

IN THE CIRCUIT COURT HELD AT SOGAKOPE ON MONDAY, 5TH JUNE, 2023 BEFORE HIS HONOUR ISAAC ADDO, THE CIRCUIT COURT JUDGE

CASE NO. 70/2022

THE REPUBLIC

VRS

NICHOLAS GALLEY

ACCUSED PERSON PRESENT

CHIEF INSPECTOR VICTOR SOMOAH FOR THE REPUBLIC PRESENT

JUDGEMENT

The Accused person stands charged before this Court with the offence of Abetment of crime to wit Robbery contrary to sections 20(1) and 149 of the Criminal Offences Act, 1960 (Act 29).

Upon his arraignment before this Court, the Accused person pleaded Not Guilty to the charge.

THE FACTS OF THE CASE

On the 20th February, 2022 about 11:00pm, the complainant went and bought food from the roadside and was returning home with her handbag which contained a wrist watch and cash of GH¢700.00. On reaching the market, the Accused person who was riding an unregistered Haojue motorbike with his accomplice, Aguzey who was a pillion rider, traced the complainant to the market. The Accused person parked the motorbike at the entrance of the market near Area Man Drinking Spot and waited while his friend Aguzey rushed on the complainant, pounced on her and struggled to snatch her handbag from her. The

complainant resisted and struggled with him for sometime but he overpowered her and snatched the bag from her containing the aforementioned items. He run to the Accused person, jumped on the motorbike and they sped off. The complainant chased them to the roadside near ADB bus stop amidst raising alarm to wit 'thief, thief' but they rode very fast towards Aflao direction and fled. The complainant narrated her ordeal to some of the motor riders at ADB bus stop who saw the Accused person and his friend running away and they mentioned their names as Nicholas and Aguzey. The riders gave them a hot chase but could not catch up with them. The complainant sustained injuries on the left arm and was accompanied to the Police Station to lodge a complaint. A Police Medical Report Form was issued to her to attend hospital for treatment and report. On the 22nd February, 2022 about 1:15pm, the Accused person was arrested by a group of people at Sogakope near the mosque and handed over to the police.

In proving its case, the prosecution called two (2) witnesses as PW1 and PW2.

The testimony of PW1, Nice Amevor (complainant) is not different from the facts as presented by the prosecution.

PW2 (No. 54499 Detective General Lance Corporal Razak Alhassan) investigated the case. PW2 relied on his Witness Statement together with the Exhibits attached.

After the close of the case of the prosecution, this Court determined that a prima facie case had been made out against the Accused person. As enjoined by law, the Court invited the Accused person to enter into his defence.

THE CASE OF THE DEFENCE

In opening his defence, the Accused person testified himself and called one (1) witness to testify in support of his case.

The Accused person told the Court that on the 20th February, 2022, he had closed from work and was home when Ahiadu Godsway asked that he brought him to town around the Old GCB area. After he bought his kenkey, he asked him to take him back home. As they were going and got a place called Sister Abla Beans Joint around the Bread Market, Godsway asked him to stop. When he stopped, he returned some few minutes later that they should move and so he also moved. When they got to the station, he asked him to branch into the station and he did. When they entered the station, there was a shop called Area Man Spot. When he got there, Godsway asked him to stop. He told him he was going to take a phone number from someone and so he left. Before he left, he Godsway not to waste time and that if he would then he would go and park at where the motor riders had parked near ADB. When he moved out of the station from the point of entry he used to enter, he was watching out if any vehicle was coming before he crossed to where the other motor riders had parked near ADB. It was there he saw Godsway running towards him. He sat on the motorbike and asked that they move. According to the Accused person, as soon as he moved and got directly opposite ADB, he saw some boys also running towards them mentioning his name but it was late so he did not stop. When they got to Ankora, he asked Godsway why the people were chasing him and he told him he had wanted to take a lady's phone from her but he rather succeeded in taking the lady's bag. It is the case of the Accused person that he was not in agreement to what Godsway told him. When he looked into his mirror he saw some boys coming after them

but Godsway asked that he took him home so he did and Godsway paid him GH¢5.00 as the fare instead of GH¢8.00 he charged.

The father of the Accused person, Galley Edmund Agbodzi) testified as DW1 in this case. DW1 told the Court that he was not present when the incident happened and that it was the Accused person who told him what happened. So, he advised him to report the matter to the Police but he refused saying that he was not the one who committed the offence.

ISSUES FOR DETERMINATION

The legal issue that emerged for determination after the end of the trial is whether or not the Accused person abetted the 2nd Accused person who is at large to rob the complainant of her handbag.

BURDEN OF PROOF

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) and 13(1). See Gligah & Anor. v The Republic [2010] SCGLR 870.

