IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: ATUGUBA, JSC (PRESIDING)
ANSAH, JSC
ADINYIRA (MRS), JSC
BAFFOE-BONNIE, JSC
ARYEETEY, JSC

CRIMINAL APPEAL
J3/2/2009
17TH FEBRUARY, 2010

ELLIS TAMAKLOE ... APPELLANT

VRS

THE REPUBLIC ... RESPONDENT

J U D G M E N T

ANSAH, JSC:

Each accused was charged with and convicted for the offences of:

"COUNT ONE

STATEMENT OF OFFENCE.

Attempted exportation of Narcotic Drugs without lawful authority contrary to Sections 56 (a) and 1(1) of the (Narcotic Drugs Control enforcement and Sanctions) Law, PNDCL 236.

PARTICULARS OF OFFENCE.

1 ROGER OCLOO 2 ELLIS TAMAKLOE on or about 29th August 2006 at the DHL Office, Kanda in Accra, in the Greater Accra Region did attempt out of Ghana without any licence issued by the Minister of Health, a quantity of Cannabis Sativa a Narcotic Drug, weighing 695g.

COUNT TWO

STATEMENT OF OFFENCE

Possession of Narcotic Drugs without lawful authority contrary to Section 2 of the Narcotic Drugs (Control Enforcement and Sanctions) Law, 1990, PNDCL) 236.

PARTICULARS OF OFFENCE

1 ROGER OCLOO, 2 ELLIS TAMAKLOE, on or about the 29th August 2006 in Accra in the Greater Accra Region, without lawful authority, did have in your possession and under your control a quantity of Cannabis Sativa , a Narcotic Drug weighing 695 g."

The accused were found guilty on both counts, convicted and sentenced to the minimum 10 years jail term on each count to run concurrently.
The prosecution gave evidence through five witnesses and closed its case, after which the accused persons opened their defence but called no witnesses.

The second accused (hereafter called the appellant) was aggrieved by the conviction and sentence and appealed to the Court of Appeal, which dismissed the appeal on both counts. The appellant once again appealed to this court against the judgment of the Court of Appeal on the grounds that:

1. "The learned Appeal Court judges erred in law on the facts when they made wrong inferences from the evidence advanced at the trial that the appellant attempted to export narcotic drugs without lawful

authority contrary to Section 56(a) and (1) of the Narcotic Drugs Act, PNDCL 236.

2. The learned Appeal Court occasioned a grave miscarriage of justice and in the process erred when they held that the appellant had possession of narcotic drugs without lawful authority contrary to section 2 of PNDCL 236 when no evidence was adduced to support that finding.

3. The learned Appeal Court Judges failure to consider the evidence led at the trial that the parcel originated from one Harry Campbell occasioned a miscarriage of justice when they concluded that the parcel originated from the appellant.

4. The learned trial judge and the Appeal Court Judges occasioned a grave miscarriage of justice and misdirected themselves on the law of circumstantial evidence when they held that the appellant was guilty of the offences of attempting to export narcotic drugs without lawful authority contrary to section 2 of PNDCL 236

5. Further grounds of appeal would be filed upon receipt of the reasons for the judgment and the Record of proceedings,"

The facts as presented to the trial court and which formed the basis of prosecution, conviction and sentence of the appellant, were that on 20th August 2006, workers at DHL offices in Accra noticed an unusually large parcel said to contain documents for posting to the UK. When examined it was found to contain rather compressed leaves, which tested positive for 'cannabis sativa', a narcotic drug. Further investigations by officials of the Narcotic Control Board revealed that the first accused, a courier of the company, had brought the parcel to the office meant for shipment. When questioned the first accused said it was

the appellant who gave the parcel to him and further denied all knowledge of the contents of the parcel.

On his part the appellant admitted giving a parcel to the first accused but asserted it was not the one alleged to contain the drugs.

The grounds of appeal seemed to say and mean one and the same thing relating to inferences drawn by the trial court and affirmed by the Court of Appeal with regard to the possession and attempt to export the prohibited drugs by the appellant. The issue was could the trial court have been right in its findings and conclusions and could the Court of Appeal have been right in affirming the judgment of the trial court?

