IN THE CIRCUIT COURT "A", TEMA, HELD ON THURSDAY, THE 30TH DAY OF NOVEMBER, 2022, BEFORE HER HONOUR AGNES OPOKU-BARNIEH, CIRCUIT COURT JUDGE

SUIT NO. D2/35/20

THE REPUBLIC

VRS.

1.MOSES KWADJO NINSON

2.JOHN ABEIKU QUAICOE

3.BRIGHT KWADJO AMOATENG

4.JOHN BADU AYEPAH

ACCUSED PERSON PRESENT

C/INSP. SUSANA AKPEERE FOR PROSECUTION PRESENT

PRINCE KWEKU HODO, ESQ. FOR FOURTH ACCUSED PERSON PRESENT

JUDGMENT

FACTS:

The first, second and third accused persons were arraigned before this court on the following charges;

1. Conspiracy to commit crime namely; robbery contrary to sections 23(1) and 149 of the Criminal Offences Act, 1960(Act 29).
2. Robbery, contrary to section 149 of Act 29,

The fourth accused person is also charged with Dishonestly receiving contrary to section 146 of Act 29.

The brief facts presented by the prosecution are that the complainant is a driver in charge of a black and yellow Toyota Yaris taxi, with registration *number GT 5355-20*, valued GH₵35,000 and lives at Spintex, Accra. The first, second and third accused persons are all unemployed and reside at Community 1, Tema, Apowa, a suburb of Takoradi and Sakumono, Accra, respectively whilst the fourth accused person is a businessman and resides at Anaji, Takoradi.

The prosecution alleged that on 20th June, 2020, at about 12:00am, the first, second and third accused persons agreed and acted together to rob a vehicle. Pursuant to that, they engaged the services of the complainant to send them from Community 1, Tema to Timber Market. When they arrived at their destination, they further asked the complainant to send them to the Industrial area. The prosecution further states that when they got to a section of the road near Tema Oil Refinery, the third accused person who was siting directly behind the driver suddenly attacked him and held his neck tightly to the seat. When the complainant tried to resist, the third accused person bit him on the forehead above his left eye causing him to bleed profusely. The three accused persons then pulled him out of the vehicle. Thereafter, the first accused person took charge of the vehicle whilst the second and third accused persons quickly jumped on board and they drove the vehicle away.

The prosecution further claims that the complainant immediately reported the matter to the police for investigations leading to the arrest of the third accused person. It is further alleged that the third accused person stated in his caution statement that he connived with the first and the second accused persons to rob the complainant. The first and the second accused persons

were also arrested and they all admitted in their caution statement that they indeed robbed the complainant of the said vehicle, took it to Takoradi and sold it to the fourth accused person at an amount of GH₵6,000 which he made a part- payment of GH₵4,000 to them and they shared the proceeds of the sale.

Based on the statements of the three accused persons, on 11th July, 2020, the fourth accused person was arrested in Takoradi and the car allegedly robbed retrieved from him. According to the prosecution, when the car was retrieved the number plate had been removed, the colour of the car had been changed and the chassis number sealed. The prosecution further maintains that the fourth accused person in his caution statement admitted paying the said GH₵4,000 to the first, second and third accused persons. After investigations, they were charged with their respective offences and arraigned before this court.

THE PLEA

The four accused persons who had no legal representation at the time of taking their pleas pleaded not guilty to their respective charges after the charges had been read and explained to them in the Twi language. The accused persons having pleaded not guilty to their respective charges put the facts of the prosecution in issue and thereafter, the prosecution assumed the burden to prove the guilt of the accused persons beyond reasonable doubt.

BURDEN OF PROOF

The foundation of our criminal justice system is premised on **Article 19(2)(c)** of the 1992 Constitution, which provides that a person charged with a

criminal offence is presumed innocent until he is proven guilty or has pleaded guilty. In the case of **Asante (No.1) v. The Republic (No.1)** [2017-2020] I SCGLR 132 at 143, Pwamang JSC held that:

"Our law is that when a person is charged with a criminal offence it shall be the duty of the prosecution to prove his guilt beyond reasonable doubt, meaning the prosecution has the burden to lead sufficient admissible evidence such that on an assessment of the totality of the evidence adduced in court, including that led by the accused person, the court would believe beyond a reasonable doubt that the offence has been committed and that it was the accused person who committed it. Apart from specific cases of strict liability offences, the general rule is that throughout a criminal trial the burden of proving the guilt of the accused person remains with the prosecution. Therefore, though the accused person may testify and call witnesses to explain his side of the case where at the close of the case of the prosecution a prima facie case is made against him, he is generally not required by the law to prove anything. He is only to raise a reasonable doubt in the mind of the court as to his commission of the offence and his complicity in it except where he relies on a statutory or special defence"

The term "reasonable doubt" as explained by Lord Denning in the case of **Miller vs. Minister of Pensions (1947) 2 All ER 372** is as follows;

"It needs not reach certainty but must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The Law would fail to protect the community if it admitted fanciful positions to deflect the course of justice"

ANALYSIS

The first, second and third accused persons are charged with two counts of Conspiracy commit crime namely, Robbery contrary to **sections 23(1) and 149** of Act 29 and Robbery, contrary to **section 149** of Act 29. In my view, the two charges

can conveniently be dealt with together and I will proceed to discuss the two offences levelled against these three accused persons together.

