

GHANA / JUDGMENT

Republic Vrs Mawutor [2023]

GHADC 478 (4 May 2023)

[2023] GHADC 478

COURT

District Court

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IN THE DISTRICT MAGISTRATE COURT HELD AT NSAWAM N. A. M. A. ON 4TH MAY, 2023
BEFORE HER WORSHIP SARAH NYARKOA NKANSAH MAGISTRATE CASE NO: B7/125/18 THE
REPUBLIC VRS NELSON MISIHU MAWUTOR ACCUSED PERSON PRESENT PROSECUTION:
CHIEF INSPECTOR AKAPAME HOLDING BRIEF FOR CHIEF INSPECTOR ASANTE FOR
PROSECUTION PRESENT

JUDGMENT

The Accused Person herein has been arraigned before this Court charged with stealing contrary to Section 124(1) of the Criminal and Other Offences Act, 1960 (Act 29). The Accused Person pleaded not guilty after the charge had been read out and explained to him. The hearing of this case was commenced before the Court differently constituted. The Court presently constituted inherited same as a part-heard. Being a criminal case, same was started de-novo, the plea of the Accused Person was taken again and he pleaded not guilty as has been noted supra. THE FACTS OF THE CASE Page 1 of 10 It is the case of the Prosecution that during April 2017, the Complainant in this case noticed that, some items belonging to the Complainant and her mother had been stolen. Suspecting the Accused, because he was the caretaker of the house, the Complainant reported the matter to the Police hence the arraignment of the Accused Person before this Court. The items claimed to have been stolen by the Accused included; one nokia mobile phone, three goats, 2 sim cards, ten fowls, twenty pieces of African prints, five yards of lace material, saucepans, plates and cutlery set, one commercial rice cooker, some cosmetics and physical cash of GH¢5,000.00. PW 1 PW1 alleged that, her family took in the Accused to act as a caretaker in her mother's house but after her mother passed on, the Accused started creating division in the family and finally conniving with PW1's step-siblings to evict PW2 from the house. PW 2 It is PW2's case that, the Accused was brought to the house as an errand boy but upon the demise of her step-father, the Accused Person began stealing from PW2's mother. PW2 continued that, although she ignored the actions of the Accused Person, the situation got worse after the death of her mother. PW2 added that, the Accused started to be of ungoverned character and also suspected the Accused Person of stealing the items listed supra. PW3 PW3, the investigator in this case, justified that on 30th March, 2018, PW1 reported a case of stealing against the Accused