It is not always that there will be direct evidence to prove the commission of an offence and circumstantial evidence has often been used. The leading case of *The State v Anani Fiadzo [1961] 1 GLR 416-419* the Supreme Court held that*:*

> "A presumption from circumstantial evidence should be drawn against an accused person only when the presumption follows irresistibly from the circumstances proved in evidence; and in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt."

In other words, as was held in *Duah v The Republic [1987-88] 1 GLR 343-360*, it was only when the guilt of an accused person had necessarily to be inferred from the facts before the court that it would be safe for a court to act upon circumstantial evidence. In a recent decision by this court in *Logan v The Republic [2007-2008]* Aninakwa JSC re-echoed the law on circumstantial evidence when he said:

> "… for circumstantial evidence to support a conviction it must be inconsistent with innocence of the accused. It must lead to irresistible conclusion not only that the crime had been committed but it was in fact committed by the persons charged in order to arrive at a definite conclusion. Conviction based on circumstantial evidence which is not supported by facts is wrongful."

I think the trial judge herein was right in her statement on the law of circumstantial evidence when she said:

> "The primary burden on the prosecutor to prove the guilt of the accused beyond reasonable doubt may not always be discharged by the provision of direct evidence. As stated in section 18(2) of the Evidence Decree 1975 (N.R.C.D 323), Circumstantial evidence including the acts of the accused may point to one and only one inference which may be sufficient proof. *The State v Anani Fiadzo [1961] GLR 416 S.C."*

This being a criminal trial, the prosecution bore the onus of proving the offence beyond reasonable doubts in order to secure the conviction of the appellant. The ingredients of the offence of possessing narcotic drugs as can be gleaned from the offence created by section 2 of the Narcotic Drugs Control, Enforcement and Sanctions Law , 1990 PNDCL 236 which provided that:

> "2 Any person who without lawful authority, proof of which shall be on him, has in his possession or under his control any narcotic drug commits an offence."

To secure a conviction of a person charged with the offence of possessing a narcotic drug under PNDCL 236, the prosecution must prove beyond reasonable doubts that

i. "the appellant had custody or control of the drugs;
ii. he knew of the presence of the drugs; and
iii. he knew of the nature of the drugs possessed":

see *Bonsu alias Benjilo v The Republic [2000] SCGLR 112 at 123.*

It is not always capable of proving the commissioning of an offence especially, those dealing with narcotic drugs, by direct evidence considering the sophistication with which the offence is committed, which is always increasing. Circumstantial evidence is often resorted to for it is often the best…. Bamford-Addo could not have been more right when she said at page 123 that:

> "The proof of knowledge or mens rea is not capable of direct proof but same may be inferred from established facts as stated in Section 18 2 of the Evidence Decree, 1975, NRCD 323. s18 2 states as follows: 'An inference is a deduction of fact that may logically and reasonably be drawn from another fact found or otherwise established in the action."

The case of *Republic v Munkaila [1996-97] SCGLR 445* dealt with what constituted the offence of possession of narcotic Drugs, and decided that:

> "A person is said to be in constructive possession or joint possession of an object if he has control over the other person in physical control of article at his disposal, control or otherwise. The actual manual possession or touch of the goods by the prisoner, however, is not necessary to the completion of the offence. It is sufficient if the prosecution can prove that the article was in the possession of a person over whom the defendant or accused had control so that the article would be forthcoming if he ordered it: see *R v Smith Dearsley and PCC 494; R v Gleed (1917) 12 CR App. R. 32a* and *Archbold*

Criminal Pleading, Evidence and Practice (36th ed.) at 780 at para 1531".

What were the facts which the trial judge found as established by the evidence and from which she inferred the appellant committed the offences in question?

Details of the facts have been given earlier in this opinion and to recapture them it is that in his defence, the appellant admitted that he received a sealed parcel from one Harry Campbell but he never opened to see the contents. Harry Campbell told him the envelope contained catalogues. But what he received was different from what the prosecution showed him on his arrest. Whether or not the envelope or parcel the appellant admitted he gave the first accused was different from what was tendered in evidence was a question of fact to be determined by evidence before the trial judge. The learned judge found the appellant admitted giving a parcel to the first accused and further testified that he had personally written his name and address of the consignee on the airway bill found attached to the parcel. He had seen that the space for the name of the consignor had already been indicated wrongly as the Company called Friesland.