The current state of the law on conspiracy as formulated by the Statute Law Revision Commission under **Section 23(1) of Act 29**, is that conspiracy is committed:

"Where two or more persons agree to 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 the case of **The Republic V. Augustina Abu & Others (Unreported, Suit No. ACC15/2010 Dated 23rd December 2009)** Marful-Sau JA sitting as an additional High Court Judge aptly stated:

"The effect of conspiracy as defined by the Criminal Offences Act, is that the persons must not only agree or act, but must agree to act together for common purposes. This to my mind raises the degree and standard of proof for the offence of conspiracy, since by the Criminal Offences Act; the prosecution must establish that the persons agreed to act, rather than just agreeing or acting…. Accordingly to succeed in securing conviction for conspiracy currently, under the Criminal Offences Act, 1960(Act 29), the prosecution must establish that the accused persons agreed to act with a common purpose for or committing or abetting a crime. Conspiracy under the new Criminal Offences Act therefore requires proof of prior agreement."

The essential ingredients of the offence of conspiracy which the prosecution must prove to secure conviction is neatly encapsulated in the decision of Justice Kyei Baffour JA sitting as an additional High Court Judge in the case of the **Republic v. Baffoe Bonnie and Others** (Suit No. CR/904/2017 (Unreported) dated 12 May 2020 are that:

1. *That there were at least two or more persons*
2. *That there was an agreement to act together.*
3. *That the sole purpose for the agreement to act together was for a criminal enterprise"*

The Supreme Court in the case **Akilu v. The Republic** [2017-2018] SCGLR 444 at 451, per Appau JSC concluded that:

"The double-edged definition of conspiracy arises from the undeniable fact that it is almost always difficult if not impossible, to prove previous agreement or concert in conspiracy cases. Conspiracy could therefore be inferred from the mere act of having taken part in the crime where the crime was actually committed. Where the conspiracy charge is hinged on an alleged acting together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing the crime"

The substantive offence the three accused persons are alleged to have conspired to commit and succeeded in committing in furtherance to their agreement is robbery contrary to **section 149 (1)** of Act 29 as amended by the Criminal Code (Amendment) Act 2003 (Act 646). The section, which proscribes robbery, provides that:

"Whoever commits robbery is guilty of an offence and shall be liable upon conviction and trial summarily or on indictment, to imprisonment for a term of not less than ten (10) years, and where the offence is committed by the use of an offensive weapon or offensive missile, the offender shall upon conviction be liable to imprisonment for a term of not less than fifteen (15) years".

Section 150 of Act 29 defines robbery as follows:

"A person who steals anything 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'.*

The essential ingredients of the offence that the prosecution must establish to secure conviction as stated by the Supreme Court in the case of **Frimpong alias Iboman v. The Republic** [2012] 1 SCGLR 297 at 312, per Dotse JSC are as follows;

i. That the accused person stole something from the victim of the robbery of which he is not the owner.
ii. That in stealing the thing, the accused person used force, harm or threat of any criminal assault on the victim.
iii. That the intention of doing so was to prevent or overcome the resistance of the victim.
iv. 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 the restrictive sense
v. The thing stolen must be in the presence of the person threatened.

To prove that the first to the third accused persons agreed to act together with a common purpose to commit the offence of robbery and did indeed commit the substantive offence of robbery, the prosecution called three witnesses and tendered in evidence the following exhibits;

i. Exhibit A: Photograph of the victim
ii. Exhibit B: Medical Report

iii. Exhibit C: Photograph of the scene of crime.

iv. Exhibit D: Caution statement of A4 admitted without objection.

v. Exhibit E: Charge statement of A4

vi. Exhibit F: Documents covering the vehicle allegedly stolen.

vii. Exhibit G: Photograph of the car retrieved.

viii. Exhibit H: Caution statement of 1st accused admitted after an objection.

ix. Exhibit H1: Charge statement of 1st accused admitted after an objection.

x. Exhibit J: Caution statement of 2nd accused admitted after an objection.

xi. Exhibit J1: Charge statement of 2nd accused admitted.

xii. Exhibit K: Caution statement of 3rd accused admitted after an objection.

xiii. Exhibit K1: Charge statement of 3rd accused admitted after an objection.

The first prosecution witness (PW1), D/Constable Gemadi Christian Akorli, stationed at the Community 11, Tema, Police station testified that on 18th June, 2020, by one Enoch Brebi, reported that his Toyota Yaris Cab with registration number *GT 5383-20* had been snatched and the case was referred to him for investigation. According to him, in the course of investigations, he received a message from Lube Oil Police Station, Community 1, Tema, about another case of robbery in respect of a Toyota Yaris cab with registration number *GT 5355-20*, the vehicle in issue in this case, which was snatched from James Tetteh Ayimavor. They therefore requested for his assistance to apprehend the perpetrators of the alleged robbery.

Consequently, on 24th June, 2020, based on intelligence, PW/Sgt. Doris Oppong and D/CPL Nicholas Akuoku of Community 2 Police Station arrested the third accused person in connection with the crime and sent him to the police station for investigations. Upon interrogation, it was discovered that the third accused person together with two others, snatched the Toyota Yaris

from the owner. The third accused person during interrogation gave a vivid account of what happened and the role each of them played in furtherance to the commission of the alleged crime and mentioned the names of the first and second accused persons as his co-conspirators. In support, he tendered in evidence the investigation caution statement of the third accused person admitted and marked after a mini-trial as **Exhibits K and K1** respectively.

