

**IN THE CIRCUIT COURT OF GHANA HELD IN ACCRA ON MONDAY THE  
20<sup>TH</sup> OF MARCH, 2023 BEFORE HER LADYSHIP JUSTICE ROSEMARY BAAH  
TOSU (MRS) – HIGH COURT JUDGE SITTING AS AN ADDITIONAL  
CIRCUIT COURT JUDGE**

**COURT CASE NUMBER D2/247/2022**

THE REPUBLIC

VS

KOLA JOSUE & 2 ORS@ LARGE

**JUDGMENT**

Accused has pleaded not guilty to the charges of Conspiracy to commit crime, to wit Robbery, contrary to sections 23(1) and 149 of the Criminal Offences Act 1960, Act 29 and the substantive offence of Robbery, contrary to section 149 of the Criminal Offences Act, 1960 (Act 29).

**FACTS**

Prosecution says that the Complainant, one Emmanuel Allotey is a driver and resides at Batasona, whilst Accused is unemployed and is a resident of Lashibi.

Prosecution contends that Accused and his other accomplices, who are at large met and planned to snatch a taxi cab at Lashibi in Accra. Thus, on the 23/7/2022, at about 12 midnight, complainant who was in charge of Toyota Vitz Taxi registered as GT 5644- 21 was engaged by Accused and his accomplices to take them to EMEFS Estate. At 12:30 am when the complainant reached the destination of the Accused persons, he stopped his vehicle expecting Accused persons to pay their fare. The Accused who sat directly behind complainant, suddenly put a rope around his neck and pulled it until complainant became unconscious. Complainant was pushed out of the car and left to his fate.

In the early hours of the day, Accused persons sent the taxi cab to the mall to sell. Based on a tip off, the Accused together with accomplices were apprehended, the others managed to escape but Accused was arrested. Complainant later identified Accused as the one who strangled him. In his cautioned statement, Accused mentioned one Ajokate and Joshua as his accomplices.

Prosecution relied on three witnesses to discharge their burden before this Court, which is to prove the guilt of the Accused person beyond reasonable doubt.

PW1, complainant, Emmanuel Allotey was driver in charge of the vehicle, subject matter of the charge. He testified that he usually works at night that on the 23/07/2022 around midnight, Accused and two other men stopped him at Lashibi Community 17 Junction. They wanted to be taken to EMEFS estate and the parties negotiated a fare of 15 GHS. PW1 says Accused is the one who negotiated the fare, whilst the other two accomplices stood behind him.

PW1 gave evidence further that the area had street lights so visibility was good. Accused was then wearing a Blue Jeans top on a tee shirt, jeans trousers and black and white slippers.

PW1 says that Accused sat right behind him with another accomplice. At the destination, the Accused persons asked PW1 to stop so he expected them to pay his fare. Suddenly Accused slipped a rope around PW1's neck and pulled his neck against the car seat. PW1 tried to move the car but in the process, the other Accused persons started to hit his hands with sticks.

PW1 says he became unconscious and when he came to him realized he was lying by the road side. The taxi cab and his Infinix mobile phone valued at GHS200 were gone.

PW1 testified that he sustained serious injuries around his neck. He reported the incident to the Sakumono Police and further went on a personal search for the car. In the course of the search, PW1 was informed by a motor rider that the Police had arrested a car snatcher, he went to the EMEFS Police station and identified Accused and the car in question. PW1 attached Exhibit A, a picture of his wounded neck.

PW2 is the investigator in charge of the case, Detective Inspector Abubakar Jantu. He testified that Accused was arrested and brought to the station with the Toyota Vitz taxi with registration number GT 5644-21. According to him, the patrol team on night duty reported that about 1 am, they had information that Accused and the others at large had robbed a driver of his taxi and were offering it for sale around the Accra Mall. An informant pretended to buy the car whilst the Police swooped in and arrested the Accused. The other accomplices managed to escape.

PW1 with wounds around his neck later reported the incident to the Police station. Upon interrogation, Accused mentioned one Joshua and Ajokate as his accomplices, he led Police to their homes at Lashibi but they were not there.

PW2 attached Exhibits B, Investigative Cautioned Statement of Accused, Exhibit C, Charge Statement, Exhibit D, DVLA documents, Exhibit E, picture of the Toyota Vitz car.

PW3, is Inspector Samuel Bismark Osaе one of the arresting officers. His evidence is that on the 23/07/22 at about 2:30 am whilst on patrol duties with his colleagues, they received a call from their station officer, who relayed the number of an informant to them.

