

IN THE CIRCUIT COURT "A", TEMA, HELD ON THURSDAY, THE 29TH
DAY OF DECEMBER, 2022 BEFORE HER HONOUR AGNES OPOKU-
BARNIEH, CIRCUIT COURT JUDGE

SUIT NO: D21/02/23

THE REPUBLIC

VRS:

ERNEST AHIABLE

ACCUSED PERSON

PRESENT

A.S.P. GEORGE DOE HOLDING THE BRIEF OF C/INSP. SUSANA
AKPEERE FOR PROSECUTION

PRESENT

NO LEGAL REPRESENTATION

JUDGMENT

FACTS

The accused person was charged and arraigned before this court on 8th August, 2022, on a charge of Robbery, contrary to **Section 149** of the Criminal Offences Act, 1960, (Act 29).

The brief facts presented by the prosecution are that on 31st July, 2022 at about 10:45pm, at Community 11, Tema, whilst the complainant had closed from work and was walking home, she saw the accused and his accomplice, one Ibrahim, currently at large, walking ahead of her. According to the prosecution, the accused person and his accomplice also saw the complainant walking behind them. They then slowed down their pace until the complainant caught up with them in front of Ping Kang Clinic with the

accused person and his accomplice walking on one side whilst the complainant was also walking on the other side of the road.

The prosecution further alleged that when the complainant got to the opposite side of the accused person and his accomplice, she had a call on her Tecno Spark A1 mobile phone valued GH¢800 and whilst answering the phone call, the accused person rushed on her and threatened her to give the phone to him else he would stab her. Out of fear, the complainant reluctantly handed the phone over to the accused person and they bolted. The complainant who had another phone in her bag called her friend Joseph Tetteh, to inform him about the incidence and he came with his friends and offered to take her home. On their way, they saw the accused person and his accomplice standing beside a car. The complainant quickly identified them to the witness and his friends. They chased the accused person and his accomplice until they got him arrested whilst the accomplice managed to escape. The Tecno mobile phone was retrieved from the accused person. The accused person was arrested and sent to the police station. During investigations, the scene of the alleged crime was visited and the CCTV Camera at the Ping Kang Clinic was reviewed and it captured the accused person actually snatching the phone from the complainant. The accused person was subsequently charged with the offence and arraigned before the court.

THE PLEA

The self-represented accused person pleaded not guilty to the charge after it had been read and explained to him in the Ewe language. The accused person having pleaded not guilty to the charge put the entire facts of the prosecution

in issue and thereafter, the prosecution assumed the burden to prove the guilt of the accused person beyond reasonable doubt.

BURDEN OF PROOF

It is trite learning that in criminal cases, the prosecution bears the burden to prove the guilt of the accused person beyond reasonable doubt. See **sections 11(2), 13(1) and 15** of the Evidence Act, 1975, (NRCD 323). In the case of **Gligah & Attiso v. The Republic** [2010] SCGLR 870, the Supreme Court held in its holding 1 that:

“Under article 19 (2) (c) of the 1992 constitution, everyone charged with a criminal offence was presumed innocent until the contrary is proved. In other words, whenever an accused person was arraigned before any court in any criminal trial, it was 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 was therefore on the prosecution and it was only after a prima facie case had been established by the prosecution that the accused person would be called upon to give his side of the story.”

The burden on the accused person, when called upon to enter his defence, is to raise a reasonable doubt in the case of the prosecution. The standard of proof for the defence, is proof on a balance of probabilities only. In the case of **Osae v. The Republic** [1980] GLR, 446, the court held in its holding 2 that:

“although it was settled law that where the law cast the onus of proof on the accused, the burden on him was lighter than on the prosecutor, and the standard of proof required was the balance of probability, if at any time of the trial, the accused voluntarily assumed the onus of proving his defence or some facts as happened in this case, the standard he had to discharge was on a balance of probabilities.”