The first prosecution witness again testified that upon receipt of this information, police officers proceeded with the third accused person to Community 1, Tema on enquires. The third accused person led police to Community 1, Tema near Melcom and lured the first accused person to meet him for his share of the proceeds of the alleged crime, which led to the arrest of the first accused person. Upon his arrest, the first accused person in his investigation caution statement admitted that they actually robbed a black Toyota Yaris with the second accused person and sold it at Takoradi at the cost of GH₵4,000. In support, he tendered in evidence the investigation caution and charge statements of the first accused person admitted and marked as **Exhibits "H" and "H1'** respectively after the conduct of a mini-trial.

According to PW1, on 26th June, 2020, intelligence gathering led to the arrest of the second accused person from his hideout at Prampram. In his caution statement, he also admitted conniving with the first and third accused persons to rob a driver of a Toyota Yaris Taxi Cab near Tema Oil Refinery and sold same at Takoradi at a cost of GH₵4,000. He tendered the investigation caution statement and the charge statements of the second accused person admitted and marked in evidence as **Exhibits "J" and "J1"** after the conduct of a mini-trial.

According to PW1, his investigations revealed that the three accused persons are connected to the robbery case reported at the Lube Oil Police station by James Tetteh Ayimavor, the second prosecution witness in this case. The docket in that case was assigned to him to continue with the investigations and after he contacted the investigator and the complainant in the case. He further testified that investigations revealed that the three accused persons took the taxicab to Takoradi and sold it to the fourth accused person at a cost of GH₵4,000. Based on this information, proceeded to Takoradi with the second accused person and got the fourth accused person arrested and the taxicab retrieved from him and brought to Tema assist in investigations. He tendered the investigation caution statement and the charge statements of the fourth accused person as **Exhibits D and E** respectively.

The investigator further stated that when the taxi was retrieved, the colour had been changed with both registration number plates removed and the chassis number on the dashboard sealed to hide the car's identity but the one on the driver side door was not tempered with. The complainant was invited to identify the taxicab retrieved and he confirmed that is the taxi forcefully snatched from him by the accused persons but was quick to indicate that the colour had been changed. The car owner brought the documents covering the vehicle as proof of ownership of the car retrieved The documents covering the car were admitted as **Exhibit F** and a photograph of the car, admitted and marked as **Exhibit G** respectively. According to him, when he perused the documents, it bore the registration number *GT 5355-20*, the mode name as Yaris, chassis *number JTDBT923171176362* and the original colour as black and yellow. The investigator concluded his evidence by stating that the car was

sold to the fourth accused person at a paltry sum of GH₵4,000 when the market value of the car was worth GH₵35,000 at the time

The second prosecution witness (PW2), James Tetteh Ayimavor testified on 19th of June, 2020 at about 11:30pm, he being the driver of the vehicle in issue was working when he met three young men now the first to the third accused persons who stopped him and engaged his services to be driven from Community 1, Tema to Timber Market, Tema. According to his evidence, he picked the three accused persons and on reaching Timber Market as earlier agreed, they asked him to send them to Tema Industrial Area instead. He complied and on their way to the Industrial Area, close to the Tema Oil Refinery, the third accused person who was sitting directly behind him attacked him from behind and held his neck firmly against the seat and bit his forehead. He tried resisting the attack but blood started oozing from the cut, which blurred his vision. He tendered in evidence a photograph of his forehead and the medical report as **Exhibits "B" and "C"** respectively.

The second prosecution witness continued to testify that the first three accused persons joined hands and pulled him out of the car. Thereafter, the first accused person took charge of the car while the 2nd accused person and the third accused person jumped on board and drove the car away. PW2 further testified that he went to the Lube Oil Police station to lodge a complaint around 12:30am on the 20th June, 2020. During investigations, he led he investigative team to the scene of crime and recounted what happened on the day of the alleged incident.

On the 26th June, 2020, he received a call from LCPL Frank Mobora to report at the police station to assist with investigations since the police at the Commuinty 11 Police Station had received information concerning the vehicle robbed from him. Consequently, he reported at the police station and L/CPL Frank Mbora sent him to Community 11 Police Station to assist investigations into his complaint. Later, he was informed that the car, which was snatched from him, had been retrieved in Takoradi. Based on that, he went to the police station to identify the car snatched from him but discovered that the number plates had been removed and the vehicle re-sprayed.

Under cross-examination by the accused persons, PW2 testified that he does not know the accused persons, and since the alleged incident happened late in the night, he could not identify the people who attacked him and took the taxi from him.

PW3, Frank Zego, testified that he is the owner of the Toyota Yaris taxi valued at GH₵35,000 with registration number *GT 5355-20* robbed in the case. According to him in February, 2020, he gave the taxicab in issue to PW2 to work with but on 20th June, 2020, the driver (PW2) called to inform him that he had been attacked by robbers and the car snatched from him in Tema and that he was on his way to the Lube Oil Police Station in Tema to lodge a complaint. He followed up to the police station and saw PW2 wounded on his forehead with blood oozing from the wound. He presented the documents to the police and later he received information that the accused persons had been arrested and the taxicab retrieved. He however noticed that his taxicab had been re-sprayed from its original colour and the number plates removed.

From the evidence led by the prosecution, the fact that the second prosecution witness was robbed of the taxi is not issue. In fact, the prosecution tendered a photograph of the victim drenched in blood and injured on the left eye as **Exhibit A** and A1. The prosecution also tendered in evidence **Exhibit B**, a medical report states that the victim was injured in the left upper eyelid through the eyebrow to the forehead about 5cm in length. The prosecution also tendered in evidence the taxi the subject matter of the alleged robbery as **Exhibit G**, which was retrieved during investigations, is not in issue.