Upon getting in touch with informant they were notified that Accused and his accomplices were trying to sell the vehicle. The patrol team followed up and met the Accused and others in the process of negotiating the price of the car. Accused was arrested whilst his accomplices fled.

Accused led patrol team to the home of one of his accomplices at Lashibi but he was unavailable.

## **THE DEFENCE**

Right from the start, Accused has denied any involvement in this offence. In fact, exhibit B, his cautioned statement is not a confession statement, and Accused was quick to point out to the Court, inconsistencies in his cautioned statement and also cross-examined Prosecution witnesses on them as much as he could, being unrepresented at that time.

His case is that he is a Togolese, who speaks Ewe and French. Accused testified that he has been in Ghana as a plumber for only four months. According to Accused, he knows A2, who is at large as a neighbor and friend. A2, one Joshua called him on the 22<sup>nd</sup> of Jul, 2022 around 11: 50 pm to meet him at Shalom Spot. A2 arrived driving a taxi cab and requested A1 to escort him to the Accra Mall to pick up something.

Accused testified that the said Joshua (A2) drove the car and they were the only two occupants. Accused says that where they arrived at, after a long journey, was an open space with not much activity unlike a mall. They then waited for the one who Joshua was to meet, when he arrived Joshua left Accused in the taxi and went out to speak to the person. A motor rider ultimately came to join Joshua and his visitor and they continued to have discussions.

The said Joshua, after his discussions requested Accused to join him with the rider on the motor bike, whilst they left the taxi with one of the discussants. The three of them sat on the motor bike with the said Joshua behind him. However, just before the motor took off, the Police surrounded them, and Joshua pushed Accused, who fell down together with the rider.

The Police started to beat him up with a machete mercilessly, Accused noticed that Joshua and the other man who came for the taxi had disappeared from the scene. Accused says he also noticed that the motor rider had been allowed to leave without providing a statement. He claims that he met PW1 for the first time at the Police Station.

Accused person denies committing any offence with the 2<sup>nd</sup> and 3<sup>rd</sup> Accused persons.

### **ANALYSIS OF THE EVIDENCE**

There are a few facts which are not in dispute here. One of these facts is that Accused was in the said taxi cab with Joshua (A2), this Accused has admitted. However, the Prosecution's case is that Accused was with Joshua and Ajokate (A2 and A3) who are at large.

Accused has consistently denied this fact even under cross-examination.

Cross-examination of Accused at page 14 of the record dated 1<sup>st</sup> March, 2023

*Que: I put it to you that you and A2 and A3 drove exhibit C from Lashibi Community 17 Junction to the Toll Booth on the motorway*

*Ans: It is not true, it is only Joshua who drove the car and I was also in the car*

*Que: I put it to you that you and your accomplices snatched this car from PW1?*

*Ans: That is not true*

This piece of evidence (that is whether there were two accomplices or one) is very critical to the case of the Prosecution because it affects the testimony and the credibility of their first witness, PW1. PW1's evidence is that on the night or morning in question, Accused together with two other men, stopped him for his services and later robbed him of his vehicle.

After analyzing the evidence led and looking through the exhibits tendered, I am inclined to believe the evidence of Accused on this issue rather than that of Prosecution witnesses.

PW2, the investigator testified at paragraph 9 of his witness statement as follows

9. *Accused person was interrogated and he mentioned Joshua and Jokate as his accomplice. He led Police to their houses at Lashibi but were not met. On 23/07/2022. Investigation caution statement was obtained from the accused.*

PW3 testified as follows

4. *When we contacted the informant, he told us that Accused person Kola Josue and his accomplices have snatched a taxi cab with registration number GT 5644-21 from a taxi driver at Lashibi. That the Accused and his accomplices are trying to sell the Taxi cab to him hence police should assist him arrest them"*

5. *When we proceeded to the Accra Tema Motorway toll booth where Accused and his accomplices were in the process of negotiating for the taxi cap and arrested Accused in the act of selling the car to the informant, but the other two accomplices managed to escape.*

6. *Accused Kola Josue led the patrol team to the house of one of the accomplices by name Yetse Deo Mawuli's house at EMEF estate but was not met*

Reading this evidence of PW3, it is clear that he has introduced the name of a totally different person into the Prosecution's case for which there is no corroboration from other prosecution witnesses. In response to his evidence, Accused rightly challenged him under cross- examination at page 9 of the record dated 8<sup>th</sup> November, 2022

*Que: I put it to you that the only person I know is a mechanic called Joshua?*

*Ans: No, Accused mentioned the name to us which we used in our statement*

*Que: I do not know any Mawuli*

*Ans; That is the name Accused gave us when he was brought to the station*

*Que: I put it to you that it was the investigator who asked me for a name and not the patrol team?*

*Ans: that is not true, accused gave us this name and we used it to make our first entries before he was sent to the investigator.*

This evidence led by PW3 has shown inconsistencies in the case of Prosecution. The court now has three names, all of which Accused has denied except Joshua. They are Ajokate and Yetse Deo Mawuli.

