IN THE CIRCUIT COURT HELD AT ACHIMOTA, ACCRA ON TUESDAY, THE 16TH DAY OF MAY, 2023 BEFORE HER HONOUR AKOSUA ANOKYEWAA ADJEPONG (MRS.), CIRCUIT COURT JUDGE

CASE NO.: D2/004/23

THE REPUBLIC

VRS

KWADWO ASAMOAH

ACCUSED PERSON PRESENT

A.S.P. STEPHEN AHIALE FOR THE REPUBLIC PRESENT

RAPHAEL KOFI BONIN, ESQ. FOR THE ACCUSED PERSON PRESENT

JUDGMENT

The accused person was arraigned before this court on 23rd March, 2023 on the charges of conspiracy to commit crime to wit; Robbery contrary to *sections 23(1) and 149 of the Criminal Offences and Other Offences Act, 1960 (Act 29)*; and Robbery contrary to *section 149 of Act 29*.

He pleaded guilty with explanation to the charges after they had been read and explained to him in Twi, being his language choice.

The explanation of the accused person on count one was:

"Yes, I conspired with another person to give the complainant a diamond".

He further gave an explanation on count two as follows:

"I told him I have diamond to give to him as a gift for helping me locate the Achimota Pentecost church. So I gave him the diamond and asked him to place on the shining part of the cedi note to increase in size and also add mercury water to the diamond to increase in size. So I placed the diamond on the money and tied it in a rubber. In the process of giving the money back to the complainant we stole GH¢2,200.00 out of the GH¢4,000.00. So I did not use force to take the money from him. He did not understand that I took the GH¢2,200.00 so we came to the police station and I gave the GH¢2,200.00 to the police".

Upon listening to the explanation of the accused person on both counts one and two, the court entered a plea of not guilty for him on both charges and conducted a trial.

The brief facts of the case as presented by the prosecution are that complainant Joseph Ashun is an electrician and a resident of Oyibi whilst the accused person is a trader but has no fixed place of abode. On 17th March, 2023 about 4:30pm, complainant came to Achimota to sign some travel documents and was looking for mobile money vendor to transfer the sum of GH¢4,000.00 to Mr. Quansah, a travel agent who is working on his travel document. Complainant after roaming for a while without success found a vendor at Achimota charcoal station who initiated the transaction. However, halfway into the transaction, the vendor realized she did not have electronic cash, hence she handed the money back to complainant. Accused and his accomplice were standing some distance away from the vendor so when the complainant started walking away from the vendor, accused person quickly

moved towards him and told him he was a stranger from Obuasi and that he was working for one Mr. Owusu whom he was trying to locate. The accused claimed the said Mr. Owusu lives around the Achimota Pentecost church. While the accused person engaged the complainant in a conversation, his accomplice also surfaced and asked the complainant where he was going to, to which the complainant indicated that he was going to Madina, accused person's accomplice claimed to be going to Madina as well, however, he volunteered to accompany complainant while he goes to show A1 where the Achimota Pentecost church was before going to Madina together. When A1 and A2 now at large managed to get complainant out of sight, A1 pulled a knife on complainant and commanded him to surrender the money. When complainant refused to heed to the command, A1 forced his hand into complainant's pocket and took out the GH¢4,000.00. Complainant in an attempt to resist the attack resulted into a struggle and in the process, GH¢1,800.00 fell. A1 was able to overpower complainant and passed the GH¢2,200.00 to A2 and they both bolted. Complainant subsequently came to the station and lodged a formal complaint. While complainant was at the station making the report, a group of young men arrested and brought A1 to the station. At the charge office, a search was conducted on him and the GH¢2,200.00 he forcibly took from complainant was retrieved from accused person's pocket. After investigation, A1 was charged with the offences and put before this honourable court.

To prove their case, the prosecution called two witnesses and tendered in evidence exhibits 'A' and 'B', being the investigation caution statement and charge statement of the accused person respectively; and exhibit 'C' being a photograph of GH¢100.00 notes.

