

IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON
WEDNESDAY, THE 5TH DAY OF APRIL, 2023 BEFORE HER LADYSHIP
ROSEMARY BAAH TOSU (MRS) - HIGH COURT JUDGE SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE

D21/367/2023

THE REBUBLIC

VS

CEPHAS BORTEY

RULING

Accused is charged with Robbery contrary to section 149 of the Criminal Offences Act, 1960, Act 29.

Per the facts presented by the Prosecution, the complainant is a driver who resides at Nungua whilst the Accused is a welder who also resides at Nungua.

On the 3rd January, 2023, at about 10:30 pm, complainant and his mate loaded passengers from Accra Post Office to Nungua. On reaching Teshie Mobil., complainant's bus developed a fault and he had no option than to provide his other passengers with another bus to Nungua.

According to Prosecution, Accused and three other persons who were also in the bus attacked the complainant and his mate and took cash the sum of GHS1,050, which was their sales for the week. Accused and accomplices then sat in a waiting taxi and bolted. A few days later on the 19th of January 2023, at about 8: 30 pm, Complainant's mate noticed Accused in their bus again when they were driving from Accra to Nungua and he informed the complainant who drove immediately to Osu Police Station. Accused was arrested

The duty of Prosecution as stated in section 174 of Act 30 is to make out a prima facie case at the close of its case. Prima facie evidence has been described as

In the case of *Republic vs. Kwabena Amaning @ Tagor & Anor Suit no. ACR 4/2007*, the Court of Appeal held that

'In my view therefore the requirement that the prosecution has to establish a prima facie case against Accused before the Accused could be called upon to open his defence is another way of saying that such evidence or case led must be such that it should leave no doubt in the mind of a reasonable person that it was the Accused who committed the offence so that where the Accused failed to give any explanation to rebut the guilt staring him in his face he would by all means be convicted. It is a notorious principle in the criminal law that 'prima facie evidence' is nothing other than evidence that can lead to the conviction of the Accused if the Accused leads no evidence to rebut the presumption raised in it.'

Prosecution called three witnesses. PW1 is complainant Samuel Adjei, the bus driver. His evidence is captured greatly by the facts as presented by the Prosecution. He testifies that his vehicle developed a fault at Kenkey House, Teshie Lascala and he had to find other means of transport for the passengers. This he did with the help of his mate until it was left with Accused and three others onboard.

PW1 described Accused as having a cock in his hand which he placed on the ground. PW1 is sure that he has correctly identified Accused because, Accused confronted him even before boarding the car at the station. PW1 says Accused and his cohorts demanded their money and subjected he and his mate to severe beatings such that they had to give all the earnings to them.

Accused together with the others escaped in a waiting taxi cab towards the Nungua direction. A few days later, he noticed Accused in his vehicle again. He drove directly to Osu Police Station and got Accused arrested.

PW2 is Elijah Bortey, PW1's mate. On the day in question around 11:30pm, he was with PW1 on board their vehicle from Accra to Nungua. He testified that PW1 directed him to look for other vehicles for the passengers whilst he fixed the problem their vehicle had developed.

He said he managed to find and pay for vehicles for all the passengers except Accused and three others who demanded to be given their money. He refused. Accused and his accomplices took offence, they then attacked PW1 and him and took all their sales. They bolted in a waiting taxi.

A commuter who was passing gave PW1, ten cedis for transport. Thy reported the affair to the Police.

On the 18th of January, 2023, he spotted Accused in their vehicle again. He informed PW1 who drove to the Police station and got Accused arrested.

PW3 is Detective Corporal Enoch Arthur. He investigated this matter. He obtained statements from the witnesses in this matter. He visited the crime scene with the actors to make enquiries. This enquiry revealed that the Prosecution witnesses were indeed robbed of their possession on that night. He tendered the following documents in evidence as

- Investigative cautioned statement- Exhibit A
- Charge statement – Exhibit B
- Pictures of the crime scene- Exhibit C and C1.

THE CHARGE OF ROBBERY

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.'*

So essentially, Robbery is stealing with the use of harm, threats or criminal assault on a person.

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

Even though Accused denies in exhibit A and B that he robbed the prosecution witnesses of their money, both PW1 and PW2, were unshaken in their evidence and under cross-examination that they have properly identified Accused.

The case of the Prosecution per the evidence of PW1 and PW2 clearly establishes that accused person together with his accomplices took their sales of GHS1,050.

The evidence also points to the use of criminal assault by accused person together with others to prevent PW1 and PW2's resistance to the stealing of their sales through the physical attack on them.

Section 174(1) of Act 30 provides

'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...'

I do find that prosecution has adduced enough evidence in respect of all the essential ingredients of the offence of Robbery for which accused person has been charged.

I therefore conclude that a prima facie case has been made out against accused person and I would call upon them to open him to enter a defence at the next Court hearing.

(SGD)

**H/L ROSEMARY BAAH TOSU (MRS)
HIGH COURT JUDGE SITTING AS AN
ADDITIONAL CIRCUIT COURT JUDGE**