I would now consider exhibit B, which the Court admitted into evidence despite Accused person's protestations. Exhibit B was admitted into evidence because it was not a confession statement. It was the opinion of this Court that Accused could deal with his disagreements with exhibit B under cross-examination, because the disagreements turned on denials of names and descriptions of events.

In exhibit B, Accused is alleged to have said that he knew both Joshua and Ajokate, who live in the same area with him. However, the name Ajokate was mentioned as only having called Joshua on the phone to know how much the buyer wanted to purchase the stolen vehicle. Exhibit B concludes by Accused allegedly stating that he led Police to the suspect Joshua's house at Lashibi, however, he was not present.

The burning question is that if Accused informed Police that both Joshua and Ajokate live near to him, and the police were on the heels on two other accomplices, why did the Police not visit the homes of these two accomplices but only one accomplice, Joshua? I believe this lends credence to Accused person's testimony that he only knew Joshua and not Ajokate.

PW3 despite giving a strange name, was clear in his evidence that Accused was led to the home of only one accomplice who was not at home. PW2 stated that the police led Accused to the homes of his accomplices but were not met.

This creates doubts in the case of the prosecution. I therefore reject the evidence of PW2 on this issue because there is no evidence that he was a member of the patrol team which visited the home of the accomplice.

The evidence also shows clearly that it was only the home of Joshua which was visited and not the said Ajokate.

I therefore find as a fact that it was only the home of Joshua which was visited by the team and not Ajokate.

Another issue I will consider, is the number of accomplices who allegedly aided Accused in this enterprise. Prosecution witnesses testify that there were two accomplices in addition to Accused making them three. Accused, however insists that he was only with Joshua and no other person.

PW1 says he was attacked by three men, PW2 uses the word accomplices and not accomplice and PW3 also uses the word accomplices.

However, a close reading of the evidence shows that the two other participants in the negotiation of the price of the vehicle apart from Accused and Joshua, were the motor rider and another person, the informant, who were known to the Police!

This is what PW3 stated in paragraph 3,4 and 5 of his witness statement

*3. on the 23<sup>rd</sup> July, 2022 at about 2;30am whilst on patrol duties with C/Inspector Hopeson Adabla, Sgt Ishmeal Afutu and Cpl. Danies Afull, we received a phone call from our station officer who gave us the phone number of an informant to contact.*

*4. when we contacted the informant, he told us that the Accused person Kola Josue and his accomplices have snatched a taxi cab with registration number GT 5644-21 from a taxi driver at Lashibi. That the Accused and his accomplices are trying to sell the taxi cab to him hence Police should assist him arrest them.*

*5. we then proceeded to the Accra Tema motorway toll booth where Accused and his accomplices were in the process of negotiating for the taxi cap and arrested Accused in the act of selling the car to the informant but the other two accomplices managed to escape.*

Under cross-examination, PW3 narrated to the court how accused was arrested. Cross-examination at page 10 of the record dated 8<sup>th</sup> November, 2022.

*By Court: Can you narrate to the court how accused was arrested?*

*Ans: We were on night patrol, I was the driver and I received the call from my station officer and informed my colleagues in the car. I called the informant and based on the exchanges we were directed to meet accused and other accomplices at the Tema motorway from Tema to Accra precisely the toll booth. The informant came with Accused and accomplice in the car awaiting for his brother to bring the money. So his brother came on the motor bike to meet them. At that point, it was the brother who was directing us so that the Accused and accomplices won't know he was communicating with Police. When the brother got there he took over the taxi and gave the motor bike to the informant. Informant pretended as if the brother had brought the money. So he asked them to join him on the motorbike. In the process of moving the bike we blocked them and the other accomplices managed to jump and run away. It was around two 2am.*

So, it is clear that in addition to Accused and the said Joshua, there were the informant and his brother, who were dealing with the police and pretended to escape. Accused even went further to testify that one of them was arrested but he noticed that he was allowed to go away without giving any statement to the Police.

It is trite that in a criminal trial if there is any doubt it goes to the benefit of Accused and not the prosecution.