Evidence of PW1

The first prosecution witness (PW1), no. 43139 D/Sgt Samuel Amponay stationed at Achimota School Police Station CID (investigator herein) told the court in his evidence that he got to know the complainant on 17th March, 2023 when he reported a case of robbery and same was referred to him for investigation as the investigator on duty. PW1 repeated the facts of the case as presented by prosecution; and added that the accused person admitted forcibly taking the GH¢4,000.00 from the complainant but succeeded in getting away with GH¢2,200.00 which was retrieved from him at the charge office. PW1 tendered the investigation caution statement and charge statement of the accused person as exhibits 'A' and 'B' respectively.

Evidence of PW2

The second prosecution witness (PW2) Joseph Ashun, complainant herein also recounted the facts as presented by the prosecution and added that the accused person also snatched his Infinix mobile phone from him in the process but when the accused person was arrested and brought to the police station, his said phone was retrieved from the accused person. That the amount of GH¢2,200.00 they robbed from him was found on the accused person when the police conducted a search on him.

Thereafter, the prosecution closed its case.

After the close of the case of the prosecution, the Court examined the evidence of the prosecution witnesses to determine whether a prima facie case had been made by the prosecution to warrant the accused person to open his defence. The Court then ruled that a prima facie case had been made and the

duty of the accused person was to raise a reasonable doubt in the case of the prosecution.

In the case of ***The Republic v District Magistrate Grade II, Osu, Ex parte Yahaya*** **[1984-86] 2 GLR 361 – 365** Brobbey J (as he then was) stated that:

> *"…evidence for the prosecution merely displaces the presumption of innocence but the guilt of the accused is not put beyond reasonable doubt until the accused himself has given evidence."*

In view of the above, the Court found that the accused person had a case to answer and was therefore called upon to enter into his defence, after the options available to him as an accused person were explained to him.

Opening of defence by the accused person

In opening his defence, the accused person testified in open Court that he lives at Abuofo and deals in second hand clothes. That he knows the complainant and got to know PW1 at the police station. According to the accused person he tricked the complainant to agree with him to give him his money after he told him he will give him a diamond. That the complainant brought the money out and he kept the said money on the diamond. The accused person continued that the complainant later disagreed not to be in the diamond transaction again so he struggled with him for his money and in the heat of the struggle some of the money fell on the ground and he also took some. That he was invited to the police station and the money he had in his possession was given out to the complainant.

The accused person did not call witness and thereafter closed his defence.

The legal issues to be determined are:

1. *Whether or not the accused person herein did conspire with his accomplice at large, to rob the complainant.*
2. *Whether or not the accused person herein did rob the complainant of the sum of GH¢2,200.00.*

The cardinal rule in all criminal proceedings is that the burden of establishing the guilt of the accused person is on the prosecution and the standard of proof required by the prosecution should be proof beyond reasonable doubt as provided in the ***Evidence Act, 1975 (NRCD 323)***, per ***sections 11(2), 13(1) and 15.***

Section 11(2) of the Evidence Act, 1975 (NRCD 323) is 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"*

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."

Also, in the case of ***Republic v. Adu-Boahen & Another*** **[1993-94] 2 GLR 324-342**, per Kpegah JSC, the Supreme Court held that:

"*A plea of not guilty is a general denial of the charge by an accused which makes it imperative that the prosecution proves its case against an accused person... When a plea of not guilty is voluntarily entered by an accused or is entered for him by the trial court, the prosecution assumes the burden to prove, by admissible and credible evidence, every ingredient of the offence beyond reasonable doubt*".

Significantly, whereas the prosecution carries that burden to prove the guilt of the accused person beyond reasonable doubt as per ***sections 11(2) and 13(1) of the Evidence Act, 1975 (NRCD 323)***, there is no such burden on the accused person to prove his innocence. At best he can only raise a doubt in the case of the prosecution. But the doubt must be real and not fanciful.

The accused person is charged with conspiracy to commit crime to wit; robbery, contrary to ***section 23(1) and 149 of Act 29***, and the substantive offence of robbery contrary to ***section 149 of Act 29***. The current state of Ghana Law on Conspiracy as formulated by the Statute Law Revision Commission under Section 23(1) of Act 29, 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."

