

GHANA / JUDGMENT

REPUBLIC VRS ALHASSAN (B7/4/23) [2024] GHADC 98 (15 February 2024)

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15 February 2024

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IN THE DISTRICT COURT 2, TAMALE HELD ON THURSDAY 15TH FEBRUARY, 2024 BEFORE HIS
WORSHIP D. ANNAN ESQ. SUIT NO. B7/4/23 THE REPUBLIC V ALHASSAN ABDUL FATTAH

JUDGMENT

1. In this case, accused is charged as follows: STATEMENT OF OFFENCE Stealing, contrary to section 124(1) of the Criminal Offences Act, 1960 (Act 29). PARTICULARS OF OFFENCE ALHASSAN ABDUL FATTAH, Pump Attendant, Age 22years: For that you on the 4th December, 2022 at Shishegu branch of GAB Energy Filling Station in the Northern Magisterial District and within the jurisdiction of this Court, did steal cash of GHS18,649.00 belonging to GAB Energy Filing Station. FACTS OF THE CASE
2. The facts of the case as given by the prosecution are that on 4th December, 2022 the Mr. Mohammed Taminu, the manager for GAB Energy Shishegu Branch closed work at about 5:00pm and that he tasked the accused to collect all sales made by the pump attendants (on that day and night) and to deposit same into the office safe cabinet. At
 - 1 - 9:30pm Inusah Humu Suleimu, one of the pump attendants, gave her sales of GHS11,803.00 to accused. Accused also had GHS6,846.00 sales for same to be deposited. On 5th December, 2022 the manager reported to work and detected that the sum of GHS18,649.00 being sales for the previous day (and night) had not been deposited. He questioned the accused, but accused failed to give tangible reasons about where he kept the money. The matter was reported to the police and upon being interrogated, accused admitted the offence of stealing the money but could not tell where the money was.
3. Accused when arraigned before this court on the above charge pleaded not guilty. DEFINITION OF THE OFFENCE
4. Section 125 of Act 29 defines stealing to mean, “a person steals if he dishonestly appropriates a thing of which he is not the owner.” Act 29 also provides that a person who steals commits a second degree felony, see s. 124(1). BURDEN OF PROOF

5. By a plea of not guilty, the accused puts himself in charge of the court, meaning that his guilt has to be proved beyond reasonable doubt. It is settled law that a person is presumed innocent until the contrary proved, see article 19(2)(c) of the 1992 Constitution. The mandatory requirement that the guilt of the person charged ought to be established beyond reasonable doubt and the burden of persuasion on the party claiming that the person was guilty, has been provided for in ss. 11(2), 13(1), 15 and 22 of Evidence Act, 1975 (NRCD 323). In *Gligah & Atiso v The Republic* [2010] SCGLR 870, the Supreme Court, per Dotse JSC re-emphasized this point thus: "...whenever an accused person is arraigned before any court in any criminal trial, it is the duty of the prosecution to prove the essential ingredients of the offence charged against the accused beyond reasonable doubt. The burden is, therefore,
 - 2 - on the prosecution and it is only after a prima facie case has been established by the prosecution that the accused person is called upon to give his side of the story."
6. Thus, whereas the prosecution carries that burden to prove the guilt of the accused beyond reasonable doubt, there is no such burden on accused to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful, see the cases of *Miller v Minister Of Pensions* [1947] 2 ALL ER 372 at 374, *COP v Isaac Antwi* [1961] GLR 408 and *Owusu-Ansah v The State* [1964] GLR 558. METHODOLOGY
7. In the instant case, accused pleaded not guilty to the charge herein. Upon such a plea, the prosecution must prove the whole of its case including the identity and knowledge of offence against the accused, see *Owusu-Ansah v The State* (supra).
8. The prosecution in proving its case against the accused called four (4) witness: Ahmed Salim Ibrahim (PW1), Inusah Humu Suleimu (PW2), Mr. Mohammed Taminu (Complainant/PW3) and D/Sgt. Asoma Emmanuel (PW4). Prosecution filed a witness statement of one Umar Rahinatu @ Ruhaina but it failed to call the said witness. The witness statement of Umar Rahinatu @ Ruhaina is therefore struck out. Prosecution also tendered in evidence the following exhibits:
 - a. Exhibit A - Investigation Cautioned Statement of Accused dated 5/12/22.
 - b. Exhibit B - Charge Cautioned Statement of Accused dated 7/12/22. The Prosecution's Case
9. Complainant/PW3 recounted similar facts as narrated above. He explained that the station had a safe where all pump attendants put their daily sales into, until the next
 - 3 - morning where the money is crosschecked and same sent to the bank. However, on 5/12/22 at 8:00am when he reported to work and opened the safe in the presence of the accused and the other attendant, Umar Rahinatu @ Ruhaina who was the last pump attendant, the sales of Ruhaina was found, but not the others. When he asked accused about his, accused answered that he kept same in the safe and that he even deposited his before that of Ruhaina. PW3 enquired who else entered the office and accused and Ruhaina mentioned one Karim, a cleaner. Upon interrogating Karim, it was revealed that when he (Karim) came to do his work, the accused was not at post so he (Karim) took the keys from