I choose to accept Accused version of the events which is consistent and accords with reason. I refer to Accused person's cross-examination at page 19 of the record dated 3<sup>rd</sup> March, 2023

*Que: It was during the transaction between you and your accomplices and the said buyer that the Alpha Swat Unit of the Police zoomed in on you and arrested you in the process, whilst your accomplices managed to escape.*

*Ans: It is not true, when Joshua and the man were talking, someone came on the motorbike. That person and Joshua went to the motor rider, and that fellow came back and entered into the taxi. Joshua was on the motorbike and I wanted to enter the car but Joshua asked me to join him on the motorbike, he told me we were going to the owner of the bike's house. When the bike was about to move, someone pushed us off the bike and we fell down (me and the motor rider) before I realized the police had arrived there to arrest us. They started beating me so I told them I was going to show them Joshua's house. When we got to Joshua's house, Joshua was nowhere to be found. When we got to Joshua's house, his wife and I were arrested and she was later released.*

This cross examination of Accused even supports PW3's evidence in material particular. I therefore find as a fact that in addition to Accused and Joshua, there were the informant and his brother on the morning of the arrest. There is no evidence of the presence of this Ajokate, if he is not a figment of Prosecution's imagination, then it means he was not available on the day of the incident.

### **IDENTITY OF ACCUSED**

In the Court's ruling on whether or not a prima facie case had been made against the Accused, I found that prima facie had been made and that PW1 had sufficiently identified Accused. I must say that being unrepresented by Counsel, Accused was unable to put PW1's identification of him to proper scrutiny. Fortunately, the opportunity has arisen for me to consider if Accused was properly identified.

In his book "**Criminal Prosecution in Ghana, Practice and Procedure**", the learned author, Daniel Korang made the following statement under the topic Eyewitness Misidentification" at page 633. He stated

*'Improper suggestion may occur in one or more of the following ways; where the participants in a lineup are grossly dissimilar in appearance to the suspect, where only the criminal suspect is made to wear distinctive clothing, which the culprit allegedly wore; where the police tell the witness they have arrested the culprit and the witness is given a premature opportunity to view the suspect in police cells before the line up (emphasis*



mine)...Improper Suggestion may also take place where the police themselves are preoccupied that a particular person is culpable and that they only need sufficient proof from a third party. In such a situation, the preoccupation may communicate itself subtly to the witness.

The learned author P.K. Twumasi in his book, **Criminal Law in Ghana** stated at page 135 as follows

*'In order not to convict an innocent person it is essential in every criminal trial that the court satisfies itself that the identity of the accused has been proved beyond reasonable doubt. It is not enough for the prosecution to prove that an offence has been committed, there must be further evidence to connect Accused to the commission of the offence.'*

This is PW1's testimony in his witness statement

*5. There is street light at the area so visibility was clear*

*6. Accused was then wearing a Blue Jeans top on a white T shirt, a blue jeans trousers and a black and white slippers...*

*15. I called a colleague taxi driver by name Agyare Dankwa to accompany me in search of the car. In the course of the search, we met a motor rider and we informed him about the snatching of my taxi cab and he told us that the police have arrested a car snatcher and he led us to trace the police to Emef estate where I identified Accused as one who used the rope to pull my neck in my car and robbed me of the car and mobile phone.*

This is a classic example of what the learned author Daniel Korang refers to as improper suggestion. By jove, if PW1's car was stolen and he nearly lost his life, what is the probability that if he is informed someone had been arrested with the car, he would conclude that was not the person who robbed him? That probability is nil.

After considering the evidence and cross examination of the witnesses, it is clear and I find that as a fact that PW1's identification was based solely on the information that Accused had been arrested in a car snatching case.

What do the authorities say on such an identification? I refer again to the book **Criminal Law in Ghana**, where the learned author made the following statement at page 138.

*"Again, it is common for the police upon the arrest of a suspect, not infrequently after a complaint has been made about the commission of a crime to invite the complainant to the station and without an identification parade produce accused from cells for the complainant to identify him. This procedure is also improper and prejudicial to the case of the suspect, unless there is evidence that the complainant knew the accused very well prior to the case and that it was upon his description of the accused that the police were able to arrest him."*

So far no evidence has been led that prior to the arrest of Accused, PW1 had given a description of him to the Police following the incident. PW1 only identified Accused based on the information which he had been fed with. I find this kind of identification to be prejudicial and wrongful. I therefore hold that Prosecution has been unable to identify Accused beyond a reasonable doubt.

There is also the little issue of Accused been found with the stolen vehicle in the Police swoop and accused person's own admission that he drove with Joshua in the vehicle to where the transaction took place.

It is without doubt that many persons can find themselves at the wrong place at the wrong time. It is also trite that the mere presence of a person at a crime scene will not make him a conspirator. See the case of **Hodgson vs the Republic (2009) SCGLR 642 @ 666**.