ANALYSIS

Here, the accused person is charged with robbery contrary to **section 149** of Act 29. **Section 149 (1) and (3)** of Act 29, respectively provides as follows;

“(1) Whoever commits robbery is guilty of an offence and shall be liable, upon conviction on trial summarily or on indictment, to imprisonment for a term of not less than ten 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 years.

Section 150 of Act 29 further defines robbery in the following terms;

“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 **Behome v. The Republic** [1979] GLR 112, the court held that *“one is only guilty of robbery if in stealing a thing he used any force or caused any harm or used any threat of criminal assault with intent thereby to prevent or overcome the resistance of his victims, 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 their case, the prosecution called two witnesses and tendered in evidence **Exhibits "A" and 'A1"**, photographs of a phone, **Exhibit "B"**, the investigation caution statement of the accused person, **Exhibit "C"**, a copy of the CCTV on a pen drive, **Exhibit "D"**, the charge statement of the accused person.

The first prosecution witness, Aidoo Mary Dauda testified that she lives at Community 11, Tema, a student and also work at Palscrib Lounge. According to her testimony, on 31st July, 2022, at about 10:45 pm, she closed from work and alighted in front of Rendezvous in Community 11, Tema. Whilst walking home, she saw the accused person and one other who were walking ahead of her. She caught up with them in front of Ping Kang Clinic where the accused and his accomplice were on the opposite side of the road. When she got close to the clinic, they also stopped by a tree at the opposite side and pretended to be urinating and the accused person walked towards her and demanded she hands over her phone to him or else he would stab her with a knife. At that

moment, she was having two phones, a Techno smartphone and a Keypad phone. The accused person took the smartphone and ordered her to look ahead and they also walked away. She used the keypad phone to call her brothers and informed them of her ordeal and they came around to escort her home and, on their way, she saw the accused person and his accomplice standing behind a parked car and she identified them to her brothers who gave them a hot chase and got the accused person arrested but the other one managed to escape. When her brothers arrested the accused person, they found the mobile phone on him. The accused person was arrested and sent to the police station where she lodged a formal complaint. She tendered pictures of her mobile phone allegedly retrieved from the accused person admitted and marked as **Exhibit "A" series**.

The second prosecution witness (PW2) D/L/CPL Gemadi Christian Akorli testified that on 31st July, 2022, about 10:45pm, the accused person was arrested and brought to the police station by one Joseph Tetteh and two others with PW1 and reported that the accused person and one other attacked the complainant and took her Tecno Spark A1 mobile phone from her but they managed to arrest the accused person and brought him to the police station with the mobile phone. The accused person was re-arrested and the case was referred to him for investigations. He tendered the investigation caution statement obtained from the accused person admitted and marked as **Exhibit "B"**. According to his evidence, during investigations, PW1 recounted the events of the day of the alleged incident leading to the arrest of the accused person.

PW2 further testified that during investigations, the accused person admitted the offence and narrated how his accomplice, one Ibrahim asked him to snatch the phone from PW1 when she was receiving the call. He proceeded to the scene of crime at Community 11, Tema, in the company of the accused person. The accused person led him to Ping Kang Clinic and pointed to the front view of the Clinic as where the incident took place. The accused person further led him to Biggie's Chop Bar and pointed to the front part of it as the place he was arrested after he was pursued. Again, PW2 testified that he saw a black cap lying at the scene of arrest of the accused person and he admitted ownership of the said cap. Also, during investigations, he got the opportunity to view the CCTV footage of the premises of Ping Kang Clinic on the day of the incident which recorded the incident between the accused person and the victim which confirms that indeed the accused person took the phone of PW1. He tendered in evidence a copy of a pen drive containing the video recording which was admitted and marked as **Exhibit "C."** PW2 concludes his testimony by stating that after gathering the evidence implicating the accused person, he was charged with the offence and arraigned before the court. Again, he tendered in evidence the charge statement of the accused person admitted and marked as **Exhibit "D."**