Was there any evidence that there was any signature on the parcel and that it belonged to the appellant? If there had been that proof then the appellant would have had to explain how that came to be and so was easy and reasonable to deduce it established an infrangible nexus between the appellant and the parcel. The appellant appended his signature on the parcel and admitted receiving the parcel from Harry Campbell. That constituted physical possession thereof; which possession continued when he also admitted giving it to the first accused even if that was so constructively. The prosecution succeeded in proving the appellant had possession of the parcel. The conviction on count one was therefore supported by evidence.

Knowledge that what he possessed was Cannabis Sativa a narcotic drug was largely a matter of inference deduced from the evidence led and it is to that that I shift my focus now. Quite apart from that the appellant possessed the parcel, he said he noted the address of the sender on the pre-printed airway bill on the parcel as having not been his. Harry Campbell had given it to him for postage and the query is if he knew that Harry gave the parcel to him for postage and he was doing that when he gave it to the first accused non-appellant why did he not write either his name or that of Harry as the sender when he saw it was that of Freisland Company? In his evidence under cross-examination, he said:

"Q Did you give him any shipment details for the parcel?

A. It was on the envelope-the senders address and the Recipient address

Q The first Accused person said you did not give him any senders address for the parcel you gave him?

A Senders address was on the envelope.

Q Do you remember what it was?

A. I can't recollect but it was Harry Campbell's name but the address I cannot recollect.

Q. You said the first accused gave you an airway bill when you gave the parcel to him?

A. Yes My lord.

Q. And you filled in some details on the bill?

A. Yes, my Lord. He showed me where to fill.

Q. Have a look at this. Was that the airway bill you filled on that day?

A. Yes, I believe so.

Q. Do you remember the recipient address?

A I remember my hand writing (words italicized for emphasis.)

BY COURT: A 2 WAS SHOWN EXHIBIT A.

Q. Was that the airway bill Mr. Ocloo gave you when you gave him the parcel?

A*. Yes I believe so because my hand writing is there* (emphasis supplied)

Q. And you said that that bill he gave you was there a portion for senders address?

A. Yes My Lord.

Q. But?

A. But I realized that it has been filled with a company address.

Q. You did not find any thing strange about that one?

A. I asked him and he said they had run short of airway bill so he will change it when he gets to the office.

X x x

Q. After you had filled this form what happened?

A During the filling of the airway bill I realized that the sender's address side was filled and he told me that they had run out of blank airway bills so he will go to the office and put the information on a blank airway bill so there is no need for me to sign."

From the evidence, the appellant found it strange that the parcel Harry Campbell gave him for shipment, had been filled with a company address in the portion for sender's address. It was not difficult to find why it was strange to the appellant; simply put, the company was not the sender of the parcel. Yet that was the airway bill the appellant signed that day, thereby making it his own. And he gave it to the first accused non-appellant for shipment. In other words the appellant physically possessed the parcel. That plainly was manual or physical possession of the parcel and its contents, thus satisfying a vital ingredient in the offence in count two.

That alone will not lead to the guilt of the appellant for not only must the prosecution prove the *factum possidendi* by the appellant, it must also be proved he had it coupled with the *animus possidendi* or the intention to possess it which constituted the mens rea.

In the English case of *Warner v Metropolitan Police Commissioner [1969]2 A.C. [1969] 2 All E.R. 356, a* majority of the House of Lords held that a person could not b in possession of dangerous drugs unless he was at least aware of the nature of that which was under his control, although it was (on the preponderant view within the majority) unnecessary for the prosecution to show that he knew of its quality. This English view of what was legal possession did not reflect the Ghanaian view and is not applicable as was explained by Atuguba JSC in Bonsu

(supra) at page 123. The Ghanaian view was expressed by Ollennu JSC in *Amartey v The State [1964] GLR 256 at 261* that*:*

> "What is the possession proof of which without more makes a person guilty of an offence under the section 47(1) unless he proved that his possession was lawful. Upon a proper construction of the section, the possession must be possession with knowledge of the nature and quality of the article; that what he possessed awareness that what he possessed is 'opium or Indian hemp', or residue from the smoking of opium or 'Indian hemp'. Physical possession without that knowledge is no offence. Without that knowledge there is no legal possession which can support the charge. Therefore to succeed on such a charge, the prosecution must prove legal possession; that is in addition to proving physical or constructive possession they must go further to lead evidence which establishes that the defendant had the requisite knowledge or evidence from which it will be reasonable to presume that the defendant proved to be in possession well knew or ought to have known, that the article he possessed was 'opium or Indian hemp', or was 'residue from smoking of opium or Indian hemp'." See Amartey v The State SC [1964] GLR 256; Nyameneba v The State [1965] GLR 723,SC.