The main issue is the identity of the three men who with force and to overcome the resistance of the second prosecution witness took the car from him. In the case of **Dogbe v. The Republic** [1975] 1 GLR 118 the court held in its holding 1 that:

"In criminal trials, the identity of the accused as the person who committed the crime might be proved either by direct testimony or by circumstantial evidence of other relevant facts from which it might be inferred by the court. Thus opportunity on the part of the accused to do the act and his knowledge of circumstances enabling it to be done were admissible to prove identity."

The first, second and third accused persons vehemently the charges of conspiracy to commit crime to wit robbery and robbery levelled accused them by the prosecution. At the case management stage, all the three accused persons pleaded alibi and the court ordered them to furnish the prosecution with the particulars of their alibi for investigations which the prosecution did and filed the report before the court.

THE EVIDENCE LED BY PROSECUTION AGAINST THE FIRST ACCUSED PERSON AND DEFENCE PUT UP BY THE FIRST ACCUSED PERSON

The summary of the evidence of the prosecution against the first accused person is that when the third accused person was arrested, he mentioned the names of the first and second accused persons as having conspired with him to commit robbery leading to his arrest. Indeed, the second prosecution witness, under cross-examination by the first accused person testified that the incident happened after 11:00pm and due to the condition of the weather, he could not identify the three men who engaged his services, attacked him and snatched the vehicle from him.

The first accused person in his investigation caution statement **Exhibit "H"** which he relied on in his charge statement, **Exhibit H1**, he recounted how he got to know the second and third accused persons. He stated that he came to Tema 8 years ago and got a job at a shower tub where second and third accused persons usually come to bath. One day, when they came to bath, they were discussing how they have been attacking and robbing drivers of their valuables. He stated that on 20th June, 2020, when they came to bath, third accused person told the second accused person that, he (the first accused person) knows how to drive. In the evening, the three of them planned to go on car snatching spree. Before they left for the operation, the second accused person asked him if he could get a buyer should succeed and he proposed one Nii Armah in Accra and the second accused person spoke to the proposed buyer on phone.

After they had made all the arrangements, they decided to execute the plan. In the evening around 11pm, they stopped a car but the second accused person signaled them that the car was not new and they later engaged the services a Toyota driver and after about an hour's drive, the second accused person ordered the driver to stop and turned off the engine. The third accused person who was sitting behind used his left hand to hook the driver's neck until he became unconscious and the second accused person got down from the car and pulled him from the steer and ordered him to drive the car away. He also described how after unsuccessful attempts to sell the car in Accra, they drove the car to Takoradi where it was sold for GH₵6,000 but the buyer paid GH₵4,000, how the proceeds was shared and how he demanded for an amount GH₵500 or driving the vehicle to Takoradi but the second accused person offered to give him GH₵100 which the third accused person called him on their return to Tema that the second accused person had sent the money and whilst going for the money, he was arrested by the police.

The first accused person in his defence denied knowledge of the second and third accused persons. He testified that he was on his way to buy food when he was arrested by the police and taken to the police station. According to him, the police asked him whether he knows the second accused person and the third accused person which he denied knowing them. He denied giving his statement to the police. According to the first accused person, he is innocent of all the charges leveled against him.

During the case management conference, the first accused person raised a defence of a plea of alibi and the court ordered him to furnish the prosecution with particulars of his alibi in accordance with section 131 of Act 30, but the

first accused person failed to give the particulars for investigations by the court. The first accused person stated that he was nowhere near Tema when the incident happened but could not tell exactly where he was and the people he was with.

From the evidence, the role played by the first accused person was that during their preparatory stage, it was arranged that he would drive the vehicle and after the accused persons had attacked the PW2 and forcefully taken the vehicle, it was the first accused person who drove the car and he took them to Accra where he had arranged with a buyer called Nii Armah but when they were not successful, he drove the vehicle to Takoardi on the instructions of the second accused person where the vehicle was sold.

EVIDENCE AGAINST THE SECOND ACCUSED PERSON AND DEFENCE PUT UP BY THE SECOND ACCUSED PERSON

The second accused person also in his caution statement **Exhibit "J",** relied on in **Exhibit "J1**" also confessed to the commission of the crime. He confessed to how they met and planned to go on a robbery spree and stated how the third accused person attacked the driver and they pulled him out of the vehicle and the first accused person who knows how to drive drove the vehicle. He further stated that thereafter, they went to Accra to sell the car. He further stated how the one they intended to sell the car to refuse to buy the car when he saw blood stains in it. He also recounted how they sent the vehicle to Takoradi and how they negotiated and sold the car at a cost of GH₵6,000 and the person paid GH₵4,000 immediately, which they shared among themselves and gave some to the person who assisted them to sell the car. The

first and third accused persons returned to Tema on the Sunday and he came to Tema on Wednesday and he had information that his accomplices had been arrested and have gone to his house at Apowa Takoardi to look for him. He went into hiding at Prampram in ascertain fetish priest house only to be arrested by the police.

Contrary to confession statement, the second accused person in his defence testified that his mother died and someone directed him to Prampram to consult to ascertain the cause of death and he was at Prampram when the police came to arrest him. According to him, he denied the offence and told the police that he did not now the first and third accused person but they tortured him and made him to thumbprint his statement under duress. Under cross-examination by the prosecution, the second accused person stated that he was born and bred in Takoradi and his visit to Prampram was his first time in Tema. The second accused person also raised a defence of alibi but could not substantiate same.

