

GHANA / JUDGMENT

REPUBLIC VRS AGBOVI (7/10/2024)

[2023] GHADC 1145 (25 September 2023)

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COURT

District Court

CASE / FILE NUMBER

7/10/2024

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IN THE DISTRICT COURT HELD AT DAMBAI ON 25TH SEPTEMBER, 2023 BEFORE HIS WORSHIP ALHASSAN DRAMANI, ESQ. DISTRICT MAGISTRATE. SUIT NO. 7/10/2024 THE REPUBLIC VRS AGBOVI ABRAHAM ACCUSED PRESENT COMPLAINANT PRESENT PROSECUTION CHIEF INSPECTOR LAWRENCE ADDO PRESENT

JUDGEMENT

The accused has been charged with the offence of stealing, contrary to section 124 (1) of the Criminal Offences Act, 1960 (Act 29). The accused, having denied the charge, the burden is put on the Prosecution to adduce sufficient evidence so that on all the evidence, a reasonable mind will find the existence of the fact of the commission of the offence by the accused beyond a reasonable doubt, see section 11 (2) and section 13 (1) of the Evidence Act, 1975 (Act 323). The accused for his part only has to introduce evidence which creates a reasonable doubt in the mind of the court regarding the prosecution's case. The doubt created by the accused's evidence should be real and not fanciful, see section 11(3) of Act 323. FACTS OF THE CASE The complainant resides at Dambai old Town and trade in yam whilst the accused is unemployed and lives at Kpando in the Volta Region. On 28th August, 2023 the complainant sent 300 tubers of yam to the Dambai market for sale. At the close of day the complainant was able to sell 200 tubers leaving 100 tubers unsold. At about 6:00pm on that fateful day complainant decided to park the remaining 100 tubers of yam in front of one of the market stores before going home. However, the accused who was sitting by observing the complainant, approached her and advised her that it was not safe leaving the yam there because they may be stolen by miscreants. The accused further suggested to the complainant to rather take the yam to a certain gentleman by name Eliwan Kofi who is a security man in one of the stores in the market for safe keeping. The complainant agreed with the suggestion so the accused quickly approached the said security man and told him that the complainant is his mother and that they want him to keep their tubers of yam for them and that they will return the next morning for the yam. The security man and another colleague of his, agreed and the accused assisted the complainant and together they carted the yam to Eliwan Kofi's shed. The complainant gave accused some tubers of yam for his assistance and the two parted ways. At about 11:00pm on same day, the accused returned to the

security man (Eliwan Kofi) and told him that he has been sent by his mother (complainant) to come and convey the yam to a different location. The security man who suspected no foul play allowed the accused to convey all the 100 tubers of yam away. The next morning the complainant returned to Eliwan Kofi to take her yam but was shockingly informed that the accused had come to collect all the 100 tubers of yam away under the pretext that he was sent by complainant. The complainant searched everywhere for the accused but to no avail. On 11th September, 2023, the complainant spotted the accused at the furry landing site, Dambai, and with the assistance of other persons arrested the accused and handed him over to the police. The accused denied the charge in his caution statement to the police but expressed his willingness to pay for the cost of the stolen yam but failed subsequently to do so. The accused was consequently charged with the offence and arraigned before this court.

THE CASE OF PROSECUTION In proving its case against the accused the prosecution called four witnesses including the investigator. PW1 was the complainant, she confirmed the facts of the case as presented by the prosecution. PW2 was Eliwan Kofi. He told the court that he is a security man at the Dambai yam market. According to PW2 on 28th August 2023 at about 6:00pm whilst at post with his colleague Opanyin Kwaku Danso, the accused person approached him and told him that he and his mother came to sell some yam in the market but could not sell all so they would like to hand over same to PW2 and PW3 for safe keeping and that they will come for the yam the next day. PW2 further said they agreed and the accused together with complainant conveyed 100 tubers of yam to his shed and both the accused and complainant left. PW2 added that at about 11:00pm same day, the accused returned and told him and his colleague that he was sent by his “mother” (PW1) to convey the yam to a different location. PW2 stated that they allowed accused to convey all the yam away. According to PW2 the next morning complainant return to them to demand for the yam and when they told her that accused had returned to convey the yam away under the pretext of being sent by she complainant, complainant told them that the accused is not her son and that she does not know the accused and did not send her to come for the yam. PW2 said they all became alarmed and searched everywhere in the market for the accused but to no avail. PW3 was Opanyin Kwaku Danso. He basically corroborated the evidence of PW2. PW3 added that on that fateful day he was present when the accused and complainant brought the tubers of yam to their duty post for safe keeping. PW3 further said later in the night when the accused returned alone to take the yam he was present and he even assisted the accused to collect the yam from the shed. PW4 was the investigator, number 54880 L/Cpl Gbedzi Thomas. PW4 recounted the facts of the case and tendered in evidence the investigation caution statement and charge statement of the accused without any objection and same marked as exhibits “A” and “B” respectively. Thereafter the prosecution brought its case to a close. The accused was called upon to open his case as a prima facie case was established against him by prosecution.