The offences in question dealt with the exportation and the prohibition or possession of narcotic drugs. I have elsewhere in this opinion stated the ingredients of the offence in count two to be that the appellant in addition to having physical possession of the prohibited drugs knew actually or ought to have known that what he possessed was a narcotic drug, to wit cannabis sativa, or Indian hemp. Such knowledge will constitute the mens rea of the offence which Lord Morris of Borth-y-Gest said in Sweet v Parsley [1970] A.C. 132 at 152 that:

> "It has frequently been affirmed and should unhesitatingly be recognized that it is a cardinal principle of our law that mens rea, an evil intent or a knowledge of the wrongfulness of the act is in all ordinary cases an essential ingredient of guilt of a criminal offence."

Proof of such a vital ingredient in the offence is not always capable of direct proof and facts proved in evidence are often used as such proof. The trial judge found as such facts as the admission by the appellant giving the parcel to the first accused a proven DHL courier, in the service of DHL, to send to the U.K. (via DHL), even though the appellant claimed Harry Campbell gave the parcel to him for that purpose, his name or that of the appellant did not appear on the parcel as the sender; instead that of the Friesland company had been there. The falsity in that was proved by the prosecution beyond all reasonable doubts for the appellant admitted having written the name of the sender on the parcel. If by his evidence the name of that company had been written on the parcel as the sender then by necessary inference he wrote the name which was proved to be false.

Then he wrote that which was false as the sender. Why did he have to do that if it was not to avoid detection as to who the real sender was and the contents of the parcel to be illicit, to wit Sattiva cannabis or Indian hemp. This would on the whole prove the fact that the appellant knew of the nature and quality of the substance he possessed actually or constructively, as a narcotic drug. That meant the prosecution proved the most essential ingredient in the offence to wit the mens rea, beyond all reasonable doubts by the prosecution beyond all reasonable doubts as held by the trial judge and rightly affirmed by the appellate court that the appellant was deeply involved in committing the offences, for he had physical possession of the parcel, and that was coupled with the presumed knowledge that what he possessed was sativa cannabis a prohibited drug. On the evidence he was not who Atuguba JSC called the 'luckless victim' but the real 'criminal recruit' in the Benjilo case.

There was evidence that the illicit parcel was to be exported to the U.K. when the appellant gave it to the first accused a DHL courier. The evidence by the appellant that he did not know of the contents to have been sativa cannabis was false, neither was it reasonably true judging from his acts and behaviour.

In the circumstances the lower courts were justified in finding the appellant guilty of both offences, convicting him accordingly and imposing the sentence on him. They are further affirmed by this court and the appeal dismissed.

J. ANSAH
JUSTICE OF THE SUPREME COURT

BAFFOE-BONNIE, JSC:

Since the facts of this case have been adequately recounted I will not repeat them. The appellant was charged, together with one Roger Ocloo, with two counts as follows:

1. Attempted exportation of narcotic drugs without lawful authority, contrary to sections 56(a) and 1(1) of the (Narcotics, drugs (Control, Enforcement, and Sanctions) Law 1990 PNDCL 236

2. Possession of Narcotic Drugs without lawful authority contrary to section 2 of the Narcotic Drugs (Control, Enforcement and Sanctions) Law 1990 PNDCL 236

He was tried, convicted and sentenced. His appeal to the Court of Appeal was dismissed. He has appealed to this Court on the following grounds:

1. *The learned Court of Appeal Judges erred in law and on the facts when they made wrong inferences from the evidence adduced at the trial that the appellant attempted to export narcotic drugs without lawful authority contrary to section 56 (a) and (1) of the Narcotic Drug Act, PNDCL 236;*

2. *The learned Court of Appeal occasioned a grave miscarriage of justice and in the process erred when they held that the appellant had possession of narcotic drugs without lawful authority contrary to section 2 of PNDCL 236 when no evidence was adduced to support that finding;*

3 *The learned Appeal Court Judges' failure to consider the evidence led at the trial that the parcel originated from one Harry Campbell occasioned a miscarriage of justice when they concluded that the parcel originated from the appellant;*