The fourth accused person throughout the trial implicated the second accused person in the alleged crime. According to him, when one Uncle Blessing who lives in Takoradi sold the vehicle in issue to him and he made part-payment, subsequently, the second accused person angrily came demanding for the balance in an angry mood and for which reason he asked his wife to go and look for the amount of GH₵2,000 which he gave to the second accused person as the outstanding balance of the vehicle but again, the second accused person denied knowing the 4th accused person. The wife of the 4th accused person also gave evidence and corroborated the account of the 4th accused person that he is the one who came with the said Uncle Blessing to demand the

outstanding balance of the purchase of the vehicle robbed from the second prosecution witness. The evidence of the 4th accused person was repeated on oath

EVIDENCE LED BY THE PROSECUTION AGAINST THE THIRD ACCUSED PERSON AND THE DEFENCE OF THIRD ACCUSED PERSON

The firs prosecution witness maintains that it was the first accused person who when he was arrested gave helpful information to the police and his cooperation led to the arrest of the first, second and fourth accused person and the subsequent retrieval of the vehicle the subject matter of the charge.

The third accused person in his defence testified that on 23rd June, 2022, he was in Kumasi attending to his sick mother. He came back on 23rd June to continue with his work. Upon his return, some people met him and stated that he resembles someone who snatched a car and he was wanted at the police station. When he went to the police station, he denied the offence but the police wrote a statement and compelled him to sign under duress since he was in handcuffs and a shocker was used on him. Under cross-examination by the prosecution, the accused person denied the offence and stated that he went to Kumasi on 23rd May, 2020 and came to Tema on 23rd June, 2020.

Contrary to the evidence of the accused person that the police wrote something and asked him to sign, at the mini-trial, he testified that he confessed to the commission of the crime because of fear for his life but that

was not what he intended to say and that he does not know anything about the robbery case.

The accused person in **Exhibit K** his investigation caution statement which was relied on in **Exhibit K1**, the charged caution statement, he was the first to give his statement narrated how he, the first and second accused persons agreed, planned and acted together to commit robbery and he described the various roles that they each played, how they ordered the driver to stop and started beating him and pulled him out of the car and the first accused person came and drove the car away whilst he was sitting in the car all along. A1 drove the car straight to Accra but later sent it to Takoradi and sold it for GH₵6000 and the buyer paid GH₵4000 and gave the first accused person and himself an amount GH₵1,000 each. Later, when he came back to Tema, the police arrested him.

To prove that he was nowhere near Tema at the time, third accused person called his mother as a witness who testified that between 23rd May, 2020 to 23rd June 2020, the accused person was with her in Kumasi.

ANALYSIS OF THE EVIDENCE LED AGAINST THE FIRST, SECOND AND THIRD ACCUSED PERSON

From the evidence led by the prosecution and the defence put up by the first, second, third accused persons, the prosecution relies mainly on the confession statements given by the accused persons and the outcome of investigations based on the confessions. The three accused persons in the irrespective caution statements implicated each other in the crime charge but at the trial,

denied knowing each other. The position of the law on a confession given by one accused person implicating the other is clear. **Benjilo v. The Republic** [1999-2000] 1 GLR 199, the Supreme Court held in its holding 2 that:

"An unsworn statement by an accused person unless repeated by him on oath at the trial and he had been cross-examined on it, would be admissible evidence against only the maker and not a co-accused. Since in the instant case, the first accused had been unavailable for trial, his prejudicial unsworn caution statement incriminating the appellant and which he had made in the absence of the appellant, had been wrongly admitted in evidence by the trial tribunal. Accordingly, it should not have been used against the appellant."

In the instant case, the three accused persons gave prejudicial unsworn statements in their respective witness statements implicating each other but they failed to repeat their statements on the respective roles they played against each other and as such the court can only use the confession of each person against the maker of the statement. The accused persons at the trial objected to the admissibility of their respective statements to the police and the court after conducting a mini-trial ruled that the statements were voluntarily given and therefore admissible. The position of the law on the effect of a confession given by an accused person was sated in the case of **State v. Otchere** [1963] 2 GLR 463, the court held in its holding 7 as follows:

"A confession made by an accused person of the commission of a crime is sufficient to sustain a conviction without any independent proof of the offence having been committed by the accused."

It is trite learning that the admission of a statement in evidence did not mean that it was of evidential value. In the recent case of **Ekow Russel v. The Republic** [2017-2020] 1SCGLR at 469, the court held in its holding 6 that:

"it was correct to state that the admission of a statement by a court did not necessarily mean that the statement was of evidential value so as to automatically result in conviction. A statement that was admitted into evidence must be weighed to determine whether it was valuable enough to sustain the conviction sought."

In the case at bar, the court must determine whether the confession statements voluntarily given by the three accused persons are valuable enough to sustain conviction. The accused persons in their various confession statements gave a vivid account of how they met, planned and agreed and acted together to commit robbery and the role they each played in the commission of the alleged crime. Indeed, from the evidence led by the prosecution, it was as a result of the valuable confession given by the third accused person in his confession statement that led to the arrest of the first and the third accused person and the subsequent retrieval of the vehicle forcefully taken from the second prosecution witness in this case. This gives credence to the genuineness of the confession statements given by the 1st and second accused persons as to their complicity in the crime charged.