THE CASE OF DEFENCE The accused person in his defence told the court that he is a “loading boy” and lives at Kpando but comes to Dambai every market day to load vehicles. According to accused on the 28th August 2023 at about 6:00pm whilst sitting at the Dambai yam market he saw the complainant who he has never met before parking her yam on a corner of the market stores. The accused said he has worked in the market for a long time and is aware of the history of theft in the market during the night, so he approached the complainant and advised her not to leave the yam there because they

may be stolen at night. The accused stated that he further advised the complainant to rather hand over the yam to Eliwan Kofi, the market security guard for safe keeping. Accused said the complainant obliged so he assisted the complainant to cart all the tubers of yam to the security man's shed. According to accused he left the scene afterwards and never returned there. The accused indicated that the tubers of yam he assisted the complainant to convey to the security men were 150 pieces and not 100 pieces as claimed by the complainant. The accused vehemently denied stealing complainant's yam. The accused did not call any witness and thus brought his case to a close after his evidence in chief. The legal issue to be determine in this case in the view of this court is whether the accused appropriated 100 tubers of yam belonging to the complainant. APPLICABLE LAW Section 124 (1) of Act 29 provides that a person who steals commits a second degree felony. Section 125 of Act 29 defines stealing. It provides that a person steals who dishonestly appropriates a thing of which that person is not the owner. Section 120 of Act 29/60 explains dishonest appropriation thus "an appropriation of a thing is dishonest if it is made with an intent to defraud or if it is made by a person without claim of right and with a knowledge or belief that the appropriation is without the consent of some person for who he is trustee or who is owner of the thing, as the case may be, or that the appropriation would, if known to any such person, be without his consent". The essential elements of the offence of stealing are:

- (1) The person charged must have appropriated the thing allegedly stolen,
- (2) The appropriation must be dishonest and
- (3) The person charged must not be the owner of the thing allegedly stolen; see *Brobbeey and Others Vrs. The Republic* [1982-83] GLR 608. ANALYSIS AND EVALUATION OF EVIDENCE Prosecution's four witnesses have all testified to the effect that the accused made away with the complainant's 100 tubers yam. PW1 gave an account of how she was assisted by the accused to cart the 100 tubers of yam to PW2 and PW3 for safe keeping as stated above. According to PW1 she return to PW2 and PW3 the next morning to collect the yam only to be told that her "son" the accused came for the yam the previous night under the guise that he was sent by her. Both PW2 and PW3 gave a vivid account of how accused returned to them at about 11:00pm to convey all the 100 tubers of yam away under the pretext that he was sent by PW1 his "mother". According to the two witnesses, they did not doubt the accused and had no reasonable grounds to refuse his request to release the yam to accused because earlier in the day they had seen him in the company of PW1, he introduced himself to them as the son of PW1 and more so, he was the one who assisted PW1 to convey the yam to their shed. The accused has vehemently denied returning to PW2 and PW3 to convey the yam. He stated that after the yam was handed over to PW2 and PW3 on 28th August, 2023, he never went back there till he was arrested by PW1 and other persons on 11th September, 2023. It is the law that in every criminal trial it is not only necessary for the prosecution to prove the commission of a crime but also to lead evidence to identify the accused as the person or persons who committed the crime. A judge is to guide himself by considering factors such as the period of time over which the witness saw or observed the accused, the conditions in

which the observation was made, whether or not the area or vicinity was lit to make the observation possible, the distance between the witness and the accused, or whether or not the description by the prosecution witnesses agreed with that of the appellant. See the case of Razak and Yamoah v. The Republic (2012) 2 SCGLR 750. It is also the law that where the identity of an accused is in issue there can be no better proof of his identity than the evidence of a witness who swears to have seen the accused committing the offence charged. See the case of Adu Boahene v. The Republic (1972) GLR 70. See also Ameshinu v. The Republic (2010) 34 MLRG 207. In the case under consideration the theft of the yam took place at about 11:00pm when darkness had completely fallen making identification and observation highly difficult. However, both PW2 and PW3 testified that on that fateful day at about 6:00pm when visibility was quite clear, the accused had come to introduce himself to them as the son of PW1 and sought permission from them for him and his “mother” PW1 to leave their remaining yam with them for safe keeping. Under cross examination by accused on 22nd September, 2023, PW2 vividly described the dress that was worn by the accused on that fateful day and added that the accused was wearing same dress when he returned later in the night to convey the yam. It is significant to state that the accused did not deny or challenge this piece of evidence. PW2 also indicated that their place of work is well illuminated and they saw the accused very clearly when he came back to collect the yam. It was also the case of PW2 that the accused directly spoke with them and they assisted him to convey the yam out of their shed, and so the distance between them was very close and hence they had clearly observed the accused. Above all, PW2 and PW3 made sworn statements to the effect that it was the accused who came back for the yam. From the foregoing and with the authorities cited above in mind, I am more than convinced that it was the accused who came back for the yam from the custody of PW2 and PW3 and without the consent or authorization by PW1. In *Lutterodt v. Commissioner for police* (1963) 2 GLR 429, three principles were laid down to be observed by a Court after forming an opinion that a prima facie case has been made on accused person and they are as follows:

- a) If the explanation of the accused is acceptable, the accused should be acquitted.
- b) If the explanation of the accused is not acceptable but is reasonably probable then accused should be acquitted.
- c) If quite apart from the defence explanation the Court is satisfied on a consideration of the whole evidence that the accused is guilty it must convict. This Court is satisfied that quite apart from his explanation as stated above, on a consideration of the whole evidence, no one else, but the accused herein, was the one who came for the yam from the witnesses supra, under the pretext of being sent by PW1 his supposed mother. I therefore find accused Agbovi Abraham guilty of the offence of stealing proffered against him and convict him accordingly. In sentencing the accused, I have taken all the circumstances of the case into account, including the fact that the accused is a first time offender, the fact that he is a young offender, the fact that he has already spent a month in police custody, his plea in mitigation of his sentence and the fact that theft cases are rife within the jurisdiction of the

court. I hereby sentence the accused to a fine of two hundred and fifty (250) penalty units and in default to serve eight months imprisonment in hard labour. SGD H/W ALHASSAN
DRAMANI DISTRICT MAGISTRATE 25TH SEPTEMBER, 2023.

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