4 *The learned trial Judge and Appeal Court Judges occasioned a grave miscarriage of justice and misdirected themselves on the law of circumstantial evidence when they held that the appellant was guilty of offences of attempting to export narcotic drugs without lawful authority and possession of narcotic drugs without lawful authority contrary to section 2 of PNDL 236*

This appeal raises two fundamental issues as follows:

1 *Whether or not the criminal intent of an accused person is a necessary ingredient for a Court to conclude that there was possession of a Narcotic substance contrary to Section to 2 of The Narcotic Drugs (Control, Enforcement and Sanctions) Act, 1990.*

2 The proper use of circumstantial evidence in criminal trials.

It is trite learning that for an action or omission to constitute an offence, there has to be a coincidence *of t*he act or omission with the requisite intention to commit the offence. This intent can be direct or constructive since a man is deemed to intend the reasonable consequences of his action or omission. Every crime contains expressly, or by implication a proposition as to a state of mind except where the statute expressly excludes the element of intention thereby making it a strict liability offence. Goddard CJ captured this position of the law aptly **in Brend v. Wood (1946) TLR 462** as follows:

"It is of the utmost importance for the protection of the liberty of the subject that a Court should always bear in mind that unless a statute, either clearly or by necessary implication, rules out *mens rea* a constituent part of a crime, the Court should not find a man guilty of an offence against the criminal law unless his mind is guilty"

In determining whether *mens rea* is an essential ingredient of an offence under a statute, it is necessary to consider the words of the statute itself and the subject matter with which it deals. No difficulty arises in determining whether the legislature intended an offence to be one of a strict liability where in the definition of the offence expressions like intentionally, fraudulently, knowingly, dishonestly etc are used because these words indicate a condition of mind. The difficulty arises where no such expressions are used by the statute. The section in issue deals with prohibition on possession of narcotic drugs and it provides as follows:

1) **A person who, without lawful authority, the proof of which lies on that person, has possession or control of a narcotic drug commits an offence**

Reading the offence creating section It is clear that the accused person's liability arises where it has been proven that what he possesses or has control over is a Narcotic drug or where it will be reasonable to fix him with such knowledge.

In the instant case there is evidence from both the prosecution and the defence to the effect that it was not possible to look at the sealed parcel in issue from the outside to know the contents. The Appellant in his evidence said that Harry Campbell handed him the parcel already sealed, told him it contained catalogues and instructed him to post it on his behalf. Nowhere has this piece of evidence been denied by the prosecution. Indeed, during the trial one prosecution witness PW2, Mr. Djangba, told the Court that the parcel in issue had gone through two of the three pronged stages the parcels go through at the DHL office successfully without anybody having any reason to suspect that the parcel contained substances other than the documents they were alleged to contain. It was only at the bagging stage that one officer opened the parcel and it was realised that it did not contain documents. It is important to note that the two stages the parcel went through successfully were the debriefing stage and the reweighing and scanning. If at the reweighing and scanning stage the parcel was not detected to contain prohibited drugs, how can it be said that the Appellant's mind should have been put on enquiry when he was handed a sealed parcel for postage by a friend. It is my candid opinion that this is not a case in which the accused can reasonably be fixed with knowledge of the contents of the parcel. And without proof of knowledge legal possession cannot be said to have been made out.

What constitutes possession has been decided by our courts in a number of cases. In **Amartey v. The State [1964] GLR 256,** Ollenu JSC posed the question and answered as follows:

"What is possession, proof of which, without more, makes a person guilty of an offence under section 47(1), unless he proved that his possession is lawful? Upon a proper construction of the section, the possession must be possession with knowledge of the nature and quality of the article; awareness that what is possessed is "opium or Indian hemp" or residue from the smoking of "opium or Indian hemp". Physical possession without that knowledge is no offence. Without that knowledge there is no legal possession which can support the charge. Therefore to succeed on such a charge, the prosecution must prove legal possession; that is in addition to proving physical or constructive possession, they must go further to lead evidence which establishes that the defendant had the requisite knowledge, or evidence from which it will be reasonable to presume that the defendant proved to be in possession well knew, or ought to have known, that the article he possessed was "opium or Indian hemp" or was "residue from smoking of opium or Indian hemp"

This statement of the law given in 1964 has not changed. Atuguba JSC in the case of **Bonsu v. The Republic [1999-2000]IGLR 199** made this statement at pgs 225-226.

