THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2019

CORAM: ADINYIRA (MRS), JSC (PRESIDING)

DOTSE, JSC

YEBOAH, JSC

BAFFOE-BONNIE, JSC

PWAMANG, JSC

CRIMINAL APPEAL
NO. J3/02/2019

3RD JULY, 2019

OWUSU BANAHENE …….. APPELLANT/APPELLANT

VRS

THE REPUBLIC …….. RESPONDENT/RESPONDENT

JUDGMENT

ADINYIRA (MRS.), JSC:-

The appellant, Owusu Banahene alongside with two other accused persons was convicted on two counts of conspiracy to steal and stealing building materials to the tune of GH¢ 2, 050,000.00 from Iron Birds Company , a company of his own uncle. On, 11 February 2011, he was convicted and sentenced to 20 years IHL and the other two accused persons were sentenced to terms of 10 and 15 years respectively. The trial Judge also made a restitution order for the appellant to restore to the complainant all properties and items acquired as proceeds of the dishonest appropriation.

An appeal to the Court of Appeal having failed, the appellant has appealed against this judgment dated 25 June 2013 on two grounds that the judgment was against the weight of evidence and the sentence harsh and excessive.

Ground One: Judgment is against the weight of evidence

We have given serious consideration to this ground of appeal and evaluated the evidence and have come to the conclusion that there is sufficient evidence on record to support the charges against the appellant. We do not find any merit on this ground of appeal.

We will accordingly dismiss this ground of appeal and affirm the conviction of the appellant.

Ground Two: Sentence of 20 years IHL is excessive and harsh

As a principle, sentencing is a matter of discretion for the trial court and an appellate court will only interfere when in its opinion the sentence is manifestly excessive having regard to the circumstances of the case or that the sentence was wrong in principle. See **Apaloo v The Republic [1975] 1GLR 156.**

Factors that a court considers in determining the length of sentence include:

1. Any period of time spent in lawful custody in respect of that offence before the completion of his trial [Article 14 (4) of the Constitution,1992]
2. The intrinsic seriousness of the offence.
3. The degree of revulsion felt by law abiding citizens of the society for the particular crime.
4. The premeditation with which the crime was convicted.
5. The prevalence of the crime within the particular locality where the offence took place, or in the country generally.
6. The sudden increase in the incidence of the particular crime.

7. Mitigating circumstances such as the extreme youth, good character, remorse and reparation
8. Aggravating circumstances such the violence or the manner in which the crime was committed.

See the cases of **Kwashie v The Republic [1971] GLR 488, Gligah & Atisa v The Republic [2010] SCGLR Kamil v The Republic [2011] 1SCGLR 300, and Frimpong alias Iboman v The Republic [2011] 1SCGLR 297**

Counsel for the appellant submits that the sentence was manifestly excessive as the appellant was a first offender and all his properties were confiscated and given to the complainant.

Counsel for the Republic, on her part submits that having regard to the circumstances of the case and the mode of operation by the appellant to loot the complainant, the 20 years IHL was not harsh.

We take note that the trial judge considered the age of the appellant and the fact that all the properties he acquired was ordered to be confiscated and restored to the complainant. However he went on to say: "Regardless, considering the amount involved in the thievery coupled with the craft the accused persons employed to effectuate their nefarious agenda, I am inclined to impose a severe punishment, with the view hopefully to deter other family members working in the company who may have haboured any such criminal intent and to deter society in general."

Much as we appreciate the sentiment of the trial judge, we are of the view the sentence of 20 years IHL is rather excessive taking into account the factors that a court has to consider in determining the length of sentence.

We have considered the plea of Counsel for leniency and also considered the fact that all the properties the appellant acquired during the period he committed the crime have been confiscated and restored to the complaint which makes the sentence of 20 years imposed on the appellant rather hash.

There is also no evidence on record that the judge took into consideration the period of time that the appellant spent in custody pending the trial which is in contravention of Article 14 (4) of the Constitution. See **Bosso v The Republic [2009] SCGLR 420**.

Taking all these factors into consideration we will allow the appeal against sentence; recalling part of Portia's speech on the need to show mercy in William Shakespeare's Merchant of Venice:

> "*The quality of mercy is not strained;*
> *It droppeth as the gentle rain from heaven*
> *Upon the place beneath. It is twice blessed;*
> *It blessed him that gives, and him that takes"*

We will therefore tamper justice with mercy and reduce the sentence of the appellant from 20 years IHL to 12 years IHL on each count to run concurrently.

The appeal against sentence succeeds by the substitution of the sentence of 20 years IHL to 12 years IHL on each count to run concurrently.

SGD. S. O. A. ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)

DOTSE, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira (Mrs.), JSC.

SGD. V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira (Mrs.), JSC.

SGD. ANIN YEBOAH

(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira (Mrs.), JSC.

SGD. P. BAFFOE- BONNIE

(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira (Mrs.), JSC.

SGD. G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

COUNSEL

NANA YAA NARTEY FOR THE APPELLANT/APPELLANT.

FRANCES MULLEN ANSAH, PRINCIPAL STATE ATTORNEY FOR THE RESPONDENT/RESPONDENT.