Again, the vivid accounts of the accused persons in their respective statements firmly corroborates the account of the second prosecution witness on how the three men stopped his taxi and engaged his services and how enroute to their destination, they suddenly attacked and wounded him, pulled him out of the car and drove off the taxi. The various accounts in the respective statements of the accused persons could only have been given by *participis criminis* i.e. a participant in a crime.

Additionally, the crucial evidence that give credence to the confessions given by the three accused persons is the evidence of the fourth accused person who was subjected to cross-examination by the accused persons that when one Uncle Blessing sold the vehicle to him, the second accused person subsequently came with him to demand the outstanding balance and when he enquired about the second accused person's place in the transaction, in his presence, the one who sold the vehicle to him said that the vehicle belonged to the second accused person and he sold it for him. This piece of evidence is firmly corroborated by DW1, the wife of the fourth accused person who identified the second accused person as having come with the said Uncle Blessing to create chaos which compelled her to go for a loan and after giving the money to uncle blessing, it was handed over to him.

The genuineness of the confession statements given by the first, second and third accused persons is evidenced by the fact that in all their caution statements, they stated that it was the second accused person who, after they were unsuccessful in disposing off the robbed vehicle in Accra suggested that they send the vehicle to Takoradi. The second accused person under cross-examination by the prosecution admitted that he was born and bred in Takoradi and the only time, according to him, he came to Prampram area was when his mother died and he came to Prampram to find solutions to her cause of death. Thus, the vehicle ending up in Takoradi is not a co-incidence but a well-panned and executed plot by the accused persons.

Additionally, after testifying in his defence, the first accused person informed the court that his only witness that is his boss has relocated to Burkina Faso. The first accused person in cross-examining the prosecution witness for the

mini-trial stated that at the time his statement was he was there with only the investigator and further in cross-examining MTPW3 stated that he was severely beaten at the time his statement was taken to the extent that MTPW1 was holding a shocker which he used on his teeth leaving him with a broken teeth. In his defence at the trial mini-trial, the first accused person testified on oath that when he was arrested, the investigator asked him if he was the one who collected the car and when he denied, he started beating him and as a result of that he gave his statement under duress. During cross-examination under the mini-trial, he stated that he thumb printed his statement to the police but his hand was held to thumbprint. The evidence of the accused person during the mini-trial is therefore in conflict with his evidence on oath. In the case of **Yaro & Anor v. The Republic** [1979] GLR 10-22, the court held in its holding 2 that:

"A previous statement made by a witness to the police which was in distinct conflict with his evidence on oath was always admissible to discredit or contradict him and it would be presumed that the evidence on oath was false unless he gave a satisfactory explanation of the prior inconsistent statement. A witness could not avoid the effect of a prior inconsistent statement by the simple expedient of denial. Where the witness did not distinctly admit that he had made such a statement, proof could be given, as in the instant case, that he had in fact made it."

The three accused persons also raised a defence of a plea of alibi at the case management stage. When the court ordered them to furnish the prosecution with the necessary particulars, the first accused person failed to do so and the second and third accused persons could not substantiate their defence of alibi. In the case of **Fokuo & Other v. The Republic** [1997-1998] 1 GLR 1, the court held that:

"since by its very nature a defence of alibi was especially easy to fabricate, section 131 of the Criminal Procedure Code, 1960 (Act 30) required an accused person in a summary trial to give notice of a defence of alibi before the examination of the first prosecution witness. And although a failure or an omission to comply with that requirement might not necessarily excuse an alibi evidence, the court was perfectly justified in taking that into account when considering the credibility of the alibi evidence, since the credibility of an alibi was greatly enhanced or strengthened if it was set up at the moment the accusation was made, and if it was consistently maintained throughout the subsequent proceedings; but if it was raised belatedly during the trial, that was a potential circumstance to lessen the weight and force of the defence.

The first accused person who set up a defence of alibi failed to file his notice of alibi and also failed to furnish the prosecution with the necessary particulars when ordered by the court. Also, the first accused person did not call any witness in support of his alibi defence but stated that the only witness he had has relocated to Burkina Faso.

The second accused person who stated that he was in Takoradi at the time also did not call any witness in support of this fact. The third accused person on his part stated that on the day the incident is alleged to have occurred, he was in Kumasi to attend to his sick mother who was on admission at the Okomfo Anokye Teaching Hospital. In support, the third accused person called his mother as his witness. DW1 for the third accused person testified that the mother of the 3rd accused person testified that she was sick and the third accused person was with him in Kumasi for sometime. One day, he informed her that he wanted to travel to Tema to look for a job. A month later, which was 3rd June 2020, he left Kumasi for Tema. Thereafter, she got information that the third accused person has been arrested. DW1, who

emphasized under cross-examination that the accused person told her he will be travelling to Tema on 23rd May, 2020 and left Kumasi on 23rd June 2020, testified as follows under cross-examination by the prosecution;

Q: When he left on 23rd June, 2020, can you tell the date he came back to Kumasi

A: No My Lord, he did not come back to Kumasi.

Q: So you will agree with me that on 20th June 2020, you did not know his whereabouts?

A: My Lord, he told me he was in Tema.

Q: And so you will agree with me that you only know he was in Tema but did not know where he was?

A: That is so my Lord.

Q: I put it to you that on that particular day which is on 20th June, 2020 he was in Tema together with 1st accused and second accused.

A: My Lord, once I was not there, I cannot say anything about it.

