

GHANA / JUDGMENT

REPUBLIC VRS ANSAH ANOTHER (43/2024) [2023] GHADC 811 (14 November 2023) [2023] GHADC 811

COURT

District Court

CASE / FILE NUMBER

43/2024

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CORAM: IN THE DISTRICT COURT HELD AT KODIE IN THE ASHANTI REGION ON TUESDAY, THE 14th DAY OF NOVEMBER, 2023 BEFORE HER WORSHIP MRS CHRISTIANA ODARKOR BRUCE-ASHIRIFIE (ESQ.), THE DISTRICT CC. NO. 43/2024 MAGISTRATE. THE REPUBLIC VRS

1. NICHOLAS OWUSU ANSAH
2. KWABENA AGYEI @ LARGE TIME: 10:30AM ACCUSED PERSON: PRESENT PROSECUTON: C/ INSPECTOR ANTWI OBENG

JUDGMENT

The accused person (A1) was brought before this court charged with the offence of stealing contrary to Section 124(1) of the Criminal Offence Act, 1960 (Act 29). When the charge was read and explained to the accused person herein, he pleaded not guilty and so the matter was set down for trial. 1 | P a g e CASE FOR THE PROSECUTION The Prosecution called two (2) witnesses in support of its case, the complainant herein and the investigator. SUMMARY OF THE PROSECUTION'S CASE The brief facts of the prosecution's case are that, on the 25th of August, 2023 about 7pm, PW 1 parked his Pregio mini passenger bus with Registration No. GR 7436-14 overnight. The following day about 9am, PW 1 had a distress call from one woman that she had seen A1 with a booster and highly suspected him to have stolen it. According to Prosecution, PW 1 rushed to where he had parked the vehicle and found that the booster and an excavator tools kept in the vehicle had been stolen. It is the case of Prosecution that on the same day, PW 1 saw the accused person and caused his arrest and handed him over to the Police. According to prosecution A1 admitted the offence in his caution statement and mentioned A2 as the receiver. Police arrested A2 but he denied the offence in his statement and stated that A1 only gave the items to him for safe keeping. Prosecution averred that in the course of the investigation the excavator tools were retrieved from A1's room and the booster from A2. A2 was however at large when A1 was arraigned before this court and charged with the offence of stealing. Prosecution called PW 1 who is the Complainant herein and in his witness statement filed on 13th of

September, 2023 maintained in material the facts as stated above. He added that on the 26th of August, 2023 he received a telephone call from one woman popularly known as “Aunty” that she had seen the accused carrying away a vehicle tape booster from his vehicle which he parked in front of her shop. 2 | P a g e According to him he quickly rushed to the scene where he parked the vehicle and to his surprise he saw that the vehicle’s tape booster valued at GH¢1,600.00 and an excavator tools also valued at GH¢6,000.00 were stolen. He stated that on the same day he saw the accused person and caused his arrest and handed him over to the police. PW 2 by name D/PW/L/ Cpl. Belinda Akoto is the investigator in this case. Per her witness statement filed on the 13th August, 2023, she testified that on the 26th of August, 2023 he was the investigation duty officer at the station when this instant suit was referred to her for investigation. She testified that on receipt of the complaint, she obtained statement from the complainant as well as the accused person herein. She tendered into evidence a copy of the investigation caution statement from the accused person marked as Exhibit “A”. It is her case that the accused person admitted stealing PW 1’s vehicle tape booster and an excavator tools and sold the vehicle tape booster to A2 in his caution statement. According to PW 2 the accused person herein led the police to A2’s shop and the vehicle tape booster was retrieved. A picture of it was tendered into evidence as Exhibit “B”. It is the case of PW2 that in the course of investigation the accused father brought the excavator tools to the police station and stated that he retrieved it from the room of the accused person. A photograph of same was tendered into evidence as Exhibit “C”. She further tendered into evidence Exhibit “D” which is the charge caution statement of the accused person. Prosecution thereafter closed its case and the accused person was invited by the court to enter his defence.

CASE FOR THE ACCUSED PERSON 3 | P a g e The accused person in his evidence in chief stated that he is a Mechanic and a driver by profession. According to him he lost his grandmother of which he had to attend the funeral for three (3) days. He testified that he had then only GH¢100.00 which will not be enough for him for the period and so decided to sell his tape booster to one of his colleagues to raise some money. According to the accused person herein on his return from where he sold the tape booster and he went to buy second hand clothes with the money. It is his case that he met one Community Police Assistant who asked if he will not be attending the funeral and he said he was preparing for same. He stated that they both joined one of his colleagues, a taxi driver in his car. He stated that they were later stopped by another vehicle of which a certain woman in the vehicle claimed that she saw him that morning with a tape booster and so he was arrested and sent to the police station. He averred that the tape booster as well as the tools box he had on him were his. The accused person did not call any witness and thereafter closed his case. At the close of the trial, the issue that fell to be determined was whether or not the prosecution has led sufficient evidence to convict the accused person. THE APPLICABLE LAW The offence of stealing is under Section 124(1) which is defined under Section 125 of Act 29 as follows: “A person steals if he dishonestly appropriates a thing of which he is not the owner” This definition was further expressed by the Court of Appeal in the case of *Ampah v The Republic* [1977] 2 GLR 171 – 179, CA, holding 2 that: 4 | P a g e “A statute, creating and defining an offence, determined the ingredients of the offence which were to be proved. To establish the offence of stealing as defined by section 125 of Act 29, the prosecution was required to prove the following three elements: (i) dishonesty, (ii) appropriation, and (iii) property