What is important is that the alleged conspirator must be found to be working together with the others towards the criminal purpose. Apart from Accused person's own testimony of how he stood by whilst Joshua discussed with the informant, prosecution has led no evidence to prove that Accused was actively involved in the negotiation.

There being no alternative evidence to Accused person's testimony, I am bound to accept his evidence. Indeed, I am fortified in my believe by PW3's testimony under cross-examination that Accused just stood there when the police swooped in, whilst the others all took to their heels.

Cross-exams of PW3 at page 10 of the record dated 8<sup>th</sup> November, 2022

*Que: I was on the motor bike but I didn't appreciate what was going on*

*Ans: Accused was just standing there.*

I think it makes practical sense that if Accused knew what was going on he would have run for his life but he did not!

## INCONSISTENCIES

Under cross-examination, Prosecution tried to draw the Court's attention to inconsistencies in Accused person's evidence both in exhibit B, cautioned statement and his testimony under oath. These inconsistencies had to do with statements in exhibit B that Joshua had asked him to accompany him to sell something and his evidence on oath that Joshua asked him to accompany him.

First of all not only are these inconsistencies minor but from the beginning of the trial, Accused drew the Courts attention to statements in exhibit B which he claimed were not attributable to him. The fact that exhibit B, was admitted into evidence does not mean that every statement therein is sacrosanct.

The authorities are clear that if the inconsistencies are minor and do not go to the root of the matter, a Court ought not to reject such evidence.

The case of **Effisah vs Ansah (2005-2006) 943 @ 960** held

*"...in the real world, evidence led at any trial which turns particularly on issues of fact, and involving a fair number of witnesses would not be entirely free from inconsistencies, conflict or contradictions and the like. In evaluating the evidence at a trial, the presence of such matters per se, should not justify a wholesale rejection of the evidence to which they might relate. Thus in any given case, minor, immaterial, insignificant or non critical inconsistencies must not be dwelt upon to deny justice to a party who has substantially discharged his or her burden. where inconsistencies or conflicts in the evidence are clearly reconcilable and there is a critical mass of evidence or corroborative evidence on crucial or vital matters, the court would be right to gloss over these inconsistencies."*

The matters which Prosecution consider to be inconsistencies are not major and do not go to the root of the charges against Accused, the court would therefore gloss over it.

The celebrated case of **Lutterodt vs. COP (1963) GLR 429 SC** sets out the three stages that a court must go through when considering the defence of an accused person

*'Where the determination of a case depends upon facts and the Court forms an opinion that a prima facie case has been made the Court should proceed to examine the case of the defence in 3 stages.'*

- i. *Firstly, it should consider whether the explanation of the defendant is acceptable, if it is that provides complete answer and the Court should then acquit the defendant*
- ii. *If the Court should find itself unable to accept or if it should consider the explanation to be not true, it should proceed to consider whether the explanation is nonetheless reasonably probable; if it should find it to be, the court should acquit the defendant, and*
- iii. *Finally, quite apart from Defendant's explanation or the defence taken by itself, the Court should consider the defence such as it is together with the whole case i.e. the prosecution and defence together and be satisfied of the guilt of the defendant beyond reasonable doubt before it should convict, if not, it should acquit'*

Unlike, the Prosecution whose burden is to prove the guilt of an Accused beyond reasonable doubt, the yardstick by which an Accused person's explanation is tested to determine whether he is entitled to an acquittal or not is **Reasonable probability**. If on the whole the explanation given by the Accused is such that even if it is not true, it is reasonably probable, then the balance of probabilities will tilt in Accused favour and he must be acquitted.

I know the evidence is damning, Accused was arrested during the sale of the stolen vehicle, Accused has admitted being in the stolen car from where the incident happened and he took Police to the home of one of the alleged accomplices, he has also been "identified" by the victim of the crime. For the naysayers let us assume that Accused person's explanation is unacceptable or not true.

However, the law grants the court two other tests to subject Accused person's explanation to. And that test is to consider whether Accused explanation even if it is unacceptable is reasonably probable.

The question then is, is it reasonably probable that Accused was asked by the said Joshua to accompany him without knowing that such an offence has been committed? Is it reasonably probable that an innocent person might find himself caught up when a crime is being committed?

The simple answer is Yes!

If a Court then finds that the Accused person's explanation is reasonably probable, then the fact is that the Prosecution has not been able to prove his guilt beyond a reasonable doubt and I so find in this matter.

Accused is acquitted and discharged of the charges of Conspiracy to commit crime to wit robbery, and robbery.

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

Accused present  
Inspector Jonas Lawer for Republic  
Paulina Fleischer for Accused