"Once again, as the memorandum to PNDCL 236 shows: " The purpose of this law is to bring under one enactment offences relating to illicit dealing in narcotic drugs" and to prevent illicit narcotic drug dealers from benefiting from their crimes" A person who does not even know the nature and quality of the substance he possesses cannot be said to engage in illicit dealing in narcotic drugs" but is merely a luckless victim" whom our legislature, prima facie does not hold to ransom"…. From all the foregoing, I hold that on a charge of possessing a narcotic drug under PNDCL 236 the prosecution must prove:

1. ***Custody or control of the drug by the accused;***
2. ***Knowledge of the presence of the drug by the accused***
3. ***Knowledge of the nature of the drug possessed"***

From the accepted evidence on record, and applying this principle and the three staged test to the current case, I am unable to say that the appellant had legal possession since his knowledge of the contents of the parcel as containing narcotic drugs has not been proved to evidential certainty. Once the prosecution fails on this then the second part of the section which seeks to fix an appellant with a strict liability of proving the lawfulness of his authority to possess will not arise. Equally the first count would also fail because a person cannot reasonably be said to have attempted to export a drug which he did not legally possess.

The second issue, not exactly unconnected with the earlier one, which I will like to discuss, is the appropriate use of circumstantial evidence in proof of criminal charges.

Concluding her judgment the learned trial judge noted thus;

"These deliberate acts of concealment point irresistibly to an awareness of the illegality of the whole enterprise and specifically as breaching the provisions of the narcotics laws as charged"

From the facts of this case, and as confirmed by the above quoted statement by the trial judge, there was no direct evidence that the appellant had knowledge that the parcel he attempted to post contained narcotics. He was convicted based on all the circumstances put together and imputed with knowledge of the contents of the parcel. I will concede that it is almost impossible to prove intention, knowledge, and other such legal requirements by direct evidence. That is why in most cases knowledge of the existence or non existence of something is often proved by circumstantial evidence other than direct evidence.

Adrian Keane in the Modern Law of Evidence, Third Edition at page 10 defined Circumstantial evidence as

"… evidence of relevant facts (facts from which the existence or non-existence of a fact in issue may be inferred) and contrasted with direct evidence, a term which is used to mean testimony relating to facts in issue of which a witness has or claims to have personal knowledge or first hand knowledge."

Circumstantial evidence may take the form of oral evidence (including admissible hearsay) or real evidence. In the English case of **Teper v. R [1952] AC 480 at page 489** Lord Normand observed as follows:

"***Circumstantial evidence may sometimes be conclusive, but it must always be narrowly examined, only because evidence of this nature may be fabricated to cast suspicion on another…It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference."***

The law on circumstantial evidence has been espoused variously by the Ghanaian Courts in several cases.

In the 1961 case of **Anane v. Fiadzo 1961 1 GLR 416** the Supreme court had laid down the bench mark for the use of circumstantial evidence in criminal trials as follows

" *a presumption from circumstantial evidence should be drawn against an accused person only when the presumption follows irresistibly from the circumstances proved in evidence ; and in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused*

and incapable of explanation upon any other reasonable hypothesis than that of guilt."

The court of appeal later in 1987 put it even more succinctly in the case of **Duah v Republic 1987-88 1 GLR 343** as follows;

"Circumstantial evidence was evidence of surrounding circumstances which by undesigned coincidence was capable of proving a proposition with the accuracy of mathematics. In criminal cases, it was sometimes not possible to prove the crime charged by direct or positive evidence of persons present at the time the crime was committed. So where the testimony of eye-witnesses was not available, the jury was entitled, and indeed permitted, to infer from those facts which the prosecution had proved, other facts necessary either to complete the elements of guilt or establish innocence. However, before drawing the inference of the guilt of an accused from circumstantial evidence, it was very important to make sure that there was no other co-existing circumstance which would destroy or weaken the inference. Thus, circumstantial evidence had to be closely examined and acted upon only when the circumstances were such that the guilt of the accused had of necessity to be inferred and that the facts led to no other conclusion"

At the trial the appellant put up two defences

1. That the parcel that was intercepted was not the parcel that he had initially given to the 1st accused person, and
2. He did not know that the parcel he gave to the 1st accused, which had been given to him by one Harry Campbell for posting, contained any banned or narcotic drugs.