belonging to another person. The first appellate court made the correct observations as to the ingredients of the offence and on the facts there could be no doubt whatsoever that the prosecution led abundant evidence in respect of the three elements of the offence as defined in section 125 of Act 29.” What constitutes “dishonest appropriation” is also explained under Section 120 of Act 29 as follows: “(1) An appropriation of a thing is dishonest

- (a) if it is made with an intent to defraud, or
- (b) 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 a person for whom that person is trustee or who is owner of the thing, or that the appropriation would, if known to the other person, be without the consent of the other person.” The term “appropriation” is further explained under Section 122 of Act 29 as follows: “...any moving, taking, obtaining, carrying away or dealing with a thing with the intent that a person may be deprived of the benefit of the ownership, of that thing or of the benefit of the right or interest in the thing, or in its value of proceeds or part of that thing” The prosecution in this instant case is required to establish the following ingredients of the offence of stealing; 5 | P a g e
- (a) that the person charged was not the owner of the item;
- (b) that he must have appropriated it; and
- (c) that the appropriation was dishonest. Prosecution must satisfy all the ingredients to establish the guilt of the accused person not some. I must state at the onset that the evidence-in-chief of the accused person as stated above is at variance with his confession statement given to the Police upon his arrest. This is what he stated in his caution statement and same tendered as Exhibit “A”. “On 26/08/23 about 2am I came out from my house when I saw complainant car parked in front of our house. I went to where the car was parked and opened the car boost. I saw an excavator tools and the car booster in the car. I carried the tools on my head and took the booster and left. I drooped the tools in my room and went to sell the booster to my friend popularly known as “Jah Bless” for GH¢300.00. I went to buy clothes for myself. On my way home, I met the Complainant and he arrested me and brought me to the Afrancho Police Station”. In the case of *State vrs Otchere* [1963] 2 GLR 463, it was held that a witness whose evidence on oath is contradictory of a previous statement made by him whether sworn or unsworn, is not worthy of credit. Such evidence cannot, therefore, be regarded as being of any importance in light of the previous contradictory statement, unless the witness is able to give a reasonable explanation for the contradiction. Furthermore, in the case of *Bour v The State* [1965] GLR 1, SC, it was held that if a witness has previously said or written something contrary to what he had testified at the trial, his evidence should not be given much weight. 6 | P a g e It is note-worthy to state here that the confession statement made by the accused person in Exhibit “A” was done voluntarily and in the presence of an independent witness. It was read to him and he understood it fully before appending his mark to it. Furthermore, the accused person was informed in a language that he understood (Twi) the reason for his arrest and of his right to counsel of his choice. Exhibit “A” having

regularly obtained cannot be ignored by the court in its analysis of the evidence before it. Moreover, the accused person did not raise any objection to the admissibility of the confession statement made by him at the trial for the court to have had a mini trial to determine its admissibility. Having said that, the evidence as led by the Accused person at the trial is that, the tape booster and the excavator tools are his and he decided to sell the tape booster to raise some money for his grandmother's funeral. The accused person further claimed to be a Mechanic and those items are his working tools. It is note-worthy to mention here that it was the accused person's father who handed the excavator tools to the police during the investigation of the instant suit that he retrieved those from the accused persons room. This is in confirmation of the accused person's confession statement to the police that he dropped the exactor tools in his room and proceeded to sell the tape booster to raise some money. On the totality of the evidence before this court there is an overwhelming evidence that the accused person herein dishonestly appropriated PW 1's tape booster and the excavator tools of which he is not the owner and he had the intention of depriving PW 1 of it. 7 | P a g e Prosecution has adduced sufficient evidence to warrant the conviction of the accused person herein. I find accused person to be guilty of stealing and I hereby convict him of same. SENTENCING The accused person is sentenced to sign a bond to be of a good behavior for two (2) years or in default six (6) months IHL. This sentencing has taken into consideration the fact that the accused person has been in custody since the time he was arraigned before this court because he could not meet his bail conditions. CHRISTIANA BRUCE-ASHIRIFIE (ESQ.,) (DISTRICT MAGISTRATE). 8 | P a g e

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