The essential ingredients of the offence which the prosecution must prove to succeed on as stated by Kyei Baffour JA sitting as an additional High Court Judge in the case of ***Republic v. Eugene Baffoe Bonnie (unreported); Suit No. CR/904/2017 delivered on 12th May, 2020***, are as follows:

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

In the case of ***Faisal Mohammed Akilu v. The Republic [2017-2018] SCGLR 444*** the Supreme Court per Yaw Appau JSC stated the current Ghanaian Law on Conspiracy as follows;

"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"`

It is necessary that I set out the law on the substantive offence of robbery to discuss the two offences together. ***Section 149 (1) of Act 29*** as amended by the ***Criminal Code (Amendment) Act 2003 (Act 646)*** provides as follows:

"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 further defines robbery in the following terms;

"A person who steals a thing is guilty of robbery if in and for the purpose of stealing the thing, he uses any force or causes any harm to any person, or if he uses any threat or criminal assault or harm to any person, with intent thereby to prevent or overcome the resistance of that or of 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.

After a careful examination of the evidence led at the trial, I made the following findings of facts and observations:

From the evidence of the complainant, the accused person engaged him in a conversation when he was walking on the pavement at Achimota near the charcoal station in search of a mobile money vendor to send an amount of GH¢4,000.00 in his possession to another person. The complainant further told the court that before he could make sense of what the accused person was telling him, another young man appeared at the scene and pulled a knife and threatened to stab him if he does not surrender all the money as well as other belongings on him at the time. According to the complainant, a struggle ensued between himself and the accused person who forcibly ditched his hands into his pocket and took some of the money, threw it to the other young man who was standing by and they fled. That some of the money fell on the ground so he picked them and it was GH¢1,800.00.

From the evidence before this court, PW2 who is also the complainant maintained under cross examination that the accused person and his accomplice forced him and he never agreed to bring his money out. Rather in the heat of the struggle the accused person took GH¢2,200.00 from him. The complainant also denied the accused person's story that he requested diamond from him, and stated that he did not discuss any diamond with the

accused person. There is no evidence before this court that the accused person or his accomplice pulled a knife on the complainant.

The accused person in his explanation to the plea of guilty on count one told the court that he conspired with another person to give the complainant a diamond and further told the court in his explanation on count two that he stole GH¢2,200 out of the GH¢4,000 but he did not use force to take the money from the complainant.

The evidence led in support of the charge that the accused person agreed and acted together with one other person who is his accomplice to rob the complainant and pursuant to that agreement, succeeded in using force to overcome the complainant's resistance to steal his money therefore boils down to the oath of the prosecution witnesses against the oath of the accused person.

In the case of ***Lutterodt v. Commissioner of Police (1963) 2 GLR 427*** the Supreme Court in holding 3 stated as follows:

> *"where a decision of a trial court turns upon the oath of 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. 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."*

The accused person in his investigation caution and charge statements, stated *inter alia* that he convinced the complainant and took his money to place it on

a diamond in the absence of mercury but the complainant later asked of his money so he struggled with the complainant and overpowered him and bolted with the money. Then he was arrested some minutes later by some of the guys at Vegas, Achimota and brought him to the police station where the money he succeeded in taking from the complainant was retrieved from him which was GH¢2,200.00.

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 in open court testified that on the day of the alleged incident, he tricked the complainant to agree with him to give him his money after he told him that he will give him a diamond. According to the accused person, the complainant brought the money out and he kept the said money on the diamond but complainant later disagreed not to be in the diamond transaction again so he struggled with him for his money and in the heat of the struggle accused person took some of the money whilst some fell down. He was later arrested and sent to the police station where they retrieved the money in his possession.

The complainant under cross-examination by the accused person was emphatic that the accused person and his accomplice used force on him and in the heat of the struggle the accused person took GH¢2,200.00 from him.

All these pieces of evidence on record are sufficient corroboration which confirmed that the confession of the accused was true.

