

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON WEDNESDAY,
THE 16TH NOVEMBER, 2022 BEFORE HER HONOUR ROSEMARY BAAH TOSU
(MRS) – CIRCUIT COURT JUDGE**

CASE NO: D2/ 247/2022

THE REPUBLIC

VS

1. KOLA JOSUE
2. JOSHUA (AT LARGE)
3. AJOKATE (AT LARGE)

RULING

Accused is charged with one Count of Conspiracy to commit crime, to wit Robbery, contrary to sections 23(1) and 149 of the Criminal Offences Act 1960, Act 29.

Accused is further charged with the substantive offence of Robbery, contrary to section 149 of the Criminal Offences Act, 1960 (Act 29).

FACTS

Prosecution says that the Complainant, one Emmanuel Allotey is a driver and resides at Batasona, whilst Accused is unemployed and is a resident of Lashibi.

Prosecution contends that Accused and his other accomplices, who are at large met and planned to snatch a taxi cab at Lashibi in Accra. Thus, on the 23/7/2022, at about 12 midnight, complainant who was in charge of Toyota Vitz Taxi registered as GT 5644- 21 was engaged by Accused and his accomplices to take them to EMEFS Estate. At 12:30 am when the complainant reached the destination of the Accused persons, he stopped his vehicle expecting Accused persons to pay their fare. The Accused who sat directly behind complainant, suddenly put a rope around his neck and pulled it until complainant became unconscious. Complainant was pushed out of the car and left to his fate.

In the early hours of the day, Accused persons sent the taxi cab to the mall to sell. Based on a tip off, the Accused together with accomplices were apprehended, the others managed to escape but Accused was arrested. Complainant later identified

Accused as the one strangled him. In his cautioned statement, Accused mentioned one Jakote and Joshua as his accomplices.

Prosecution relied on three witnesses to discharge their burden before this Court. PW1, complainant, Emmanuel Allotey was driver in charge of the vehicle, subject matter of the charge. He testified that he usually works at night that on the 23/07/2022 around midnight, Accused and two other men stopped him at Lashibi Community 17 Junction. They wanted to be taken to EMEFS estate and the parties negotiated a fare of 15 GHS. PW1 says Accused is the one who negotiated the fare, whilst the other two accomplices stood behind him.

PW1 gave evidence further that the area had street lights so visibility was good. Accused was then wearing a Blue Jeans top on a tee shirt, jeans trousers and a black and white slippers.

PW1 says that Accused sat right behind him with another accomplice. At the destination, the Accused persons asked PW1 to stop so he expected them to pay his fare. Suddenly Accused slipped a rope around PW1's neck and pulled his neck against the car seat. PW1 tried to move the car but in the process, the other Accused persons started to hit his hands with sticks.

PW1 says he became unconscious and when he came to himself he realized he was lying by the road side. The taxi cab and his Infinix mobile phone valued at GHS200 were gone.

PW1 testified that he sustained serious injuries around his neck. He reported the incident to the Sakumono Police and further went on a personal search for the car. In the course of the search, PW1 was informed by a motor rider that the Police had arrested a car snatcher, he went to the EMEFS Police station and identified Accused and the car in question. PW1 attached Exhibit A, a picture of his wounded neck.

PW2 is the investigator in charge of the case, Detective Inspector Abubakar Jantu. He testified that Accused was arrested and brought to the station with the Toyota Vitz taxi with registration number GT 5644-21. According to him, the patrol team on night duty reported that about 1 am, they had information that Accused and the others at large had robbed a driver of his taxi and were offering it for sale around the Accra Mall. An informant pretended to buy the car whilst the Police swooped in and arrested the Accused. The other accomplices managed to escape.

PW1 with wounds around his neck later reported the incident to the Police station. Upon interrogation, Accused mentioned one Joshua and Jokate as his accomplices, he led Police to their homes at Lashibi but they were not there.

PW2 attached Exhibits B, Investigative Cautioned Statement of Accused, Exhibit C, Charge Statement, Exhibit D, DVLA documents, Exhibit E, picture of the Toyota Vitz car.

PW3, is Inspector Samuel Bismark Osae one of the arresting officers. His evidence is that on the 23/07/22 at about 2:30 am whilst on patrol duties with his colleagues, they received a call from their station officer, who relayed the number of an informant to them.

Upon getting in touch with informant they were notified that Accused and his accomplices were trying to sell the vehicle. The patrol team followed up and met the Accused and others in the process of negotiating the price of the car. Accused was arrested whilst his accomplices fled.

Accused led patrol team to the home of one of his accomplices at Lashibi but he was unavailable.

THE CHARGES

Section 23(1) of the Criminal Offences Act 1960(Act 29) provides

'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'

The ingredients to prove are

- i. That there were at least two or more persons*
- ii. That there was an agreement to act together*
- iii. That the sole purpose for the agreement to act together was for a criminal enterprise.*

The evidence is quite uncontroverted and straight to the point. PW1 testified that that Accused was the one in the company of two others who engaged his services as a taxi driver, and who later robbed him of his vehicle. Accused was unable to challenge much of PW1's evidence under cross-examination.

PW3 in his testimony also detailed how, Accused and his accomplices were apprehended in the process of selling the said car. Accused was arrested, however, the two other accomplices escaped. Again, not much was done by way of cross-examination to question the evidence of PW3.

The offence of conspiracy is committed where two or more persons agree to act together in committing or abetting a criminal offence whether with or without previous concert or deliberation. The agreement to commit the crime is not always proved by direct evidence, however it may be established by inferences from proven facts.

In so far as the evidence led puts Accused in the said taxi and at the place of the attempted sale of the taxi, I find that Prosecution has led sufficient evidence and made out a prima facie case against Accused.

I would call upon him to open his defence on this charge of Conspiracy to commit crime to wit Robbery.

The accused person is also charged with Robbery contrary to section 149 of the Criminal Offences Act, 1960 (ACT29). He pleaded not guilty.

Section 150

'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.'*

Prosecution must prove in this charge that Accused stole a thing which does not belong to him, and that for the purpose of stealing this thing Accused used threats, criminal assault or harm to overcome the resistance of the victim.

Prosecution has proved the above sufficiently through the evidence led.

The learned author, Justice S.A Brobbey in his book *'Essentials of Ghana Law of Evidence'*, states the following on the shifting of the burden of proof at page 74.

'When it is said that the burden of proof shifts, what is meant is that after one party has adduced sufficient evidence to prove his point, the burden will move to the opposing party to adduce more cogent evidence which will disprove the opponent's

case and induce the court to believe him and rule in his favour. The shifting of the burden applies only to the burden to produce evidence'.

I find therefore that the burden has shifted to Accused after Prosecution has led evidence and I will call upon him to open his defence at the Court's next sitting.

(SGD)

**H/H ROSEMARY BAAH TOSU (MRS)
CIRCUIT COURT JUDGE**