

**IN THE CIRCUIT COURT HELD AT SOGAKOPE ON THURSDAY, 8TH
DECEMBER, 2022 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT
COURT JUDGE**

CASE NO. 03/2022

THE REPUBLIC

VRS

GODFRED ADZALO

ACCUSED PERSON PRESENT

CHIEF INSPECTOR JACOB AWIAGAH FOR THE REPUBLIC PRESENT

JUDGEMENT

The Accused person is before this court charged with the following offences contrary to the Criminal Offences Act, 1960 (Act 29):

- i. Conspiracy to commit crime to wit; Robbery contrary to sections 23(1) and 149;
- ii. Robbery contrary to section 149.

Upon his first arraignment before this Court on the 22nd December, 2021, the Accused person pleaded Not Guilty to the charge.

THE FACTS OF THE CASE

On the 27th March, 2021 at about 6:30pm, the complainant was in his shop when the Accused person and four (4) others in masks wielding guns and knives suddenly entered the shop. The complainant who was preparing his account to close the day's work was ordered by the robbers to surrender his money or else they will finish him. The complainant got scared and surrendered the money.

During the operation, the Accused person who transported the robbers to the shop was recognized by the complainant. When the Accused person noticed that he had been identified, he withdrew and stood at the entrance of the shop whilst the others operated. Eventually, the robbers succeeded in stealing cash of GHC10,000.00, two smart phones, one HP i3 laptop, eight pieces of keypad phones and assorted scratch cards. After the operation, the Accused person went into hiding until he was arrested from his hideout in Adidome Township.

At the trial, the prosecution called two (2) witnesses to testify in support of its case. The testimony of PW1 (Amu Kennedy Kofi) confirmed the facts as presented by the prosecution.

PW2 (Detective Corporal Ebenezer Kwesi Quartey) investigated the case. PW2 relied on his Witness Statement together with the exhibits attached.

After the close of the case of the prosecution, the court ruled that a prima facie case had been made out against the Accused person, and so he was accordingly ordered to enter into his defence.

THE CASE OF THE DEFENCE

The Accused person testified himself and called one witness as DW1. The Accused person told the court that it was one Saturday about 5-6pm, he was going to watch football match at the E.P. Park and on his way he met four (4) gentlemen. One of them had dreadlocks but the other three (3) did not. They stopped him and they asked that he picked them with his motorbike towards the Pentecost compound which he obliged. According to the Accused person, on their way and some few meters before the Pentecost compound, they asked him to stop and wait for them. It is the case of the Accused person that when they

alighted, they gave him GHC50.00 so he told them he did not have change for them. So they asked him to wait whilst they changed the money from the mobile money vendor. Whilst waiting for them, a jungle motorbike with a Bob Marley sticker on the tank arrived. The Accused person stated that at that moment, he decided to go and check on them because they were keeping long. On entering the place where they said they were going to change the money, he saw the gentleman who came with the jungle motorbike together with the passengers who engaged his services attacked the complainant and asked him where the money was. According to the Accused person when he entered, the gentlemen boarded the jungle motorbike and left. It is the case of the Accused person that he did not carry them again on his motorbike.

DW1 (Felicia Avordome) told the Court that she was not around when the incident happened and had travelled to her mother's place at Afife but the Accused person narrated what happened to her.

The legal issue issues that emerged for determination after the end of the trial are as follows:

- i. Whether or not the Accused person and four (4) others agreed or acted together to rob the complainant of his property.
- ii. Whether or not the Accused person robbed the complainant of his property.

BURDEN OF PROOF

It is important to note that the 1992 Constitution per Article 19 (2) (c) presumes every person innocent until the contrary is proved. In other words, 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 person beyond reasonable doubt. The burden of proof is therefore 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. "See Gligah & Anor. v The Republic [2010] SCGLR 870.

Thus in Section 11(2) of the Evidence Act NRCD 323 it is provided that:

"In a criminal action the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt."

COUNT ONE: CONSPIRACY TO COMMIT CRIME

Section 23(1) of Act 29 provides that:

"Where two or more persons agree or act together with a common purpose for or in committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence."

