts. Again, accused person did not call her mother as a witness to testify on these things. Most importantly, PW1 was in the box and accused person through her counsel extensively and vigorously cross examined PW1, nowhere was a case put forth by way Page 4 of 11 of cross examination that PW1 had set a trap for accused person with a pastor hoax and/or hacked into accused person's email and WhatsApp. Accused person had also put forth the case that PW3 once consented to her sending Ghs 10,500 to a pastor for the purpose of purchasing oil for spiritual directions and so when she decided to send more money, she was under the impression that PW3 would not object. PW3 was cross examined rigorously by counsel for accused person. Nowhere was he asked a question about him having once consented to the accused person giving company money out to a pastor for spiritual directions. In EXHIBIT 2, which accused person had tendered as a letter from PW3, PW3 had mentioned that he gave her money "out of his pocket" (emphasis mine) when she told him of the so called oil for prayers and had cautioned her that it was probably a scam. That act and caution by PW3 were enough for accused person to know that she could not dabble in company funds as PW3 himself had assisted her with money out of his pocket and not from the company's coffers and also put accused person on notice that if at all, she would be scammed. Accused person had also not tendered in evidence even one document indicating that she sent money to the numbers that she mentioned in her evidence in chief. I find that her claim as to spirituality is simply a ruse to cover up for her crime. It appears that the accused person knowing her actions, was subtly preparing the grounds for such a claim in the event that she was caught in her actions. Page 5 of 11 I also do not find the evidence of accused person to be reasonably probable. On one hand, she was suffering mentally due to the threatening messages and the footsteps and voices which she heard and on another, she was unperturbed by the messages and the said footsteps and voices and continued doing her job. Again, unless she has suffered from a bullet shot and an arrow shot sometime in her life, I do not find it reasonable that she would feel pains which are tantamount to bullet and arrow pains because she would not be in a position to know how those pains are. In all of her evidence, accused person does not mention reporting either the threats or stalking to the police herself or reporting the deletion and manipulation of her accounting entries to PW3. She also does not mention visiting a hospital to seek medical assistance if not for the psychological pain then for the bodily pains which she felt. Under cross examination by prosecution, she says she did not report to the police because she was confused and she did not visit the hospital because she did not have money. For someone who says that she was diligently performing her duties as an accounts officer during this period, I find her answers to be mere afterthoughts. Furthermore, accused person wants this court to believe that PW1 had hacked into her email and WhatsApp accounts but deleted only the emails and not the WhatsApp. That it is due to this deletion that she could not produce any of the supposed emails that the said pastor sent to her. Yet, she had tendered in evidence EXHIBIT 1 series as WhatsApp messages evidencing the threats she received. If indeed, PW1 had hacked into her account and deleted Page 6 of 11 evidence that would enure to her favour, then one would expect PW1 to delete not only the emails but the

