

GHANA / JUDGMENT

Republic Vrs Ahator [2023]

GHADC 362 (11 June 2023)

[2023] GHADC 362

COURT

District Court

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IN THE DISTRICT COURT, DZODZE HELD ON FRIDAY THE 11TH OF JUNE, 2023 BEFORE HIS WORSHIP NELSON DELASI AWUKU DISTRICT MAGISTRATE. Case No. B7/31/23 THE REPUBLIC VRS PHILIP AHATOR

JUDGMENT

PARTIES COMPLAINANT PRESENT ACCUSED PRESENT REPRESENTATION CHIEF INSPECTOR FRANCIS AHIAGBE FOR PROSECUTION PRESENT

BACKGROUND

The accused person was arraigned before this Court on 16th June, 2023 on charges of unlawful entry and stealing contrary to sections 152 and 124 of the Criminal Offences Act, 1960 (Act 29).

BRIEF FACTS 1 | P a g e The brief facts as attached by the Prosecution stated that, the complainant Eva Domekpor is a 53-year-old trader and a resident of Dzodze whilst the accused Philip Ahator is a 20- year-old commercial motor rider also resident in Dzodze. The prosecution stated that on the 28th of May, 2023 the complainant and her son Richardson Amenyio left home in the morning to church around 7:30am with the door to their room locked. The Prosecution stated that, the complainant's son who returned home earlier later escorted his friend who he had come back from church with to his house with their door still locked. The Prosecution stated that, upon his return home, he noticed that their door had been forcibly opened and became suspicious. The Prosecution stated that, upon entry he saw the accused in his mother's room holding a knife with the items in the room completely scattered. The prosecution stated that the accused threatened to stab PW2 if he draws closer and subsequently used the trap door to hit him and escaped leaving his red sandals behind. The prosecution stated that the accused was pursued but he absconded through a nearby bush. The prosecution stated that the complainant who detected afterwards that an amount of GH¢1,100.00 had been stolen from her room reported the incident to the police who visited the scene and took photographs for evidential purpose. 2 | P a g e The prosecution stated that, on the 9th of June, 2023 the accused was arrested on a different stealing case and was identified by PW2 as the one he met in his mother's room on 28th May,

2023, based on which the accused was cautioned and charged with the offence after further investigations. PLEA OF ACCUSED PERSON The accused pleaded not guilty to the offences when the charges and particulars of the offences were read and interpreted to him in Ewe. Witness statements of witnesses of prosecution together with charge statements and investigation caution statements of the accused persons were filed by the prosecution and served on him for trial. THE CASE OF PROSECUTION The prosecution called the complainant as his first witness, Richardson Amenyo, son of the complainant as a second witness and the police investigator Ernest Oppong as a third witness. In his evidence to the Court, the complainant, first prosecution witness stated that, on the 28th of May, 2023 at about 7:30am PW2 left the house for church at the Global Evangelical Church, Dzodze and she also left later at 8:30am for the Evangelical Presbyterian Church with the door to their room locked. PW1 stated that at about 10:30am she received a call from PW2 who informed her that a thief had broken into their room so she rushed home and on her arrival saw a lot of people in the house with the door to the room forcibly opened. 3 | P a g e PW1 stated further that upon entering the room, she noticed that all her personal effects had been scattered and an amount of GH¢1,100.00 she kept in the room stolen. PW1 stated that PW2 informed her that when he returned from church he saw their door had been opened and upon entering he saw the accused in the room holding a knife, but he pushed the trap door to hit him and escaped PW1 stated that PW2 told her he can identify the suspect when seen so they reported the incident to the police and handed over the red sandals left behind by the suspect. In his evidence in support, PW2 stated that on the said day of the incident he closed earlier from church and returned home but shortly escorted his friend who accompanied him to the house home. PW2 stated that when he came back home, he noticed their door had been forcibly opened and upon entering he saw the accused in his mother's room holding a knife. PW2 stated that the accused threatened to stab him and subsequently pushed the trap door to hit him while he escaping from the room. PW2 stated that he pursued the accused but he left behind his red sandals and absconded through a nearby bush. PW3 gave evidence as the investigator and stated that on the 28th of May, 2023 he was at the station as the investigator on duty when the case of unlawful entry and stealing was referred to him for investigation. 4 | P a g e PW3 stated that he obtained complainant and witness statements from both PW1 and PW2 and also visited the scene where he took photographs and retrieved the sandals left behind for evidential purpose. PW3 stated that on 9th June, 2023 the accused who had been arrested and brought to the station over another stealing case was identified by PW2 as the one he saw in his mother's room on the 28th of May, 2023. PW3 stated that he knows the accused and that on the 20th of May, 2023 he bordered his motorbike from Dzodze Damadi to the police station and observed that he was wearing a sandals similar to what was retrieved from the scene. PW3 stated that the accused denied the offence but when he was given the sandals to wear at the station it matched his feet. PW3 tendered in evidence the investigation cautioned and charge statements of the accused person and the retrieved sandals which were adopted and marked as Exhibits A, B and C. DEFENCE OF ACCUSED The accused stated on the 27th of June, 2023 that he did not know anything about the alleged offence and that all the allegations being made against him were false. The accused stated that the sandals recovered from the scene is not for him and that he is not the one PW2 claims he saw on the day of the incident in his mother's room. His Witness Annan Mary stated that she did