In Frimpong @ Iboman v Republic [2012] 1 SCGLR 297, Dotse JSC stated thus:

"It is important to note that in this case, it is sufficient if the prosecution succeed in proving the essential ingredients of the offences of conspiracy to commit robbery and robbery. For the offence of conspiracy, it is necessary to establish the following:-

- i. Agreement to commit the unlawful act of robbery – acting for a common design. There need not be any prior deliberation.
- ii. Intention on their part to commit that unlawful act – this was manifested in their common pursuit of the robbery agenda.”

On the evidence before this Court, only the Accused person was arrested and arraigned before this Court. There is also no evidence before this court to establish that the Accused person agreed or acted together with the other persons at large to rob the complainant of his property. It can therefore not be said that the Accused person conspired with himself or the other persons at large to commit the offence.

COUNT 2: ROBBERY:

Section 150 of Act 29 defines Robbery as follows:

“A person who steals a thing commits robbery

(a) if in, and for the purpose of stealing the thing, that person uses force or causes harm to any other person, or

(b) if that person uses a threat or criminal assault or harm to any other person, with intent to prevent or overcome the resistance of the other person to the stealing of the thing.”

In Frimpong @ Iboman v. Republic (supra), the Supreme laid out the following five (5) elements to establish by the prosecution in a charge of robbery:

1. That the appellants stole something from the victim of the robbery of

which he is not the owner.

2. That in stealing the thing, the appellant **used force, harm or threat of any criminal assault on the victims.**
3. That the intention of doing so **was to prevent or overcome the resistance.**
4. That this **fear of violence must either be of personal violence to the person robbed or to any member of his household or family in a restrictive sense.**
5. The thing stolen must be in the presence of the person threatened.

From the entirety of the evidence adduced at the trial, it was only the complainant who swore to have seen the Accused person robbing him of his property with some other persons at large. Throughout the trial, the Accused person has denied committing the offences charged. In his Cautioned and Charge Statements given to the police on the 6th April, 2021 and 28th August, 2021 respectively, the Accused person still denied all the charges against him.

Under cross examination, the Accused person still maintained his innocence and narrated again what happened on that day. The following are some of the answers given by the Accused person when he was cross examined by the prosecution on the 17th October, 2021:

Q. You told this court you know the complainant very well.

A. I know him but not very well.

Q. You knew complainant before this case.

A. Yes.

Q. When you took your accomplices and you got to complainant's shop you knew it was his shop.

A. Where I parked, you can see where the complainant's shop is, and can see inside the shop partially. When they alighted, they gave me GHC50.00 to take fare of GHC3.00 which I didn't have change for them. So they told me to wait whilst they get change from the complainant. It was because they were keeping long that is why I decided to go and check up on them. On entering when I saw the complainant in a kneeling position and begging them. Upon seeing me, they rushed out and left. The complainant can attest to what I saw and happened.

The evidence on record is the testimony of PW1 (complainant) against that of the Accused person. PW2 (investigator) only came to rely on his Witness Statement together with the exhibits attached. On the other hand, DW1 was not present when the incident happened but was later told what happened by the Accused person. In short, the evidence on record is oath against oath.

In the case of Lutterodt v. Commissioner of Police [1963] 2 GLR 429, the Supreme Court per holding 2 stated that:

"Where a decision of a trial court turns upon the oath of a prosecution witness against that of a defence witness, it is incumbent on the trial court to examine the evidence of the said witnesses carefully along with other evidence adduced at the trial before preferring one to the other. If the court prefers the evidence of the prosecution then it must give reasons for the preference, but if it is unable to give any reasons for the preference, then that means that there is a reasonable doubt as to which of the versions of the story is true, in which case, the benefit of the doubt must be given to the defence.....".

Upon a careful evaluation of the entire evidence adduced at the trial, I am unable to prefer the evidence of the prosecution to that of the Accused person. The court finds that the Accused person has raised a reasonable doubt in the case of the prosecution. In the circumstances, I hereby acquit and discharge the Accused person herein.

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ISAAC ADDO
CIRCUIT JUDGE
8TH DECEMBER, 2022