Inusah Humu Suleimu (PW2) @Humu Sulley, another pump attendant. Accused, however, came back to the station. The CCTV when played show accused was holding a book and something like money around the fuel pump, but accused was not captured putting money in the safe. PW3 averred that when the accountant, Mr. Ahmed Salim Ibrahim (PW1), called the police accused then admitted that he did not deposit the money but could not tell where the money was. PW3 explained further that the office keys were always with the pump attendants who were on duty and that no one had access to the office or safe, apart from them.

10. Ahmed Salim Ibrahim (PW1) added that accused admitted to him that he collected the sum of GHS18,649.00 but failed to drop it in the safe cabinet.
11. Inusah Humu Suleimu (PW2) @ Humu Sulley testified that on 4/12/22 at 9:05pm she handed over cash sum of GHS11,803.00 to accused to be kept in the safe. However, at 7:00am when PW3 opened the safe it was detected that over GHS18,000.00 could not be found.
- 4 -
12. At the end of the Prosecution's case, the Court found that a prima facie case had been established against accused and therefore called upon accused to open his defence. Accused Person's Defence
13. Accused in defence stated, "The money in question was the money for the daily sales by me and one other pump attendant, Inusah Humu Suleimu. I took the money and kept it in the safe. The next day when we opened the safe, it was detected that the monies I kept in there and some other monies that were already in the safe could not be found. That is all."
14. Accused sought to call a witness, but later withdrew calling the said witness. ANALYSIS OF FACTS AND LAW
15. Following the decision in *Owusu-Ansah v The State* (supra), the prosecution was therefore required to prove the offence of stealing beyond reasonable doubt. In the case, *Brobbey & Ors v The Republic* [1982-83] GLR 608, the essential elements to be proved by prosecution with regards to the offence of stealing were stated as (a) the person charged must have appropriated the thing allegedly stolen, (b) the appropriation must be dishonest and (c) the person charged must not be the owner of the thing allegedly stolen. Therefore, a person could not be guilty of stealing unless he was proved to have appropriated the thing in the first place. See the cases of *Anang v The Republic* [1984-86] 1 GLR 458 and *Ampah & Anor. v The Republic* [1976] 1 GLR 403.
16. The law is also that a confession or admission alone, without more, is sufficient to find a criminal conviction, see *Billa Moshie v The Republic* [1997] 2 GLR 418. In *Ofori v The State*, [1963] 2 GLR 452, the Supreme Court held that a free and voluntary confession of guilty by an accused person, if it is direct and positive and is duly made