These are formidable defences separately and collectively, and the prosecution and the court could not just wish them away by a cursory wave of the hand.

As an accused person, the only thing that he was required to do through out the trial was to raise reasonable doubt. He produced evidence to show that the parcel did not originate from him and that he was only a messenger of Harry Campbell. Again, he said that he did not refuse to collect the postage receipt or alter the sender's address deliberately. According to him, it was the first accused who gave him a pre-printed airway bill with Friesland Ltd as the sender's address. He queried this anomally and the first accused assured him that it was only because he had ran out of blank airway bills and that he was going to do the right thing when he got back to the office. Someway, somehow he failed to do so. The first accused confirmed this story and said that it was not because they were trying to hide anything but only because he sought to pocket the postage sum. This evidence was further corroborated by a prosecution witness from DHL who said that the couriers sometimes engaged in such practices but when they were found out they were dismissed. This has been the case of the appellant right from the time of his arrest to now!

In the face of this consistent and weighty evidence this is what the Court of Appeal said;

> "There is no doubt that it was appellant who actually delivered the parcel to the courier for export. What he sought to do was to show that he did not know the contents of the envelope which he alleged contained documents……..**The trial judge considered this defence adequately and rejected it because by his own conduct appellant deliberately concealed the identity of the real sender, falsified the address and signature and the route, all in an attempt to escape detection. These acts were rightly found by the trial court not to be consistent with the acts of an innocent person.** These acts together with the fact that the appellant personally wrote the name of the consignee at the time when he had seen the name of the consignee wrongly, indicated as Friesland

and refusing to take receipt for the payment that he made, further condemn the appellant."(emphasis added)

But what exactly did the trial judge say that led the learned Justices of the Court of Appeal to conclude that she had considered the evidence adequately and come to a conclusion which they did not feel inclined to disturb? In her four and a half page judgment this is all that she said about the evidence on record.

".....The testimony of the second accused shows that by previous association, he knew of the correct procedure for remittances through DHL yet he had acted to the contrary in respect of the offending parcel. His complicity in using a false address and a false signature of the sender address on parcel is in my opinion not innocent acts of omission but rather acts deliberately executed with the sole purpose of preventing the detection of the real sender of the parcel. These deliberate acts of concealment point irresistibly to an awareness of the illegality of the whole enterprise and specifically as breaching the provisions of the Narcotic laws as charged."

Why the Learned Justices of the Court of Appeal, like the Learned Trial Judge, came to the conclusion that these recounted acts constituted credible circumstantial evidence to support conviction, I cannot fathom. Suffice it to say in a criminal trial the appellant was only supposed to raise reasonable doubt to earn an acquittal. It is my candid opinion that the Appellant succeeded in raising reasonable doubt in the case of the prosecution to earn an acquittal. Conversely, the prosecution failed to prove their case beyond reasonable doubt.

Let me end this judgment by quoting what our brother **Aninakwa JSC** said in the case of **Logan v. The Republic [2007-2008] 1 SCGLR 76**

"..for circumstantial evidence to support a conviction it must be inconsistent with innocence of the accused. It must lead to irresistible conclusion not only that the crime had been committed, but it was in fact committed by the persons charged in order to arrive at a definite conclusion. Conviction based on circumstantial evidence which is not supported by facts is wrongful"

The evidence on record cannot be said to be one which works by cumulatively eliminating other possibilities in a geometric progression. The plausibility of the accused person's innocence is deafening. It is for the foregoing reasons that I allow the appeal set aside the conviction and sentence and enter a not guilty verdict for the appellant on both counts.

P. BAFFOE-BONNIE
JUSTICE OF THE SUPREME COURT

ATUGUBA, JSC:

I agree that the appeal be dismissed.

W.A. ATUGUBA
JUSTICE OF THE SUPREME COURT

ADINYIRA (MRS), JSC:

I had the benefit to read beforehand the opinions of my brothers Ansah and Baffoe-Bonnie JJSC. I support the conclusion reached by Ansah, JSC that the appeal be dismissed.

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

ARYEETEY, JSC:

I also agree that the appeal be dismissed.

B. T. ARYEETEY
JUSTICE OF THE SUPREME COURT

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