

**IN THE CIRCUIT COURT OF GHANA, HELD IN ACCRA ON WEDNESDAY,
THE 5TH OF OCTOBER, 2022 BEFORE HER HONOUR ROSEMARY BAAH TOSU
(MRS) – CIRCUIT COURT JUDGE**

CASE NO: D2/81/2022

THE REPUBLIC

VS

1. ALPHA OMEGA
2. YANIE BOURZON

RULING

Section 173 of Act 30 provides as follows,

‘If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused sufficiently to require him to make a defence, the Court shall, as to that particular charge, acquit him’.

Section 174(1) of Act 30 also provides the converse of section 173

‘At the close of the evidence in support of the charge, if it appears to the Court that a case is made out against the accused sufficiently to require him to make a defence, the court shall call upon him to enter his defence...’

1st and 2nd Accused persons, were arrested and arraigned before this Honouable Court on a charge of Conspiracy to Commit Crime, to wit Robbery contrary to section 23 and 149 of Act 29 and a substantive charge of Robbery contrary to section 149 of Act 29.

THE CASE OF PROSECUTION

The Prosecution says that on the 15th October, 2021 at about 10:00 pm, Complainant, one Anneta Amaney was robbed on a section of the Regimanuel Road by Accused persons who were hiding in an uncompleted building. Prosecution alleges that Accused persons attacked Complainant with a knife and snatched her Infinix Smart Five mobile Phone, valued at GH¢690 and bolted.

Prosecution called Complainant as PW1 and the investigator Detective/ Sergeant Frank Asomaning as PW2.

PW1 testified that she did not know Accused persons until after their arrest. She says that on the 15th October, 2021, she was walking home around 10:30pm when suddenly two men appeared beside her. At that moment PW1 says she was holding her phone. One of the men held her right hand which had the mobile phone and she began to struggle with him. According to her the second person pulled out a kitchen knife and was advancing towards her, as a result of fear, she relinquished the mobile phone and the two men run into an uncompleted building.

She said she waited for a while until the two men left the scene and went home. She, however did not report the incident to the Police but rather she told a friend. She testified that the phone they snatched was an Infinix Smart 5 phone.

PW1 testified that she purchased a new phone, retrieved her google account and went on social media. It was then she noticed pictures of some guys and recognized one of them. She asked this person where he worked and he said he worked at Furniture City. She also noticed a SSNIT document which belonged to a certain Hamza Muniru. Her enquiries also showed that this Muniru also worked at Furniture City. She then reported the incident to the Police and the said Hamza was arrested. It was through Hamza that the Accused persons were arrested.

Prosecution's second witness is the investigator. His evidence is that he was handed over this matter to investigate. He says that his preliminary investigations led to the arrest of one Muniru Hamza from whom the said phone was retrieved. It was further established that the phone was given to one Justice Mensah, a phone repairer as a replacement when Muniru took his phone for repairs. Further investigations led to the arrest of the Accused persons, who allegedly traded the said phone for a loan of GH¢200 from Muniru. The Accused persons according to PW2 claimed to be the legitimate owners of the phone.

Upon arrest 1st Accused was identified by the said Justice to be the one who traded the mobile phone for cash.

PW2 tendered in evidence the pictures of the phone as Exhibit A, however his attempts to tender in the caution statements and charge statements of Accused persons were rebuffed and after a mini trial, the Court ruled the statements to be inadmissible.

THE CHARGES AGAINST ACCUSED PERSONS

Accused persons are firstly charged with the offence of Conspiracy to commit crime, to wit Robbery, contrary to section 23 of Act 29.

Section 23(1) of Act 29/60 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'

To succeed on a charge of conspiracy, the Prosecution must prove that the persons agreed to act together with the common purpose to commit the offence.

In the case of *Republic vs Eugene Baffoe Bonnie & Ors CR/904/2017*, the ingredients of the offence of conspiracy were stated

'...For prosecution to be deemed to have established a prima facie case, the evidence led without more, should prove

- 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.*

There has been no evidence led that the Accused persons were even on the scene on the day of the incident. This is because not only did PW1 fail to identify them positively, but the statements Prosecution relied on to show their complicity have been rejected by this Court.

Prosecution has therefore failed to prove that there was an agreement between the two Accused persons which was for the sole purpose of a criminal enterprise which is Robbery.

Prosecution has failed to prove the charge of Conspiracy against the first and second Accused persons.

The accused persons are also charged with Robbery contrary to section 149 of the Criminal Offences Act, 1960 (ACT29).

Section 150 of Act 29 provides 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 the case of *Frimpong @ Iboman vs. Republic (2012) SCGLR*, the ingredients of the offence of robbery were stated as follows:

- a. That the Accused stole something from the victim of the robbery of which he is not the owner
- b. That in stealing the thing, the Accused used force, harm or the threat of any criminal assault on the victims.
- c. That the intention of doing so was to prevent or overcome the resistance
- d. That this fear of violence must either be of personal violence to the person robbed or to any member of his household in the restrictive sense
- e. That the thing stolen must be in the presence of the person threatened

The case of the Prosecution was mainly built around the evidence of the Complainant, PW1 and the statements of Accused persons which were rejected by the Court. Unfortunately for Prosecution, PW1 admitted under cross-examination that she could not identify who the perpetrators of the crime were, mainly because it was at night and she only knew them as a result of the Police arresting them. Therefore, it can be concluded that the Accused persons have not been identified properly as having committed this offence.

Cross-examination of PW1 by A2 at page 3 of the record dated 9th May, 2022.

Que: I put it to you that you do not know me

Ans: I got to know A2 after I was robbed

Que: Does that mean that on the day you were robbed, you couldn't identify the one who robbed you?

Ans: Yes, I couldn't identify them because it was dark.

In the circumstance, there is really no evidence on the record to show that Accused persons were the ones who robbed PW1 of her mobile phone, that they were the ones who used force or harm or the threat of criminal assault on PW1 which was for the purpose of stealing her phone.

I find that Prosecution has not made out a prima facie case against 1st and 2nd Accused persons on the charge of Robbery.

I am therefore unable to call upon first and second Accused persons to open their defence because Prosecution has failed to discharge its burden of making out a prima facie case against them.

A1 and A2 are accordingly acquitted of the charges against them.

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