It is instructive to note that the accused person in his caution and charge statement; and also in his testimony under oath before this court, stated that there was a struggle between him and the complainant and in the heat of the struggle some of the money fell and he also took some of the money.

A careful scrutiny of exhibits 'A' and 'B' show that they were taken in compliance with ***section 120 of the Evidence Act, 1975 (NRCD 323)***. There was an independent witness in the person of Datsa Patience in exhibit 'A' and Abiba Ali in exhibit 'B'.

Akamba JSC in the case of ***Ekow Russel v. The Republic [2016] 102 GMJ 124 SC***, stated as follows:

> *"... A confession is an acknowledgment in express words, by the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it.* ***By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused****. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person's own free will without fear, intimidation, coercion, promises or favours ..."* (Emphasis mine)

From the evidence before this court, the testimony of the accused person is not too different from his investigation caution and charge statements on the

issue of the element of force he applied to overpower the complainant in order to dishonestly appropriate the said money.

In the case of ***Commissioner of Police v. Isaac Antwi*** **[1961] GLR 408-412,** it was held that the accused person is not required to prove anything. All that is required of him is to raise a reasonable doubt as to his guilt.

This is further emphasized by ***sections 11(3) and 13(2) of the Evidence Act, 1975 (NRCD 323). Section 11(3)*** provides that:

> *"In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt."*

Section 13(2) provides that:

> *"Except as provided in section 15 (c), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt."*

The defence of the accused person could not raise a reasonable doubt as to his guilt because he confessed in his defence in open court that he struggled with the complainant to overcome the resistance of the complainant in stealing his money.

Crabbe J.S.C. in the case of ***The State v. Sowah and Essel*** **[1961] GLR 743-747, S.C.** held that:

"*A judge must be satisfied of the guilt of the crimes alleged against an accused person only on consideration of the whole evidence adduced in the case; and only then can he convict*".

I am satisfied of the guilt of the accused person in the sense that from the totality of the evidence on record, particularly the admission of the accused person that there was a struggle between him and the complainant where he overpowered the complainant and took some of the money from him whilst some fell, I find that the prosecution has been able to prove their case beyond reasonable doubt that the accused person with force, overcame the resistance of the complainant and did dishonestly appropriate his cash sum of GH¢2,200.00. Having further considered the accused person's explanation on count one before the trial, that he conspired with another person to give the complainant a diamond and upon a careful examination of his testimony under oath as to using tricks on the complainant and subsequently applying force on the complainant to overcome him to steal his money, I find that the accused person conspired with another person to rob the complainant of his money.

For the foregoing reasons, I pronounce the accused person herein guilty of the charges against him and accordingly convict him of same.

Q: Any plea in mitigation before sentence is passed?

A: I plead with the Court that whatever happened will not happen again.

Counsel for the accused person has also made submission for plea in mitigation on behalf of the accused person to the effect that the accused

person is a young offender, barely 24 years old; a first time offender and married with a child and is the breadwinner of a young family. That the Supreme Court has indicated that the courts should take into consideration the age of the accused person and other mitigating factors when sentencing. He prayed the court to give the most minimal sentence possible. That the accused person has shown enough remorse so he will learn from it.

Q: Is the accused person known?

A: No, he is a first time offender.

By Court:

In sentencing the accused person, the court takes into consideration his plea in mitigation as well as his counsel's plea for mitigation on his behalf, the fact that he is a first time offender, the youthful age of the accused person and the fact that the amount of GH¢2,200.00 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 consequently sentence the accused person as follows:

Count 1: The accused person is sentenced to serve a term of imprisonment of twelve (12) years in hard labour (I.H.L.)

Count 2: The accused person is sentenced to serve a term of imprisonment of twelve (12) years in hard labour (I.H.L.)

The sentences shall run concurrently.

Restitution Order

On record, upon an application by the prosecutor, the court on 6th April, 2023 ordered for the release of the amount of GH¢2,200.00 which was retrieved from the accused person herein to the lawful owner (complainant herein).

H/H AKOSUA A. ADJEPONG (MRS)

(CIRCUIT COURT JUDGE)