- 5 - and satisfactorily proved, is sufficient to warrant a conviction without any corroborative evidence.
- 17. In the instant case, prosecution contended that accused admitted taking the sales of PW2. Prosecution relied heavily on this admission and argued further that if accused had kept same in the safe, it should have been found the next day, similar to that of Umar Rahinatu @ Ruhaina. However, accused failed to deposit the said sales and that of his into the safe cabinet. Prosecution added that PW3 opened the safe in the presence of the accused and the other pump attendants. And when questioned, accused admitted not depositing the money and also failed to point out where the money was. The accused, in his defence, contended however that he deposited his sales and that of PW2 into the safe, but cannot explain why the money was not found.
- 18. From Exhibit A, the investigation caution statement, below is what the accused stated: "...At about 9:30pm a witness in the case who is also a pump attendant at the station after her sales gave me cash the sum of GHS11,803.00 to put same into the safe. I also added my sales of GHS6,486.00 to the money making the total GHS18,649.00...I don't remember where I kept the money. I did not put [it] inside the safe. I don't remember where I kept same..."
- 19. The above Exhibit A was admitted without any objection. Prosecution, despite Exhibit A, went ahead to establish that accused failed to deposit the money. Yet, the accused during the trial maintained he deposited the money. The following ensued when PW3 was under cross-examination: "Q: And as a manager, you have a key to your own office?"
 - 6 - A: The key is only one. So I cannot take it to the house. So it is always with the attendants, so that by the close of day they can gain access to put the daily sales into the safe. Q: Apart from you the manager, who else has the key to the safe. A: ... Q: A: ... Q: No one else. On that fateful day you detected the alleged theft, you threatened to call the police? No. So at what point did you call the police? A: That was when Mr. Salim came and questioned the accused as to the whereabouts of the money. Accused was not able to give an accurate answer. So Mr. Salim said he was going to call the police. Accused told us that he did not put the money in the safe, but he cannot tell where he had kept it. ... Q: I am further suggesting to you that once you are the only person who has the key to the safe, you bear responsibility of whatever money is missing and not the accused? A: It is not my responsibility, because if accused kept the money in the safe, the money would have been there. So since he did not put it there, he has
 - 7 - to pay his debt. There are identities to whatever sales, the attendant writes his name and attach it to his sales and the amount is also stated."

20. When PW2 was cross-examined, below is what transpired: “Q: So in your own witness statement, you indicated at paragraph 2, ‘Usually at the end of each day I hand over my sales for the day to Abdul Fatawu a fellow pump attendant to load the cash into the safe cabinet of my behalf’. When you say Fatawu, are you saying the accused? A: Yes. Q: And for how long have you been handing over cash to accused? A: 2months. ... Q: You saw him put the money into the safe? A: No.”
21. On the part of the accused, below is what also transpired: “Q: On the 4/12/22 yourself, Inusah Humu Suleimu and Umar Rahinatu were on duty at the said filling station? A: That is true. Q: At the close of work, as a pump attendant your duty is to count your sales?
- 8 - A: Yes. Q: Each pump attendant is required to write his name and sales for the day on a piece of paper? A: Yes. Q: It is also required of you to wrap your total sales with the piece of paper and put it in the safe? A: Yes. Q: You agree with me that you can only put in money in the safe but cannot remove it? Yes. On 5/12/22 all of you were present when the manager entered the office? A: ... Q: A: That is true. Q: He opened the safe in the presence of all of you? A: That is true. Q: I am putting it to you that on 4/12/22 you did not stay at the filling station throughout the night?
 - 9 - A: We are obliged to go to wherever we are to go to after close of work and that does not contradict the times of my work. Q: Because you did not stay there, one Karim did not meet you at the time he came to clean? A: That is so. Q: I am suggesting to you that it is not your duty to collect Inusah Humu Suleimu’s sales? A: That is so. The incident took place in the night. Part of the practice is that under no circumstances should we leave the station at night with only an attendant. We can only do that when the manager is around. On that very night, the customers were many. So by way of facilitating our job, Inusah Humu Suleimu gave part of her daily sales to me. I counted it and separated the two, that is hers and mine, and kept it in the safe. Q: At what time are you supposed to put the money in the safe, after close or when still selling/working? A: Again, part of the practice is that when your sales exceeds GHS3,000.00 you have to put it in the safe. We are not allowed to have monies on us beyond GHS3,000.00.
 - 10 - Q: So on 4/12/22 before you closed, how many times did you and Inusah Humu Suleimu put money into the safe? A: ... Q: Once and it was me who sent it. It is only you and Inusah Humu Suleimu’s money that could not be found? A: Some monies too could not be found. Q: Rahinatu’s money was in the safe, not so? A: Yes. Hers was there. But our monies, that is mine and Inusah Humu Suleimu’s money and other monies that were already in the safe could not be found.”
22. From the above, I find that accused indeed took the sales of PW2. Again, accused was present when the safe was opened. Prosecution maintained that if accused deposited the money in the safe, it would have been found. Prosecution further maintained that the safe could not be opened by anyone, save the manager (PW3). This accused confirmed. There was no account of PW3 single-handedly opening the said safe on that day. However, when