WhatsApp messages. EXHIBIT 1 series contains messages from different numbers. There is no indication that they were sent to the accused person. EXHIBIT 1 series could very well have been written and screen shot by anyone as there is no indication that they were sent to and received by anyone. I find it to be part of the straws that accused person is desperately clutching on to in this court as part of her explanation. I also find her evidence that the auditing was done in a rushed manner purposely to implicate her to be untruthful. She is an accountant herself and was present during the auditing. In her evidence in chief, she had also mentioned audits that were conducted in the company and how after such of one audits was conducted in 2018, PW3 made it known to all that he had put her in charge of the company. This means that she was not new to the auditing process and procedures. Again, accused person confessed in her investigation caution statement that in all, she took the sum of USD 74,000 from the company's coffers. That was on the 23rd day of June, 2020. The audit report which she signed is dated the 1st of July, 2020. She signed it on 5th July, 2020. Thus clearly, even before the audit report, she had a fair idea of how much she had appropriated from the company. I find her claim that this particular audit was carried out inappropriately to be nothing but an attempt to clutch at straws. I also find her claim under cross examination that although she wrote her investigation caution statement herself, she was asked by the investigator to admit the offence to be a mere afterthought. In this court, counsel for accused person did not object to the Page 7 of 11 admissibility of her investigation caution statement and charge statement. They are statements that the accused person wrote herself. In this court, accused person has shown herself to be a person who says and does what she wishes and who cannot be advised into doing anything. She answered prosecution's questions in a long and winding manner and not even an admonition by her counsel and the court for her to answer the questions posed to her directly stopped her from that route. I have combed the evidence on record and I find that it does not raise any defence in favour of the accused person. At the close of accused person's case, I find that it fails to raise a reasonable doubt in my mind as to the prima facie case established against her by the prosecution. After a consideration of all the evidence on record and applying it to the relevant law, I find at the close of the trial that prosecution has established the guilt of the accused person beyond reasonable doubt on the charge of stealing on count one, two, three, four, five and six. She is accordingly convicted of all six counts. PRE SENTENCING HEARING According to prosecution, the convict is not known. According to In mitigation, counsel for the convict says; my lord, we have listened with rapt attention to the judgment of the court and pray to mitigate the sentence that my lord would impose. Convict is a young woman and although she took prosecution through a full Page 8 of 11 trial, is remorseful for her actions. We still stand by the fact that she is a victim of circumstances hit by and large. She was in charge and is thus guilty. We pray that my lord visits upon us a very minimal sentence as she is a first time offender. We pray for a very minimal sentence that she may go and see and return back. My lord should not prolong her sentence so that she can come out. We pray for a very minimum sentence that the 2nd degree would allow the court to mete to us. We pray accordingly. SENTENCING The offence of stealing falls under the 2nd degree felony offences that carry a maximum imprisonment term of 25 years. A conviction on a charge of conspiracy to steal also carries with it the same sentence as the substantive offence. Thus for each of the six counts, I can sentence the convict to a maximum of twenty five years in custody. In arriving at a sentence,

I have considered the fact that the convict had shown next to no remorse for her crime and taken prosecution through a full trial to establish their guilt. She had by so doing wasted the time and resources of the state and also put prosecution witnesses through unnecessary expense in coming to court. On account of the fact that she had partly admitted the offence in her investigation caution statement and further in her evidence in chief and laid the explanation first at the doorstep of having borrowed the money and secondly at the footstep of spirituality, I find that her taking the state through a full trial was a needless exercise and a complete waste of state resources. Again, out of the sum of Ghs 497,186.44, not even pesewa has been recovered. Convict has not made any attempt to make restitution by paying any of the amount involved although as far back as June, 2020, in her investigation caution statement, she had pleaded for time to make a refund. Page 9 of 11 The value of the money in USD is 80,000. For a company that employs many people and pays salary, that is a huge amount of money which could have gone into growing the company and its staff. Convict decided to take all the money for herself. Per EXHIBIT 2 which is PW3's letter to her, the company almost went bankrupt due to the moneys the convict stole. In mitigation, counsel for convict says that Operating in convict's favour is the fact that she is a first time offender. At almost 40 years, she has led a crime free life and stayed out of any encounter with criminal law. That being so, upon her first encounter with the law, the court should hand down a sentence that tilts more towards reformation than deterrence. The sentence should be lenient enough not to take away all the productive years of convict's life but strong enough to send a message to all and sundry that stealing would not be countenanced as a mild offence by the people of Ghana. In consideration of the aggravating and mitigating circumstances, I hereby sentence the convict to a five year term of imprisonment on count one, four year term of imprisonment on count two, five year term of imprisonment on count three, four year term of imprisonment on count four, six year term of imprisonment on count five and four year term of imprisonment on count six. The terms are to run concurrently. She is also to refund the current Ghana cedi equivalent of USD 80,000 to Kristl Star Company Limited by the 31st day of December, 2023. (SGD) H/H BERTHA ANIAGYEI (MS) (CIRCUIT COURT JUDGE) Page 10 of 11 A. S. P STELLA ODAME FOR THE REPUBLIC PRINCE KWAKU HODO FOR THE ACCUSED PERSON. Page 11 of 11

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