The general principle of law in every criminal case as stated in the case of Asare v. The Republic [1978] GLR 193-199, per Anin J.A. reading the Court of Appeal decision is that:

“There was no burden on the accused to establish his innocence, rather it was the prosecution that was required to prove the guilt of the accused beyond all reasonable doubt.”

THE LAW ON ABETMENT

Section 20 (1) of Act 29 reads as follows:

“A person who, directly or indirectly, instigates, commands, counsels, procures, solicits, or in any other manner purposely aids, facilitates, encourages, or promotes, whether by a personal act or presence or otherwise, and a person who does an act for the purposes of aiding, facilitating, encouraging, or promoting the commission of a criminal offence by any other person, whether known or unknown, certain, or uncertain, commits the criminal offence of abetting that criminal offence, and of abetting the other person in respect of that criminal offence” .

In the case of Commissioner of Police v. Sarpey & Nyamekye [1961] GLR 756-760, Sarkodee-Addo JSC held that:

“In order to convict a person of aiding and abetting it is incumbent on the prosecution to prove that the accused did any one of the acts mentioned in subsection (1) of section 20. Under subsection (2) a person who abets a crime shall be guilty if the crime is actually committed (a) in pursuance of abetment, that is to say, before the commission and in the presence or absence of the abettor and (b) during the continuance of the abetment, that is to say, the abetment must be contemporaneous in place, time and circumstance with the commission of the offence. In our view, an act constituting an abetment in law must precede or it must be done at the very time when the offence is committed” .

Throughout the trial, the Accused person has denied committing the offence he has been charged with. From the entirety of the evidence adduced at the trial, it is not in dispute that it was Godsway who robbed the complainant of her handbag. However, what is in dispute is whether or not the Accused person herein abetted Godsway to commit the offence of robbery. In his Cautioned

Statement to the police on the 22nd February, 2022, the following is what the Accused person stated:

"I am an okada rider resident at Toklokpo near Sogakope. On 20/02/2022 around 9:30am I picked a passenger one Aguzie from Toklokpo to Sogakope Old Commercial Bank area to buy kenkey. After buying the kenkey he joined me back and he asked me to send him home. On reaching Sogakope bread market the said Aguzie asked me to stop. That he saw a nice girl so he wanted to go and get her number. He again asked me to chase the girl which is complainant Nice Amevor to the entrance of the marked gate near Area Man drinking spot, Sogakope. Myself together with Aguzie on blue unregistered Haojue motorbike got to the entrance of the market gate near Area Man Spot and Aguzie jumped off my motorbike to meet complainant Nice Amevor inside Sogakope market. Suspect Aguzie was wasting time with complainant Nice Amevor inside the market, so I shouted to his hearing that I should be waiting for him when I saw Suspect Aguzie coming from the market direction with a top speed and he came and climbed my motorbike with words to wit "lets go" and I also moved. After moving the motorbike I heard someone shouting my name but I didn't stop but we both got to Ankora area I asked suspect Aguzie that the way he run to join me on the bike and at the same time I heard someone shouting my name I didn't understand so what is happening and he replied the time he was with complainant Nice Amevor inside the Sogakope market he wanted to collect her mobile phone from her and she refused, so he ended up snatching her handbag from her. However, after suspect Aguzie narrated what has happened in the market to me he asked me to ride him home at Toklokpo which I also did and I collected my okada fare from him as GHc5.00 and I left for home. Today 22/2/2022 around 1:00pm I was on my blue unregistered Haojue motorbike working when I got arrested around Production drinking spot, Sogakope and they brought me to Sogakope Police Station. So, I didn't rob anybody neither did I abet with any person to rob. Hence, my statement."

It is on record that the Accused person gave his Evidence-In-Chief on the 16th February, 2023. His Cautioned Statement was obtained on the 22nd February, 2022, i.e. about twelve (12) months apart. The Accused person was consistent and did not contradict himself. Even his evidence under cross examination by the prosecution was not discredited. The defence only witness, DW1 was not present when the incident happened but was later told what happened by the Accused person. In short, the evidence on record is oath against oath. On the other hand, PW2 only investigated the case and was also not present when the incident happened on that fateful day. In short, the evidence on record is oath against oath.

In the case of Lutterodt vrs Commissioner of Police [1963] 2 GLR 429, the Supreme Court per holding 2 stated that:

“Where a decision of a trial court turns upon the oath of a 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 evidence adduced at the trial before preferring one to the 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”

Upon a careful evaluation of the entirety of the evidence adduced at the trial, I am unable to prefer the evidence of the prosecution to that of the Accused person. The court finds that the Accused person has raised a reasonable doubt in

the case of the prosecution. In the circumstances, I hereby acquit and discharge the Accused person herein, Nicholas Galley.

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ISAAC ADDO
CIRCUIT JUDGE
5TH JUNE, 2023