

GHANA / JUDGMENT

Republic Vrs Asefuah [2023]

GHADC 550 (16 June 2023)

[2023] GHADC 550

COURT

District Court

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IN THE DISTRICT COURT '1' CAPE COAST BEFORE HER HONOR VERONIQUE PRABA TETTEH, ESQ SITTING ON FRIDAY 16TH OF JUNE, 2023 AS AN ADDITIONAL MAGISTRATE. CC NO: 120/2023 THE REPUBLIC VRS KOFI ASEFUAH - ACCUSED PERSON Accused Present Insp. Laare for Prosecution Present

JUDGEMENT

There are six counts of offences falling under three main charges laid against the accused and they are the usual offences filed in stealing cases. He is charged with causing unlawful damage contrary to section 172, unlawful entry contrary to section 152 and Stealing 4 items the property of Moree Senior High Technical School contrary to section 124(1) all of the Criminal Offences Act, 1960 Act 29. The particulars of offence in summary provide that the accused unlawfully caused damage to the door to the office of the headmistress of Moree Senior High Technical school to gain entry for the purpose of stealing a double decker fridge, an amplifier machine, computer monitor, and a computer keyboard. The prosecution tasked with proof of the case relied on the evidence of 3 witnesses including the investigator. In the evidence of the prosecutions first witness he claims that he went to the Moree Senior High Technical School for a visit and discovered that the office of the head mistress had been broken into and items stolen. After taking pictures of the state of the break in which were tendered by the prosecution; he went and informed the headmistress. He then returned with her and another staff and there they met the thieves attempting to carry the stolen items away. They chased the thieves but were unable to catch them. The witness in his evidence however could not say if the accused was one of the persons they saw trying to carry the stolen items away. He however claims that he later saw the accused and the driver entering the bush. This led them to chase after the driver when he later emerged from the bush. The prosecution's case hinged on the evidence of their last witness, that is the taxi driver. His evidence is that it was the accused who hired his services on that day to carry firewood from the bush. When the accused led him to the bush, he discovered the item the accused wanted to transport was a fridge so he refused to take it. It was on his way back to town that he was stopped by the prosecution witness. It was the word of the accused person and this witness, what is referred to as oath versus oath. In such cases the testimony must be critically

examined. There are questions that arise from the evidence of this witness. One is the first prosecution' witness' evidence that there was more than one thief on the day in question and that they run away upon seeing the witnesses and those accompanying him. The driver however claims it was only accused who hired his services and did not mention that there were other persons who had also been present when he went into the bush. The only involvement of the accused, it appears was to transport it from the bush to town or wherever he had intended to take it to. The investigators evidence was only a rehash of the evidence given by the witnesses and a narration of his arrest of the parties. He did say that he believed the taxi driver because of the previous conduct of the accused but no further evidence of this previous conduct was offered. The accused did not testify but spoke from the dock to deny the offence. He did cross examine the witnesses briefly. His silence notwithstanding, this court has a duty to examine the case in its entirety. It bears noting that accused has maintained his innocence throughout and in his statements to police denied any knowledge of the crime. Having considered the case, there is no evidence that conclusively proves it was the accused who damaged the door of the office, unlawfully entered inside and then carried the fridge and other items outside. None of the evidence offered by the prosecution witnesses provides sufficient proof of these facts. According to the first prosecution's witness, they saw thieves on that day but they run away. As to whether accused was involved with them I do not find that police investigated that fact but rather focused on the accused. I arrive at this conclusion because of the evidence of the prosecution witness that he saw other persons but those persons had run away. It is likely that those persons could have committed the acts I have mentioned above. And the likelihood of that raises reasonable doubt of the accused unlawfully entering by damaging the door and stealing those three items. I am not satisfied that sufficient evidence was led on the offence of stealing, unlawful entry and unlawful damage. I will acquit the accused on those the counts. On the evidence provided by the second witness of prosecution I am satisfied and I find that the evidence of the taxi driver believable and that indeed on the day in question, it was accused who employed his services to transport the fridge. This facts support the charge of dishonestly receiving rather than stealing. His manner of dealing with the fridge amounts to assisting in the disposal of stolen fridge in a way that was not meant to restore it to Moree Senior High Technical School. Section 146 and 147 of the Criminal Offences Act, 1960, Act 29 provides that

146. Dishonestly receiving property A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this Chapter, commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence.

147. Dishonestly receiving

(1) A person commits the criminal offence of dishonestly receiving property which that person knows to have been obtained or appropriated by a criminal offence, if that person receives, buys, or assists in the disposal of the property otherwise than with a purpose to restore it to the owner. I am also satisfied that his attempt to convey the stolen fridge was with knowledge of it being a stolen property. This is clearly because the fridge was found in the

bush, a place where no good and working fridge is usually kept. I find him guilty of dealing with the stolen property which amounts to dishonestly receiving. Section 156 of the Criminal and Other Offences provides the authority to convict a person charged with stealing for the offence of dishonestly receiving. It provides that

156. Conviction of receiving on charge of stealing Where a person is charged with stealing a thing and receiving the thing knowing it to have been stolen is proved that person may be convicted of receiving although not charged with that offence. I therefore convict him for dishonestly receiving. Having remained in custody since his arrest, I will take that into consideration and sentence the accused to a day's imprisonment. He is also to enter into a bond to be of good behaviour for 12 months, in default of which he is to spend 12 months in prison custody. H/H VERONIQUE PRABA TETTEH, ESQ (CIRCUIT COURT JUDGE)

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