The testimony of the mother of the third accused person did not do much to substantiate the plea of alibi raised by the third accused person. In the case of **Fokuo & Other v. The Republic** (supra), the court held that:

"For an alibi evidence to be of some weight … it should cover and account for the whole of the time of the riot or so much of it as to render it impossible that the accused could have committed the act charged against him during the period"

The evidence of the mother of the third accused person shows that on 20th June, 2020, the accused person was within Tema and not in Kumasi to attend to his sick mother on admission as he would want the court to believe. The alibi defence put up by the first, second and third accused persons woefully

fails and I find that at the time the incident is alleged to have occurred they were all within Tema.

In the case of **Gonja v. The State** [1974] GLR 573, SC, the court held in its holding 1 as follows;

"The failure of an alibi does not relieve the prosecution of its duty to prove its case beyond reasonable doubt. Although a strong defence of alibi weakens a strong prosecution case, the failure of an alibi, cannot strengthen a weak prosecution case."

Admittedly, the failure of the alibi raised by the accused persons does not relieve the prosecution of the burden to prove their case beyond reasonable doubt. However, the failure of the alibi further strengthens the case of the prosecution, which on the evidence implicates the three accused persons in the crimes charged.

On the totality of the evidence led by the prosecution and the defence put up by the three accused persons on the charges of conspiracy to commit crime to wit robbery and robbery, I find that the prosecution proved their case beyond reasonable doubt that the first, second and third accused persons agreed and acted together with a common purpose to commit crime namely; robbery. Pursuant to the said agreement, the accused persons, with force and to overcome the resistance of the second prosecution witness, dishonestly appropriated the taxi the property of the third prosecution witness. I therefore pronounce the three accused persons guilty of the charges and I accordingly convict them of same.

COUNT 3

On count 3, the fourth accused person is charged with dishonestly receiving contrary to **section 146** of Act 29. The particulars of offence states that on 20th June, 2020, at Anaji, Takoradi, the 4th accused person received a Toyota Yaris with registration number *GT 5355-20*, valued at GH₵35,000 which was robbed in this case and sold to him at a cost of GH₵4,000 which he knew to have been appropriated by means of robbery.

Section 146 of Act 29, which proscribes dishonestly receiving, provides that:

"A person who dishonestly receives property which that person knows has been obtained or appropriated by a criminal offence punishable under this Chapter commits a criminal offence and is liable to the same punishment as if that person had committed that criminal offence."

The offence of dishonestly receiving is explained in **section 147 (1)** of Act 29 as follows:

"A person is guilty of dishonestly receiving any property which he knows to have been obtained or appropriated by any crime, if he receives, buys, or in any manner assists in the disposal of such property otherwise than with a purpose to restore it to the owner."

In the case of the **Republic v. Bayford** (1973) 2 GLR 321, the Court held in its holding 1 that for an accused person to be guilty of dishonestly receiving stolen goods, it was essential for the prosecution to adduce sufficient evidence to establish that:

a. The property was in such a condition as to be under the dominion of the accused to the exclusion of the person who obtained or appropriated it by an offence. It was not necessary that the accused had physical or manual possession, but it had to be shown that the

property was under his control.

b. That the accused received the property, that is to say, that the accused took possession of the goods, actual or constructive. It had to be shown sufficiently that the accused and the person who obtained or appropriated the property by an offence did not both have possession at the same time;
c. At the time the property was received by the accused it had actually been obtained or appropriated by an offence; and
d. Guilty knowledge which was largely a matter of inference.

To prove that the first accused person dishonestly appropriate the car which the first, second and third accused persons robbed from the second prosecution witness, the first prosecution witness, the investigator testified that his investigations into the matter revealed that the first, second and the third accused persons after robbing PW2 of the vehicle, drove it to Takoradi and sold it to the fourth accused person at a cost of GH₵4,000. According to him, he proceeded to Takoradi where the fourth accused person was arrested and the taxi retrieved from him.

The accused person in his defence admitted that he bought the said vehicle from one Uncle Blessing but denied knowing that the said car had been appropriated through robbery. In the case of **Augustine Osei v. The Republic,** [Criminal Appeal No. H2/08/2015], delivered on 30th November, 2017, the Court of Appeal, Kumasi stated at page 6 that:

"… Just being found in possession of stolen property cannot be a ground for conviction for the offence of dishonestly receiving if guilty knowledge or knowledge that the property was obtained by crime is absent or was not proved."

The prosecution in proving knowledge on the part of the accused person need not lead evidence of actual knowledge. It is sufficient if the prosecution lead evidence from which the court can justifiably infer knowledge on the part of the accused person on the matter. See the case of **Santuah v. The Republic** [1976]1 G.L.R. 44-49**.**

The prosecution maintains that the fourth accused person knew the vehicle to have been appropriated through crime because the vehicle is valued at GH₵35,000 but he bought it at a paltry sum of GH₵4,000. Also, the condition in which the vehicle was found shows that he knew it was appropriated through a criminal offence. According to PW1, the colour of the vehicle had been changed, both registration number plates removed and the chassis number on the dashboard sealed to hide the car's identity but the one on the driver side was not tempered with and the car was found in his possession. The prosecution therefore forcefully contends that the fourth accused person knew the car to have been appropriated through robbery.

The fourth accused person in his investigation caution statement, **Exhibit "D"** and in his defence denied knowledge that the vehicle was appropriated through crime. The fourth accused person testified that one Uncle Blessing, a security man in Takoradi in his neigbourhood called him on phone that he was going through financial difficulties and as such he wanted to sell his car.