The accused person in his investigation caution statement confessed to the commission of the crime when he stated that whilst his friend was escorting him home, they met PW1 and his friend told him to snatch a phone she was holding and making a call on it. They walked towards her and his friend snatched the phone and gave it to him to keep. After leaving her, they saw that the screen of the phone they had snatched was damaged and he told his friend that they should return it. On their way, they were accosted and he was

arrested and the phone was found on him. In the case of **State v. Owusu & Anor** [1967] GLR 114, the court held in its holding 1 that:

“an extra-judicial confession by an accused that a crime had been committed by him did not necessarily absolve the prosecution of its duty to establish that a crime had actually been committed by the accused. It was desirable to have, outside the confession, some evidence, be it slight, of circumstances which made it probable that the confession was true. From the evidence adduced in the instant case, there was sufficient corroboration which confirmed that the confession of each accused was true.”

The accused person in his defence testified that on the day of the alleged incident, he was standing in front of a certain vehicle when he noticed that two guys were chasing him but he did not know the reason why they were chasing him. According to him, because he was having pains in one leg, they pushed him down and used stone to hit him and asked him about the whereabouts of the phone. He told them that he did not know anything about any phone and he had not taken any phone too. They were hitting him with the stone asking him to show them where the phone was. He was arrested and sent to the police station where he gave his statement to the police.

The accused person under cross-examination denied snatching the phone of the first prosecution witness and maintained that the mobile phone in issue was not retrieved from him. The accused person further testified under cross-examination by the prosecution that he only confessed in his statements to the police because the police commander told him to tell them the truth and after that they will release him and that was why he admitted in his statement to the police.

The first prosecution witness under cross-examination by the accused person was emphatic that the accused person snatched the phone from her. She described the attire the accused person wore on the night of the incident as black pull over, black trousers with a black cap. It is instructive to note that the description of a black cap matches the testimony of the investigator that at the scene of arrest he found a black cap belonging to the accused person but the cap found at the scene of crime was not tendered in evidence.

Also, the CCTV footage tendered in evidence confirms the account of PW1 on what actually transpired on the night of the incident. I have painstakingly watched the video contained in **Exhibit "C"** and I observed that the place where the incident took place is well lit. Thus, although it happened in the night, the first prosecution witness cannot be mistaken as to the identity of the person who snatched the phone from her. The description of the attire matches the description of one of the people who snatched the phone from her as a black pull over, black trousers and a black cap.

The accused person in cross-examining PW2, questioned him that one of the people in the CCTV footage was limping but he does not limp but PW2 maintained that the accused person limps in the right leg. During proceedings, the court observed the walking of the accused person in open court which confirms that he limps in the right leg as indicated by the second prosecution witness. It can also be gleaned from the video that it was the person clad in black and limping in one leg, the description that matches the accused person, who actually snatched the phone from the first prosecution witness. Also, at the case management conference, the accused person raised a defence of a plea of alibi but the accused person failed to furnish the

prosecution with the particulars of his alibi for investigations and also failed to call witnesses in support of his alibi.

On the totality of the evidence on record, I hold that the prosecution proved their case beyond reasonable doubt that the accused person with force and threat of the use of force, to overcome the resistance of PW1 did dishonestly appropriate her mobile phone. I accordingly pronounce the accused person guilty of the charge and convict him of same.

SENTENCING

In sentencing the accused person, the court takes into consideration his plea in mitigation, the fact that he is a first -time offender, the youthful age of the accused person and the fact that the mobile phone was retrieved. In accordance with Article 14(6) of the 1992 Constitution, time spent in custody is considered. The court also takes into consideration the fact that no physical harm was caused to the complainant and the accused person did not use any offensive weapon.

I therefore sentence the accused person to serve a term of imprisonment of ten (10) years in hard labour.

RESTITUTION ORDER

In accordance with **section 146** of the Criminal Procedure and Other Offences Act, 1960(Act 30), the mobile phone retrieved from the accused person is to be released to the complainant.

(SGD)

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