Person. Following this, the Accused Person was invited and denied all the allegations levelled against him claiming that the items with Page 2 of 10 him were given to him by one Benita Miller who happens to be a sister to PW1 and PW2. PW3 stated that, the said Benita Miller corroborated the Accused's claims but the Accused was still charged and arraigned before Court based on the statement given by the Complainant. THE CASE OF THE DEFENCE The Accused in his defence admitted that, he stayed with the mother of PW1 until her demise following which PW2 started collecting some of the same items he has been accused of stealing. The Accused mentioned that, he reported the matter to the family head of PW1's step-father. PW2 was asked to return the items but refused and surprisingly the Accused was invited to the police station concerning a case of stealing reported against him by PW1 and PW2. The Accused claims that, the police officers took his statement and granted him bail and found no stolen item after they searched his room. DW1 DW1 essentially tendered in the same evidence as the Accused. DW2 DW2 also testified in line with the evidence provided by the Accused. The general principle of law in every Criminal Case as stated in the case of *Asare v. The Republic* [1978] GLR 193-199, per Anin J. A. reading the Court of Appeal decision is that: "There was no burden on the accused to establish his innocence, rather it was the Prosecution that was required to prove the guilt of the accused beyond all reasonable doubt." Page 3 of 10 The learned judge continued to state that; "The accused is presumed innocent until his guilt is established beyond reasonable doubt; that the burden is rather on the Prosecution to prove the charge against him beyond reasonable doubt.... The judge or magistrate must on a consideration of the whole evidence, be satisfied of the guilt of the accused before he may convict" Section 125 of Act 29 defines stealing as follows: "A person steals who dishonestly appropriates a thing of which that person is not the owner." In *The State v. W. M. Q. Halm and Aryeh Kumi* Crim. App Nos. 118/67 and 113/67, 7 August, 1969; (1969) CC155, the Court per Akufo Addo, C. J., Ollennu, Apaloo, Amissah JJ. A and Archer J stated the three essential ingredients which proves a charge of stealing under our criminal law as: "(i) That the person charged must not be the owner of the thing allegedly stolen; (ii) That he must have appropriated the thing; (iii) That the appropriation must have been dishonest." The Accused Person has throughout the trial vehemently denied the charges proffered against him and so the Prosecution retains the burden to prove his guilt beyond reasonable doubt. It must be noted that, with the exception of some four (4) items, the items that were listed on the charge sheet as having been purportedly stolen by the Accused Person is substantially different from the items stated in the Complainants Witness Statement. The Court finds no explanation for this discrepancy on the record. In addition to this, the Complainant testified that, some of their belongings which she listed, were found Page 4 of 10 and recovered from the Accused Person's house and that the said items are with the Police. Surprisingly however, the investigator did not corroborate this assertion. The investigator informed the Court that, the police found a dressing mirror and sofa in Accused Person's room and that although Complainant insisted that the dressing mirror belonged to her mother; Accused Person denied this and said he did not steal it but one Benita Miller gave it to him. The investigator further testified that, they called the said Benita and she confirmed that the dressing mirror indeed belongs to her and she gave it to the Accused Person. An evaluation of the evidence adduced by Prosecution witnesses reveal certain inconsistencies. If indeed, a long list of items, was found at the Accused Person's house; then why did the

investigator choose to leave such material information out of her evidence. It remains unanswered why she would choose to testify on just the dressing mirror. Even more interesting in the case of the dressing mirror is the fact that, the investigator did not satisfy herself as to who originally owned the said dressing mirror. She rather presented to the Court the conflicting claims made by the parties in her witness statement. It is without doubt that even the testimonies of the Prosecution witnesses seem to have inconsistencies and unanswered questions. An examination of the evidence further shows that, Complainant's basis for accusing the Accused Person for stealing was simply that Accused Person was living in the house when the said items were stolen. As noted supra, there are noted inconsistencies in the items purported to have been stolen as per Complainant's Witness Statement and the Charge Sheet. But granted that, certain items were even stolen, then Complainant's reason for accusing the Accused Person was simply that he lived in the house at the time of the purported theft. The Complainant gave the following answers under cross-examination: Page 5 of 10 "Q. Did you see me with any of the missing items running out of the house with it? A. No. But your being there, things were there when we came back the things were not there so you took it. Q. Did you see me returning the items back to the house? A. I did not see you returning the items but when we went to the house for investigations the items had been returned surprisingly. Q. Do you have a photograph to show the Court, showing me holding your things and returning it to the house, if Court should grant you leave to do so. A. No. Because when you took the things no one was there, likewise when you returned the things too no one was there but when we came to the house with the police on the 31st August, 2018 some of the things had been returned because the police had left the house unlocked on the 28th August, 2018 when we went to the house and realized the house had been broken into. Upon this, the police commander called the Accused Person to the office and he confessed as to how he returned the items to the house" It is expected that, the Accused Person may be suspected in such circumstances; but a criminal conviction cannot be based on a mere suspicion. The Prosecution has the burden to prove the charge beyond all reasonable doubt. A charge premised on a mere suspicion is not enough to secure a conviction. In the opinion of the Court, the Prosecution or the investigator should not be arraigning a person in Court if all they have is a suspicion. It is without doubt most investigations would start with suspicion and it is to be assumed that the investigator Page 6 of 10 only proceeds to Court when he has sufficient evidence; or at least something more substantial beyond a mere suspicion. I would think that to be the purpose anticipated, when the process of investigation before proceeding Court was contemplated. In the absence of this, the Court wonders; what then was the Prosecution's expectation in coming to Court in the first place. It is trite learning that, the Prosecution's case cannot be based on mere suspicion. The law requires that the Prosecution must prove its case beyond a reasonable doubt. This means that the Prosecution must present evidence that is strong enough to convince the judge or jury of the defendant's guilt. Mere suspicion is not enough to prove a case beyond a reasonable doubt. Suspicion is just a feeling or belief that someone has committed a crime without any proof or evidence. In Ghana, the Prosecution must have evidence that links the defendant to the crime in question. This evidence can include eyewitness testimony, physical evidence, or circumstantial evidence..... . If the Prosecution's case is based solely on suspicion, the Accused Person can argue that there is no evidence linking the Accused Person to the