not know anything about the alleged incident since the accused did not give her any money. 5 | P a g e DW2 stated that on the alleged day of the incident she left the accused in the house and went to the farm at about 8:36am and returned at 1:00pm. THE LAW Burden of Proof Section 11(2) of the Evidence Act, 1975 (NRCD 323) provides as follows; “In a criminal action, the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt required the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of a fact beyond reasonable doubt”. In the case of Abdulai Fuseini v the Republic, reported in [2020] Crim LR, page 331, the Supreme Court reiterated the basic principle underpinning criminal prosecution in our courts as follows; “Proof beyond reasonable doubt is actually proof of the essential ingredients of the offence charged and not mathematical proof”. See also Frimpong alias Iboman v. The Republic [2012] 1 SCGLR 297. The accused person in this case is charged with the offences of unlawful entry, causing unlawful damage and stealing contrary to sections 152, 172 (1) (a) and 124 of the Criminal Offences Act, 1960 (Act 29). Unlawful Entry Section 152 of the Criminal Offences Act, 1960 (Act 29) provides that “a person who unlawfully enters a building with the intention of committing criminal offence in the building commits a second degree felony. 6 | P a g e Under section 153 of Act 29, a person is said to have unlawfully entered a building if that person enters otherwise than in the exercise of a lawful right or by the consent of any other person able to give the consent for the purposes which he enters. Stealing A person steals who dishonestly appropriates a thing of which that person is not the owner. See section 125 of the Criminal Offences Act, 1960 (Act 29). ANALYSES AND EVALUATION OF EVIDENCE In establishing the offence of unlawful entry the prosecution is required to prove that the accused unlawfully entered the building with the intention to commit a crime and the crime was actually committed in the building. To successfully prove a case of stealing against a person in our law, three elements have to be established which include the fact that;

- a) the person is not the owner of the thing allegedly stolen
- b) that he appropriated the thing and
- c) that the appropriation was dishonest. See the cases of Ampah v the Republic [1977] 2 GLR and Mensah v the Republic [1978] GLR 404. The elements in the above offences can only be established or inferred through available evidence adduced by prosecution and from the nature and manner in which the alleged act is established to have been executed. 7 | P a g e The accused persons having denied the allegations, the burden was on prosecution to provide the relevant evidence and witnesses to secure the conviction of the accused on the charges levelled against him. The evidence given by the second witnesses for prosecution is that upon returning to the house after escorting his friend, he noticed that the door to his mother’s room had been forcibly opened and when he entered he saw the accused in the room holding a knife. PW2 stated in addition that the accused hit him with the trap door and escaped from the house leaving behind his sandals. It was after the incident that PW1 later detected that money she had kept in her room was missing. The accused denied that he was the one seen by PW2 in the room of his mother and stated further that the sandals the investigator claimed to have retrieved from the scene was not his. In his evidence-in-chief to

the court, PW2 stated that he knows the accused and the accused confirmed this under cross examination of PW2 on 22nd June, 2023. Q. I am putting it to you that, it is because you know me earlier that is why you suspected me. You did not see me as you claim? A. I saw you. I even pursued you Throughout his cross examination of PW2, the accused did not dispute the fact that the witness knows him but only stated that he was not the one the witness saw in the room and later pursued on that day. Since the witness stated that he knows the accused and the accused confirmed same, the question of a possible mistaken identity does not arise in this situation. The accused was 8 | P a g e also not able to lead evidence on circumstances between himself and the witness that should constitute the basis for the witness to make such allegation against without cause. In addition to the evidence of PW2, prosecution also relied on the Exhibit sandals retrieved from the scene which measurement corresponded with the size of the feet of the accused. In proving the identity of an accused by the use of circumstantial evidence, it was held in the case of *Dogbe v the Republic* [1975] 1 GLR 118 that; “In criminal trials, the identity of the accused as the person who committed the crime might be proved either by direct testimony or circumstantial evidence of other relevant facts from which it might be inferred by the court”. The prosecution in this case relied on both direct evidence from PW2 and circumstantial evidence premised on inferences from the facts and evidence retrieved from the scene of the crime which all point to the guilt of the accused. The witness called by the accused denied having any knowledge about the incident. Her attempt to deny the fact that the sandals retrieved from the crime scene belonged to the accused was defeated by her own admission that she had not seen the sandals before making that assertion. The responses of DW2 under cross examination on 27th June, 2023 in relation to the sandals are reproduced below; Q. Can you describe the sandals that you claim is not for the accused? 9 | P a g e A. I did not see the sandals Q. Then why do you claim it does not belong to the accused when you have not seen it? A. I did not see it. The conduct of the witness in her attempt to speak to things she has not seen or have knowledge about dented her credibility and gave a strong indication that she was only at the court to do the bidden of the accused.

CONCLUSION

The evidence given by PW2 and the fact that the accused and his witness failed to raise a reasonable doubt about the evidence and the facts in relation to the sandals retrieved from the scene leads to a conclusion of the guilt of the accused. Based on the above reasoning, the accused is convicted on both counts. Taking cognizance of the prevalence of crime among young persons in the jurisdiction and the mode of execution of the offence which suggests that the incident was a premeditated act by the accused, he is Sentenced to imprisonment for sixteen (16) months on both counts. Sentences to run concurrently. NELSON DELASI AWUKU MAGISTRATE 10 | P a g e 11 | P a g e

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