The fourth accused person went on to testify that when he went to inspect the car, the said Uncle Blessing had applied filler all over the car. When he asked him why he had applied the filler on the car he wanted to sell to him, he told him that he was doing small works on the car and needed to spray it but he was financially constrained and hence his decision to sell the car According to

him, he priced the vehicle at GH₵12,000 and they bargained to GH₵10,000 and he told him he would make a part-payment of GH₵5,000. The said seller told him that he would use GH₵1,000 to spray the car for him. He went with him to see the sprayer who promised to finish the spraying in three days. After three days, the said Uncle Blessing told him that the spraying was done and he went for the car and parked it at the entrance of his house. He gave the car keys to him and he told him and he promised to pay GH₵2,000 in five days time. The five days was not due when he came with the second accused person who demanded immediate payment and threatened to scatter his shop if he failed to pay the money. Consequently, he went to his sister to borrow GH₵2,000 and gave it Uncle Blessing which in his presence the second accused person quickly grabbed the money from him. The said Uncle Blessing then told him in the presence of the second accused person that it was the second accused person who brought the vehicle for him to buy but because he did not have money he sold the car to him. There and then he told Uncle Blessing that he will not buy the car again and demanded for a refund of his money. He requested for sometime to sell the vehicle and refund his money to him. Later, the police arrested him that the vehicle was stolen and sent him to the police station. On their way to the police station, he pointed out Uncle Blessing as the one who sold the car to him but the police failed to arrest him. At the police station, he called his wife to send the car to the police station.

DW1, the wife of the fourth accused person confirmed that one Uncle Blessing, a security man in their neighbourhood sold the vehicle to the fourth accused person and when he was coming for the balance, he came with the second accused person who came to cause confusion and the said Uncle Blessing told them that the car belonged to the second accused person who asked him to sell the car for him. When the accused person was arrested, they sent the vehicle to the police station.

The evidence led by the accused person shows that before the sale, he did not know the three accused persons but rather dealt with a security that on the evidence both himself and his wife had known for almost five years. There is no evidence that the person who sold the car to him participated in the robbery but the evidence shows that he was helping the three accused persons dispose off the vehicle but the police have been unable to effect his arrest.

In cross-examining the prosecution witnesses, counsel for the accused person seriously put the market value of the vehicle in issue since according to him, the year of manufacture and the model of the vehicle and the fact that it was not new, the accused person purchased it at the prevailing market value since the vehicle should have been written of no value but there is no valuation report before the court on the value of the vehicle. Also, the condition in which the accused person purchase it filled with filler which had to be re-sprayed based on the representations of the seller that he was cash strapped means that he was prepared to sell at a value that will enable the accused person to put the vehicle in a road worthy condition. Additionally, PW3 under cross-examination by Counsel for the accused person testified that the car was manufactured in the year 2007 and it was not brand new when he purchased it at a price of GH₵35,000 in the year 2019. This means that at the time he purchased the vehicle in 2019, the car had been used for about 12 years. As such, a valuation report would have assisted the court to determine if the accused person bought it too low from the prevailing market value for which reason the court can impute knowledge to him.

Further to that, the defence put up by the accused person that the said Uncle Blessing had not given him documents covering the car because he had not finished paying is reasonably probable. Also, the evidence of the fourth accused person and DW1 that when he became aware that the vehicle belonged to the second accused person, he rescinded the transaction and demanded for a refund which till date had not been paid by the said Uncle Blessing who has escaped negative any knowledge on the part of the 4th accused person. Additionally, the accused person parked the vehicle right in his house in the open and his conduct when he became aware that it was obtained through crime by immediately sending it to the police station shows that he did not know the vehicle to have been appropriated through robbery.

On the totality of the evidence led by the prosecution and the defence put up by the accused person, I hold that the prosecution failed to prove that the accused person at the time he received the car in issue knew that the car had been obtained through robbery. I therefore pronounce the fourth accused person not guilty of the charge and accordingly acquit and discharge him of same.

SENTENCING

In sentencing the first second and third accused persons, the court takes into consideration their plea in mitigation, the fact that they are first-time offenders, the youthful ages of the accused persons and the fact that the accused person did not use any offensive weapon and the fact that the car was retrieved. In accordance with **article 14(6)** of the 1992 Constitution, time spent in custody pending trial is considered. As aggravating factors, the court considers the harm caused to the second prosecution witness and the trauma the accused person subjected him through the robbery.

Additionally, the court considers the prevailing wave of robbery in the country particularly robbery of taxis and other commercial vehicles and the need impose deterrent sentence to register the revulsion of members of society in order to safeguard the security of commercial drivers who ply their trade in the night as well as protect the security of passengers.

I therefore sentence the first, second and third accused persons as follows:

Count 1: Conspiracy to commit crime to wit robbery, contrary to sections 23(1) and 149 of Act 29, I sentence each of the three accused persons to serve a term of imprisonment of 15 years in hard labour.

Count 2: Robbery contrary to section 149 of Act 29, each accused person is sentenced to a term of imprisonment of 15 years in hard labour.

Count 3: Dishonestly receiving contrary to section 146 of Act 29, the fourth accused person is acquitted and discharged.

The sentences shall run concurrently.

Restitution order

On record, by an application by PW3 the court on 30th November, 2020 ordered for the release of the vehicle which was retrieved from the fourth accused person car number *GT 5355-20* to the lawful owner (Frank Zego). The order must be complied with forthwith.

(SGD)
H/H AGNES OPOKU-BARNIEH
(CIRCUIT COURT JUDGE)