the safe was opened in the presence of accused and the other pump attendant, the alleged deposit of the accused could not be found.

23. Based on the above findings and Exhibit A, I hereby conclude that prosecution has been able to prove beyond reasonable doubt that accused appropriated the sum of GHS18,649.00, see *Ofori v The State* [supra] and *Gligah v The Republic* [supra]. He
 - 11 - simply failed to deposit the money, that of his and PW2's. I, therefore, find him guilty in the offence of stealing, see the case of *Brobbey & Ors v The Republic* [supra]. SENTENCING
24. Having heard counsel for the accused and prosecution on mitigation, I note that accused is a first time offender and a young person, 24yrs. Counsel for accused also prayed for a non-custodial sentence.
25. I cannot fathom the strategy of the accused on all of the above. He simply delayed this case for over a year, when he could have taken steps to mitigate his punishment.
26. Now, should this court award a fine, which I am only mandated up to 500p.u. (i.e. GHS6,000.00), then an injustice will be done since the accused has benefited a sum of GHS18,649.00. Similarly, it would be an injustice just to allow the accused to walk free, without a clear intention to refund the money. In the circumstance, accused is to pay a fine of 500p.u (GHS6,000.00) and in addition serve a jail term of nine (9) months, IHL. Should he fail to pay the 500p.u. he shall serve an additional jail term of six (6) months in that regard. The above is to serve as a deterrent to all persons who may engage in a similar act.
27. The accused to compensate GAB Energy in the sum of GHS18,649.00. H/W D. ANNAN ESQ. [MAGISTRATE] INSP. A. R. DAWUD FOR THE REPUBLIC
 - 12 - HALID ABDUL-RAUF FOR THE ACCUSED PERSON Reference:
 1. Article 19(2) of the 1992 Constitution
 2. ss. 124(1) and 125 of the Criminal Offences Act 1960 (Act 29)
 3. s. 131 of the Criminal Procedure Act (Act 30)
 4. ss. 11(2), 13(1), 15, 22 and 120 of Evidence Act, 1975 (NRCD 323)
 5. *Miller v Minister Of Pensions* [1947] 2 ALL ER 372 at 374
 6. *COP v Isaac Antwi* [1961] GLR 408
 7. *Gligah & Atiso v The Republic* [2010] SCGLR 870
 8. *Owusu-Ansah v The State* [1964] GLR 558
 9. *Brobbey & Ors v The Republic* [1982-83] GLR 608
 10. *Anang v The Republic* [1984-86] 1 GLR 458
 11. *Ampah & Anor. v The Republic* [1976] 1 GLR 403

12. Billa Moshie v The Republic [1997] 2 GLR 418

13. Ofori v The State, [1963] 2 GLR 452

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