crime..... The Prosecution's case cannot be based on mere suspicion. The law requires that the Prosecution must prove its case beyond a reasonable doubt by presenting sufficient evidence that links the defendant to the crime in question. In the case of Republic v. Tawiah [2013] GHASC 28, the Court held that; "suspicion, no matter how strong, cannot replace proof beyond a reasonable doubt"..... Page 7 of 10 In this case, the Accused Person was charged with possession of narcotics without lawful authority. The Prosecution relied on circumstantial evidence to prove its case, arguing that the accused was found in possession of a bag containing narcotics and that he acted suspiciously when he saw the police approaching. However, the Court held that suspicion alone is not enough to establish guilt and that there must be evidence linking the accused to the crime beyond a reasonable doubt. In this case of Republic v. Tawiah (1976) 1 GLR 23., the Accused Person was charged with stealing a sum of money from the Complainant. The Prosecution's case was based solely on suspicion as there was no direct evidence linking the Accused Person to the crime. The Court held that suspicion, no matter how strong, cannot take the place of proof and that a conviction cannot be based on suspicion alone. The Court further stated that the Prosecution must prove its case beyond a reasonable doubt and that mere suspicion cannot discharge this burden. It is clear on the face of the record that, the Prosecution in the present case failed to adduce sufficient evidence beyond the suspicion that Complainant had; which suspicion was based on the mere fact that Accused Person was living in the house when the things purportedly went missing. Prosecution could not lead evidence beyond this suspicion to link Accused Person to the crime. In the case of Republic v. Amponsah-Emmanuel [2012] 2 SCGLR 1110, the Supreme Court reiterated the principle that: "a conviction cannot be based on mere suspicion. In this case, the Accused Person was charged with causing financial loss to the state. The Prosecution's case was based on circumstantial evidence and inference drawn from the Accused Person's conduct. The Court held that while circumstantial evidence can be used to prove a case, it must be cogent, compelling and lead to Page 8 of 10 only one inference - guilt. The Court further stated that where there are other reasonable inferences that can be drawn from the evidence, then a conviction cannot be sustained." In Dexter Johnson v. The Republic [2011] SCGLR 601, Dotse JSC had this to say about the standard of proof in criminal matters and I quote: "Our system of criminal justice is predicated on the principle of the Prosecution, proving the facts in issue against an Accused Person beyond all reasonable doubt. This has been held in several cases to mean that, whenever any doubts exist in the mind of the Court which has the potential to result in a substantial miscarriage of justice, those doubts must be resolved in favour of the Accused Person". The learned judge continued and I quote: "I believe this principle must have informed William Blackstone's often quoted statement that 'Better than ten guilty persons escape than one innocent suffer' which was quoted and relied upon by me in the unanimous decision of this Court in the case of Republic vrs Acquaye alias Abor Yamoah II, ex-parte Essel and Others [2009] SCGLR 749 @ 750". I examined the whole of the evidence adduced at the trial and that it is the considered opinion of the Court that the Prosecution could not prove the charge of stealing against the Accused Person beyond reasonable doubt. In the circumstance, I hereby acquit and discharge the Accused Person herein, NELSON MISIHU MAWUTOR. H/W SARAH NYARKOA NKANSAH MAGISTRATE Page 9 of 10 04/05/2023 Page 10 of 10

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